Kicking the Dragon

Confessions of a Tax Heretic

Larken Rose

Kicking the Dragon

Confessions of a Tax Heretic

Larken Rose

Kicking the Dragon
Confessions of a Tax Heretic

Larken Rose

Cover design by Larken Rose.

eBook conversion 2012 by Peter Klimon

Printed in the U.S.A. ISBN: 978-0-9777834-2-7

PART I - What's All This About?

PART II - Testing the Idea

PART III - Opinions vs. Censorship

Part I:
What's All This About?

Starting at the Ending

I write these words from prison—a place where, until a few years ago, I would never have expected to find myself. In fact, had my class back in high school voted for someone "least likely to ever go to prison," I'm sure I would have made the top three. Given my lack of criminal history, my quiet and obedient behavior back in school, the fact that I have never used any drugs (or even alcohol), never smoked, am happily married and have a great kid, and so far have survived for 37 years without ever having to punch anyone, I'm pretty sure I would qualify as a "goodie-two-shoes" in most people's minds. Yet here I am, serving a 15-month sentence in federal prison. Granted, it's only a minimum-security prison "camp," which is pretty tame compared to "real" prison, but I'm still stuck here. So, while I have a bit of time on my hands, I feel compelled to tell the story of how I got here, because it involves issues which should matter to every American, not just to me.

I might as well tell you now, my tale doesn't involve any car chases or shootouts, or anyone dying—nor does it involve sex, drugs or rock 'n' roll. (I wonder if anyone will keep reading after that admission.) Nor does the story involve me getting caught doing anything sneaky or dishonest. In fact, it doesn't even involve me doing anything illegal. I know, I know: everyone says he's innocent. They all claim, "I didn't do it!" Well in my case, I *did* do it, but "it" wasn't illegal (notwithstanding my current incarceration). But my purpose in writing this book is not to "clear my name" or to make anyone think better of me. You may think what you like about this nasty convict and enemy of the state, because what is worth learning from my story has nothing to do with me personally.

To skip right to the punchline, I stopped filing federal income tax returns after 1996.

Now, it's been my experience that whenever someone hears that, he immediately jumps to half a dozen conclusions, all of them incorrect. So I beg the reader not to get ahead of himself, and not to form any opinions until all the facts are known. It's very easy for people to get carried away by unthinking mental reflex, since jumping to conclusions is so much easier (and often more fun) than objectively analyzing and thinking about stuff. So, if you were hoping for an excuse to jump to a conclusion, make up your mind (and shut your mind), so you can skip the rest of the book, here you go:

1) I was convicted of failing to file federal income tax returns.

2) People in government call me a "tax protestor."

3) The IRS says that my beliefs are "frivolous."

4) Several judges have said the same.

5) Conventional wisdom also says I'm wrong.

Therefore, I'm a wacko criminal. So if you'd like, you can dismiss me as such without reading any further, and get back to your daily routine. There, wasn't that easy? If, on the other hand, the above didn't scare you away (as apparently it didn't, since you're still reading), you might find the rest of the story interesting—maybe even disturbing.

Though my story revolves around some very unorthodox conclusions I reached concerning the federal income tax laws, the primary goal of this book is not to convince you that those conclusions are correct. In order for the story to make sense, you'll need to grasp at least the basics of my legal conclusions, but whether you agree or disagree with them, or even fully understand them, please don't let that interfere with the story. Whether you're curious, skeptical, or even if you already think I must be a clueless wacko, I ask you to simply absorb the story, and reserve judgment until the end.

"Condemnation without investigation is the height of ignorance."
[Albert Einstein]

I also want to emphasize that the title of this book is not "Defeating the Dragon," or even "Battling the Dragon," but merely "Kicking the Dragon"— probably an act of sheer stupidity as much as anything else. If some wimpy little peasant walked up to a huge dragon and kicked it, some people might wonder why he did so. Well, I *invited* the federal government to prosecute me. Want to know why?

False Assumptions

"Oh, you're one of *those* people!"

While we humans like to consider ourselves to be thinking, rational beings, mostly what we do is parrot what we hear elsewhere, blindly jump from one conclusion to the next, and engage in other forms of what I call "program think": the tendency of people to reach their beliefs and conclusions as the result of utterly irrational mental reflexes.

One of the most common manifestations of "program think" is wanting to categorize and stereotype people based upon a speck or two of information. We're pretty much forced to do that on a regular basis, as we don't have time to make an objective, careful analysis of everyone we meet. It's also psychologically handy to compartmentalize *ideas* as well as people. For example, anything sounding like "I don't have to pay taxes" is very easily categorized by most people as some sort of "tax protest." Anyone who doesn't pay "his taxes" must be a nasty, unpatriotic, malcontent tax cheat who just doesn't want to pay his fair share, right?

In the hope of fending off false assumptions in this case, I must list a few things that I do *not* believe, and things that I am *not* claiming. Hopefully this will keep my beliefs from slipping into categories in your brain where they do not belong.

1) I did *not* refuse to pay my taxes.

2) The reason I stopped filing tax returns was *not* because I object to taxes.

3) I do *not* think that income taxes (or taxes in general) are unconstitutional.

4) I am *not* a tax protestor.

5) I did *not* end up in prison by cheating on anything, hiding anything, or lying about anything.

If you've now run out of convenient conclusions to jump to, or handy categories or stereotypes to quickly fling me into, good! Now I can tell you what this story *is* about, or at least what started it: **I believe that my income (and probably yours, too) is not subject to the federal income tax**.

If you're having troubling making sense of this so far, that's good—it means you're trying to reason instead of assuming. (It's more trouble, but it's good for us to do that on occasion.) So let's take it slow and easy, and see what this is all about. Here goes:

Governments write laws which impose taxes. Assumptions and guesses do not create legal obligations; only legislation does. For example, if you were to assume that life insurance benefits are subject to the federal income tax, you'd be wrong. Whatever you think *should* be taxed, or whatever you think is fair or unfair, unconstitutional or not, economically wise or stupid, etc., the issue at hand here is something else entirely: *Who, according to the law, owes federal income taxes?*

Yes, the question sounds rather stupid. Apart from people with little or no income, and maybe some people who are really good at jumping through tax code loopholes, we *all* owe income taxes, right? We may not like it, but legally we owe it. Right? Maybe, maybe not. Please bear with me while we address this seemingly stupid question.

In an effort to keep this from getting too technical, let's start with some very basic (almost silly) points:

1) The federal income tax applies only to "taxable income." There is no tax upon non-taxable income.

2) It's not unpatriotic, illegal or immoral to not pay something you don't owe. For example, if you don't distill whiskey, you have no legal, moral, or patriotic duty to pay whiskey-distilling taxes. Likewise, if you don't receive any income which is subject to the federal income tax, then giving money to the IRS is neither virtuous nor patriotic; it is both silly and legally improper.

3) The law, and only the law, determines what taxes people owe. (Whether the law is immoral, unfair, unconstitutional, and/or stupid—whether or not you think you *should* be taxed—is an entirely different question, and one which need not be addressed here.)

That third point, though patently obvious, can easily get mangled by backward logic and emotional thinking (or non-thinking). For example, when confronted with a claim that most Americans don't legally owe federal income taxes, some respond with things like "But how will the government function?" That may be a reasonable question, but it has no bearing on whether someone owes a tax

or not. The law alone determines that. (For example, someone who doesn't distill whiskey isn't going to suddenly owe whiskey-distilling taxes just because the government supposedly needs more money.)

In short, the issue here has nothing to do with any political or moral opinion. It's just about determining one's tax liability, based entirely upon the law itself—an issue which, on its face, might sound painfully boring. So please don't let political beliefs or moral opinions get in the way of examining what is a purely academic issue.

I should add, however, that while my conclusions about who owes federal income taxes are based entirely upon the law, this story involves a lot more than a legal argument, and what can be learned from it is far more important— and hopefully a lot more interesting—than the technical intricacies of the federal tax code.

It Means What It Says

Imagine being pulled over and ticketed for driving 42 miles an hour in a 45 mph zone. "Wait a second, officer," you protest, "the sign says 45, and I was only doing 42!" Instead of disagreeing, the cop confidently responds, "The speed limit here is 25; that sign doesn't apply to you." Would you just accept that? Certainly not. You would be outraged, and rightfully so. But that would never really happen, right? Well, I'm in prison right now for doing exactly what the law *commanded* me to do.

Question: How do you know how fast you're allowed to drive on any given road? Answer: Look at the speed limit signs. Why? Because that's what they're for; it's why they exist: to tell you how fast you can drive.

Question: When figuring out your taxes, how do you determine how much domestic "taxable income" you have? Answer: Refer to the rules found in Section 861 of the Internal Revenue Code, and the "regulations" that go along with that section. Why? Because that's what those sections are for; it's why they exist: to tell you how to determine your "*taxable income from sources within the United States*."

Who says? The government says. The following shows the titles of a couple of sections (and subsections) of the Internal Revenue Code.

Section 861: "Income from sources within the United States"
Subsection 861(a): "Gross income from sources within United States"
Subsection 861(b): "Taxable income from sources within United States"

Section 862: "Income from sources without [outside of] the United States"
Subsection 862(a): "Gross income from sources without United States"
Subsection 862(b): "Taxable income from sources without United States"

Now, if you don't do any foreign trading, but just earn a living in the United States, so far doesn't it seem—based just on what you see above—that maybe you should be looking at Section 861 of the tax code to figure out how much (if any) taxable domestic income you have? Here is a quote from an official IRS regulation reinforcing the point:

"Sections 861(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from

sources within the United States after gross income from sources within the United States has been determined." [26 CFR § 1.861-8]

(Just so you know, any time you see underline or bold emphasis within quotations in this book, it is my own added emphasis, and doesn't appear in the original quote. Also, when you see the symbol that looks like someone stepped on an inchworm ("§"), it just means "section.")

The quote above is an official, legally binding instruction, courtesy of the Commissioner of the IRS and the U.S. Secretary of the Treasury, telling you and me how to determine our taxable domestic income. And it sure seems to be telling us to use those particular sections, doesn't it?

So what? Would you believe that I'm in prison right now, clicking away on this stupid typewriter, because I used Section 861(b) of the tax code, and the regulations related to it (1.861-8), to determine my "*taxable income from sources within the United States*"? No, I'm not kidding. I was prosecuted and imprisoned for *complying* with official, legally binding commands, straight from the government's own law books, including what you see above.

"Oh, come on! There must be more to it than that! They wouldn't prosecute you for doing what the law *told* you to do!" Oh, really? Wouldn't it be a story worth reading if they did?

Once Upon a Time

The year was 1997. My wife, Tessa, and I lived in a little house in a suburb of Philadelphia, Pennsylvania, where we ran a small medical transcription business. Of the $40,000 or so we brought in each year (nothing to brag about, with both of us working full time on the business), about $10,000 was going to the IRS. (One reason it was that high is that we were considered "selfemployed.") Needless to say, we weren't exactly thrilled about that, but you know what they say about death and taxes.

Anyway, around that time I started hearing about various theories concerning the income tax (other than "It stinks!"). I started looking into a few so-called "tax protestor" arguments that I came across on the internet. I found lots and lots of claims that ended with conclusions along the lines of "so we don't have to pay taxes!" Many of the claims were downright batty. A few others at least had interesting points to make or lines of reasoning, but one by one I found that, in the end, they just didn't hold water. They were often based on misunderstandings or misreadings (presumably inadvertent) of various laws or court decisions. They sounded too good to be true, and they were.

After reviewing many such theories and claims, someone (I don't remember who) pointed me in the direction of yet another "theory," with a similar-sounding punchline (i.e., "We don't owe taxes! Yippee!"). The article was called "Gross Income," written by a man named Thurston Bell. Initially I had the classic program-think response: "That sounds like those other theories, and they all turned out to be wrong, so this one will be too."

(That is a fine example of intellectual guilt-by-association, which is easy to fall into, even if it is logically unsound. Just because one theory is flawed does not mean that every theory with a similar conclusion must also be flawed. For example, those people who long ago were stupid enough to jump

off cliffs while wearing cardboard wings with feathers glued to them did not prove that human flight was impossible; they only proved that *they* didn't know how to do it. Likewise, while there have been many legally and logically flawed arguments ending in "so I don't owe income taxes," that is *not* a logical proof that everyone *does* owe income taxes.)

Again, the law alone determines who owes taxes, but the law tends to be boring, confusing, long-winded and convoluted. So let's go read some tax law! Hooray! The good news is, if you can invest a bit of actual concentration for the next few pages, the rest of this book should be easy sailing —and will make a lot more sense.

And for those few, weird people like me who actually *like* evidence, thorough academic analysis, and comprehensive proofs, I'm including my entire "Taxable Income" report at the end of this book as Appendix A. For everyone else—all those who want to skip the headache and get on with the story—what follows is the short version.

If you were to read Section 1 of the Internal Revenue Code (assuming you knew where to find the Internal Revenue Code), you would see that the law imposes a tax on the "taxable income" of every individual. Section 1 also includes a chart, showing how to determine how much you owe in taxes based on how much "taxable income" you received during the year. If your taxable income is zero, of course, your tax liability is also zero. Nothing surprising yet.

If you continued reading the tax code, you'd eventually find that another section of the law (Section 63) says that, generally speaking, "taxable income" means "gross income" minus deductions. (Congress has a nasty habit of writing legal definitions that use other terms that require even *more* legal definitions, so get used to it.) So from your "gross income," you get to subtract certain credits, exemptions, and deductions, in order to arrive at "taxable income." Anyone who has filled out a 1040 form knows this, but let's make a note to burn the concept into our brains:

[Gross Income] - [Deductions] = [Taxable Income]

Still nothing earth-shattering. And another section of the tax code (Section 61) generally defines the legal term "gross income" to mean "*all income from whatever source derived*," including things like compensation for services (wages), business income, interest, dividends, rents, and so on. In other words, the definition appears to include pretty much all of the normal types of income people receive. So it would seem that we can change our equation to this:

[All Income] - [Deductions] = [Taxable Income]

That's clear enough, isn't it? But if it's really that simple, why have we all heard about the monstrously voluminous and confusing tax code? If you look no further than those two general definitions, the conclusion seems obvious: everyone who has any income owes the tax (though he may be able to use a few credits and deductions to reduce the pain a bit). So go pay your fair share, and stop looking at the law!

A Laborious, Painstaking Journey

While reading this story, please keep in mind that, prior to looking into these issues, I had no training in tax law, or in any law. I'm not a CPA or an attorney. I had worked on a grounds crew and had done medical transcription (typing letters for doctors). Legal stuff was pretty dang foreign to me. When it came to doing our tax returns, I let a computer program do it for me. It asked me questions, half of which I understood; it spat out a number; I grumbled a bit, and paid it. But I was pretty darn clueless about the law itself.

Were I to give a detailed account of all the basic stuff I had to learn about the law before I could even begin to grasp the important stuff, this story would be ridiculously long and horribly tedious. I started with a zillion questions, even about really basic stuff: Where do I even find the law? What does it look like? How is it arranged? How do I know where in the law to look for any given subject? What is a "statute"? What is a "regulation"? Who writes them? Which parts are legally binding? What is the role of court rulings in all this? Does it matter which court a ruling comes from? And what are all those dang random numbers in all of it, such as "26 CFR § 1.861-8(f)(1)(vi)(E)"? *What sadistic lunatic came up with this system?!*

I had to learn it all from scratch. I will attempt to make the explanation of my findings as simple and easy to follow as possible, but it was anything *but* simple and easy when I went through it. Walk into any law library, and you'll learn what I learned the first time I did it: the law is *not* set up to help normal people understand it. It is an insider's game—a system of the lawyers, by the lawyers, and for the lawyers. And woe unto the peasant who thinks that understanding plain English is enough to keep him alive in the world of "legalese." Below I will try, whenever possible, to translate all the lawyer-speak gobblety-gook into something fairly coherent and understandable, but keep in mind that that is *not* how it was when I found it.

Want to Know a Secret?

As every tax preparer knows, there are certain sections of the tax code that say that certain types of income (such as gifts, life insurance proceeds, and interest on municipal bonds) are not subject to the federal income tax, but are instead "exempt." You don't have to pay taxes on those kinds of income. (Woohoo!) And if you ask him, your tax preparer will confidently tell you that *all* income is taxable, unless you can find such a section of the tax code specifically saying that a certain kind of income is exempt.

Well, as part of my investigation of the "wacky" claim that most Americans don't owe federal income taxes, I found myself in the law library in the basement of the county courthouse in Norristown, Pennsylvania. And while there, thumbing through a set of huge, old red books labeled "Federal Income Tax Regulations," I stumbled across this:

> **"Section 22(b) [of the 1939 tax code] exempts certain types of income ... No other items may be excluded from gross income except ... those items of income which are, <u>under the Constitution, not taxable by the Federal Government</u>." [26 CFR § 39.22(b)-1 (1956)]**

So, in addition to what the tax code says is exempt, some *other* income is also non-taxable because of the Constitution itself. Wait a second. That's not what "conventional wisdom" says! All the tax pros say that *all* income is taxable, except for what the tax code specifically exempts. But

there in front of me, in black and white, were the government's official regulations proving that the "experts" were either lying, or didn't know what they were talking about. I ran to the library photocopier, with the big red book in hand, lest someone snatch it from my clutches before I could copy what I had found.

In that same book, I also found another section explaining that the federal income tax is imposed upon "income," and that neither income exempted by statute *or* by "*fundamental law*" (the Constitution) enters into the computation of "net income" subject to the tax. Later I would find that the income tax regulations included very similar wording *every year* from at least 1918 up through 1956. (I later learned that a couple of other people had found the same citations before I had, but this was the first I had ever heard of such a thing.)

In short, I had found solid proof that the so-called "experts" do *not* know everything about the tax laws. In the many years since that discovery, I have talked to dozens, if not hundreds, of tax professionals. Except for the ones who believe as I now do, *never* have I met one who knew that some income is taxexempt because of the Constitution itself. Nor have I met one who knew that the regulations ever said that. (Some "experts" they turned out to be.)

And of course, since mainstream tax professionals don't *know* that the Constitution itself makes some income non-taxable, they don't tell their clients about it, and they don't take it into account when determining what (if anything) their clients owe in taxes. You may find this hard to believe, but *you* now know something about tax law which even the tax attorneys who rake in hundreds of thousands of dollars a year do not know. If you doubt this, try asking your tax guy, "What kinds of income are exempt from federal income taxes, not because of any particular section of the tax code, but because of the Constitution itself?" His clueless expression will tell you all you need to know.

In fact, I challenge you to find any "status quo" tax professional anywhere who has ever treated *any* income of a client as exempt due to the Constitution itself. But whether it's a few people or a few million people, *somebody* must be receiving that constitutionally exempt income the regulations spoke of. Wouldn't you like to know whether *you* are one of those unlucky people who are unwittingly paying taxes on *non*-taxable income, due to the uninformed advice of so-called "tax experts"?

(To be modern about it, nowhere in any of the nifty tax-preparation software (TurboTax, TaxCut, etc.) will you find any reference to any income being exempt from tax because of the Constitution itself. And in case you thought that such software descends from on high as a gift from the infallible tax gods, I personally know a guy who has *written* tax preparation software, and who now acknowledges that at the time he was woefully ignorant of the actual tax laws. He now agrees with me that most Americans do *not* owe the tax, and he's doing what he calls "penance" for inadvertently helping people pay taxes they didn't actually owe. The vast majority of tax software writers, meanwhile, have yet to repent of their sins of ignorance. The point is, however slick the packaging, the software is written by *people*, and if those people don't have all the evidence—and they don't—the end result will be a misapplication of the law. So whether you misapply the law with a CPA or tax attorney, or misapply it with the help of snazzy-looking software, you're still accepting on faith the opinions of people who simply do not have all of the evidence.)

To be blunt, the opinions of a million "experts" who don't have all of the evidence are, all

together, worth next to nothing. Imagine 1,000 zoologists who had never heard of a platypus or an echidna, confidently declaring, "All mammals give birth to live young." It only takes one bit of evidence (e.g., a goofy-looking, egg-laying mammal from Australia) to prove *all* of the "experts" dead wrong. And so it is with tax law as well. If a million "experts" don't know that some income is tax-exempt because of the Constitution itself, then they are *not* the ones to ask about who does and who does not owe taxes. It doesn't matter what credentials they have, what plaques hang on their walls, or how highly paid or widely respected they are; if they don't have all of the evidence, then their "expert" opinions will be incomplete, at best.

At this point do you feel any "program think" kicking in? It might go something like this: "There's no way some wacko convict knows something about tax law that my expensive tax guy doesn't!" So try asking your tax guy about it. Or don't you dare to? (Sad to say, many who label themselves as "experts" tend to get very belligerent and hostile when some lowly peon asks them a question that they can't answer. So don't be surprised if your favorite tax pro gets a little testy when you try to ask him about these things.)

Expert-worship is a very common type of "program think." We accept as gospel the proclamations of perceived "experts," mainly because it's a lot easier than each of us having to figure out the whole world from scratch for ourselves. The trouble is that so-called "experts," in many fields of thought, so often make colossal blunders (e.g., poo-pooing the round-earth "theory," poopooing germ "theory," poo-pooing flying machines, poo-pooing supersonic travel, etc.). In fact, pick any important discovery or invention, and it's almost a sure bet that the learned, credentialed "experts" of the day poo-pooed it.

Getting back to the issue at hand, the following chart shows the categories into which all income can be divided—according to the tax professionals, and then according to the actual income tax regulations published by the federal government. Note the difference.

	The "experts" say:	The law books say:
NOT TAXED (exempt)	Income exempted by statute	Income exempted by statute ***Income excluded because of the Constitution***
TAXED	All other income	All other income

Do you know if any of *your* income belongs in that second category on the right? If so, you're *not* supposed to report that income on a tax return, and you're *not* supposed to pay taxes on it. But how are you to know whether you might have some of that income, when the tax professionals don't even know there is such a thing?

In our system of written law, the law isn't supposed to leave you guessing. It must tell you

precisely what is required of you, or it would be considered "void for vagueness." (The Supreme Court, in *Connally v. General Const. Co.*, 269 U.S. 385 (1926), explained that a law which is "*so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application*" is invalid.) So the question is not what you might *guess* is taxable, but what does the law *say* is taxable? There are only two possible ways the law could answer the question about what is constitutionally taxable: 1) it could specifically list or describe what is *exempt* (what is not taxable); or 2) it could specifically list or describe what is *taxable* (what is not exempt). In other words, the law books should either say "Here is what is taxable..." or "Everything is taxable except for the following..."

If you ever see anything in the law books that looks like a list of what is constitutionally exempt, let me know. Having personally reviewed many hundreds of pages of tax statutes and regulations, including over eighty years' worth of older law books, I have never seen such a list. However, I *have* seen a list, in both current regulations and regulations dating back to long before I was born, specifically listing and describing types of income which are *not* exempt—i.e., listing types of income which *are* subject to the federal income tax. Here is how the list appeared in the older regulations defining "gross income," from those same big, old red books I found in the Norristown courthouse law library:

> **"Profits of citizens, residents and domestic corporations derived from sales in foreign commerce must be included in their gross income; but special provisions are made for nonresident aliens and foreign corporations by sections 211 to 238, inclusive, and, in certain cases, by section 251, for citizens and domestic corporations deriving income from sources within possessions of the United States." [26 CFR § 39.22(a)-1 (1956)]**

And here is how the list of non-exempt income appears in the *current* regulations:

> **"Income that is not considered tax exempt. The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:**
>
> **(A) In the case of a foreign taxpayer (including a foreign sales corporation (FSC)) computing its effectively connected income ...**
>
> **(B) In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC [domestic international sales corporation] or a FSC [foreign sales corporation];**
>
> **(C) For all purposes under subchapter N of the Code ... the gross income of a possessions corporation ...**
>
> **(D) Foreign earned income as defined in section 911 and the regulations thereunder ..." [26 CFR § 1.861-8T(d)(2)(iii)]**

While arranged and worded differently, both lists (past and present) include certain *foreign* income of Americans, certain income which *foreigners* receive from inside the U.S., and rules about federal *possessions*. (The term "federal possessions" refers to places like Guam and Puerto Rico: territory outside of the 50 states but owned by the U.S. government.) Notice anything conspicuously absent from both lists? What about the *domestic* income of the average American? Why is that not found on either list? That's taxable too, isn't it? (If you want to further annoy your tax guy, ask him if he's ever seen the sections quoted above. The chances that he has are slim to none.)

So, according to those big books of official federal tax regulations which I found in that Norristown law library, some income is tax-exempt because of the Constitution, but income from

certain *international* trade—commerce crossing country borders or involving federal possessions—is *not* exempt, and taxes must be paid on that income. Okay, but what about *my* income? (And what about your income?)

Assumptions and Law

Suppose you were reading the laws about driving a car, and you came across a section saying that you must have your headlights on whenever: 1) it is dark outside, or 2) it is raining. Would you then assume that you must *always* have your headlights on, even when it is dry and sunny? Of course not. If the law meant "always," it would *say* "always." Why would you assume a requirement that the law doesn't mention? You wouldn't, and you shouldn't. (What good is written law if it doesn't bother specifically telling you what is required of you?)

There is a principle of law, known as "inclusio unius est exclusio alterius," which dictates that when the law "*expressly describes a particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded*" (Black's Law Dictionary). In other words, if the law says only that it applies to A, B, C and D, you are to conclude that it does *not* also apply to E. If the legislature wanted it to apply to E, they would have written the law to say so.

With that in mind, why do the regulations (past and present) say that income from certain *foreign* or *international* trade is not exempt (and therefore must be reported as "gross income"), without also saying the same about the *domestic* income of most Americans? That's a heck of a thing for the regulationwriters to "forget" to mention, don't you think? Of course, it's easy to just assume that what they *meant* to say was that income from international trade, *as well as* from purely domestic trade, is subject to the tax. Everyone "knows" that domestic income is taxable. So shouldn't we just assume that to be the case, even if the law doesn't specifically say so?

Well, the Supreme Court (in *Gould v. Gould*, 245 U.S. 151 (1917), and many subsequent cases) has clearly stated that, when interpreting tax laws, one should *not* assume that they apply to any matters which are "*not specifically pointed out*," and that tax laws are to be construed "*most strongly against the government, and in favor of the citizen*."

So, in the regulations quoted from above, what do you see being "*specifically pointed out*"? (Hint: *international* trade.) And what is *not* specifically pointed out? Your income, perhaps? So if the law lists types of income which are taxable (not exempt), and your income is not on that list, what should you conclude? Could it be that the federal income tax applies only to income from certain trade which crosses country borders?

It's time for another "program think" check. Is your brain objectively taking all this in, or is it groping for some reason why this can't mean what it looks like? There must be some *other* reason it says that. There must be some *other* explanation for the regulation saying that some income is exempt because of the Constitution itself. There must be some *other* reason why the regs (short for "regulations") list international activities, but not the income of you and me, when they describe what income is not exempt. It can't be that most Americans don't legally owe the tax! That's impossible!

Besides, you're only hearing my side of the argument, right? What about the other side? What do the experts say about this? Having spent eight years confronting numerous CPAs and attorneys with this evidence, I feel qualified to share with you their "side" on this point: "No comment." They don't know that the law books ever said what you see above, and they have no explanation for it.

In addition, in my years of confronting those in government with this evidence, I have never seen any IRS form letter or notice, or any court ruling at any level, which has even *mentioned* the regulations quoted above. *Never*. This is despite the fact that *thousands* of Americans have specifically asked the government about this issue. I also have never read or heard any IRS or DOJ attorney or bureaucrat, or any judge at any level, even suggesting where the law might tell us what is and what is not constitutionally taxable. Instead, I have seen and heard numerous government bureaucrats and attorneys and judges (including at my own trial) asserting and/or implying that *all* income is taxable, except for what is specifically exempted by the statutes of the tax code. And they're all provably dead wrong.

But how could all of those thousands of "tax experts" be completely ignorant about such a fundamental issue? How can they *not know* what is taxable and what is tax-exempt? I mean, that's what they do; those are the things they get *paid* to know. How could they *all* be that clueless? If you're having trouble accepting it, join the club. It's a little like finding out that we all have another major internal organ that no doctor knows about. How could they all have rummaged around in so many guts for so many years without any of them noticing it? Well, of the thousands of tax pros who have rummaged through the "guts" of the tax code for decades, there are several very important guts that have gone completely unnoticed.

There are several reasons for this. First, the tax pros don't look at the actual law anywhere near as often as most people might expect. (There are a *lot* of tax law "guts," and they aren't very pleasant to look at.) Instead, the tax pros rely mainly on the legally worthless IRS "publications," and textbooks written by other ignorant people, and so just pass on the flawed "conventional wisdom" from one generation to the next. Second, the important "guts" were very carefully designed to be inconspicuous, and easy to miss. If one goes to the tax code assuming that we all owe the tax, he'll most likely come out with the same conclusion, and just dismiss out of hand anything that shows up which he can't understand or explain. The tax pros are familiar with a few tiny scraps from the law, but most of it is just as unfamiliar to them as it is to you.

For example, those general definitions of terms like "gross income" and "taxable income" by themselves certainly sound all-encompassing, and that's as far as most tax pros ever look. After all, how could those definitions *not* include all income? Once again, after a little rummaging around, the law books hit me with the answer. The Supreme Court (in *McCullough v. Virginia*, 172 U.S. 102 (1898)) says that it is "*elementary law*" that, "*however broad and general its language*," no statute should "*be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach*." So it makes perfect sense to have, on the one hand, a very broadly worded statutory definition of "gross income," and on the other, regulations saying that some income is nonetheless tax-exempt because it is, "*under the Constitution, not taxable by the federal government*."

Also keep in mind, this is not a matter of a typo or mistake in the law books, nor is it some

"loophole" that Congress could simply "fix" with new legislation. For decades the law books have clearly stated that there is some income which, because of the Constitution, Congress *cannot tax*, no matter how much it wants to, and no matter how much it supposedly "needs" tax dollars. But could it really be that, under the Constitution, Congress is allowed to impose an "income tax" only upon international trade? That's far too weird to be true! Isn't it?

Opposing Views

In any search for the truth (about anything), it's good to see what all sides of an argument have to say. While the government has done its best to forcibly silence my opinions (as you'll soon see), I'm more than happy to publish the opinions of the other side, from both government and private individuals, though substantive attempts to address the issue by the other side have been few and far between.

One tax attorney in particular, Daniel Evans, has made it his personal mission to debunk so-called "tax protestor" theories. And, though some might not like to hear this from me, most of the time Mr. Evans does a pretty good job of it. (Many of the "anti-tax" theories I long ago found to be flawed, Mr. Evans also disputes for similar reasons.) Trouble is, once someone becomes attached to an agenda, such as defending conventional wisdom against "tax protestors," he sometimes starts to engage in some pretty impressive mental gymnastics to avoid having to admit that he made a huge mistake.

In an online, public internet discussion group, I had a number of exchanges about my findings with Mr. Evans and other tax professionals. As an example of "expert" mental gymnastics, consider what happened when I asked some tax professionals what income was exempt from tax, not because of any specific section of the tax code, but because of the Constitution itself. In other words, I asked them what income is, "*under the Constitution, not taxable by the federal government*," just like the older regulations said. In response, a few tax folk made wild guesses, such as interest on municipal bonds, but everything they guessed has always been exempted by *statute* in the tax code, so they flunked the test. (Remember, the regulations say that in *addition* to what is exempted by statute, some *other* income is constitutionally non-taxable.) After the incorrect guesses from a few other supposed tax experts, Mr. Evans chimed in with his expert opinion, enlightening all readers as to what the regulations were referring to: absolutely nothing. That's right, Mr. Evans declared that, other than what is exempted by statute, *no* income is constitutionally exempt. He then opined that the regulations obviously saying the exact opposite were "badly worded."

Badly worded? I've seen a lot of badly worded, convoluted and confusing regulations, but what we're looking at here is not just a case of less-than-ideal phraseology. The older regulations *said* that you were supposed to *exclude* from your "gross income" that income which is constitutionally non-taxable. It's a bit beyond "bad wording" to say the exact opposite of what you mean, yet that is how Mr. Evans (experienced tax attorney) tried to explain this away.

And that illustrates a point which is far more important than the silliness of one self-proclaimed expert. When there are two conflicting conclusions which seek to explain a collection of evidence, that can make for an interesting and worthwhile debate. When, on the other hand, one side of an

argument blatantly contradicts or ignores the evidence (as Mr. Evans did), why would the conclusions —or, more accurately, "assertions"—of that side deserve any credence? Is it okay to ignore the evidence and make provably false statements if you have enough credentials?

Much of the "debate" I've seen regarding what has become known as the "861 evidence" (which is a sort of shorthand nickname for the legal issue involved here) has ended up going in that direction: the people on my side believe that the words in the law mean what they say, whereas the tax professionals insist that the law means the *opposite* of what it says. (Then people chastise *me* for thinking I could possibly know any better than the "experts.")

This is something a lot of people have come up against in a lot of different fields of thought: all the credentialed, formally trained "experts" unequivocally declare that "X" is the gospel truth, while the evidence itself obviously proves that "Y" is the truth. And what do the onlookers do? They usually accept "X" as indisputable doctrine. They accept at face value the assertions of the "experts," while assuming that such assertions must be backed by evidence and logic—albeit evidence and logic the general public never asks to see, and never gets to see.

So, when deciding which income is taxable, the law books say one thing, and the self-proclaimed "experts" say another. What should you believe? Well, if you want to join me here in prison, believe your own eyes. If not, you'd better just blindly accept the provably incorrect assertions of people in power.

But Why?

Suppose you are a United States citizen living and working in Florida, and one day you get a tax bill for $3,673 from the government of China. What do you do? Probably either ignore it, or write them a nasty letter telling them you don't owe them anything. But how can you be so sure? Because you don't do anything that's any of their business. The technical term for "any of their business" is "jurisdiction." Working in Florida, you aren't doing anything which is under the jurisdiction of the Chinese government. That's a no-brainer.

But here's a twist: is the guy working in Florida under the jurisdiction of the United States federal government? Contrary to what almost everyone in the country would assume, the answer is "no." Under the U.S. Constitution, the federal government has jurisdiction over only a few, specific things happening within the 50 states (the main ones being listed in Article I, Section 8 of the Constitution). And generally speaking, doing business in one of the 50 states is *not* a federal matter. If you think I'm making this up, read on. In one case, after saying that Congress *does* have jurisdiction over commerce which *crosses* state and country borders, the Supreme Court added this:

> **"But very different considerations apply to the internal commerce or domestic trade of the states. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the states. No interference by Congress with the business of citizens transacted within a state is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature." [License Tax Cases, 5 Wall 462]**

If this comes as a surprise to you, don't worry, you're not alone—not by a long shot. If the media

and education system weren't so pathetically inept, more Americans might still know this stuff. (Just to further upset your comfortable assumptions with another dig at "conventional wisdom," if you think the President is chosen via public election, go read the Constitution.)

To oversimplify a bit here, what a government has no jurisdiction to regulate, it has no jurisdiction to control via "taxation" either. (See Appendix A, my "Taxable Income" report, for a thorough explanation of this point.) If you earn your living doing international trade—or, as the Constitution puts it, engaging in "*commerce with foreign nations*"—then you *are* doing something which is under federal jurisdiction, and Congress could (and did) impose a tax on the income you receive from such business. Once again, if you think this is just some wild theory I made up, check out the following quote from another Supreme Court case I came across during my studies. The case was about how the 1913 federal income tax applied to an American company which was selling products in *foreign* countries.

> **"The Constitution broadly empowers Congress not only 'to lay and collect taxes, duties, imposts, and excises,' but also 'to regulate commerce with foreign nations.' So ... Congress undoubtedly has power to lay and collect such a tax as is here in question." [*Peck v. Lowe*, 247 U.S. 165 (1918)]**

In other words, the Court said that because of Congress' general taxing power *together with* its specific jurisdiction over international trade, it could "undoubtedly" impose an income tax upon income from international trade. The next obvious question—which, unfortunately, neither the court nor the company brought up in that case—is, "What about income from trade or commerce over which Congress does *not* have specific jurisdiction—like, for example, a citizen working in one of the 50 states?"

For over eighty years the Supreme Court has very curiously *avoided* directly addressing that question. In fact, in one case handled by an attorney I know— the same one who ended up being my "standby counsel" at my trial—the government lawyers came right out and admitted the following (in writing): "*The government is unable, therefore, to offer case authority for the universally accepted proposition that a citizen of the United States, working and residing in the United States, subject to federal law, earning wages, and responsible for filing an income tax return, is liable for taxation*." In other words, "everybody knows" that the average American owes the tax, but the government can't find any court cases which have specifically decided that.

While the courts were avoiding the question like the plague, however, the federal tax *regulations*, as we saw above, were nice enough to tell everyone that: 1) some income is tax-free because of the Constitution; and 2) income from certain *international* trade is subject to the tax. Coincidence? I think not. James Madison himself, often called the "Father of the Constitution," said this:

> **"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected." [James Madison, Federalist #45]**

Got that? The "Father of the Constitution" said that the federal government will, for the most part, get its revenue by taxing *foreign* commerce. (Now there's something they don't teach in school.)

(As an aside, there is a popular misconception that the Sixteenth Amendment to the Constitution gave Congress the power to tax any income it pleases, but the Supreme Court has stated in no uncertain terms that the Sixteenth Amendment "*conferred no new power of taxation*" upon Congress, that that amendment "*does not extend the taxing power to new or excepted subjects*," that it did not "*render anything taxable as income that was not so taxable before*," and in fact that the words "*from whatever source derived*," as used in the amendment, were not intended to have **any effect** "*on which incomes were subject to federal taxation*." (For all of the citations for those quotes, see Appendix A of this book.) Furthermore, the regulations cited above, which talk about some income being exempt due to the Constitution, were all written *after* the Sixteenth Amendment was enacted (in 1913). So if you thought the Sixteenth Amendment gave Congress the power to tax any and all income, think again.)

In short, the law itself shows that Congress imposed an income tax upon income derived from "*commerce with foreign nations*," over which the Constitution gives it jurisdiction, while *not* taxing income from purely domestic commerce, over which it does *not* have general jurisdiction (any more than it has general jurisdiction over everyone in China). Now, if at this point you're assuming I must be wrong, must be misreading or missing something, or that I'm just plain off my rocker, that's quite all right. Skepticism is healthy. If you find the citations I'm quoting even slightly curious, that's good enough for now. Again, you're allowed to think I'm wrong, or even crazy, as long as you grasp my position just enough to be able to follow the story below.

The Magic Number: 861

There are really *two* independent routes through the law which prove that the federal income tax is a tax only upon *international* trade. We just briefly covered the first one, having to do with some income being non-taxable because of the Constitution, and only international trade being listed in the law books as being non-exempt (taxable). But there is another way to prove the truth, and it has to do with Section 861 of the Internal Revenue Code. Notice that the first route to the truth doesn't even mention Section 861, demonstrating that, despite the fact that my legal conclusions are often referred to as the "861 argument," the issue is not just about the meaning of one lone section of the tax code. Far from it.

Going back to how I came across the issue, the article I had read titled "Gross Income" (by Thurston Bell) basically posited that there was a certain place in the federal regulations which lists the types of activities that produce "taxable income," and that income from any activities *not* listed therein was not subject to the federal income tax. The article then quoted from a certain regulation (26 CFR § 1.861-8(f)(1)) which listed a bunch of activities related to *international* trade and federal *possessions*.

The first obvious question which sprang to my mind was this: Why is he looking at *that* section? I'm sure I can find lots of sections in the tax code that talk about things which don't apply to my situation. That doesn't mean I don't owe any taxes; maybe the sections about me are simply found somewhere else. If, however, that really was the place to look in the law to determine what is taxable for you and me, then it would be more than a little curious (to say the least) for it to mention only international stuff.

So, to put the claim to the test, the first step was to determine if there was any reason to be looking at Section 861 to begin with. I put on my Sherlock Holmes cap, got out my oversized magnifying glass, and went to work.

I looked up a couple of sections mentioned in the "Gross Income" article, and sure enough, they did indeed say that 861 and its regulations are the place to look to determine "*taxable income from sources within the United States*." And those citations did *not* say that those sections were just for certain people in certain situations—they said, in black and white, without condition or exception, that 861 and its regulations tell how to determine a taxpayer's taxable domestic income. Period.

As I kept researching the issue, I kept finding one quote after another—in the statutes, the regulations, the indexes, and so on—saying, unequivocally and unconditionally, that 861 and its regs are *the* sections to use to determine one's "gross income" and "taxable income" from sources *inside* the United States. Okay, so Mr. Bell really *did* have a good reason to be looking there. The next step was to determine what those sections said, and what kinds of income they showed to be taxable.

A Walk Down Memory Lane

In my research into Section 861, I learned the entire story *backward*. I started with the current statutes and regulations, and only later found out where they had come from, and the changes which those sections had gone through over the years. To spare the reader the confusion and headaches I had to go through, I'll explain this point by examining the law as it "evolved" over time, rather than examining the evidence in the order I found it, which was completely backward. (Try reading a book starting on the last page and working your way back to the first page, and you'll have a good idea of what I went through trying to make sense of what I had found.)

By sheer luck—or providence, if you prefer—some guy I didn't know happened to find a dusty old copy of a federal "Revenue Act" from the 1920s in a used bookstore, and posted a scan of Section 217 of that act on the internet (for reasons unrelated to the 861 evidence). And then I happened to stumble across it as a result of doing internet word searches. (I don't even remember what I was searching for.) After a little trying, I managed to contact the guy who had posted it, and he generously sent me a copy of the entire Revenue Act. The section that he had posted, which caught my eye, looked like this (I've taken out some extraneous text here for the sake of brevity):

"Sec. 217. (a) In the case of a nonresident alien individual or of a citizen entitled to the benefits of section 262, the following items of gross income shall be treated as income from sources within the United States:
(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise ...
(2) The amount received as dividends (A) from a domestic corporation ...
(3)Compensation for labor or personal services performed in the United States;
(4) Rentals or royalties from property located in the United States ...
(5) Gains, profits, and income from the sale of real property located in the United States.
(b) From the items of gross income specified in subdivision (a) there shall be deducted the [allowable deductions]. The remainder, if any, shall be included in full as net income from sources within the United States." [Section 217, Revenue Act of 1925]

Trying to wade through legalese can be difficult, especially for us mere peasant-folk, so read it carefully, and read it twice. In short, it lists some common types of domestic income (numbered 1

through 5), and says that, after deductions, such income is taxable for "nonresident aliens" (people who aren't U.S. citizens and don't live in the U.S.), and for citizens who are "*entitled to the benefits of section 262*." A little more research revealed that Section 262 of that Revenue Act was only about those who received most of their income from within federal *possessions* (e.g., Guam and Puerto Rico).

Time out! Doesn't conventional wisdom say that the types of domestic income listed in that section are taxable for *everyone*, including *all* Americans? Aren't wages earned in the U.S., for example, taxable for *all* U.S. citizens (and foreigners, too)? So why on earth would there be a section pointing out that wages earned in the U.S. are taxable for foreigners and for *certain* Americans in certain unusual circumstances? What gives?

What you see above (the old Section 217) is the "grandfather" of the current Section 861. Now do you see why the feds really don't want you looking there to determine your taxable income? No one would mistake that older section to mean that domestic income is taxable for *all* Americans. It very clearly spelled out for whom such income was taxable, and it *wasn't you and me* (assuming you're an American who earns a living inside the U.S.). Remember, we're not supposed to assume that tax laws apply to matters "*not specifically pointed out*," so why would the law specifically point out that domestic income is taxable for certain people, while not saying it's taxable for the average American? After all, it would have been so easy to make the section say that domestic income is taxable for *all* Americans—in fact, it would have taken a lot *fewer* words to say that than to say what it did.

Conspiracy Theory

If you look at the current Section 861, all by itself, you will *not* see what the old Section 217 said. It still lists various types of domestic income, but the very beginning of it changed. Throughout the 1920s, the section started like this:

"In the case of a nonresident alien individual or of a citizen entitled to the benefits of section 262, the following items of gross income shall be treated as income from sources within the United States: ..."

It was pretty darn obvious who it was about. But ever since 1932, it has started like this:

"The following items of gross income shall be treated as income from sources within the United States: ..."

Where did the stuff about foreigners and federal possessions go? Had something changed? Had domestic income become taxable for everyone? After visiting all sorts of law libraries, digging up the corresponding regulations from many different years, I can confidently answer: *No*, the correct application of the law did *not* change, but the wording was changed so that *you wouldn't know* that you don't owe the tax. Yes, I'm alleging a conspiracy (which means only that more than one person cooperated to do something nasty).

Sound kooky? Again, my "Taxable Income" report (Appendix A of this book) goes into a lot more detail than I will here, but in short, there were at least a dozen changes to the wording of that part of the law since the 1920s which, when taken together, paint an unmistakable picture of an attempt to *hide* the fact that income from *inside* the U.S. has always been taxable for foreigners, and for certain Americans (those doing business in federal possessions), but *not* for the rest of us.

Opposing Views, Again

Once again, a good investigator will want to know what the "other side" of the argument makes of all this. I have always been consistent about my position, the basics of which can be summed up as: 1) I *should* be using the regs under 861 to determine my taxable income; and 2) those sections do *not* show my income to be taxable. I therefore conclude that I don't owe any tax on my domestically earned income. On the other hand, those desperate to maintain "conventional wisdom" don't seem to mind jumping around from one position to another. For example, in our internet debates, Daniel Evans (the tax attorney mentioned above) would regularly jump back and forth between two conflicting positions: 1) You shouldn't be looking at 861; it's not about you! and 2) Section 861 means that your domestic income is taxable!

While both are provably incorrect, it's important to note that the two claims don't even match *each other*. In our exchanges, Mr. Evans would insist that I shouldn't be looking to 861 at all—it was only for certain people in unusual circumstances—until I bludgeoned him into submission by citing a pile of regulations saying the opposite. (If you have too much time on your hands, go on the internet and look up 26 CFR §§ 1.861-1(a)(1), 1.861-1(b), 1.861-8(a)(1), 1.862-1(b), and 1.863-1(c), and you'll see what I mean.) Then, once it became absurd to claim that I shouldn't be looking there at all, Mr. Evans would jump over to a *new* argument: Section 861 means your income is taxable anyway! Then I'd show the history of the section (like the old Section 217, shown above), and the regulations related to the current section, proving that that too is dead wrong, after which he would go *back* to saying I shouldn't be looking there at all. Eventually we got to the point where, when I'd ask whether I should be using 861 and its regs or not, Mr. Evans would keep his feet firmly planted on *both* sides of the fence by saying that it doesn't *matter* whether I use 861 or not. While that is also not true, how weird is it for a highly paid tax lawyer to keep changing his mind about what parts of the law we're all supposed to use to figure out what we owe? They can't keep their own position straight!

Lie by Omission

As a friend of mine likes to say, the hardest thing to see is what isn't there. For over eighty years the federal income tax code has included sections specifically about income from *inside* the United States (domestic income) and income from *outside* the U.S. (foreign income). Over those eighty-plus years, the sections about domestic income have *never once* mentioned the income of the average American. Never. Meanwhile, those specific types of foreign and international trade *have* been specifically mentioned in the tax code since well before my parents were born.

And therein lies the trick: if you, as an American working in the fifty states, go to the tax code assuming that you owe federal income taxes, you will find nothing specifically and succinctly telling

you otherwise. If, on the other hand, you read the law hoping to *find out* whether your income is subject to the tax, you will find nothing specifically telling you that it is. So, if you wish, you can easily go about your life blindly *assuming* that your income is taxable, but the law has never *said* it's taxable.

Technically speaking, the law is perfectly valid. The law doesn't have to tell you what all is exempt; it only needs to tell you what all is *taxable*, and it does exactly that. If you baselessly assume that your income is taxable, even though the law never says so, that's your own damn fault. (If, on the other hand, you do as the law itself says, the IRS and the United States "Department of Justice" will put you on their list of people to destroy, and you might win an involuntary vacation at "club fed" too.)

Part II:
Testing the Idea

Taking the Plunge

So that's the brief summary of the issue. To recap, here are the main things worth noting which the law, past and present, tells us:

1) Some income specifically not exempted by the tax code is nonetheless exempt from tax because of the Constitution itself.

2) Income from certain *international* trade is taxable (not exempt).

3) There are certain sections of law to use for determining taxable *domestic* income (now Section 861 and related regs).

4) Those sections show U.S. source income to be taxable for *foreigners* and for people with *possessions* income, but not for the average American.

5) One should not assume that tax laws apply to "*matters not specifically pointed out*."

Notwithstanding "common knowledge" to the contrary, what that logically adds up to is this: most Americans, including myself and my wife, *do not owe federal income taxes*, and never have.

(I should add that I don't want the reader, based on the fact that I'm giving only the short explanation of the issue here, getting the impression that I just glanced at a few sections of law and jumped to the conclusion that I don't owe the tax. On the contrary, I spent many hundreds of hours reading, re-reading, and re-re-reading hundreds of pages of statutes, regulations, and court cases—both recent and going back almost a century—before becoming convinced of my conclusions. But if I gave a detailed account of all my trips to various law libraries and all my long nights on the computer looking up and reading tax laws, this book would be longer than the Code of Federal Regulations, and equally boring. Again, if you want a better understanding of the issue, read Appendix A of this book. Or you could grab a few hundred cups of coffee and read the entire federal tax code from start to finish.)

An Awkward Position

Whether you accept my conclusions or not, stand back for a second and consider the predicament I found myself in. To be blunt, I had compiled evidence of what I believed to be the largest financial fraud in history. If what I had concluded was correct, about a hundred *million* of my "neighbors" were being tricked and robbed on a yearly basis—and not of a few bucks here and there, but in amounts big enough to cause millions of people real financial hardship, adding up to a total of over a *trillion* dollars a year! It was too weird to be true. It was impossible. The significance of it was

incomprehensible. The conclusion was too outrageous to be credible, and yet there was no other explanation for all the evidence that I had right in front of me.

"When you eliminate the impossible, whatever remains, however unlikely, must be the truth." [Sherlock Holmes (Sir Arthur Conan Doyle)]

And if my goofy-sounding conclusions were correct, what the heck was I supposed to *do* about it? I was a little nobody, with no credentials and no legal background or training. Who would listen to me? And if they did, who would ever take what I was saying seriously enough to look at the evidence? And if people did start paying attention—well, there were a lot of people with a lot of power who wouldn't exactly be happy about it. But after all my work, was I just going to throw it away and pretend I had never seen it? Pretend I didn't know what I knew? Heck, no. Regurgitating the red pill was not an option.

After much hand-wringing, fretting and pondering, back in early 1998 my wife and I made the radical decision to stop filing federal income tax returns—not because we didn't like paying taxes, but because the law itself had told us that we had no "taxable income" to report, and hence no federal income taxes to pay. In fact, from that point on it would have been a *felony* (under 26 USC § 7206) for either of us to have signed a return swearing that we had received taxable income, when we had every reason to believe that that wasn't true. (Of course, the government would never prosecute us for *over*-stating our tax liability, but it was the principle of the thing.)

One thing we decided right away was that we were not going to hide what we were doing, or be at all sneaky about it. Why bother sneaking when we were *obeying* the law? So we made it a point from the beginning to *tell* the government exactly what we were doing, and why. Instead of trying to hide, we spent much effort trying to get someone from the government to discuss the issue with us, and to show us anything in the law which we might have been missing. The results of our efforts to have a reasonable dialogue about it, however, ended up being downright surreal.

Paper-Pushing

It started with letters. A lot of them. By themselves the letters between myself and the IRS could fill a book, though mostly it would be a redundant, boring book, since I was explaining the same things over and over again, and they were sending the same stupid non-responses back over and over again. Based upon all the letters I've received from the IRS myself, and the letters other people received from the IRS and then showed to me, I have reached the following conclusions:

1) IRS employees are the ultimate paper-pushers, believing that sending out pieces of paper with ink on them, regardless of the content, completely fulfills any obligations and duties they may have. Whether the words on the paper they send out form any ideas that are factually, legally, or grammatically correct is beside the point. In fact, being slightly coherent or remotely relevant doesn't seem to be a requirement either; as long as they send you a piece of paper with ink on it, they believe they have done their job.

2) About the only thing IRS employees do well is demand money. They can't explain *why* you owe it, or how they came up with the amount they're demanding (which is usually rather large), but

they can demand it nonetheless. Even in what should be run-of-the-mill, simple cases, the exchange often ends up being something like this:

IRS: "You owe us $12,642.53."
Citizen: "I'm not sure why you think that. Can we meet to discuss it?"
IRS: "Now you owe us $17,312.58, and we really mean it."
Citizen: "I've enclosed a detailed analysis of my finances, including all supporting records (put together by my expensive CPA). Please let me know when we can sit down and go over this."
IRS: "Now you owe us $43,625,125.05, and we intend to eat your children if you don't pay us right now."
Okay, that may have been a slight exaggeration, but only slight.

3) IRS employees are (with very rare exceptions) incapable of thinking outside the box. In fact, calling it a "box" gives them way too much credit, since a box has three dimensions, and IRS agents have only one. To them, reality is a line: "We demand; you pay."

4) IRS employees do what they're told to do, and nothing else. If what they were told to do happens to be irrational, illegal, unfair, or utterly idiotic, it makes no difference to them. In fact, they wouldn't even notice. They can't think; they can only obey. Their careers can be summed up by the Nuremberg defense: "I was just doing what I was told."

5) IRS employees know less about tax law than the average high school dropout—or the average loaf of bread. They acknowledge that there is something called "the law," and that it is in some vague way related to what they do, but they've never actually seen it, and are instantly turned to stone (blank-faced, stupefied stone) when it is put in front of them. Basic English is a challenge to them; the "legalese" of statutes and regulations might as well be written in Swahili.

It is difficult for the average person to comprehend the nature of the IRS until he has experienced the insanity first-hand. Everyone has witnessed run-of-the-mill stupidity or incompetence, but tax collectors take things to a whole new level. One fine example I had the pleasure of experiencing myself was a many-months-long dispute with the Philadelphia Department of Revenue, resulting entirely from the Philadelphia tax collectors being incapable of comprehending the fact that I do not live or work in Philadelphia, and that I never have. (That doesn't seem like a very complex issue to me, but they had major problems grasping the point.)

And while, in most areas of life, you can simply choose to avoid stupid or incompetent people, that's not the case with IRS bureaucrats. The *inescapability* of lunkheaded tax collectors, and their ability to ruin lives, is what makes them so scary.

But I digress. Back to the story.

When my wife and I stopped filing after 1997, we also decided to ask, via something called a "claim for refund," that the money we sent the IRS in 1994, 1995 and 1996 be given back to us. (Correcting or "amending" previously filed returns is a common procedure, though one must do it within three years of filing the original return.) And we had made a very big error that needed correcting: reporting our income as if it were taxable. We didn't know any better at the time.

We had many adventures concerning our claims for refund before our not filing for 1997 or subsequent years really became an issue. Not long after the claims were filed (in early 1998), I came

to the realization that the most potent weapon the IRS has is the incompetence, stupidity and disorganization of its employees. No, I'm not being sarcastic. Let me explain.

The IRS has millions of unwilling victims, which it bizarrely refers to as "customers" (which is about as appropriate as calling car-jacking victims "customers"). The people who really do serve customers know that you have to provide customers with something they want. Not so with the IRS. When you have a dispute with a store, you can always walk away and not come back. That doesn't work very well with tax collectors. They have no incentive to be reasonable. They have the club, and they hit you with it until you "comply." That is their version of "customer service."

But how does the IRS *benefit* from its own incompetence? Imagine a basic tax dispute. Suppose the IRS denied a certain deduction, and you think they were wrong to do so. (This is assuming you either had taxable income, or thought you did.) If you challenge them on it, which of the following scenarios best serves the IRS's interests? 1) A polite, competent, knowledgeable employee considers the case, and maybe even agrees with you and fixes the problem, or; 2) A bunch of bumbling idiots misunderstand the issue, lose your letters, send the case to some equally clueless bozo in some other state, and finally send you a nasty letter saying you owe them an additional $3,252.61 in penalties and interest which accrued while they were playing "hot potato" with your file. See the power of incompetence? The end result is that most people just give up and pay whatever arbitrary amount the IRS says they owe. (The other option is to pay a tax attorney $1,000 to defend your $46.15 deduction, which isn't much better.)

On paper, the IRS's official rules say that if the IRS folk disagree with your return for any reason, you have a right to sit down with them to discuss the matter. But don't hold your breath waiting for that to happen. Regarding our claims for refund, I wrote to or spoke on the phone with half a dozen different IRS employees, in three different offices, before they even acknowledged that there *were* amended returns that they needed to do something about. To make a painfully long story relatively short, it took me two *years* from the time the claims were filed to the time the IRS finally agreed to meet with me to discuss them. This was despite the fact that I always responded in writing (by certified mail) the same day that I received anything from the IRS. After all that, for the 1994 claim they just made up a date when they said they received it, and then said I had filed it too late. So I sent them a copy of their *own* prior letter, acknowledging that the claim was filed on time.

As a humorous—or possibly depressing—aside, I know two different people who received *both* of the following: 1) A letter from the IRS saying that a claim for refund had never been received; *and* 2) A letter from the IRS attempting to impose a fine on the person for having filed a "frivolous" claim —via the return they said they had never received. "Dear taxpayer, we're penalizing you for sending us the thing we said you didn't send us." Behold, the awesome power of sheer idiocy.

So, in early 1998 my wife and I filed three claims (for three different years), one of which the IRS "lost" twice, and another of which they admitted receiving but then ignored. Nearly two *years* after we filed the claims, they granted me a meeting.

Before telling the grisly tale of what occurred at that first meeting, a few words must be said about the intimidating power of the IRS. Just the name, "IRS," strikes terror into the hearts of millions. Receiving letters that say "Internal Revenue Service" in the return address invariably causes

spirits to drop and blood pressures to rise (and don't think that's not by design). Though I'm now a bit ashamed to admit it, back then getting things from the IRS had the same effect on me. It's an amazing phenomenon, really. The first time I called an actual IRS person, I was all nerves. Why? Did I think that Ms. Andreu—see, I even still remember her name—would reach through the phone and strangle me? No. At least probably not. And that first call was about asking for money *back* which we had already given the IRS, so the worst they could do was say no, and we'd be no worse off than we were before. Yet the terror was still there. How many disputes simply never happen because people would rather put up with a certain amount of injustice than have to deal with the IRS?

During that first call, in which I was disputing the IRS's right to just *ignore* my claims for refund as if they had never been filed, Ms. Andreu told me that I was just "*delaying the inevible*." No, that is not a typo; that's what she said (her "speako"). However, I guess being denied a meeting wasn't "inevitable" after all, because I met with the infamous IRS in Jenkintown, Pennsylvania, on April 18, in the year 2000.

Meeting the Beast

At first I considered omitting from this book the names of particular government agents, but have since decided against it. If shame and public humiliation is the only punishment these people ever get, the only deterrent to their misconduct, then they're getting off easy. So let the shame and humiliation begin! The fact that several of these bureaucrats also lied under oath at my trial removes any guilt I might have otherwise felt at exposing their idiocy to the world.

Let me set the stage. The scene: a simple conference room in the Jenkintown offices of the IRS. On one side of the ring we had me, my mom, and another witness. (My wife wasn't at this first meeting.) In the other corner we had three IRS employees:

1) Cathy Spaulding, the quintessential federal bureaucrat, looking neither cheerful nor alert. She was in charge of the case.

2) Michael Enz, a belligerent IRS "specialist," who looked and sounded like a kneecap-smasher for the mob, who came all the way from the downtown Philadelphia offices of the IRS just for me.

3) Mort Kafrissen, senior IRS supervisor, there to observe. Mr. Kafrissen, an elderly gentleman, holds the honor of being the *only* IRS employee I've ever had official dealings with who did *not* say anything utterly idiotic or behave obnoxiously. So my hat's off to you, Mr. Kafrissen, even if you think I'm nuts.

The issue was our 1994 and 1995 claims for refund. (By then our 1996 claim was in bureaucratic limbo, from which it never escaped.) Having concluded that our income was not taxable, and that we therefore didn't actually owe the IRS the money we had given them in those prior years, we wanted it back. Not surprisingly, the IRS wasn't eager to give it back.

I approached the meeting, not with any hope of bludgeoning them with law and reason until they agreed with me (which I knew wasn't likely to happen), but with the hopes of at least determining the

precise points on which we disagreed, which I could then appeal to the next level. I also wanted to see what, if anything, they could come up with that might make me reconsider my conclusions. So my main goal at the meeting was merely to state my position and then get the IRS to state its position on the specifics of the issue. Sounds simple enough, doesn't it?

Because of the complexity of the legal issue, a couple of weeks before the meeting I sent Agent Spaulding a detailed letter in which I explained the various points of my position, and included numerous supporting quotes from the law books (complete with citations so she could look them up for herself). My letter included this:

> **"In order to facilitate a meaningful and constructive meeting, I have attached a brief description of a few issues which I believe to be central to a possible contention between myself and the IRS. This is not a request for a written response; I am informing you of the relevant issues so that you may be prepared to address these matters at the time of the meeting. (This should give you time to seek the assistance of district counsel if you are not personally familiar with the legal issues involved.)"**

And now I was finally getting that meeting. Having been escorted deep into the heart of the enemy camp, and then closed—and even locked, as I recall—into a nondescript conference room with three experienced IRS agents (I had my mom there to protect me), I had my chance to argue my case. Little old me, a non-lawyer peasant, on the IRS's home turf, up against the all-knowing, all-powerful IRS.

I audio-recorded the meeting (and so did they), having warned them ahead of time that I was going to do so. Once both recorders were running, the meeting started with Agent Spaulding stating the date and time—and getting it wrong. (My mom had to correct her. Way to go, Mom!) After Ms. Spaulding noted who was present and summarized the reason for the meeting, I got my chance to make my case.

I gave a brief overview of the issue, including the two independent lines of reasoning which led me to believe I don't owe the tax: 1) The law books in many places say that I should use Section 861 and its regulations to determine my taxable domestic income, and those sections do *not* show my income to be taxable; and 2) The regulations say that those common types of income listed in the general definition of "gross income" are *not* always taxable, but are sometimes exempt, and then say that income from certain *international* trade is not exempt. And applicable to both is the legal principle that I should not assume that the law applies to matters not specifically pointed out.

For each point I gave them printouts of several citations supporting my position. And then it was time to ask the IRS folk to either agree or disagree with me on each point. There I was, sitting across a table from the big, bad IRS, braced for the awesome onslaught of their impressive and persuasive legal knowledge.

What I got from them instead was a pitifully embarrassing display of ignorance, a complete inability to reason, and only a partial ability to read. My first question, after summarizing my position, was whether they agreed or disagreed that Section 861 and following, and the related regulations, determine the "sources" of income subject to the income tax. The question is actually a little silly, because this is the first thing the regulations under 861 say (and have said every year since long before I was born):

"Part I (Section 861 and following), Subchapter N, Chapter 1 of the Code, and the regulations thereunder, determine the sources of income for purposes of the income tax." [26 CFR § 1.861-1]

So I was pretty much asking them whether they agreed with their own regulations. So they quickly agreed, right?

Nope. Ms. Spaulding must have spent ten minutes either trying to understand the question or trying to avoid it (or both). She openly admitted (on tape, remember) that she was unfamiliar with the sections I was quoting, and admitted that she could not answer the question. While Ms. Spaulding was floundering, Agent Michael Enz came riding to her rescue, and promptly fell off his horse. He firmly proclaimed, in his classic thug accent, that they *disagreed* with me on that point.

Hooray! An actual answer! Yes, it directly contradicted their own regulations, but at least it was an answer! Just to be sure, though, I asked the question again: were they *disagreeing* with my claim that Section 861 and following, and the regulations thereunder, determine the sources of income for purposes of the income tax? Mr. Specialist responded, "*No, we're not disagreeing to that...* " Oh well, at least I had a solid answer for about twenty seconds, before Mr. Specialist put his own answer out of its misery. They never really answered the question again.

Okay, so that was a little weird, but I remained determined to have a rational discussion. My second question was whether they agreed or disagreed that I should be using Section 861 and its regulations to determine my taxable domestic income. I argued that I should, and quoted from 26 CFR §§ 1.861-1(a)(1), 1.861-1(b), 1.861-8(a), 1.863-1(c), 1.862-1(b), and Treasury Decision 6258 (among other things), all of which clearly and unequivocally say that I *should* be referring to 861 and its regs to determine my "*taxable income from sources within the United States*."

This time I'd get an answer for sure. Or so I thought. After all, there were only two choices: they would either agree that I should use those sections, or argue that I shouldn't.

They responded with a firm "Um..." Again, Ms. Spaulding said she wasn't familiar with those sections, and couldn't give me a definite answer. (At that point an uncertain wild guess would have been a vast improvement.) In other words, they *weren't sure* exactly how I should determine my taxable income. How can IRS employees not know which sections to use to determine someone's taxable income? All they do is figure people's taxes! It's like a mechanic not knowing where to find the engine in a car.

I was stunned. Having told them, weeks in advance, what my position was and what I would be asking at the meeting, I expected at least some half-decent lawyer-spin, if not a substantive rebuttal. But for the entire meeting, every "answer" the IRS gave was the same: they couldn't actually answer my specific questions, but they really wanted me to look at the general definition of "gross income" (in Section 61) and ignore everything else. (They didn't explain why we have a multi-thousand-page tax code if only one section actually matters.)

The law is like a puzzle: lots of little pieces that must be put together to form a big, coherent picture. But these IRS folk, including a self-proclaimed "specialist," *didn't have* a big picture to present. They knew about one piece (the general definition of "gross income") and didn't seem to know about, care about, or have any opinion about any other piece. They were apparently quite

content with their one-piece puzzle. Mind you, I started the explanation of my position by citing and quoting Section 61—the section they were so fond of—and acknowledging that it does indeed give the general definition of "gross income." Then I showed how there is more to the law than that one section.

In light of their love for Section 61, I decided to try something else. I put on the table in front of them a copy of Section 61, printed right off of Congress' web site. I directed them down past the main text, to the cross-references below, one of which says this:

> **"Income from sources —**
> **Within the United States see section 861 of this title**
> **Without the United States see section 862 of this title"**

Their entire position (though they never expressed it this succinctly) boiled down to "Just look at Section 61 and nowhere else (especially not 861)." But there, in the cross-reference *under Section 61 itself*, I was being *told* to look to Section 861 regarding income from inside the U.S. (We agreed that all of my income was from within the U.S.) I even gave them their own copy to keep, which I'm sure they'll treasure always. But they still didn't want me looking at 861. Why not? Were they really incapable of seeing what was right in front of them? In many different places, the law says I should look to 861, and they could cite nothing saying I shouldn't, yet they wouldn't budge. I had a hard time comprehending this level of denial. Section 61, the love of their life, directs me to 861, and I showed them that. But they still insisted that I shouldn't look at anything beyond Section 61.

Interspersed into this surreal discussion about tax law was a discussion about a procedure called "technical advice," whereby an IRS employee or a "taxpayer" can ask that a legal question be referred to the IRS's lawyers (instead of just the paper-pushers, such as the ones at my meeting). So, since the folks sitting across from me were obviously unqualified to address the issue (which they admitted), I asked that the matter be sent to their lawyers for "technical advice." They refused my request. They openly *admitted* that they couldn't answer my questions and then, in violation of their own procedures, *refused* to send the case to someone who could.

Am I the only one who senses something strange about that? They have lawyers whose job it is to deal with legal questions, they have formal procedures for sending the questions to those lawyers, and their bureaucrats admitted that they weren't familiar with that part of the law and couldn't answer my questions. But no, they still wouldn't refer my questions to their lawyers, and wouldn't say why.

Due to their inability to read and/or their inability to believe their own eyes, I didn't bother spending much time on the other questions I had, which they did no better with: not familiar with it, can't answer, we'll get back to you. The meeting was sprinkled with some interesting moments, such as when Agent Enz complained that I was "*arguing over words*." What? Maybe his copy of the tax code has cartoons or something; mine contains only *words*. (I suppose we could have argued over punctuation, or perhaps font style.) On another occasion, Mr. Enz complained that I was reading sections of law "*literally, word for word, for what they mean*." I kid you not; those were his exact words. Apparently I'm not wise enough to know that you're not supposed to think that the law means what the words of the law literally say. Unfortunately, Mr. Enz wasn't kind enough to share with me whatever telepathic or channeling powers he uses to determine the true meaning of the law, but he demonstrated obvious disdain for simpletons like myself who think we should *read it* to find out what

it means.

On another occasion, Agent Enz asked, "*Who'd you buy this from?* " When I said it was my own research, he omnisciently declared, "*No it isn't; who'd you buy it from?* " When I handed him a copy of my complete "Taxable Income" report, with my name on the front, he shut up.

On a bright note, at least half a dozen times during the meeting Ms. Spaulding indicated that she would do "further research" into the issue. (Why she hadn't done that prior to our first meeting, she didn't say.) So later, when I finally got a letter from her, I eagerly opened it, anxious to see her scholarly, thorough rebuttal of my position. The letter said my claims were being denied. Why? Because under Section 61, my income was taxable. That was all. One sentence. No mention of 861, no mention of any of the questions I asked, or anything else we had discussed. (And, of course, no mention of Section 61 *referring* to Section 861.) Gee, I hope Ms. Spaulding didn't over-exert herself doing all the in-depth "research" required to come up with that awe-inspiring response.

So that was it. Those are the people who make so many Americans shake in their boots. That was the all-knowing, all-powerful IRS at its finest. I went in expecting at least some impressive spin, maybe even a few actual citations of law, but came out with *nothing*. (I'm still not sure why it took three of them, including one brought in from downtown Philadelphia, to *not* answer my questions.) Even with weeks of advance warning of what I wanted to talk about, the all-knowing IRS had a grand total of *nothing* to refute anything I had discovered, and I found that very curious indeed. If I needed any further confirmation that my conclusions were correct, that was it. All they could do was tell me that they really didn't want me looking anywhere but Section 61, no matter what the law books say.

Within a few days I had transcribed the entire meeting and posted it on the internet, so the world could appreciate the awesome competence of our federal public servants.

Follow-up Evasions

A few more letters went back and forth concerning my request for "technical advice" (sending the case to the IRS's lawyers), which they continued to refuse. Mind you, it's not that the lawyers made a ruling against me; it's that they refused to give me a ruling at all.

As the IRS regulations and publications explain, when someone can't reach an agreement with the IRS at the first level (called "Examinations"), they have the right to meet with the "Appeals" division of the IRS to discuss the matter. So I requested such a meeting. After a while I got a letter from IRS Appeals refusing to meet with me at all. Why? Because, they falsely claimed, I was refusing "*to comply with the tax laws based on moral, religious, political, constitutional, conscientious, or similar grounds*." Does any of the above sound to you like "I refuse to obey the law"? The only thing I ever brought up was what *the law itself* says about how to determine what I owe. But based on a bald-faced lie, IRS Appeals refused to meet with me, or consider the case at all.

If my conclusions were incorrect, why was the IRS trying so hard to *avoid* explaining why? Shouldn't they want to take the opportunity to show me that I owe them something? Why were Examinations, Appeals, and the IRS lawyers all so reluctant to answer simple questions about how to

determine what (if anything) I owe? The published IRS "Mission Statement" says that the IRS's purpose in existing is to help America's taxpayers understand and comply with their tax responsibilities. So why were multiple IRS offices trying so hard to *avoid* talking to me, even when that meant violating their own procedures?

A Sneak Preview of Insanity

While April 18, 2000, was the first time I met with the IRS regarding my own case, it was not the first IRS meeting I attended. About a week earlier, I was down in Sarasota, Florida, at another "Examination" meeting between the IRS and a friend of mine. The format of the meeting was similar to my own: an informal administrative meeting at which Mr. John Greer, having reached the same conclusions I had, wanted to explain his position to the IRS and ask them to show him any error he might be making, or at least state the specifics of their own legal position.

We sat in a crowded little conference room, with Mr. Greer and his three witnesses (including me) on one side of the puny table, and Agent Steward Stich and his manager, Anna Schrammel, on the other. (Agent Stich looked and acted as if he had just been let out of a straitjacket.) Mr. Greer had informed them ahead of time that he would be recording the meeting, so once settled in, I started our audio recorder, and calmly announced that I had done so. Agent Stich just about exploded. "*Turn it off! Turn it off!* " Had I put a ticking time bomb on the table, the response could hardly have been more extreme. I didn't turn it off, and after several minutes of psychotic tantrums from Agent Stich—in which he threatened, among other things, to terminate the meeting on the spot—Ms. Schrammel came up with the brilliant solution: the IRS turned its recorder on, too.

Anyway, in order to avoid being too redundant, I'll just give some of the highlights (or lowlights) of the meeting:

1) The IRS never answered Mr. Greer's specific questions (essentially the same ones I had asked).

2) When asked whether he was referring to Section 861 and its regulations to determine Mr. Greer's taxable domestic income, Agent Stich said that the IRS was using the sections "*that are out there*," but could not or would not say just *which* sections those were (or where "out there" those elusive sections might be).

3) After being handed copies of their own regulations plainly showing that they should have been using 861 and its regs, the IRS responded with "*Well, we have other sections, so we're not going to get into this*." (I suppose those would be the "other sections" that are "out there" at some undisclosed location.) 39

4) Agent Stich's supervisor, Anna Schrammel, left the room at least three times for the express purpose of retrieving their own copy of the regulations. For some reason, however, she never produced them, or cited anything from them.

5) Mr. Greer's insistence on knowing just *how* the IRS was determining his alleged tax liability

eventually resulted in Agent Stich threatening to call the U.S. Marshals to have them come and forcibly remove Mr. Greer and his three witnesses (one of them being me) from the building. So that apparently was their "answer" to his questions, and that concluded the meeting. No doubt Mr. Stich and Ms. Schrammel were proud to later discover that their professional, quality treatment of Mr. Greer had been posted on the internet for all to see.

As in many other cases, the IRS continued to harass Mr. Greer, without ever answering his questions, or even stating the specifics of their *own* position. And just as in my case, various other IRS offices also refused to address the issue with Mr. Greer. So much for helping people "understand" their tax responsibilities. Perhaps the IRS needs a new "Mission Statement": "To get your money by any means necessary, whether you owe it or not." (Or, as the bumper-sticker says, "IRS: We've got what it takes to take what you've got!") That's some quality "service," don't you think?

I hate to beat a dead (and rotting) horse here, but these meetings were about nothing more than how to determine what someone owes in federal income taxes, and the IRS *couldn't say*. What the heck are they doing in that job if they don't know how to determine someone's taxes? And how the heck are *we* supposed to know how to determine our taxable income if the damn IRS can't even say how to do it?

Round Two

On September 22, 2000, about five months after my first meeting with the IRS, I had yet another meeting with them, this time about the fact that my wife and I had stopped filing (which we had been telling them for a couple of *years* at that point). In many ways the meeting was a rerun. The setting was the same, and the characters were almost the same. Agents Spaulding and Enz made return appearances, but this time Mr. Charles Judge (that's his name, not his title) was there representing IRS management. And this time my wife came along, as did another witness.

The purpose of the meeting was pretty simple. Our income had been reported to the IRS on "1099" forms, and the IRS assumed that that income was taxable and wanted us to file and pay up. Of course, the discussion quickly moved to the only relevant question: How did they determine that our income was actually taxable? This time, however, they knew exactly what I would be asking, and so they would be well prepared to put me in my place. I was once again anxious to see the results of the research that Agent Spaulding had kept saying she was going to do. This time I wouldn't catch them off guard, so they'd really set me straight.

As it turned out, their "on-guard" response was indistinguishable from their "off-guard" response. I quoted the same regulations, asked the same questions, and they *still* couldn't answer any of them, and said so (again, on tape).

My wife and I again acknowledged receiving the income which was reported to the IRS. I then pointed out that while a 1099 form shows that we received income, it is not proof that the income is taxable, and I pointed out that at the prior meeting, the IRS supervisor had even agreed on that point, saying, "*just because you receive a piece of paper* [a 1099 form] *, you're correct, doesn't*

necessarily mean it's gross income."

The ever-brilliant Agent Enz responded by saying that the IRS would have to do "*third-party contacts*," meaning harassing our customers to confirm what we had been paid—even though we had just acknowledged, again, having received the money. (A rocket scientist he ain't.) At the first meeting, the IRS's own supervisor had to explain to Mr. Enz that we weren't denying getting the income; we were saying it wasn't taxable (making third-party contacts utterly pointless). So I explained it to Mr. Enz again.

The discussion of the 861 evidence was just as weird as before, if not more so. I asked them if they were "*trying to determine our taxable income from sources within the United States*," and Cathy Spaulding said "*Yes*." So I read to them a series of citations, copies of which I gave to them (again), saying that 861 and its regs are the place to go to determine a person's "*taxable income from sources within the United States*." They still couldn't say why they were not using 861, but they very much wanted me looking only at Section 61.

When I once again showed them a printout of Section 61, from Congress' own web site, which at the bottom has a cross-reference *pointing to 861* regarding "*Income from sources within the United States*," Ms. Spaulding came up with the strange response, "*All right, you're referring to 861, I believe, because it suits your purposes*." Yes, she really said that. I only wanted to apply the law correctly, to do what the law told me to do, for my own benefit. Well, excuuuuse me. (I also pointed out that it was Congress' own web site which was referring to 861.)

Agent Michael Enz had a couple of new gems to offer. During my attempt to have them state the specifics of their own position, the following exchange occurred:

Enz (IRS): "They don't understand, we're enforcement. We're not judicial. We're not—we just enforce the Code sections."
Me: "This [meaning the regulations] is binding on you. Are you aware of that?"
Enz: "Yeah, and you can do whatever you want to do with it." [What?]
Me: "Could you get your copy of the Code of Federal Regulations?"
Enz: "We're only enforcement, right?"
Me: "Yeah, but you're enforcement of the law, not enforcement of blind assertions."

They never brought out their copy of the regulations. On another occasion, they wanted to cite the denial of my claims for refund (which they had issued) as proof that I was wrong. Got that? They said I was wrong before, so that proves it. So I brought out a copy of their "report" denying our claim.

Me: "I would like to get it on the record, because this was the most ridiculous dodge of an issue I've seen in my life. In that report, her entire synopsis of the situation was 'Per Internal Revenue Code Section 61, you are liable for income taxes on the non-employee compensation that you earned in the commonwealth of Pennsylvania during the taxable year.' End of quote. No address of the questions—"
Enz: "That's not a dodge, and ya know why it's not a dodge? Because if we get too specific, then when we go to court, we limit our arguments."

In other words, if they actually state their position, they might get stuck having to defend it. So they flounder and evade instead. Swell. Nice due process. Do they seem a bit defensive to you? All I was asking was *how to determine what I owe* (if anything), and they didn't dare to answer!

On another occasion, when the discussion wasn't going the way he wanted it to, Agent Enz said, "*Why don't we give them an estimate of what, ya know, the kind of money they're messin' around with?* " Messing around with? What does the *amount* have to do with whether it's taxable or not? Apparently some people don't even have enough self-respect to disguise their thuggery as something less distasteful. "Never mind the law, let's talk about how much we're going to steal from you." Splendid view of due process.

And the new supervisor, Charles Judge, wasn't any more helpful.

Charles Judge (IRS): "I believe that the income that was paid to [you] is taxable under Section 61."
Me: "And you don't have a response to all the citations I've given you?"
Judge: "Not right now, but—"
Me: "Well, I'd like that before it goes past this stage, because otherwise it's a violation of due process."
Judge: "Well, we—we'll give you a report."

They never did.

At that meeting I again requested that the questions be sent for "technical advice," so their lawyers could deal with it. Again, they refused to do so. This time, Agent Enz even came out with this: "*District Counsel's already made a ruling on this, and they said, ya know, no tech advice or anything like that, so we're just arguing stuff that's been argued before*." He was admitting that the IRS lawyers had told them ahead of time *not* to send the issue to them. Yes, we had "argued" about it before, with them admitting that they couldn't answer my questions or state the specifics of their own position. How, exactly, does that remove any need for further discussion?

Well, considering what passes for "discussion" in the eyes of the IRS, further discussion did seem kind of pointless.

Charles Judge (IRS): "While we disagree on a lot of things here, we're not here to knowingly do anything wrong."
Cathy Spaulding (IRS): "—denying due process."
Me: "Why are you—I showed you the regulations and you aren't following them."
Judge: "Yeah, but, but I'm citing another regulation."
Me: "Where?"
Judge: "Section 61. Have you seen—"
Me: "I gave it to you. I gave you a copy of 61, and it cites 861."
Judge: "Okay."
Me: "It's a general definition, like he [Enz] just said, the statutes are general definitions. The regulations specifically point out—"
Judge: "Well we're not—I'm not gonna convince you, and you're not gonna convince me today, so—"
Me: "But what you're saying is, you intend to go forward trying to collect from us without giving a legal argument—without rebutting what I've showed you—disregarding the Treasury regulations that I showed you."
Judge: "No, we, we'll give an argument."
Michael Enz (IRS): "We're not the attorneys. Our District Counsel is the attorneys, and they'll argue with you." [How? He had just admitted that their lawyers said not to send the issue to them.]
Me: "You're also not authorized to ignore the law when I put it on the table in front of you. You are making a ruling of law."
Judge: "We're not ignoring it. We're not ignoring—"
Me: "You are not authorized to do that, as he just said."
Judge: "Okay. Again, we're just—I think it's time to conclude the meeting."

I admit, my patience wore a bit thin this time. I pointed out, while trying to remain calm, that the IRS had had a detailed explanation of my position, complete with piles of supporting citations, for more than a full year. Keep in mind, these bureaucratic knuckleheads were claiming that we owed them tens of thousands of dollars, yet more than five months after our first meeting, they still couldn't tell me the specifics of their *own* position on how they were determining our taxable income. (Try having some boneheaded bureaucrat tell you, "We think you owe us ten thousand dollars, but we can't really say how we determined that," and see whether you can remain calm and polite.)

At one point, after giving them copies of their own regulations, and having them read along while I quoted the regs telling me to use 861, I asked whether they saw what the regulations said. Yes, they said, they did. And did they understand why I believe what I believe? Yes, they did. And did they have anything to rebut it? Mr. Judge responded with "*I don't know why there's not more of an obvious, ya know—I think we're missing something somewhere here under 861*." Wow, what an understatement.

Referring to their stumbling, bumbling uncertainty when it came to discussing their own regulations, I came right out and asked, "*Is this what's supposed to convince me?* " Surprisingly, they instantly responded by saying no, it was not supposed to convince me that I was wrong. (Well, that's comforting.) Still trying to remain calm, with minimal success, I pointed out how much time they had had to come up with something, *anything* in the law to refute my conclusions, and to justify their demands for huge sums of money. If there was evidence showing that I was wrong, and that I really did owe the tax, I asked (rather loudly), "*Where is it?* " Agent Michael Enz, "specialist" in such matters, responded by saying that he had such proof, but that he had left it back at his Philadelphia office. His tone of voice bore an uncanny resemblance to a kid being asked for his homework and responding with "My dog ate it."

(Despite the IRS supervisor, Mr. Judge, saying that he wanted to review Mr. Enz's missing evidence—apparently Mr. Judge thought it actually existed—the mysterious proof that I'm wrong has never materialized. Gee, I wonder why.)

Needless to say, the meeting was all downhill from there, with one exception. I made it clear that I did not want this ending the way the first meeting had, with them baselessly asserting that my income was taxable while ignoring the substance of the issue and evading my questions. Charlie Judge, the IRS supervisor, responded by saying, "*We will not close the case without contacting you in some manner first*." What a relief. (Wait until you see just how they next "contacted" me about the case.)

Repeated Silliness

On February 28, 2001, I got another chance to get a glimpse of how incompetent and ignorant IRS folk are, this time out in Harrisburg, Pennsylvania, where I was again a witness at someone else's meeting with the IRS. John Hoffman had paid what he thought he owed for 1997, then concluded that his income wasn't taxable (based on the 861 evidence), and he wanted his money back. The IRS didn't want to give it back. After repeated requests, they finally granted Mr. Hoffman a meeting at which to discuss the matter. In his opening statement, Mr. Hoffman explained that in order to be afforded his due process rights, both at the meeting and at any subsequent appeals meetings, "*it*

is obviously necessary to determine the exact points of disagreement between us." Mr. Hoffman therefore wanted to run down a list of points and have the IRS simply agree or disagree with each. Sounds simple enough, doesn't it?

Well, Stanley Escher, IRS "group manager" at that office, had other plans. He responded: "*Let me start, before you go over your twelve points, let me go and tell you what our position is, and why our position is that, and let me show you some of the regulations and some of the language in some of the tax services that support our position*." Well, I guess that might be fun, too. Mr. Hoffman and I then sat patiently, listening to a long, drawn-out monologue from Mr. Escher about tax law, hardly any of it actually relevant. After mentioning the general definition of "gross income" in Section 61, Mr. Escher proclaimed that "*any item of gross income that is not taxable is non-taxable because it is specifically stated as being nontaxable*," and gave interest on municipal bonds as an example. (Does that not precisely match what I wrote above about tax professionals thinking that everything is taxable unless specifically exempted by the tax code?) Then Mr. Escher went through, in needless, excruciating detail, how one fills out a tax return, and how one gets from "gross income" to "taxable income" by subtracting allowable deductions. Mr. Hoffman and I managed to stay awake long enough for Mr. Escher to finally get to his explanation of 861:

> **"Our system does not double-tax. So if you already paid money, say some of your interest income was earned abroad, or some of your wages was earned abroad, and you paid tax on that in a foreign country, we're not going—the government—the IRS will not double-tax you on that income. All right? And so what they do is, there is under the tax portion of the return, and credit portion, there is a foreign tax credit, so we'll give you a foreign tax credit for the amount of tax you paid on that foreign source income. All right? So we don't tax your income twice. That's a very important point, because that's where 861 comes in. Do you have any questions so far? Am I being kind of clear?"**

That was his explanation of 861. There is a foreign tax credit, but it is described in Section 901 and following, *not* in Section 861. In fact, the only two mentions in 861 of the foreign tax credit are about an obscure rule having to do with certain dividends from foreign corporations, and how the credit is not allowed against certain "railroad rolling stock" income. No literate person who reads 861 would think that's it's only about, or even mainly about, foreign tax credits. And, as usual, the IRS bureaucrat cited *nothing* from the law supporting his bizarre assertion about the purpose of Section 861. (Notice also that his claim doesn't match what the IRS said at the three prior meetings I attended, at which foreign tax credits were never mentioned.)

On several occasions, between Mr. Escher's sermons, I suggested to Mr. Hoffman that he just run down the list of specific questions, to get the IRS's answers on the record and be done with it. But Mr. Escher didn't seem very eager to do that, and wanted to pontificate and evade instead. Then he went into yet another long-winded diatribe about his own out-of-thin-air position. I hate to do this to the reader, but no amount of summarizing could convey the lunacy of his words, so here is Mr. Escher's *second* explanation of 861:

> **"Let's take a look at 861. You have to understand the purpose of 861. 861 is not—861 is a sourcing—is the regulations, or is the Code sections determine of sourcing of income between foreign and U.S. sources. And it's used in computing taxable income, foreign tax credits, all those items dealing with 'Is the income I made abroad taxable in the U.S., or is it taxable somewhere else where I can get a foreign tax credit?' I'm over-simplifying. [You call that simplifying?] <u>It has nothing to do with the determination of gross income</u>. This is the determination of gross income—and I'm pointing to, for the record, Code section 61. This is gross income. If you read the very first sentence [of 861], and this is where I think the disconnect comes in.**

[Reading from Section 861:] Gross income from sources within the United States. [Note, he had just claimed that 861 has nothing to do with determining gross income.] Like I said, 861 determines—is a sourcing section, sourcing income foreign and U.S. And it's used in the computation of foreign sources income, and U.S. source income for—not for arriving at gross income, but for use in arriving at foreign tax credits, taxable foreign source income, those type of things. It has nothing to do with—if you have no income at all earned abroad, you have nothing at all earned abroad, everything that you have—you live, you're a U.S. citizen and everything you have you've earned in the United States, okay—wages, interest from banks, or whatever—it has nothing to do with Code section 861. The very first sentence of 861 says the following items of gross income, it doesn't say that the following items are the only thing in gross income, they're just saying the following items of gross income shall be treated as income from sources within the United States. It has nothing to do with arriving at taxable—at your—if you don't fit into this situation where you have foreign source income, this section does not apply to you. Let me be a little more clear on that. [He could hardly be any less clear.] And, um—Code section 61, Part I, which is what I just read from, and this I'm reading from the regulations. Categories of income. Part I, Section 861 and the following, Subchapter N, Chapter 1 of the Code and the regulations thereunder determine the sources of income for purposes of the income tax. [I'm not sure he even noticed what he had just read.] These sections explicitly allocate certain important sources of income to the United States, or to areas outside of the United States, as the case may be, and with respect to the remaining income, particularly that derived partly from sources within and partly from sources without the United States, authorize the Secretary or his delegate to determine the income derived from sources within the United States, either by rules of separate allocation or by processes of formulas of general apportionment."

At this point he stopped reading from the regulation, right before the regulation says this:

"The statute provides for the following three categories of income:
(1) Within the United States. The gross income from sources within the United States, consisting of the items of gross income specified in section 861(a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See §§ 1.861-2 to 1.861-7, inclusive, and § 1.863-1. The taxable income from sources within the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 861(b) and 863(a), the [allowable deductions]. See §§ 1.861-8 and 1.863-1.
(2) Without [outside of] the United States ...
(3) Partly within and partly without the United States ...
(b) Taxable income from sources within the United States. The taxable income from sources within the United States shall consist of the taxable income described in paragraph (a)(l) of this section plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a)(3) of this section." [26 CFR § 1.861-1]

Weeks prior to the meeting, Mr. Hoffman had sent to Mr. Escher a letter explaining the specifics of his position and quoting a bunch of supporting citations, including what you see above. At the meeting, Mr. Escher had that section right in front of him. Yet he still chose to proclaim, without a shred of evidence backing him up, that "*Code section 861 has nothing to do with the determination—if in fact you do not fit into any of these situations, again the situation being if you are a U.S. citizen wholly residing in the U.S., having no connection with foreign sourced income, all your income comes from the United States—wages, interest, dividends, whatever—operations totally in the United States, then 100 percent of your income is taxed, based on Section 61, and there is no application in that circumstance for 861*." Where in what you see above (or in any of the many similar citations found in Appendix A of this book) is there any support for that claim? Nowhere. Mr. Escher just made it up, and hoped Mr. Hoffman would take his word for it. But he didn't.

Then Mr. Escher brought up a *New York Times* story about a couple who had been convicted of using bogus trusts. Mr. Escher then *falsely* claimed that the IRS "*had litigated this particular issue with a taxpayer*," when the trial had *nothing* to do with the 861 issue. What really happened, which

Mr. Escher tried to gloss over, was that at *sentencing* the defendants brought up the 861 evidence (apparently having only just heard of it, *after* having been convicted). The *New York Times* said that the judge increased the defendants' sentences because, as Mr. Escher read from the story, they "*insisted on speaking and telling the judge about the 861 position, and how as a sovereign citizen of California, the federal courts had no jurisdiction, and all sort of—in the New York Times article, 'gibberish'*." So it's wrong because someone got punished for saying it. Nice logic.

In between Mr. Escher's barely coherent ramblings, I kept trying to get to the list of specific questions, until Mr. Escher said this: "*Well, I guess what I'm saying to you, and what I've tried to demonstrate to you from the get-go is that it is our position—and that we're not gonna waver from this position—that 861 does not apply to your situation. And we can go over every one of those articles, and it's not gonna change that. What I'm saying to you is I'm not gonna go over those articles with you; I'm not gonna go on this point by point, because it's my contention that in the very first sentence of 861(a), it is clear in my mind that 861 is not applicable to your situation*."

Really? The very first sentence of 861(a) shows that it's not about us? Let's read what that first sentence says: "*The following items of gross income shall be treated as income from sources within the United States...* " Then it lists various types of domestic income, including compensation earned for work done in the U.S. How, exactly, does that "clearly" imply that Mr. Hoffman shouldn't be looking there? Mr. Hoffman had given Agent Escher half a dozen citations which state, in English plain enough for even an IRS agent to understand, that Section 861 and its regulations are the sections to use to determine one's "*taxable income from sources within the United States*." No conditions, no qualifications, no exceptions. In response, Mr. Escher simply *hallucinated* something saying that Mr. Hoffman shouldn't look there.

When I again tried to get to the list of questions, Mr. Escher said, "*Well, I'm saying to you before even going into them, we disagree with every one of your points*." Every one? Well, not quite. He added, "*Any point there that you're indicating 861 has relevance to you as a taxpayer, based on the income that you earned in that year, in the year 1997, we disagree with that position. Now, I don't know how much clearer I can be*." Why do you suppose he didn't want to answer the specific questions?

Mr. Hoffman, calmly and politely, replied: "*I'm not here to argue with you. And you've had the questions for quite some time. And I don't want this to be a thing where we just pretend like we're going through due process. I wanted it to be taken seriously, because I believe the position is serious. But why would you—*"

Mr. Escher interrupted to say this: "*Well, but I have taken it seriously. I've put in several hours in researching this*." Several hours? I would bet money that those "several hours" consisted entirely of going over insulting, threatening (legally non-binding) IRS form letters, rather than reviewing anything from the law itself. No one who actually reads Section 861, or Section 1.861-1 of the regulations (which is what Mr. Escher quoted from), would conclude that a U.S. citizen should ignore 861 unless he has foreign tax credits to compute. There's just not a shred of support for that claim in the law. The only way he would have gotten that impression is from the IRS form letters which made up that provably false claim.

Eventually Mr. Hoffman ran down the list of questions, most of which Mr. Escher didn't even seem to comprehend. When he got to the question about some income being exempted, not by any statute, but by the Constitution itself, Mr. Escher was at least nice enough to admit: "*Without further research, I don't really have a response for that one. I can't really tell you without researching an answer to that question*." Again, the IRS folk simply aren't aware of the fact that the Constitution exempts some income. Oddly, it wasn't long before Agent Amnesia once again proclaimed that "gross income" means "*anything that you receive, unless it's specifically exempt*." Wrong again.

I don't mean to be nasty, but I was stunned at Mr. Escher's inability to follow simple trains of logic, or even comprehend basic English. No matter how slowly and simply we explained them, he couldn't understand the most basic questions about determining what is taxable, and had to resort to a sort of blanket evasion: "*I don't believe that 861 applies to your position*," and later, "*that's how I'm gonna answer—that is my answer from now on for anything with 861*." Not exactly open to rational discussion, was he? Also of note, twice at the meeting Mr. Escher insisted that 861 and following, and related regulations, determine the "sourcing" of income, but *not* the "sources" of income. This was a bit odd, since he himself had just read aloud from the regulations which say that those are the sections which "*determine the sources of income for purposes of the income tax*" (as you can see above). Incidentally, nowhere does 861, or any of the regulations thereunder, ever use the term "sourcing." One section of related regulations (1.861-8), on the other hand, uses the word "sources" *seventy-one* times.)

So the meeting ended, with Mr. Escher still insisting that Mr. Hoffman shouldn't be using 861, and still having nothing in the law supporting that claim. So, just as I had done in my own case, Mr. Hoffman asked that the legal questions be sent to the IRS lawyers for "technical advice." Once again, the IRS refused, even though their own manual says that "*Technical advice should be requested where taxpayers or their representatives take the position that the basis for the proposed action is not supported by statute, regulations, or published positions of the Service*" (IRM, § 4.2.7.2.10), which was obviously the case there (and in my case as well). Once again, no technical advice, no appeals, no refund, no due process. Par for the course.

Debating Styles

The rantings of Mr. Escher make a nice segue into an important point regarding persuasion. There are two general methods of argument that people use to try to convince other people: they can either 1) try to simplify things, make them understandable, lay out a trail of logic and evidence, and try to have people grasp the truth for themselves, or they can 2) try to confuse people to the point where they just want to give up and take the guy's word for it. I may not always succeed, but I hope it's obvious that I always opt for the first method: trying to get people to *understand* things for themselves.

On the other hand, it sure seems to me that a lot of government folk (such as Mr. Escher) try to sound learned and informed, while trying to *confuse* their audience into just giving up and blindly believing them. If you want to know which method someone is using on you, the dead giveaway is what happens when *you* try to simplify things, slow it down, and methodically move from one step to the next, in an effort to understand what's going on. Can the person answer basic questions and

explain his position point by point? Or does he give a confusing monologue, blurt out his conclusion, and then get annoyed or impatient when you want to back up to make sure you understood?

I have talked to a lot of people regarding tax law issues. A few of them were people who, though I disagreed with them, tried to argue logically and methodically. *None* of those people worked for the government. I have *never* met anyone in government who gave the impression of wanting to actually persuade me logically. Yes, they wanted me to accept their conclusions, but they did *not* want to get into a step-by-step, well-reasoned discussion and analysis of anything. When I put the evidence in front of them, they reacted like Dracula being offered a pile of garlic.

Why would that be? Very simply, it's because somewhere deep down inside, they suspect they might be wrong. Why else would they very carefully *avoid* addressing the evidence? Why would they be afraid of answering questions, as every government official I've ever talked to has been? I've always made it a habit to invite the government to ask me anything they wanted. They never did. They always wanted to cut meetings short, say they would get back to me, say they weren't prepared to answer questions, and use other excuses to weasel out of calm, rational discussions of the law. Would someone who was familiar with the evidence and confident in his conclusions act that way? Of course not. Such people enjoy getting into the "nitty gritty," diving head first into the evidence, to try to prove their point. As you'll see later on, we got to the point where we had to try to blatantly bribe supposed tax experts—both inside and outside government—with thousands of dollars, in an effort to get them to talk about the issue in public! Getting a rational discussion of the issue is like pulling teeth.

Black Dresses, Wooden Hammers

After I had met with the IRS several times, it was clear to me that they were completely clueless about Section 861 and its regulations, and couldn't come up with anything in the law even hinting that I shouldn't be using those sections. They didn't seem to want me looking there, but had absolutely nothing to contradict all the citations I showed them saying I *should* be looking there. In short, they were using the Wizard of Oz argument: just look where we want you to look, and pay no attention to that section behind the curtain! Needless to say, I was neither impressed nor persuaded by the response of the all-knowing IRS. I started wondering if I'd ever get anyone to make at least a half-decent attempt at refuting my conclusions.

At some point, the 861 issue started showing up in Tax Court cases here and there (in cases other than mine). The U.S. "Tax Court" is not actually a Judicial Branch court. It is a glorified administrative hearing (Executive Branch), formerly called the "Board of Tax Appeals." And, as the Internal Revenue Manual admits, the IRS does *not* consider Tax Court rulings to be legally binding, except for the specific case before the court. In other words, they don't consider Tax Court rulings to constitute binding "precedent."

To illustrate the point: in July of 2003, the Tax Court rightfully chastised the IRS for not allowing people to record certain in-person meetings with the Appeals division, in blatant violation of 26 USC § 7521. That section states, in no uncertain terms, that "[a]ny officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the

determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview." (I'm not sure what part of that the IRS had trouble understanding.) For months the IRS simply ignored the Tax Court's ruling—not to mention the law—and continued its policy of harassing citizens off the record, behind closed doors, and with no witnesses. Eventually the IRS folk changed their "policy," however, not because they really care what the Tax Court or the law says, but probably because they knew that a lot of people would just drag them into Tax Court over and over again, and the Tax Court would keep telling them to let people record the meetings.

So the IRS only treats Tax Court rulings with respect when it wants to, and ignores them when it wants to. Not only is the IRS not bound by Tax Court rulings, but no other court is bound by them either. Nor am I. Nonetheless, my attitude has always been that if I was making an error or missing something, I wanted to know about it, whether such enlightenment came from a Tax Court judge or a janitor (the latter being a lot more likely). So I kept my eyes out for any 861-related "rulings," non-binding though they may be.

"Frivolous!" (Froth, froth, froth.)

In one Tax Court case after another, that was the careful analysis provided regarding the 861 evidence. One or two cases at least made the lame, provably incorrect claim that Section 61 makes everything taxable, while other rulings relied completely on insult and demonization of whoever raised the issue.

Take, for example, the case of *Dashiell v. Commissioner*, in which the Tax Court "judge" said that Section 61 "*prefaces its use of the word 'source' by the word 'whatever,' thereby making the particular source of a U.S. taxpayer's income (and the income sourcing rules of sections 861-865) irrelevant for purposes of the definition of income under section 61*."

So 861 is now "irrelevant" to 61? Interesting, since:

1) Section 61 itself has a cross-reference pointing to 861;

2) Section 61 uses the term "sources" of income, while the regs say that 861 and related rules "*determine the sources of income for purposes of the income tax*";

3) The regulations under 861 say the items listed in 61 are *not* always taxable;

4) The regulations, past and present, say there are constitutional limits on the broadly worded general statutory definition of "gross income" (now found in Section 61);

5) Half a dozen regulations say, without any qualifications or conditions, that 861 and its regs are the place to look to determine one's taxable domestic income;

6) The indexes of the tax code point to 61 as the general definition of "gross income," and point to 861 for specific rules regarding "gross income" from sources within the United States; and

7) A Supreme Court justice has said: "*'From whatever source derived,' as it is written in the Sixteenth Amendment* [which is where the wording of 61 came from] *, does not mean from whatever source derived*" (*Wright v. United States*, 302 U.S. 583 (1938), dissenting opinion).

But no, the Tax Court can see only one sentence of the multi-thousand-page tax code, and feels no need to explain or even mention anything else.

A couple of Tax Court rulings quoted an older lower court ruling (*Crain v. Commissioner*, 737 F.2d 1417 (5th Cir. 1984))—which had *nothing* to do with 861; it was about someone claiming the tax is unconstitutional—where the court said that it felt "*no need to refute these arguments with somber reasoning and copious citation of precedent*," because to do so "*might suggest that these arguments have some colorable merit*." So, using that as its excuse, the Tax Court refused to address the substance of the 861 evidence. It must be convenient for them to have a blanket, one-size-fits-all cop-out: "If I argue with you, or politely explain why you're wrong, it might make people think your position is arguable, so I'll just call you names instead." Interesting method of jurisprudence.

One attorney and former federal prosecutor who ended up *agreeing* with my supposedly "frivolous" conclusions explained to me that while the label of "frivolous" shows up in many court cases, about all sorts of things, usually the courts will at least explain *why* something is frivolous instead of having the attitude of "it's frivolous because we say it is," as they have done with the 861 evidence.

That same former federal prosecutor also commented on the whisper-down-the-lane basis of many court rulings, which works like this: one judge says "that's frivolous"; then another judge quotes the first one saying it, then a third judge quotes the first two, and so on. Some call this "precedent." I call it intellectual cowardice. Sometimes it's just a symptom of mental laziness: the judge doesn't want to have to bother actually researching some issue, so he just finds what some other judge said, and quotes that. But it can also be used as a way for a judge to get out of having to address inconvenient evidence. Either way, the end result is a collection of "case law" (assertions from guys who wear black dresses and carry wooden hammers) which bashes the issue without ever actually addressing it.

(As one strange example, in one case a Tax Court judge—I believe it was Judge Wolfe—asserted that the 861 issue is "frivolous," without explaining why, and then in a subsequent case quoted his *own* prior assertion as proof that the issue is indeed frivolous. "This is true because yesterday I said it was true." How delusional does someone have to be to use that arguing method with a straight face?)

In addition to "case law" without a shred of substance, the IRS also cites "case law" that isn't even about the issue at all, knowing full well that putting a case name and number will impress the average peasant, who never in a million years would actually look up the case to see what it says. For example, several IRS form letters poo-poo the 861 evidence and cite the Tax Court's ruling in the "Solomon" case. Trouble is, that case had *nothing* to do with the 861 evidence. It does mention Section 861, but in a completely different context: the petitioner was making the peculiar argument—for reasons we don't need to get into here—that Illinois is not part of the "United States," as that term is defined in the tax code, and that his income therefore constituted income from *outside* of the U.S.,

not income from within the U.S. per Section 861. What does that have to do with the issue explained above? Not a dang thing, but that didn't stop some IRS propagandist from citing it as if it proves something. (Note that when I cite a court case, I actually quote the words of the ruling, and then give the citation.)

As another example of citing irrelevant cases (and this came up at my trial), some IRS form letters also cite the "Madge" Tax Court case when insulting the 861 issue. Very persuasive, except that nowhere does the ruling in that case ever *mention* Section 861 or any of the related regulations. But hey, it looks good as a citation. And since almost no one is going to look it up (or would even know how to look it up), flinging in irrelevant citations looks very impressive. Like this: Two plus two equals five (*United States v. Eduardo von Gleekleheimer*, 123 2Fd 456 (1953)). Doesn't that look spiffy? (I just made it up.) So, after there is a collection of non-binding, substance-free and mostly irrelevant "case law," an IRS bureaucrat can simply quote the guy who quoted the other guy who quoted that other guy, and pretend that that counts as proof that the 861 evidence is bogus. But, as those who investigate the issue in more depth discover, *nowhere* in the chain of parrots is the law itself seriously examined.

Sadly, to most Americans this method of repeating baseless assertions is seen as a compelling argument, especially if those flinging assertions around are in positions of authority, or are thought to be experts. In the eyes of Joe Q. Public, some mere peasant armed only with evidence and logic can never compete with the unsupported opinion of some political appointee who is accustomed to being called "honorable" (for no apparent reason).

Allow me to give a quick example of the "honorableness" of Tax Court judges, most of whom are former IRS lawyers. The present I got for my thirty-seventh birthday (on 6/24/05) was a story in the press exposing the fact that the Tax Court had lied its butt off. In short, a civil tax trial ended with a special trial judge ruling against the IRS and in favor of a Mr. Kanter, in a case involving $30 million. The trial judge stated that "*the court cannot find or conclude that* [the IRS's] *claimed kickback schemes existed or ... that there was fraud*." However, under the Tax Court rules at that time, the ruling in favor of Mr. Kanter was kept *secret*, after which a *different* judge, Tax Court judge Harold Dawson—who had not presided over the trial, and wasn't even there—decided to rule in favor of the IRS. Of course, one judge overruling another is not all that unusual, but Judge Dawson did not say he was overruling anything; he said he was just adopting the findings of the original trial judge, which was an outright, bald-faced lie. (The victim of that lie, Mr. Kanter, died before the lie was exposed.) Even legal experts and law professors raised an eyebrow or two at that. What's the point of having a trial when the ruling is kept secret, and then the Tax Court just lies about the outcome of the trial, and punishes the one who *won* at the trial? The lawyer for Mr. Kanter's estate was quoted as saying, "*I am aghast at what has happened. After 35 years of trying these cases, believing that taxpayers got a fair adjudication, I have found out I was wrong*." (I could have told him that.) The "honorable" scumbag judge, when asked for comment, said, "*I'm not free to discuss this and I don't have any comment to make*," and also added, "*The case is still in litigation and I think it would be unethical for me to make any comments*." Oh, *now* he suddenly has ethics? Right. Where were his ethics when he was telling that thirty-million-dollar lie? And I'm supposed to accept on faith the baseless assertions of these people? No, thanks.

Granted, there are occasions when one would be justified in saying, "That's too stupid to dignify it with a response," but the 861 evidence isn't anywhere near belonging in that category. (I hope the reader will at least skim over my "Taxable Income" report, Appendix A in this book, so he can see that for himself.) Yes, the conclusion that most Americans don't owe federal income taxes is obviously contrary to popular opinion, but that conclusion is the result of sound logic applied to ample legal documentation. If the punchline really is frivolous, then (by definition) it should be very easy to point out at least one glaring flaw of logic or law somewhere in the argument. But no one seems able to do that. The feds can't even decide just which points they disagree with; they just really don't like the conclusion which all the points together lead to, because it threatens their power.

Asking Questions

If only one or two people, or even a few dozen, were making some wacky-sounding claim, I might have to sympathize with government lawyers who didn't want to invest the time and effort to carefully refute such a claim point by point. After all, they can't be expected to give a comprehensive, detailed rebuttal to every question or argument anyone can come up with. They just don't have the resources.

That excuse does not apply here, however. By the time of my trial, there were just over 6,400 people subscribed to my e-mail update list. There were also somewhere around 13,000 copies of my *Theft by Deception* video (which I'll talk about later) in circulation, and several *hundred thousand* "861 Evidence" mini-CDs (which I'll also talk about later) out there. And over a span of several years, my free "Taxable Income" report had been downloaded nearly *half a million* times.

So this was not some isolated, insignificant happening. (They wouldn't have bothered to prosecute me if it were.) Within a couple of years after my "Taxable Income" report came out, the 861 issue had become a huge problem for the IRS, and they knew it. They issued several public notices bashing the issue and threatening to fine anyone who brought it up, while they continued to dodge the substance of it. Once again, if there were a substantive rebuttal available, don't you think they would have focused their efforts on getting it out there instead of just shouting "frivolous" over and over again?

Not content with the insults and threats coming from our "public servants," several thousand of us uppity folk started organizing letter-writing campaigns. Rather than complaining or preaching, all the letters did was to ask several specific questions about how to properly determine our taxable income. That's all. Surely providing specific answers to a few basic questions that were being asked by thousands of Americans would be in the IRS's best interest. (Or rather, it *would* be in their best interest if there was any way to answer the questions without exposing the largest financial fraud in history.) So let's examine the results of our efforts to get some answers.

1) King George

Perhaps the most pathetic response to our questions came from President Bush's office. In response to three specific questions about how to determine taxable income, he thanked the person for contacting the White House "*about the tax burden of the American people*." Huh? The rest of the

letter, which said nothing even remotely related to the questions asked, was a sales pitch for Mr. Bush's alleged "*tax relief agenda*." Well, it's hard to get any more nonresponsive than that.

2) Charles Rossotti, Commissioner of the IRS

Several hundred Americans (at least) sent Mr. Rossotti three basic questions about how to properly comply with the tax code—how to accurately determine one's taxable income. The two main questions (which are the primary theme of all of the following letter-writing campaigns) can be paraphrased as: "Should I use Section 861 and related regulations to determine my taxable domestic income?" and "Do those sections show my income to be taxable?" Reasonable enough, don't you think?

These are not trick questions, nor are they complicated. For any given person, either he should use those sections, or he shouldn't. You can't "kinda" use a section of law. And either those sections do show his income to be taxable, or they don't. Income can't be "kinda" taxable. Surely it should be easy for the IRS Commissioner to answer a couple of questions about determining what we owe, right? I mean, a hundred million of us are expected to do it every year, so someone in the IRS ought to be able to explain *how* to do it.

To make a long story short (again), after literally years of people sending those questions to Commissioner Rossotti, I never saw anything from his office that was anywhere near being an answer to any of the questions we asked. For every letter-writing campaign, I asked the participants to send me copies of whatever responses they received from the government. And they did. I have quite a collection of "response" letters, though none of them actually respond to any of the questions.

3) Congress

We also did several letter-writing campaigns targeting members of Congress with those same basic questions about how to determine taxable income. We didn't get a letter to every one of them, but we got most of them (several hundred). Surely the ones who *enact* laws could answer questions about them, right?

Of the representatives who did anything at all with the letters, most simply forwarded them to the IRS. Think of that: the group of people that *writes* the laws deferred the questions to those who *administer* the laws. In fact, in response to the questions, the office of Senator Zell Miller sent back a response saying this: "*Thank you for your recent letter regarding the application of the federal tax code; unfortunately, this issue falls outside the jurisdiction of a United States Senator*." What?! I guess they only *write* the laws; you can't expect them to be able to explain what they mean.

With very few exceptions, the remainder of the "representatives" just did a "cut and paste" from a non-responsive IRS form letter, and put it on their own congressional letterhead so it would look as if they had actually looked into the matter (but we weren't fooled). Others did not hide the fact that they merely referred the questions to the IRS. For example, John McCain responded to the questions with a three-line cover letter, along with an IRS form letter. Senator McCain's letter said only this: "*Thank you for your information regarding your tax questions. I am always interested in matters that affect my constituents. Thank you again for bringing this matter to my attention*." Nice generic politician drivel. And if you think that was lame, below is what the accompanying IRS form letter

said. Remember, this is in response to a guy doing nothing other than requesting answers to a few basic questions about determining taxable income.

"*I am responding to your inquiry dated July 10, 2004, on behalf of* [nasty question-asker] . *His inquiry was about the federal income tax.* [Nasty question-asker's] *recent letter and other similar letters he sent to you and the Internal Revenue Service seem to reflect personal opinions and frustrations with the federal tax system, which we cannot address. The federal courts have consistently ruled against the issues* [question-asker] *has raised, and we have given him all the information that we have. Unfortunately, we do not have the resources to continue to respond to each of* [question-asker's] *letters. Therefore, we cannot respond to future correspondence from him about the same issues.* "

Personal opinions? Frustrations with the tax system? And how the heck did "the federal courts" rule against *questions*? The IRS gave the guy *all* the information they have? You mean they don't *know* how the guy is supposed to determine his tax liability? And if the IRS is so low on resources, why didn't they just answer the guy's questions the first time he asked them, instead of repeatedly evading them?

Other congressfolk sent their constituents a report from the "Congressional Research Service." For the first few *years*, the rather lengthy CRS report said exactly *nothing* about 861. A later version included a short blurb, paraphrased from an IRS form letter, which carefully avoided the questions we were asking. (I must mention, with some disappointment, that even the office of Congressman Ron Paul, who certainly talks as if he's pro-freedom, pro-Constitution, and against the income tax, sent out the same insulting, evasive drivel as all the others. I expect that that was not Dr. Paul's idea, but some boneheaded underling's doing.)

4) Mark Everson, Commissioner of the IRS

At a press conference on September 16, 2003, Commissioner Everson (Mr.Rossotti's successor) boldly proclaimed that "*the IRS must help people understand their tax obligations*," which is just what the IRS "Mission Statement" says. Hear, hear! Within a week of making that statement, his office received over 1,200 letters from different people across the country, all asking him to please answer a few questions (shown below) about how to properly determine taxable income.

Mr. Everson's initial response was to ignore all of us completely. A couple of months later, however, the IRS began sending out a flood of form letters to hundreds, if not thousands, of Americans. Hooray! Answers at long last!

Well, no. The form letter didn't even *mention* 861 at all. Nor did it mention the questions asked, or even hint that any questions had been asked. No, the mass mail response—presumably directed by Mr. "Customer Service" Everson himself—instead lamented the fact that some people "*encourage others to deliberately violate our nation's tax laws*," and warned that nasty things might happen to anyone who listens to those people. (How exactly does "Go ask the government how to obey the law" translate into "Go deliberately violate the law"?) The letter ended by bluntly saying that the IRS "*will not respond to future correspondence concerning these issues*."

So let's recap: 1,200 citizens: "How do we properly comply with the law?" IRS: "You better obey the law or else! And we're not gonna talk to you anymore!" Nice attitude, Führer Everson. Astonishingly, that same form letter also gushes about how the IRS strives to act "*in a manner that warrants the highest degree of public confidence in our integrity, efficiency, and fairness*." How Orwellian can you get? Do as you're told, or the Ministry of Love will grind you to dust! Good grief.

And just so you can see what that was in response to, here are the actual questions all those people sent to Commissioner Everson:

Questions Regarding Determining Taxable Income

1) Should I use the rules found in 26 USC § 861(b) and 26 CFR § 1.861-8 (in addition to any other pertinent sections) to determine my taxable domestic income?

2) If some people should not use those sections to determine their taxable domestic income, please show where the law says who should or should not use those sections for that.

> Reasons for first two questions: The regulations at 26 CFR § 1.861-8 begin by stating that Sections 861(b) and 863(a) state in general terms "*how to determine taxable income of a taxpayer from sources within the United States*" after gross income from the U.S. has been determined. Section 1.861-1(a)(1) confirms that "*taxable income from sources within the United States*" is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8 (see also 26 CFR §§ 1.861-1(b), 1.862-1(b), 1.863-1(c)). Cross-references under 26 USC § 61, as well as entries in the USC Index under the heading "Income Tax," also refer to Section 861 regarding income ("gross" and "taxable") from "sources within U.S."

3) If a U.S. citizen receives all his income from working within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show his income to be taxable?

> Reason for question: Section 217 of the Revenue Act of 1921, predecessor of 26 USC § 861 and following, stated that income from the U.S. was taxable for nonresident foreigners, and for U.S. corporations and citizens deriving most of their income from federal possessions, but did not say the same about the domestic income of other Americans. The regulations under the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "*specific sources and activities*," which still relate only to certain types of international trade (see 26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

4) Should one use 26 CFR § 1.861-8T(d)(2) to determine whether his "items" of income (e.g. compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

> Reason for question: The regulations (26 CFR § 1.861-8(a)(3)) state that a "class of gross income" consists of the "items" of income listed in 26 USC § 61 (e.g. compensation, interest, rents, dividends, etc.). The regulations (26 CFR § 1.861-8(b)(1)) then direct the reader to 26 CFR § 1.861-8(d)(2) which provides that such "classes of gross income" may include some income which is excluded for federal income tax purposes. (Section 1.861-8(d)(2) merely redirects the reader to 1.861-8T(d)(2).)

5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is the income of the average American not on that list?

> Reason for question: After defining "exempt income" to mean income which is excluded for federal income tax purposes, the regulations(26 CFR § 1.861-8T(d)(2)(iii)) list types of income which are not exempt (i.e. which are subject to tax), including the domestic income of nonresident foreigners, certain foreign income of U.S. Citizens and residents, income of certain possessions corporations, and income of international and foreign sales corporations; but the list does not include the domestic income of the average American.

6) What types of income(if any) are not exempted from taxation by any statute, but are nonetheless "excluded by law" (i.e. not subject to the income tax) because they are, under the Constitution, not taxable by the federal government?

> Reason for question: Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute "*or fundamental law*" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to the types of income exempted by statute, other types of income were excluded because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)). (This is also reflected in the current 26 CFR § 1.312-6.)

Yeah, we're a bunch of nasty scofflaw "tax protestors," aren't we? How dare we ask how to properly *comply* with the law?

5) Pamela Olson, Assistant Secretary of the Treasury

In our long quest to find someone in government who wouldn't treat us like dirt for asking

perfectly reasonable questions, I thought I saw a ray of hope in Ms. Pamela Olson. We had learned that her office in the Treasury Department (Tax Policy) was the highest office with actual hands-on dealings with the income tax regulations. More interestingly, on the internet I found the transcript of a speech Ms. Olson had given, talking about how to improve "compliance" with the tax laws. (An iron maiden and the rack would no doubt be Mr. Everson's choice.) Ms. Olson's comments on August 8, 2002, to a committee of congressfolk included the following:

"*Mr. Chairman, you were among the first to highlight concerns about tax shelters, tax scams, and schemes. ... I believe our self-assessment system is strong, but keeping it strong requires the confidence of the citizenry. Research by social scientists suggests that when it comes to complying with the law, the belief that the laws are legitimate and should be obeyed has a stronger motivating effect than the fear of being caught*."

So, convincing people that they actually *owe* the tax will do more for "compliance" than threatening to hurt them! No kidding. At last! Someone who would give us answers instead of threats!

Actually, she gave neither. She completely ignored the first volley of letters which over three hundred of us sent in late 2002, asking those six pesky questions shown above. A few months later we tried again (with another 300 letters), and a bunch of us called her office, asking when we could expect answers to our questions. Her "answer," which came shortly thereafter, was to resign. Oh well. (Her predecessor, Marc Weinberg, had also resigned after a friend of mine kept sending *him* those darn letters asking questions about 861.)

So another high official refused to answer, But there was more to the Pam Olson saga, which I didn't learn until much later. On February 5, 2003, I sent out an e-mail message to a lot of the people paying attention to the 861 evidence. That message included the following:

"*So far Ms. Olson has only gotten letters. I bet a few hundred letters got her attention. It probably caused her some stress when she realized she can't answer the questions. She may not know the truth yet, but she at least knows something is fishy. How much do the letters bother her? Maybe none, maybe pretty much. How much would a full-page ad in the Washington Times bother her, that said… PAM OLSON, ANSWER THE DAMN QUESTIONS! (...and then briefly explained the situation.) How about if that appeared in newspapers across the country? How about if 500 people showed up at her office in DC one day, asking her to answer the questions? How about if eight people a day (one an hour) took turns visiting her office, every day for the next few months? How about at her house? How about if 500 people called her office every DAY, asking when she was going to answer the questions? How about if people could ask their 'representatives' to please tell Pam Olson to answer the questions? What if it was 5000 people, instead of 500? What if a few thousand people called every talk show they could find, and mention the insanity of the feds being unable to answer basic questions about how we are supposed to determine what we owe (and have a handy-dandy web page about it to point to)? A few hundred letters to the editor, all mentioning Pam Olson in particular?*"

Brace yourself because this gets a little weird. In December of 2004, almost two years after I sent that e-mail, a story ran in the *Wall Street Journal* about a Ms. J.J. MacNab, who had taken it upon herself to act as a spy for the IRS, lurking in online chatrooms under a fake identity, spying on

people in the "tax honesty movement" and reporting her findings to the feds. The feds even credit Ms. MacNab with being "*instrumental in shutting down a variety of illegal tax shelters, from high-end estate-planning techniques to low-end tax-protester scams*." Trouble is, by "scams" they don't just mean people hiding stuff or lying about stuff; they also include those annoying people who ask inconvenient questions about the tax laws. They can't afford to describe us as what we are: people who have reached unconventional—but solidly supported—conclusions about the proper application of the law. No, they have to demonize us. Get a load of how the *Wall Street Journal* article did it:

"*Last year, Ms. MacNab—using the Patriot alias—intensified her scrutiny of antitax guru Larken* [sic] *Rose. On an online discussion group with 2,500 followers, Patriot came across veiled threats of violence against U.S. tax officials*."

First of all, notice how when people disagree with the government, they're never a bunch of independent thinkers; it's always a "guru" and his "followers" or "adherents." But more amazingly: threats of violence?! Now back up a few paragraphs, and see what the WSJ and MacNab were characterizing as "veiled threats of violence." Of course, they didn't actually quote those supposed "threats" from me, because it would expose the insanity of their "spin." But wait, there's more. The government propaganda in the *WSJ* article continued:

"*Ms. MacNab alerted Ms.* [Pam] *Olson, then a Treasury assistant secretary, who was being lambasted online for speaking out against tax shelters and scams. At a* 63 *breakfast quickly arranged by Ms. Olson, Ms. MacNab showed the Treasury official e-mails prodding the tax protesters to harass and stalk her. Ms. Olson says she immediately arranged to receive Secret Service protection.* "

Harass and stalk her? Ever heard of the idea that the people have the right to "*petition the government for a redress of grievances*" (First Amendment) when they think they're being mistreated, Ms. Olson? And who the heck was "lambasting" her for "*speaking out against tax shelters and scams*"? No one. We were complaining that she was refusing to answer a few perfectly reasonable questions being asked by hundreds of hard-working, honest Americans. And she ran to the Secret Service because of that?! Why not just *answer the damn questions*, Ms. Olson?

Considering how wildly inaccurate the *WSJ* story was, the next day I sent a letter to the author, Monica Langley, pointing out how many things were blatantly untrue in her article. I also pointed out how ironic it was that she tried to paint *me* as the one using threats and intimidation, in light of some of the things the IRS, by that time, had done to me (which you'll learn about later on). My letter concluded as follows:

"*Whatever you think about my conclusions regarding the tax laws (if you've even heard of them before), I hope you don't approve of government-sponsored censorship, slander, libel, and demonization. And if you learn that someone has lied to YOU, and you have printed that lie for all to see, I hope you are willing to publicly correct it*."

Well, Ms. Langley corrected the misspelling of my name, but that was all. She did write back to me, however. The only other thing she could come up with to justify the "*veiled threats of violence*" claim was another e-mail I had sent to my list, in which I talked about a person who had decided to

go on a hunger strike until the IRS would answer various questions about the tax laws. In my e-mail I opined that I would rather see someone like Pam Olson not getting any food until she answers the questions; that way the criminals, not their victims, would be the ones suffering. Of course, any moron reading my message could see that I wasn't suggesting that anyone *do* that to Ms. Olson. But the government, with the help of the lazy mainstream media, managed to characterize a bunch of people doing nothing more than *asking questions* as violent terrorists.

(Incidentally, the *Wall Street Journal* is not the only paper which has helped the government's efforts to paint us as nasty criminals. In an article in April of 2004, David Cay Johnston of the *New York Times* wrote a piece about payroll personnel dealing with more and more Americans who didn't want anything withheld from their paychecks, because they didn't think they owed federal income taxes. Consider the following snippets, all of which appeared in that one story: "*With Internet promoters fanning the flames*"; "*a class on how to deal with tax protesters*"; "*payroll clerks being assaulted by workers enraged over taxes being withheld*"; "*comparing* ["tax protestors'"] *'pseudo-legal arguments' to 'the Unabomber's manifesto'*"; "*Payroll officials should be careful with such people*"; "*They may not be very nice. ... They could be dangerous*"; "*That prompted Dennis Carroll, who handles tax-denier claims by United States Postal Service workers, to announce, 'I work behind three locked doors'*." The message the "story" was designed to imply should be pretty obvious: people who don't think they owe taxes are violent, nasty criminals. Apparently demonizing the messenger is easier than refuting the message.)

6) IRS Lawyers Specializing in 861

Somewhere along the line, with a little research and a little luck, we managed to find a list of IRS attorneys who specialize in specific sections of the tax code. So, naturally, we looked up the IRS experts on Section 861, and found the names of Barbara Felker and David Bergkuist. Surely *they* would be able to answer our questions! If anyone could, it would have to be them—they were the IRS's *national* experts on that particular part of the law.

So the same friend of mine who wrote to Marc Weinberger—Tom Clayton, M.D., down in Texas (whom you'll hear more about later on)—started exchanging letters with the IRS's 861 experts, and sent me copies of everything he sent to them and everything he received from them. The results were more than a little curious.

The questions being asked were (again) about who should use 861 and its regulations, and what those sections show to be taxable, which any real 861 "expert" should be able to answer in his sleep. After Dr. Clayton had asked the same questions a few times, the IRS "experts" sent back the same nonresponsive form letter that other IRS offices had been sending out. Remember, we're talking about the IRS lawyers who are the *top* 861 experts in the *country*, working for "Chief Counsel" at IRS headquarters in Washington, D.C. Their entire job is to interpret Section 861 and following, and the related regulations.

So Dr. Clayton wrote to them again, thanking them for their nonresponsive responses, but pointing out that they hadn't even come close to answering anything he had actually asked. Then he asked once again that they please provide specific answers to his specific questions.

Their final letter to the good doc stated that, having sent him the worthless form letter, they had given him "*all the general information*" they had on the topic. (How about some specific information, instead?) In other words, the IRS's own national experts on 861 would not or could not answer the questions. Obviously they couldn't plead ignorance (unlike most IRS paper-pushers). So why wouldn't they answer?

One truly bizarre incident must be mentioned here, though I still cannot explain it. When Dr. Clayton first starting sending questions to the 861 experts at the IRS, he made no reference to me, or my "Taxable Income" report, or any web site. He just asked a few specific, succinct, reasonable questions about the proper application of Section 861 and its regulations. Then one day Dr. Clayton received a thick envelope from the office of David Bergkuist (IRS lawyer specializing in Section 861). Could it be answers at last? Well, yes and no. The only thing in the envelope was a complete printout of *my* "Taxable Income" report. There was no cover letter or any sort of explanation with it, and neither of us had ever sent them my report. The printout showed that the report had been printed straight off of our web site—someone at IRS Chief Counsel had printed out *my* report and sent it to Dr. Clayton!

Needless to say, we both considered that to be a pretty strange response. (My dad informs me that, after I told him of the incident, he laughed about it for an entire day.) We could only come up with a few guesses at what it might mean, none of them very believable. Maybe this was their way of saying, "We know you nasty people are working together!" But since we weren't pretending otherwise, what would be the point of that? Or maybe Mr. Bergkuist was going over the report, had a copy lying around, and some underling paper-pusher misunderstood and sent it out, thinking it was supposed to be a response to the questions. Again, sounds unlikely.

Or maybe, in a fluke fit of honesty, Mr. Bergkuist decided to send Dr.Clayton a copy of the most thorough, well-supported answer to his questions then in existence: *my report*. (That is probably the *least* likely explanation, however, mainly because it would involve a government lawyer being honest.) We may never know why it happened.

7) Jim South: Anti-861 Coordinator

At one point we had spies inside the IRS who sent me some of their internal memos (not meant for public consumption) showing that the IRS's national anti-861 plan was headed up by someone named "Jim South." (That might be a fake name, which IRS agents—and other unscrupulous crooks who don't want others to know who they really are—often use.) Well, I thought, if Mr. South was qualified to head the team dealing with us pesky 861 folk, maybe he could answer the questions. So in early 2003, I gave out Mr. South's office address and phone number to my e-mail update list (which was relatively small at the time), suggesting that as potential victims of Mr. South's anti-861 designs, they might want to politely ask him how they *should* be applying the law. To make a long story short (since you've heard it before), we melted Mr. South's phone line, flooded his office with letters, and got no answers. (A few callers got threatened with audits and/or collections for daring to ask such heretical questions.) Apparently "answering questions" never occurred to Mr. South as a possible means of dealing with us pesky 861 folk. In fact, one person who called him reported to me that Mr. South said that the courts are the ones to answer questions about the law, not the IRS—and then he hung up. Wow, how do the IRS bureaucrats enforce the law if they don't know what it means?

So, are you starting to find all this a little suspicious? Well, keep reading.

8) Federal Prosecutors

Doesn't it seem reasonable that anyone willing to *prosecute* people for disobeying the tax laws should, conversely, be able to tell people how to *obey* those laws? It does to me. So I suggested that people write letters to a few folk at the U.S. Department of Justice, asking those same questions about how to properly determine one's taxable domestic income.

In addition to the Attorney General himself, we sent letters to Eileen O'Connor, who heads the Tax Division of the DOJ, and who had been particularly condescending and insulting in DOJ "press releases" demonizing those evil, nasty, terrible people like me who dared to mention the forbidden number: 861. We also sent letters to Floyd Miller, the lead prosecutor in my case, and Patrick Meehan, the U.S. Attorney for the Eastern District of Pennsylvania (and Floyd Miller's boss). (The letters to Mr. Meehan and Mr. Miller are included in their entirety later in this book.)

As far as I know, neither Attorney General Ashcroft, Ms. O'Connor, Mr. Meehan, nor Mr. Miller ever sent any kind of response to any of the letters which hundreds of people sent in. (I know I never got a response from any of them.) What Mr. Miller did instead was whine to the court about all the letters they were receiving. Well, boohoo. Somehow Mr. Miller saw my suggestion that people *ask the government* about how to *comply with the law* as something naughty, if not illegal. So apparently those who prosecute people for supposedly breaking the law either cannot or will not tell people how to *obey* the law. I guess the law works by trial and error: if you get prosecuted, you did it wrong. If not, you either did it right, or they just haven't gotten around to you yet. What an interesting system.

The same former federal prosecutor I mentioned before—the one who ended up agreeing with my conclusions—related to me the fact that he was never trained in tax law. In the few tax cases he helped to prosecute, both sides just assumed that the defendant's income was taxable, and therefore assumed that he owed the tax, and then just argued about whether he had hidden anything or lied about anything. So if you're tempted to assume that prosecutors must be familiar with the law (as I once would have assumed), think again.

(On another occasion, when someone asked DOJ officials to answer those six pesky questions, the response they received went like this: "*Because all of the questions relate to Internal Revenue Code (hereinafter 'I.R.C.') § 861, I will address them all by stating that I.R.C. § 861 deals with foreign income and is not relevant to your case unless you received income from a foreign country*." What? A section entirely about income from sources *inside* the U.S.—which doesn't say a thing about foreign income—only applies to people who have *foreign* income? Yeah, that makes loads of sense. More on this later.)

9) Various IRS offices

People across the country also sent those same questions to all sorts of different IRS officials and bureaucrats, most of whom didn't respond at all. Most of those who did write back just sent out non-responsive form letters.

This calls for a brief detour from the story. Some people have made an art form out of evasion

and obfuscation. (They're usually called "lawyers.") They manage to dodge simple questions, and instead give misleading, long-winded answers to questions which nobody asked. Consider this analogy: Suppose Bob is on trial for the murder of Fred, who one afternoon was found lying dead in his own living room. At trial, having been coached by his lawyer, Bob *truthfully* states all of the following: "I did not stab Fred, I've never even been in Fred's house, and I was home all afternoon." If those are all true, then surely Bob must be innocent, right? Wrong. Bob *shot* Fred (didn't stab him) through his living room window (he was never in the house) at 11:45 a.m. (not in the afternoon), and then went home. But using careful lawyer-spin, and meticulously avoiding the question of whether he killed Fred, he could say things which were literally true yet misleading. If you think that sounds far-fetched, remember, this is what lawyers are paid to do: "spin" facts and the law to try to get the desired decision for their clients. What they carefully avoid saying, and the questions they carefully dodge, are often more telling than what they do say. With that aspect of "lawyer-speak" in mind, let's look at what the IRS form letters do and do not say.

For starters, most of the form letters talk about various "tax protestor" theories and arguments which have nothing at all to do with the 861 evidence. If you ask whether you should be using Section 861, you might, for example, get a form letter back refuting the claim that the Sixteenth Amendment wasn't properly ratified, or that the term "income" means only corporate profit, or that the tax is unconstitutional, or that only gold is money, or that the tax is "voluntary," and so on. The IRS has a nasty habit of responding to what they *wished* you had asked (things they have answers for), while ignoring what you actually *did* ask.

And even the few form letters which do mention 861 manage to carefully avoid answering the questions. They use linguistic tap-dances, throw out a few assertions, dodge the heart of the matter, and end in a flurry of insults and dire warnings. (How hard can it possibly be to send a letter which either says "Yes, you *should* use those sections" or "No, you should *not* use those sections"?)

Often the strawman method of argument is used: changing the opponent's position to make it easier to respond to it. For example, one common IRS form letter disputes the claim that "*only foreign source income is taxable*," even though no one familiar with the 861 evidence would ever make such a claim. After all, there wouldn't be sections for determining "*taxable income from sources within the United States*" (meaning 861 and its regulations) if income from inside the United States is never taxable.

Another IRS form letter argues that Section 861 does not exempt the domestic income of U.S. citizens from taxation. That is also very true, but also very irrelevant. No one is arguing that 861 exempts anything from tax. That's just not at all what sections 861 through 863 do, or how they work. Again, the form letters change the issue in order to be able to refute it. Why not just answer what was actually asked?

Most of the form letters refer to the broadly worded general definition of "gross income" found in Section 61. A couple of form letters also reference the regulations at 26 CFR § 1.1-1, which explain that the tax applies to "taxable income" and that citizens are liable for the taxes imposed by the tax code, whether their taxable income comes "*from sources inside or outside the United States*." What those form letters do *not* mention, for obvious reasons, is that the regulations (at 26 CFR § 1.863-1(c)) also say that "*The taxpayer's taxable income from sources within or without the United*

States will be determined under the rules of Secs. 1.861-8" and following (the regs under 861). The taxes "imposed by the Code" apply only to one's taxable income (not all income), so why does the IRS response try to sneak around the question of how to *determine* one's taxable income?

With all the verbiage put into their non-responses, one has to wonder, why not just *answer the @#&%$ questions*?! "Should I use these sections?" "Yes, you should," or "No, you should not." See how easy it should be? Since they send out thousands of form letters anyway, why not write one that actually answers the questions, and send out thousands of copies of *that*? But the government, from top to bottom, refuses to just answer a simple question with a simple answer. Why do you suppose that is?

Here is why they can't (or won't) answer the question about whether we're all supposed to use 861 and its regulations: because if they say "no," they are directly contradicting their own regulations, whereas if they say "yes," that would lead many people to conclude (correctly) that they don't owe anything in federal income taxes. The questions, though simple, put the IRS in an inescapable trap. So they just refuse to answer them.

One IRS response which someone forwarded to me was particularly amusing. It whined that "*The questions are constructed in such a way that any answer could be construed to support arguments that the tax laws of this country do not apply to the questioner or his/her income*." Time out! The two main questions amount to "Do I use 861 and its regs?" and "Do they show my income to be taxable?" If the answers were "yes, you should use those sections" and "yes, they show your income to be taxable," where's the problem? Or if the first answer is "No, you shouldn't use those sections," where's the problem? The *only* combination of answers they would have any reason to *not* want to give are the *correct* answers: "Yes, you should use those sections, and no, they don't show your income to be taxable." So their refusal to answer clearly implies that they know those to be the truthful answers. Why else would they hesitate to answer? ("Mr. Jones, is this your gun, and did you shoot Bob with it?" "Well, those questions are constructed in such a way that if I answer them, you'll think that I killed Bob.")

Basically, the feds "pleaded the Fifth," essentially confessing that answering the questions correctly would make people think they *don't owe the tax*. In short, their response amounts to "If we tell you how to determine what you owe, you'll think you don't owe anything!" Well gee, I wonder why. That particular letter went on to insult the question-asker, saying that "*the IRS cannot provide fodder for those who promote or accept these frivolous and self-serving arguments*," therefore concluding that it was perfectly proper for the IRS to refuse to answer the questions, which the IRS mischaracterizes as an "argument." (The letter also says that the IRS is willing to help resolve any "legitimate" problems, so apparently they think that wanting to know how to determine what you owe isn't "legitimate.")

In 2004, the IRS issued "Revenue Ruling" 2004-30, so they'd have something official-sounding to use to bash the 861 issue. However, the officialness is in appearance only. The IRS's own manual —the Internal Revenue Manual (IRM)—says that Revenue Rulings "*do not have the force and effect of Treasury Department Regulations*" (IRM § 4.10.7.2.6.1). But what made the Revenue Ruling curious is that it didn't at all match the normal format of Revenue Rulings, which are usually issued in individual cases to express "*the conclusions of the Service on the application of the law to specific*

facts stated in the ruling" (IRM § 4.10.7.2.6). If, for example, you wanted to take a particular questionable deduction, the IRS might issue a Revenue Ruling explaining why they were denying it. Except for Revenue Ruling 2004-30, such "rulings" are just technical analysis, not demonization and threat pieces.

In between warnings and insults, the ruling only says a few things about the law itself. For example, it says that "*there is no authority in sections 861 through 865 that permits an individual to take the position that either the individual or the individual's U.S.-based income is not subject to federal income tax*." Literally, that is quite true. Sections 861 through 863 themselves divide *all* income—whether taxable or not—into "within" and "without" income. Since 1932, those statutes themselves don't say when such income is actually taxable. The IRS ruling also correctly states that "*Sections 861 through 865 do not limit gross income subject to United States taxation to foreign-source income*." Again, true: there wouldn't *be* a Section 861 if income from within the U.S. were never taxable. Then the ruling says this: "*The rules of sections 861 through 865 have significance solely in determining whether income is considered from sources within the United States or without the United States, which is relevant, for example, in determining whether a U.S. citizen or resident may claim a credit for foreign taxes paid*."

To some extent, that's true. Those statutes give the geographic "source" rules, but do not specify when domestic income and/or foreign income are actually taxable. The related *regulations*, as well as the statutes throughout the rest of Subchapter N of the tax code, do that. But the implication—for which the ruling doesn't give a shred of legal support—is that most folks don't need to look there at all to determine their taxable domestic income. As you can see above, there is no basis in the law for that statement, and half a dozen regulations saying the exact opposite.

Keep in mind, the things mentioned here are what the IRS sends out to people who ask a few basic questions about determining taxable domestic income. Neither that "Revenue Ruling," nor anything else they send out, actually answers any of the questions. There must *be* correct answers to the questions, and if 100 million of us are expected to properly determine our taxable income, shouldn't folks in the IRS know how to do that? Furthermore, shouldn't they be willing to explain to us how to do it?

> **"Mission of the Service: Provide America's taxpayers top quality service by helping them <u>understand</u> and meet their tax responsibilities and by applying the tax law with integrity and fairness to all." [IRM § 1.2.1.2.1]**

With that in mind, let's go beyond the template form letters, and see how different IRS employees have responded to those basic questions about how to determine what we owe. Remember, it is literally impossible to determine "your taxes" if you can't answer these questions. We've already seen how several IRS offices floundered and evaded. Here are a few more responses from different IRS folk across the country.

<u>Example #1</u>:

A Mr. Morris (IRS ID# 04-04588), in response to someone asking whether he should use 26 CFR § 1.861-8 to determine his taxable domestic income, said this: "*The simple answer to your question is that you would use 26 CFR 1.861-8 to determine your taxable income*." Hooray, he got it right! (So why am I sitting in prison for doing that?) He even quoted from the beginning of 26 CFR §

1.861-8 to back it up, just as I do. However, his response then took a strange turn:

"*While the answer to your question per the above quote may be to the affirmative that 26 CFR 1.861-8 is used to figure your taxable income from income sources within the United States, it is also the case that such a regulation is not a direct source that is usable to laymen for making the determination you want to make*."

Huh? What does that mean? Yes, it's the section to use, but not for us mere peasants? His response continues:

"*The above regulation is a technical arbiter that is a basis for rules found in publications, which are the actual tolls* [tools?] *for determining taxable income*."

What? The publications are legally worthless, yet this guy wants people ignoring the regulations and just relying on the publications. Why?

"*As a practical matter, the above regulation* [Section 1.861-8] *would be confusing to most people who may try to use it for figuring taxable income even as it serves as the basis for their ultimate calculations*."

In other words, Yes, that's the section to use—but don't, because it will only confuse you. Huh?

"*This regulation is more or less useful to lawyers and accountants who need to resolve specific client situations or misunderstandings that arise from lay publications like publication 17, which is one of the more general publications for individuals. Most of publication 17 in one way or another is dedicated to helping you determine your taxable income*."

So apparently only lawyers should look there, and only if some worthless publication doesn't answer their questions. In case you doubt what I said about publications versus regulations, here is what the IRS's own manual says:

> **"Publications are nonbinding on the Service and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position." [IRM § 4.10.7.2.8]**
>
> **"The Service is bound by the regulations." [IRM § 4.10.7.2.4]**

Ready for the grand finale? Mr. Morris' response concluded with this: "*To sum up my response, you can use 26 CFR 1.861-8 to determine your taxable income, but I wouldn't recommend it*." Wow. (I guess I wouldn't "recommend" it either, since I got thrown in prison for doing it.)

Example #2:

When asked if one should use 861 and its regs to determine his taxable domestic income, a Mr. Emirides (IRS ID# 04-03296) responded as follows:

"*Thank you for your email regarding what is the code section and federal regulation titled Taxable income from sources within the United States.* [Who asked that?] *Yes, code section 861(b)*

is titled Income from sources within the United States, and the applicable Federal Tax Regulations is [sic] *section 1.861-1(b)*."

That was the entire response. While not quite coherent or grammatically correct, it seemed to be agreeing that 861 is the place to be for determining taxable domestic income. So again, why am I in prison for doing exactly that? (Incidentally, for the hyper-picky folk out there like me, Section 1.861-8 of the regs, not 1.861-1(b), corresponds to Section 861(b) of the statutes, and the title the IRS guy quoted is the title of Section 861, not 861(b).)

Example #3:

When someone asked whether 861 and its regs show the income of the average American to be taxable, here was the response he got from a Mr.Shuman (IRS ID# 59-06262): "*Thank you for your inquiry dated 11-20-03. Please refer to Title 26 of the United States Code. Section 6012, or Publication 2105*."

That was it. Section 6012 says that one who receives a certain amount of "gross income" must file a tax return. It says nothing about 861, "taxable income," or anything remotely related to the question. Publication 2105, on the other hand, is just a long-winded, legally worthless insult to so-called "tax protestors," which says absolutely nothing about 861 or its regulations. This should tell you a lot about how the IRS paper-pushers are trained: If anyone *mentions* 861, insult him, threaten him, and tell him to pay his fair share. Why not train them to answer the questions instead?

Example #4:

As you can see above, one of the six questions is whether one should "*refer to 26 CFR Section 1.861-8T(d)(2) to determine in which situations the items of income listed in 26 USC § 61 are excluded for federal income tax purposes*." Here was the response to that question from a Mr. Brown (IRS ID# 04-01770):

"*It appears you are reading I.R.C. 61 backwards. I.R.C. 61 is a list (but not limited to the items listed) of items which are included as gross income. I.R.C. 861 concerns Income from sources within the United States. Based on these definitions, the answer to your question is NO, if you are talking about a U.S. citizen or resident. Such individuals are taxed on their worldwide income, unless a particular item of income is made exempt, or made nontaxable, by a law of the United States. This information is from I.R.C. 61, and 861, of the Internal Revenue Code of the United States*."

There is a lot worth mentioning in those few sentences: 1) The IRS guy acknowledges that 861 is about domestic income, which is nice. 2) For some reason, he then implies that one should *not* look to 861 if he is a U.S. citizen (even though 1.861-8T(d)(2) specifically includes matters involving U.S. citizens). 3) He ignores the point of the question, which is that the regs under 861 specifically *say* that the "items" in Section 61 sometimes include *exempt* or *excluded* income. 4) He implies that only income exempt by *statute* can be nontaxable (just as I said tax folk believe).

But notice the complete absence of logic in his argument: Section 61 lists items, and 861 is about income from within the U.S., therefore you should not look at 1.861-8T(d)(2) to determine whether

your income is exempt. Where on earth is the logic in that, or even anything remotely resembling a connection? "Wombats are marsupials, and cheetahs have spots, and therefore snails can't read." Do these people think that the office they hold, plus lots of words (no matter how irrelevant or incoherent), should be enough to persuade people? Sadly, for many it probably is.

Example #5:

The above examples were from e-mail exchanges, but below is an exchange which occurred on the phone (in early 2004). Someone who had asked the questions in writing received an irrelevant, insulting form letter from the IRS folk in Ogden (containing the usual rubber-stamp "signature" of the probably-mythical IRS overlord, "Dennis Parizek"). So the citizen gave the Ogden office of the IRS a call. Here is what happened:

IRS: "Thank you for holding, this is [name inaudible], I.D. #0462546926. How can I help you?"
Citizen: "I need to speak to a Dennis Parizek, please."
IRS: "Okay. He's actually our boss and his name is on our computer-generated letters."'
Citizen: "Aha."
IRS: "Is there something I can help you with?"
Citizen: "Yes. I just received a letter that said it was in response 'to my recent correspondence,' and I'm wondering which correspondence that was, because I've sent several in the last year and this is the only reply that I've gotten."
IRS "Okay, and what was, let's see—Okay, what was your response, did they put in the letter anything about it? Or, what was in the letter?"
Citizen: "The letter that I sent—I had some questions regarding how to determine my taxable income, and the response that I got—there was no answer to any of the questions whatsoever and there was a response of 'the courts have ruled against the arguments' that I have made and they would 'not respond to any future correspondence concerning these issues' from me. Uh, I didn't make any arguments. I just asked some simple questions about determining my taxable income."
[five-second pause]
IRS: "Okay, well, that is a frivolous action towards us and that—we do not respond to any of those."
Citizen: "I'm sorry??"
IRS: "We do not respond to any of those letters. That's just the way it is."
Citizen: "I don't understand. Isn't the IRS supposed to help me understand my tax obligations?"
[three-second pause]
IRS "Well, in a way, yes, but—"
Citizen: "Well, if I can't go to the IRS to understand what my tax obligations are, where am I supposed to go to?"
IRS: "Well, your tax obligations are—you make wages, you pay taxes, that's just the way it is."
Citizen: "Well, that's what I'm saying. I got—in the law—I have some questions about what the law says."
IRS: "Well, I'm—we're not to discuss the tax law with you, sir."
Citizen: "Okay. Um, who do I go to?"
IRS: "Well—you can go—to the books—whatever—but we're not discussing those kind of tax laws with you."
Citizen: "Ha, ha, ha. Now you got me really confused. Okay, well maybe we can do this. In the letter that was sent to me it said the federal courts have consistently ruled against the 'arguments' that I have made. Could I get—could you direct me to the rulings that the federal court has made against these so-called arguments that I guess you think that I have made?"
IRS "No."
Citizen: "No??"
IRS "We can't do that either. I'm not going to discuss the tax laws or the court rulings or anything like that with you."
Citizen: "Okay, well—somebody has to—I mean, that's what the IRS is supposed to do. I mean, other than just say, you know, send it in. You're supposed to help me understand what I'm sending in and why I'm sending it in, right?"
IRS "No, that's just—that's the way things are—I'm sorry, but—If you have any legitimate tax questions then I'll continue the call, if not then I am going to disconnect."

Citizen: "This isn't a legitimate tax question?"
IRS "Good-bye."
Citizen: "Hello, wait a minute. What did you say your name was again?
Hello?"

Wow, that's some top-quality service, don't you think? Let me point out, that call happened almost six *years* after my "Taxable Income" report was released, so it wasn't some issue that was just sprung on them; this wasn't the first person to ask this, or the hundredth, or the thousandth. If there were answers to the questions that would preserve "conventional wisdom," the folks at the IRS would be eagerly giving them out every chance they got. Their responses, spanning many years, are obviously an indication that they cannot afford to address the issue rationally and openly. And, quite obviously, IRS personnel are *trained* to refuse to talk about this issue; they are warned beforehand to never discuss that part of the law. The guy said he had some questions about how to determine what he owes, and they called *that* a "frivolous action" against the IRS. Nothing suspicious there, huh?

Example #6:

The IRS has what is called a "Taxpayer Advocate" office, whose stated purpose is to help citizens having problems with the IRS. Below is a transcript of a call someone placed to that office. Unfortunately, only the last part of the conversation was recorded. Here is some of what was caught on tape:

TA(IRS): "Well, you're not going to get answers, probably."
Citizen: "Why not?"
TA(IRS): "Because you're asking to have a legitimate—you are really needing to go to a lawyer and you won't get a suit heard because the Justice Department will throw it out as frivolous. And they would have a right to assess you a penalty of up to $25,000."

Note the interesting contradiction: he wants to send the guy somewhere else with his questions (i.e., to a lawyer), but then turns around and admits that the DOJ and the courts would fine him big bucks just for bringing up the issue. In short, he's making it abundantly clear that there is *nowhere* inside the system where one can go to get these questions answered.

Citizen: "Why is it frivolous to ask a question regarding the proper application of the federal income tax, and not get an answer? What is frivolous about that?"
TA(IRS): "Court cases have proved that your income is taxable and that's the end of the story."

After the individual pointed out that Tax Court rulings are not binding, the Taxpayer Advocate person asked if the citizen had any "background in law," and the citizen answered that he did not.

TA(IRS): "Okay, well maybe you might want to talk to someone you might know who does. And maybe they'll be able to help you."
Citizen: "I've been in contact with lots and lots of CPAs, forensic accountants, tax attorneys, and former IRS agents, who all back this particular argument. So—"
TA(IRS): "Well, power to you, sir. I guess I'm gonna disconnect the call because if that's all you want to discuss, Mr. [redacted], I'm not at liberty to do that."
Citizen: "Well, okay. I was just hoping to get some answers to these questions."
TA(IRS): "Well, I apologize, but you won't get them from this office. Have a nice day."

Mind you, that's from the office that's supposed to be an *advocate for citizens* in their dealings with the IRS. And they're "not at liberty" to answer questions about the law?! If that doesn't make you suspicious, you deserve to be defrauded and extorted. This would be a good time to quote a few more

things from the Internal Revenue Manual (try not to laugh):

> **"Since taxpayers must compute their taxes under a body of laws and regulations, some of the provisions of which are complex, the Service has the responsibility of providing taxpayers with all possible information to assist them in the performance of their obligations." [IRM § 1.2.1.2.38]**
>
> **"The public impact of clarity, consistency, and impartiality in dealing with tax problems must be given high priority: In dealing with the taxpaying public, Service officials and employees will explain the position of the Service clearly." [IRM § 1.2.1.6.2]**
>
> **"The Service will issue quality responses to all taxpayer correspondence. ... A quality response is timely, accurate, professional in tone, responsive to taxpayer needs (i.e., resolves all issues without further contact)." [IRM § 1.2.1.6.4]**

That doesn't exactly match how they respond to folks who mention 861, does it? I guess for us, their definition of a "quality response" goes like this: "Stop asking questions about the law! You're evil and stupid! We're gonna hurt you! And we're not gonna talk to you anymore!"

Oddly, even when a federal judge *orders* the government to answer the questions, they still don't. In late 2003, a guy I know named Ken Evans filed a civil suit against the IRS, trying to get money back. His suit explained in detail why he believed his income to be non-taxable, and included this:

"*The federal income tax is imposed under Section 1 on 'taxable income.' Other sections of the law generally define the terms 'gross income' and 'taxable income.' But, these definitions can easily be misread as if they apply to all money earned by everyone in the world. Which we all know isn't true. Section 861 and its related regulations, along with what the law calls other 'operative sections,' spell out exactly when income is taxable. The federal regulations state repeatedly that these are the sections of law to use to determine when income earned within the United States is taxed*."

Sound familiar? The government chose not to file a response at all to Mr. Evans' memorandum, which is a little weird. What made it weirder was that in a pre-trial conference, the government lawyers said they were going to file a response, but then never did. But it gets worse. Mr. Evans also filed "interrogatories" in the case, whereby one party formally asks the other a question, in order to narrow down the points of disagreement. The first question he asked was: "*Are 26 USC § 861 and the related regulations beginning at 26 CFR § 1.861-8, applicable in determining Plaintiff's taxable income from sources within the United States in the instant case?* " And guess what. The judge *ordered* the government to answer! Hooray! Now they'll answer! They have to, or it's "contempt of court"!

Well, no. They don't. The government never filed a response and never answered the questions. The judge dismissed the case, called the issue "frivolous," and fined Mr. Evans $1,000 for mentioning 861 (and grossly mischaracterized his position, to boot). Incidentally, nowhere in the court's ruling did it say anything about the correct application of Section 861, so neither the judge nor the government ever explained how Mr. Evans *should* determine his taxable domestic income, or just where his position went wrong. But they don't need to address such issues, you see, because they have the ability to hurt people instead. What a swell justice system.

Pay No Attention!

The closest thing we ever got to any kind of answer from government folk, mostly from low-level bureaucrats and anonymous form letters, consisted of various renditions of: "Pay no attention to 861! That section is about someone else, not you!" Oddly, I've seen a half-dozen different, *conflicting* opinions from various bureaucrats about who *should* use those sections. Some said 861 was only about foreign-source income (a silly argument, considering the fact that the entire section is about income from *within* the U.S.); some said it was only for people with foreign *and* domestic income; some said it was only for foreigners; some said it was only for people who had to determine a foreign tax credit; some said it was only for those who have to apportion income and/or deductions between foreign and domestic income, and so on. Meanwhile, as you can see above, some admit that we should *all* be looking there. Basically, what their convoluted beliefs boil down to is this: "If those sections show your income to be taxable, use them; if they *don't* show your income to be taxable, don't use those sections!"

Once again, when someone who should be knowledgeable about the law asserts that some section is only about certain people, there's a tendency among us non-experts to take his word for it. If Section 861 and its regulations really are only for certain people, and not for most of us, how would we know? Well, the law would *tell* us. Sections of law are constantly saying things like "in the case of this person or that person..." or "for purposes of this part of the law..." When the law includes a rule with limited application—which applies only to certain people or in certain situations—the law *says* it has limited application, loud and clear, right up front. Let's again take a peek at what the law says about 861, and see if it gives any hint that you and I are *not* supposed to be looking there—that those rules are only for someone else. First, let's look at the table of contents, to see where in the law Section 861 itself is found:

Subtitle A - Income Taxes
Chapter 1 - Normal Taxes and Surtaxes
Subchapter N - Tax Based on Income From Sources within or without the U.S.
Part I - Determination of Sources of Income
Section 861 - Income from sources within the United States

(Note: If you look up Part I of Subchapter N in most current printings of the tax code, you will find it under a different title. Though that gives yet another fine example of an attempted cover-up, it is technical and complex enough that for now I'll just refer those who wonder about it to my "Taxable Income" report, Appendix A of this book, which addresses the point in detail. Suffice it to say, what you see above is the *correct* title of Part I of Subchapter N, despite what some printings of the code now erroneously show.)

See any reason why you shouldn't be looking there? Now let's see how the IRS's "Cumulative Bulletin" sums up the purpose of that part of the law:

"Rules are prescribed for determination of gross income and taxable income derived from sources within and without the United States, and for the allocation of income derived partly from sources within the United States and partly without the United States or within United States possessions. §§ 1.861-1 through 1.864. (Secs 861-864; '54 Code.)" [Treasury Decision 6258]

Where does that even hint that those rules are only for certain people, but not for you and me? How about the related regulations? Where are they located? Here is the table of contents for the regs:

Part 1 - Income Taxes
Tax Based on Income From Sources Within or Without the United States
Determination of Sources of Income
Section 1.861-1 Income From Sources Within the United States

See any reason for us *not* to look there? The first thing those regulations say is that these sections of the law (861 and following, and related regs) "*determine the sources of income for purposes of the income tax*." It doesn't say for purposes of some people; it doesn't say for use in unusual circumstances; it says "*for purposes of the income tax*." So why, exactly, are most of us supposed to ignore those sections?

Section 861(b) of the tax code is about "*Taxable income from sources within United States*," and here is how the related regulations begin:

"Sections 861(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined."
[26 CFR § 1.861-8]

Read that carefully, and read it twice. How much more plainly could it be stated? Where is the part that says that you and I should *ignore* these sections?

In contrast, when a section of law really is only supposed to be used by certain people, or in certain situations, the law makes that abundantly clear right up front. Consider, for example, the section which comes right before 861. Look where it is located, and look how obvious the limited application is:

Subtitle A - "Income taxes"
Chapter 1 - "Normal taxes and surtaxes"
Subchapter M - "Regulated investment companies and real estate investment trusts"
Part III - "Provisions which apply to both regulated investment companies and real estate investment trusts"
Section 860 - "Deduction for deficiency dividends"
Subsection (a): "General rule - If a determination with respect to any qualified investment entity results in ..."
Subsection (b): "Qualified investment entity defined - For purposes of this section, the term 'qualified investment entity' means - (1) a regulated investment company, and (2) a real estate investment trust."

Both the titles and the text of that part of the law (not to mention all of the related cross-references, indexes, and regulations) make it glaringly obvious that the rules are only about *certain* companies and trusts. In sharp contrast, *none* of the dozens of statutes, regulations, tables of contents, indexes, or cross-references which refer to 861 give any hint that only *certain* people should use those sections to determine their taxable domestic income. Not a single one.

So why on earth do some in government insist that we shouldn't look there, when *nothing* in the law itself even remotely suggests such a thing?

Simple: because if we do look there, we might discover that *we don't owe the tax*! (The fact that they can't even agree among themselves about who *should* be looking there also ought to tell you something.)

Nothing Suspicious Here

Does my conclusion that most Americans don't owe federal income taxes at first sound wacky? Absolutely. "Everyone knows" that we all owe income taxes. But don't you find it just an itsy-bitsy, teensie-weensie bit strange that all Americans are required to determine what taxes they owe (if any) —which requires them to first determine their "taxable income"—but no one in government seems willing or able to answer a few simple questions about how to do that? What you see above is just a small sampling of the myriad of incoherent, contradictory, belligerent, irrational, delusional, insulting and/or threatening diatribes the IRS has thrown at the thousands of Americans who have politely asked about 861. About the only thing I have *never* seen them respond with is actual *answers*.

They call my position "frivolous," "nonsensical," and other nasty things, but the government folk still can't agree with each *other* on how the law applies. Should I be using 861 and its regs? Most of them can't (or won't) answer at all, and among those who do answer, some say "yes" and some say "no." Do 861 and its regs show my income to be taxable? Most of them can't (or won't) answer at all, and among those who do answer, some say "yes" and some say "no." And this has been going on for eight *years*.

Remember IRS "specialist" Michael Enz saying that 861 is only for certain people in certain unusual circumstances, and not for me to use? Well, as luck would have it, someone else sent me a letter they received from the same Mr. Enz, stating that the person *should* use 1.861-8 to determine his "*taxable income from sources within the United States*." And remember how the IRS bureaucrats at my meetings didn't want me looking at 861? Well, Diana Loden, the Vogon (see below) who eventually took over the case, in internal memos said my income was taxable *because* of 861(a)(3), implying that I *should* be looking there. Well, which is it? Can't these people at least get their alibis to match?

(Pardon the obscure reference, but while reading Douglas Adams' *Hitchhiker's Guide to the Galaxy* here in prison, the book's description of the creatures called "Vogons" was all too familiar: "*They are one of the most unpleasant races in the galaxy. Not actually evil, but bad-tempered, bureaucratic, officious, and callous. ... They don't think, they don't imagine, most of them can't even spell, they just run things*." Wow, a job description for IRS employees.)

And how about the rest of the questions? What about where the regs say that the "items" in Section 61 are *not* always taxable? What about that strange list of non-exempt income, which only includes certain *international* trade? What about where the regs show that the Constitution itself makes some income non-taxable? I have *never* seen any IRS form letter or notice, or any court ruling at any level, which even *mentions* those issues, much less actually addresses them.

This bears repeating: in all of my research and dealings with the government, over a span of eight years, I have never once seen any court ruling even *mention* the regs saying that some income is

exempt because of the Constitution, or the regulations which say that the common "items" of income are sometimes exempt, or the lists (past or present) in the regulations of non-exempt income (which include only international activities). Never. I guess if they don't ever mention them, maybe most people will never know they exist. So far it seems to be working pretty well.

If I may be so bold, I would suggest that there's something downright looney about the government prosecuting and imprisoning me for ostensibly determining my taxable income incorrectly (thereby coming up with a tax liability of zero), while being unable or unwilling to say for sure how I *should* have done it. But apparently that's how our lovely system really works. Forget looking at the law. It doesn't mean what it says, and it means what it doesn't say, and no one is entirely sure what all it means, and please don't ask the folks in government what it means because they don't want to talk about it, *but you damn well better obey it*! Never mind the law, the statutes and regulations, and all that. The reality is a lot simpler: you have to pay it because they will hurt you if you don't. That's all you need to know.

The Blockheads

Though H&R Block is not part of the government (obviously), presumably the folk who work there are familiar with the tax laws, since they make billions of dollars telling people what "their taxes" are. So, we theorized, maybe *they* could answer the questions which the IRS seems incapable of addressing.

Starting in February of 2003, a friend of mine, Peter McCandless, a college professor who had a radio show in Kansas City, organized a letter campaign targeting H&R Block. The campaign was pretty simple. Numerous people across the country looked up and sent a letter to their local H&R Block office, asking just *one* question: Do the folks at H&R Block use Section 861 and related regulations (in addition to any other pertinent sections) to determine the taxable domestic income of their clients? Simple enough. Around *six hundred* different H&R Block offices across the country were sent that question, with copies also being sent to H&R Block headquarters in Kansas City. All the letters offered to *pay* for an answer to the question if necessary.

No one reported receiving an answer. (One office said it was forwarding the question to their headquarters—which we had already done anyway.) Being persistent, Professor McCandless placed a follow-up call to H&R Block headquarters and spoke to one of their attorneys. Had they received the letters? Yes, they had. Did they intend to answer the question? Nope. Why not? Because, according to their *attorney*, it is not their "policy" to answer that question.

Um, what? A company that makes many millions of dollars determining people's taxable income (which you have to do to determine a tax liability) has a "policy" of refusing to answer a simple question about how they do it? How weird is that? In any given case, they either use those sections or they don't. What honest reason could they possibly have for being reluctant to say when (if ever) they use those sections?

Along with the letter campaign, at least two people decided to go to H&R Block offices to ask the question in person. They reported their experiences to me as follows.

1) One person spoke to the office manager at one H&R Block office, whose awesome response to the question was "*We use the IRS regulations*," adding that there were a lot of other sections other than those mentioned. Well, no kidding. (The actual question asked was whether, in *addition* to any other pertinent sections, the Blockheads used 861 and its regs to determine the taxable domestic income of their clients, so the manager's answer was completely worthless.) The manager then went into veiled-threat mode, saying that "*people a lot smarter and richer than us*," like Leona Helmsley, have learned the hard way that we all have to pay taxes. So apparently we don't owe it because the law says we owe it; we owe it because we'll get put in a cage if we don't pay. Due process, Mafia-style. The office manager then suggested that the guy asking the question get a lawyer. (What the heck is H&R Block good for if it refers tax questions to someone else?) One other thing: after the office manager said "*We go by the tax code*," the questioner asked, "*Don't you use the regulations?* " Removing any residual façade of competence or expertise, the H&R Block office manager responded, "*Isn't that the tax code?* " (For those of you who don't claim to be tax experts, the "tax code" consists of the statutes of Title 26 of the United States Code; the regulations are a separate publication, written by the Treasury department.)

2) A different person spoke to a different H&R Block office manager, asking the same question. The office manager tried, to no avail, to find anything in their computer program mentioning 1.861. After evading the question a while longer, the office manager then made a rather interesting (and disturbing) admission. He said they do not use individual sections of the law to do their job; they use IRS Publication 17. So they use a legally worthless publication, instead of the legally binding regulations. That's good to know. (And the public defers to *these* people as the "experts" on tax law?) One more thing: H&R Block takes the IRS's Publication 17, puts its own cover on it, and calls it "H&R Block Publication 17." Remember what I said about H&R Block not being part of the government? I take it back. These people are nothing more than pseudo-private parrots for the federal extortion machine.

Interestingly, in response to an e-mail, another H&R Block employee, regarding the "861 Evidence" presentation (discussed below), said he found it "*very interesting*," but concerning the part about H&R Block refusing to answer one simple question, he said that "*H&R Block has had a longstanding policy of not publicly responding to conspiracy theory type questions regarding the tax code*," because "*any response is a no-win situation for the company*." Why would answering one question about how H&R Block applies the law be a "no-win" situation? And how can asking which sections of law they use be a "conspiracy theory type" question?

On another occasion, when H&R Block had an online forum for asking tax questions, Professor McCandless took the opportunity to ask this: "*Are 26 USC section 861(b) and the related regulations beginning at 26 CFR section 1.861-8 the sections to use to determine one's taxable income from sources within the United States?* " And this was the response from "HRBlockTaxPros":

"*That sounds like a tax protestor scheme that has become popular. Taxable income is determined throughout the tax Code. There is no one Code section that defines it. We caution you against proceeding related to this matter. Please see a tax professional for more information on filing requirement*."

A *question* sounds like a "tax protestor scheme"? It's a yes-or-no question. So which is the

correct answer, and which is the "tax protestor scheme" answer? He didn't say. Instead, this *tax professional* refused to answer a question and then, bizarrely, told the person asking the question that he should go ask a *tax professional*. Uh, he just did, and the "tax professional" refused to answer. He also "cautioned" Professor McCandless against "proceeding related to this matter." Related to what matter? Asking questions? Examining the law?

As for the claim that no one code section defines taxable income, the federal income tax regulations (e.g., 26 CFR § 1.863-1(c)) seem to have no trouble saying, unequivocally and unconditionally, that 26 CFR § 1.861-8 and following are the sections to use for determining one's "*taxable income from sources within the United States*." Furthermore, since no one, including any tax professional, has ever read the entire tax code—dang near none of them have even read 26 CFR § 1.861-8—it's pretty silly to claim that one must use the entire code, but no section in particular. The real goal of that cop-out is to convince us mere peasants that we shouldn't look at the law at all, because we could never begin to understand it all. As if the "experts" do.

It should be obvious by now that many tax professionals and IRS employees have heard of 861 (though they don't understand the issue), and have been specifically coached about what to say if it ever comes up. If you say the magic number, no matter how politely or reasonably, you will be insulted, threatened, and then ignored. Maybe if you're really lucky, you'll get flung into prison.

Ad Hominem Response

For years now it has been the case that if you search the internet for "861 evidence" or similar terms (or my name), you will find two very different kinds of web sites: those which discuss the actual wording of the statutes and regulations, and those which bash and insult the people who discuss the law. Unfortunately, in sound-bite America, personal attacks may persuade more people than evidence and logic do.

It seems that if you say "frivolous," "nonsensical" and "ridiculous" over and over again, and throw in an occasional "the courts have never agreed with this" for good measure, it sways a lot of people. One web site which uses this method, and which is particularly substance-free and slanderous, is called "Quatloos," owned by a Mr. Jay Adkisson, who specializes in asset protection (and who would, therefore, probably be out of business if the "income tax" deception were to fall). This is how his web site describes me:

> **"When a scam gets rolling, all sorts of human cockroaches come out of the woodwork to try to cash in. This is the perfect description of Larken Rose, a scammer come lately to the world of tax protesting who runs the tax scam website http://www.taxableincome.net."**

Wow, "scam" three times in two sentences. Sounds objective. (I'm not sure how www.taxableincome.net can be a "scam," or how it lets me "cash in," when everything on it has always been free.) The article continues:

> **"Not being smart enough to come up with any unique theory of his own, Larken has simply latched on to the '861' or 'Income Can't Be Defined' arguments that end up with the conclusion that only foreigners are required to pay income tax."**

Aside from starting with a slanderous personal attack, they also manage to make two mistakes in one sentence when describing my position: I have never argued that "income can't be defined," nor do I conclude that only foreigners owe federal income taxes. Obviously, accuracy isn't a major concern for the people who run that site. And why should it be? They know that if they just bash anyone who even pays attention to the 861 evidence as a stupid, tax-protesting, malcontent criminal, most people will quietly go away and not look into the issue any further.

Their site smears anyone who does not accept on faith the conventional wisdom about the income tax, and gloats over the fact that various people who have mentioned 861, and people with other unconventional beliefs, have been fined, silenced via court injunction, and/or imprisoned. In other words, "They're wrong, because they got hurt" (i.e., might makes right). It's hard to think of an insult low enough to describe someone who delights so much in the suffering of others simply because they hold a different opinion.

The Unmentionable Section

The list of supposed tax "experts," government and private, who have run away from basic questions about the tax laws goes on and on, but I'll mention just a few more here. In early 2005, one person sent the six questions to someone who has been a lawyer for twenty years, has a master's degree in tax law, and has been teaching federal income tax law for more than a decade. Here is how he responded to the six questions, asked by one of his students:

> **"Although the questions you pose are impressive, I do not believe that they are appropriate for an introductory tax class at a community college. To be honest, they remind me of the anti-government tax protestors who are happy to benefit from our nation's prosperity but balk at paying for the privilege of living here. I am sure that that is not your motivation or frame of reference, but our typical students DO NOT want a philosophical debate over the authority of the IRS and the constitutionality of our tax system—they want to know how to fill out their tax 1040, what itemized deductions are commonly available, what the penalties are for late filing, etc. I think your questions are more appropriately directed to the Courts, Congress, the IRS, or a graduate course on tax policy. I'm sorry that I can't be of help to you!"**

Notice how all the "experts" think that we should be asking some *other* expert. The IRS tells people to ask a CPA, the CPA tells people to ask their congressman, the congressman tells people to ask a lawyer, the lawyer tells people to ask a law professor, and the law professor tells people to ask the IRS. And this is all about how a hundred million people are supposed to determine their tax liabilities. Shouldn't *every* tax professional know the answer to that?

Note also that the law professor impugns the motives of the one asking the questions, with terms like "*anti-government tax protestors*," while refusing to answer the questions. He also mischaracterizes the questions as a challenge to the constitutionality of the tax, when they have nothing to do with that. Then he goes into a philosophical rant, which of course doesn't have the slightest relevance to the question of how to determine one's "taxable income." (Personally, I believe that anyone who thinks that taxation is the reason for national prosperity is an imbecile.) But perhaps what is most telling is his comment that his students don't *want* to think about such things; they just want to know how to fill out their tax returns. Sad, but probably true.

Not all tax professionals were as polite as the law professor quoted above. In February of 2005,

one sweet attorney/CPA sent me an e-mail stating the following (without specifically saying what his tantrum was in response to):

> **"You are either an idiot or are intentionally misinforming the public. The Internal Revenue Code, beginning with Section 861 deals with taxing foreign citizens and entities. It is not intended to be used as a definition for taxing US citizens. There is no general disagreement among tax professionals. The only disagreement is in your published material. If you believe there is a valid disagreement, email me one article written by a CPA or tax attorney which agrees with your views. I also note you fail to disclose your formal education. Is that intentional?"**

In response, I pointed out that the regulations under Section 861 specifically mention matters involving *U.S. citizens* in several places (e.g., 26 CFR §§ 1.861-8(f)(1)(i), 1.861-8(f)(1)(vi)(E), 1.861-8T(d)(2)(iii)(D)), obviously proving that the section is *not* only for "*foreign citizens and entities*" (a claim he supported with absolutely nothing). But after his utterly false assertion, notice that his entire rant had to do with what the tax professionals think, and what credentials and education people have, rather than what the law says. So I quoted a bunch of credentialed, highly educated tax professionals who had come to agree with me. I got no further response. (By the way, my web site *did* state that I am neither a CPA nor a lawyer, and that I have had no formal training in tax law, so he was wrong about that, too.)

But why is it that discussion of this particular section of the law triggers emotional responses in so many supposed "experts"? It's not a philosophical thesis; it's a section of *the tax code*, for Pete's sake! Why does no one on the other side seem capable of having a plain old academic discussion about what that part of the law says? Is it so impossible to talk about a section of law without flinging insults and threats around? If tens of thousands of people hold a belief you disagree with, even if they're all completely mistaken, wouldn't it be a little more effective to explain *why* they're wrong, rather than just calling them idiots and threatening to fine or prosecute them? Is there some unwritten rule that people with unorthodox beliefs have to be treated like dirt?

Along those same lines, another high-ranking tax official—in fact, the top IRS attorney in the country—had either a sudden, inexplicable fit of repentance and rehabilitation, or a fit of profound hypocrisy. Shortly before he resigned in mid-2003, B. John Williams (IRS Chief Counsel) said this:

> **"The courts have repeatedly and consistently rejected these arguments and are imposing substantial penalties on taxpayers and promoters for taking frivolous positions. These schemes carry a heavy price, for both the promoters and the participants."**

Notice the insult ("frivolous") and the threat ("heavy price"). Shortly *after* he resigned, however, he said the following, while talking about how the IRS should deal with improper tax shelters:

> **"One of the foundation stones of the credibility of the [IRS] with the American public is that the Service proceed analytically rather than emotively. 'Abusive' reflects the indignation that the Service feels about a transaction, but the Servicès feelings about a transaction do not state a legal basis for disallowing the tax benefits from a transaction. 'Abusive' is not an analytical term, it is an emotive term, and the mission of the Service is to apply the law fairly and impartially, not to apply the law in a manner that is biased toward a result the government wants."**

How about the terms "frivolous" and "schemes"? How analytical are those? But it gets better. Mr. Williams went on to say that "*the Service does not need an attitude that 'we're looking for a*

fight,' it needs an attitude that 'we're interested in determining and collecting the right amount of tax' and 'we accept your disagreement with us as legitimate'." Well, which is it, Mr. B. Hypocrite Williams? Are we evil poopy-head tax protestors who should be insulted, threatened and punished, or should we be treated as people with an honest difference of opinion? And instead of being so holier-than-thou *now*, why didn't you answer the damn questions when you were in office and could have actually done what your empty pontificating now suggests that government folk should do?

(Of note, the feds are so accustomed to resorting to vilification and intimidation that even when it comes to the multitude of flawed "tax protestor" theories to which there *are* rational responses which could be given, they still usually don't bother. Instead of politely responding to those claims that *can* be easily and substantively refuted, the government almost always resorts to thuggery. The authoritarian attitude shines through: if you disagree with them for any reason, you don't deserve answers, you don't deserve due process, you don't deserve respect, you have no rights, and you should be destroyed.)

Now What?

In light of what I described above—which is a relatively small sampling of my attempts, in vain, to get honest answers to honest questions—what was I supposed to think? Sure, I was a little "nobody," with no credentials and no formal training in the law. But when I went to the "experts," inside government and out, and put the law right in front of them, they had no coherent response, they had no rational explanation for the evidence I had, and in fact were usually very open about the fact that they were not familiar with what I was showing them. If my seemingly ridiculous conclusion was wrong, why was no one able to succinctly explain or demonstrate *why* it was wrong?

My goal was to get to the bottom of it all; to find the truth. I didn't particularly want to incur the wrath of a superpower. Trying to pick fights and make enemies—really powerful enemies, at that—is not one of my favorite pastimes. It's not as if I had been sitting around thinking, "Gee, how can I get myself into as much trouble as possible?" I wanted the truth, not trouble. Unfortunately, I got both. As Voltaire is quoted as having said, it's dangerous to be right when the government is wrong. But once I had the truth staring me in the face, proven not only by the law books themselves but also by the stunning inability of those in government to explain it away, what was I supposed to *do* about it? Again, should I have just pretended I hadn't seen it? Feign ignorance and hope it would all go away?

> **"Occasionally men stumble across the truth, but most pick themselves up and hurry off as if nothing ever happened." [Winston Churchill]**

Unfortunately, probably due in part to my upbringing (blaming one's parents is a popular fad these days), I was of the opinion that if I knew that a hundred million people were being robbed, I should probably say something about it. So I did. Loudly.

Part III:
Opinions vs. Censorship

Spreading the Word

In case there is any doubt, and in case the spin doctors have caused some confusion in your mind about what I believe, let me be perfectly clear about what I'm alleging here (so clear that even an IRS employee can understand it):

• Since 1913, there has been a perfectly valid, constitutional federal income tax applicable to income from certain *international* trade (commerce crossing country borders). Foreigners with U.S. income and Americans with foreign income have always been subject to that tax.

• Income from purely domestic commerce, such as that which a U.S. citizen earns while living and working in the fifty states, is *not* subject to the tax. The law itself shows that, and has done so for over 80 years.

• The law was intentionally written to have such a limited application, to keep it in line with the constitutional restrictions upon the power of the federal government.

• At the same time, government lawmakers and regulation-writers have, over the years, changed the wording and arrangement of the law (but not its substance or correct application) in an effort to *conceal* the very limited nature of the tax.

• As a result, hundreds of millions of Americans have been deceived into believing that the tax applies to their income, when, according to the law itself, it does *not*. As a result, the American people continue to be defrauded by their own government to the tune of well over a *trillion* dollars ($1,000,000,000,000) every year.

Clear enough?

Having reached these disturbing conclusions, I felt the urge to tell people about what I had learned. So sometime in 1998, I released the first version of a written report entitled "Taxable Income" (thrilling title, huh?), detailing and documenting my findings and conclusions. That report was soon posted on at least two web sites, for all the world to see. One person who read that report was Tom Clayton, M.D. (whom I mentioned before). After exchanging a bunch of e-mails, and after many phone calls, Dr. Clayton offered to finance a new web site, to be just about the 861 evidence. We chose the domain name www.taxableincome.net. The site featured my "Taxable Income" report, which we kept updating as we continued to find new relevant information. We also started posting many other articles on the site, all related in one way or another to the 861 evidence, including transcripts of several IRS meetings.

(Twice in the following years my "Taxable Income" report was published in "Tax Notes Today,"

an online publication read by a lot of tax professionals.

In the versions I saw, there were no comments, pro or con; just the report, unedited and in its entirety. I didn't even know they were doing it until a subscriber of that publication showed it to me. Not that I minded.) Everything on our web site was available for free to anyone who wanted it (and had internet access). There was nothing for sale, nothing to sign up for, no members area, etc. It was a free offering to the victims of the biggest financial fraud in history, because we thought they had a right to know. And it wasn't long before we were seeing thousands of downloads of the report.

But Dr. Clayton and I were always looking for bigger and better ways to get the truth out there. For some reason, neither of us was very happy about the fact that a hundred million of our neighbors were being robbed every year by their own government (which pretends to protect people from that sort of thing). Given the attitudes of our fine "public servants"—something along the lines of "shut up or we'll hurt you"—we saw educating the public, and publicly exposing the fraud for all to see, as the only hope of ending it. Dr. Clayton, being extremely passionate about letting the people know what was being done to them, selflessly threw lots and lots of his time, energy, and money into this endeavor.

And via the report and the web sites, we were starting to have some success. The best evidence of that success was when the government began its efforts to forcibly shut us up.

The Silence Treatment

In 2001, I received a letter from Chris Roginsky at the IRS, informing me that he wanted to have a meeting with me about my "*abusive tax shelter*." Huh? My *what*?!

A little legal explanation is in order here. When someone puts together some plan or arrangement, and then falsely tells people that by participating in the plan they can become entitled to some tax benefit (exemption, deduction, etc.), that is an "abusive tax shelter." A classic example would be someone claiming to be able to make clients tax-exempt by forming sham "trusts" for them.

What does that have to do with me publicly expressing my conclusions about the tax laws? Not a darn thing. So why would the IRS fabricate such a baseless accusation? Because it had worked in other cases, as a means of forced censorship. At least two other web sites which dealt with the 861 evidence (www.nite.org and www.taxgate.com) were successfully shut down by the government through a gross misapplication of the "abusive tax shelter" laws. In January of 2003, the court ordered Thurston Bell—the author of the "Gross Income" article that first caught my attention—not only to take down his "nite.org" site but also to post something saying he was *wrong* about his legal conclusions. The *New York Times*, defender of the First Amendment, gloated over that obscene example of censorship and state-sponsored propaganda.

Unlike our site, those sites did assist people with their individual disputes with the IRS (helping with letter-writing, seeking due process, and various diabolical things like that). However, I never saw anything on those sites which began to approach the meaning of "abusive tax shelter." Nobody was selling any plan which claimed to *create* a tax benefit for anyone, which is the only behavior that

the "abusive tax shelter" laws are about. The sites merely explained how existing law applied to people's already-existing situations.

The bottom line is that the IRS, the DOJ, and the courts all eagerly and intentionally *misapplied* the law, in order to circumvent that pesky First Amendment and forcibly silence your fellow Americans, to stop them from voicing unapproved opinions. And since it had worked so well on others, they decided to try it on me, too.

I agreed to meet with the IRS about my non-existent "tax shelter," and told them I intended to bring witnesses and audio-record the meeting (which I did). I also, however, told them that I would not be bringing the laundry list of documents their letter commanded me to bring, including my high school diploma, a list of all the computers which contained the materials from my web site (sound a tad fascist to you?), and a list of my "clients." I suppose they meant all the non-existent clients who had purchased my non-existent tax shelter.

After they started the meeting and gave their little introduction, I asked the most obvious question: What "tax shelter" were they trying to investigate? I handed them a copy of the law defining "abusive tax shelter" (26 USC § 6700), and said this: "*It makes it absolutely clear that an abusive tax shelter is someone selling or giving away a plan, and telling people that by participating in the plan they become entitled to a tax exemption or tax benefit of some kind. What am I doing that even remotely resembles that?* "

I expected some sort of creative spin in response. Instead, Mr. Roginsky responded with "*That's what we're here to determine today*." What? Apparently they weren't sure what it was they were investigating. They were there to determine if I was doing what they had baselessly accused me of. (Can you say "fishing expedition"?) So I asked why they even thought I *might* have been doing such a thing. Again, they told me that that's what they were there to find out. Somewhat stunned, I asked if they just randomly pick names out of the phone book to "investigate," to which Mr. Roginsky gave the moronic response of "*not necessarily*."

I knew full well the truth: they didn't like me expressing my opinions, and were hoping to find some half-baked excuse to shut me up. (First Amendment, schmirst amendment.) In fact, they eventually admitted their true motivation. I kept asking what they were trying to "investigate," until Mr. Roginsky described my sin: I had a web site, and on it expressed my conclusion that most Americans don't receive taxable income and therefore don't owe federal income taxes. Expressing that opinion—while selling nothing and giving no advice (paid or otherwise)—was the cause of their pestering me, and possibly attempting to get a court injunction against me, as their letter had mentioned.

An "injunction" is a court order, commanding someone to do something or to stop doing something. So I asked the next logical question: What, exactly, did they want to stop me from doing (via court order)? They wouldn't say, so I made it even simpler by asking them directly if they were trying to shut down my web site. They wouldn't say. (Of course that's what they were trying to do.) I even asked them to point out what on my web site they disapproved of. They couldn't say, other than not liking my conclusions. Got that? They admitted that I was summoned to their office and interrogated, not for breaking any law, but for voicing an *opinion* they didn't like. In the United States

of America.

After a while the meeting wandered into an argument about the 861 issue itself, with rather bizarre results. At one point, during a discussion about Congress' constitutional taxing power, Mr. Roginsky made the odd claim that the Constitution authorizes the United States Congress to tax everyone in *China* if they want to—but that it would be really hard to collect, so they didn't. (I'm not making this up.) An attorney from IRS Office of Chief Counsel, Jim Beyers, was also at the meeting, but every time I tried to engage him in the discussion—such as regarding Mr. Roginsky's "unique" (idiotic) constitutional analysis—he would slither out of it and change the subject. But hey, he is a government lawyer, so that's to be expected.

The highlight of the meeting was Mr. Roginsky's attempts to refute my legal position. (Prepare yourself, because this gets a little weird.) He argued that my income, which we agreed came from inside the United States, was taxable income, even though it may *not* have been "*taxable income from sources within the United States*." Put another way (as if rewording such insanity could improve it), he was saying that I could have "taxable income" from sources within the United States even if I had no "*taxable income from sources within the United States*." If that makes sense to you, you belong either in a mental institution or an IRS office—which are pretty much indistinguishable from each other anyway.

As I had done a zillion times before, at the meeting I handed them a written explanation of my position, complete with piles of supporting citations. As usual, they wanted me to look at the general definition of "gross income," and to ignore everything else. I agreed that that section does indeed give a general definition of "gross income."

Me: "*And it* [Section 61] *lists the common items of income: compensation, interest—it doesn't say who's getting them or in what commerce, and, to quote the regulations, section 861 and following, and the regulations thereunder, determine the sources of income for purposes of the income tax.* "

To that, Mr. Roginsky responded with: "*Okay. Okay, you already stated that, and we'll have to just let that go for now, because that is what the regulation says*." Wow, nice comeback. They wanted so much for me to blindly assume that everything is taxable, instead of paying attention to what those darn regulations actually say.

After a heavy dose of Mr. Roginsky's unabashed lunacy, I ended the meeting, told them they could feel free to try to get an injunction, and walked out. They never filed for an injunction, and I never heard about it again until I was in prison, five years later, when they tried to fine me exactly *one penny* for my non-existent "abusive tax shelter." No, I'm not kidding: the letter said the amount of the fine was one cent, because the amount of the fine is based upon how much income the person makes from his "abusive tax shelter," and I hadn't made anything from the web site. (I'm not sure how they rounded it *up* to a penny.) Incidentally, I didn't pay the one-penny fine. I appealed it, and they ignored my appeal. They haven't yet sent thugs to seize the penny.

As it turns out, though they gave up on getting an injunction, they found another, equally effective way to illegally silence our perfectly legal web sites, albeit temporarily. But that part of the story

comes later.

Making the Video

I must admit, I was as proud of my "Taxable Income" report as the government was scared of it. Trouble is, most people don't really want to read a 60-page legal analysis. (Go figure.) It was clear to me and Dr. Clayton that we needed a more mainstream-compatible way to spread the word.

Sometime in 2000, the idea of making a video occurred to me—not just a video of some guy giving a speech, but a video that would use the full potential of computer animation to make complex ideas easier to grasp. I had played around before with Maxon's Cinema 4D, and had some idea of its potential. (Similar types of software were used to make movies like *Toy Story* and *Antz*.) But as nifty as such programs are, I also knew that the software and hardware for such a project wouldn't be cheap. Far from it. But once again, Dr. Clayton came riding to the rescue, and offered to donate the tens of thousands of dollars necessary to make the project happen. (Yes, I said "donate"—he wasn't even asking to be paid back.)

Without getting too technical, let me just say that rendering/animation requires a lot more computer power than just about anything else you can do with a computer. For the last month or two of the project, five or six computers were networked together in my basement, all of them processing 24 hours a day at top speed.

I can't possibly convey in a paragraph or two just how much time and effort I put into making the video. (Granted, it would have taken less time if I had actually known what I was doing when I started, but I had to learn how to use the software as I went along.) To make a really long story really short, I spent *a year and a half* creating the video, with every detail of every scene created and animated inside the computer, and all of them carefully synchronized to the narration. Unless you've seen the video, and have some idea how computer modeling and animation works, it may be hard to imagine why on earth it would take so long. But it's not worth explaining here.

The video was finally released in April of 2002, and was called "Theft by Deception (Deciphering the Federal Income Tax)." It was the first time I had ever sold anything related to the issue. Since all the same information was still available for free in the written report, and I'd worked for a year and a half on the video, I didn't at all feel bad about selling the thing for twenty bucks. I also gave anyone permission to broadcast or show it, publicly or privately, which many people did. It ran dozens of times on various "public access" cable stations, as well as being shown in cities and towns across the country by anyone who wanted to show it.

A lot of people liked the video very much, although ultimately we realized that it was still too much for "sound bite" America to digest. For those who didn't understand everything presented, the video apparently doubled as an effective cure for insomnia. Nonetheless, I remain proud of the video, while having no desire to start over and try to do it better. Apparently it was effective enough to worry a lot of people in government, partly because of the fact that one of the first things I did when the video was finished was to send out over a hundred free copies of it to various IRS employees across the country. You can guess how much the top dogs at the IRS liked that. (Later on my spies

inside the IRS sent me copies of their internal memos, telling any IRS examiners that if they received the video they should report it to the IRS's 861-squelching teams immediately.)

Speaking Out

Backing up a bit, it was after coming across my "Taxable Income" report online that Peter McCandless, the college professor mentioned above, contacted me. He found the report interesting, but like any good investigator, he wanted to analyze it thoroughly and with a healthy skepticism. At some point he asked if he could visit me, and in late 2001, he came out to Pennsylvania. We spent many hours going over the relevant documents, with Peter playing devil's advocate, trying to punch holes in it, to really put it to the test. Ultimately, he decided that my ridiculous-sounding conclusion was, in fact, correct. Not long after we first met, he was offered a chance to have his own radio show, and he invited me on as his first guest. And over the next few years, we did many follow-up shows.

Eventually we started making public offers to pay any tax professional a couple *thousand* dollars to come on Dr. McCandless' show for two hours to answer questions about how to determine taxable income. It was a long time before we got our first taker, but when we finally did, the fellow assured Dr. McCandless that he would be happy to answer *any* tax-related questions on the air. Days before the show, Dr. McCandless sent him the questions we intended to ask. Shortly thereafter, the guy backed out. (I guess he meant he could answer any tax-related questions except *those*.) And remember that tax attorney, Dan Evans, the self-designated refuter of so-called "tax protestor" theories? When we offered him thousands of bucks to come on the air and answer the questions, he didn't respond at all. In fact, after several *years* of publicly making the offer to any IRS employee, CPA or attorney, we got a grand total of one person to follow through on the deal. His entire position was that all of the dozen or so references pointing to 861 were negated by one sentence in Section 1.861-8 (which didn't even exist until 1978), which says that the rules of 1.861-8 apply in determining taxable income from "specific sources," meaning those listed types of international trade. Basically, his position amounted to the same old backward logic: those sections don't show your income to be taxable, so don't look there. He was nice enough to agree that 861 and its regs do *not* show the income of the average American to be taxable. He also admitted that he didn't know what income was exempt due to the Constitution—so he didn't actually answer all the questions, but we paid him anyway.

I also started going on other radio shows, and did an occasional public talk about the issue. I was sending my report and my video to whoever I thought might pay attention to it. A lot of other people across the country were distributing the report as well. Every way we could think of, we were trying to get the truth out there to the general public—the victims of the fraud.

Kicking the Dragon

Time passed. We had ample evidence of the biggest financial fraud in history, but although word was spreading, it was not fast enough for my liking. Despite the web sites, the video, the radios shows, etc., those in the mainstream media were mostly ignoring the issue, and mischaracterizing it whenever they did mention it. I learned the hard way that "reporters" are good at quoting government

bureaucrats, but not much else. We had solid proof of a crime—a *huge* crime, committed by our own government—but relatively few people were hearing about it or looking into it. We had tens of thousands of people on board, but even that counts as "few" when compared with a population of several hundred million. By then we even had a fair number of CPAs, attorneys, and even former IRS employees who had come out and publicly voiced their agreement with the 861 evidence. Most "tax experts," however, still refused to even consider the issue.

Time marched on—years went by—while on a daily basis people were being harassed, extorted, financially destroyed, and even prosecuted, by the IRS and the "Department of Justice" (a misnomer if ever there was one). In spite of all our efforts, the lie was still louder than the truth. We needed a way to get public attention. With that in mind, I decided to do something that even most of my friends and allies thought was nuts (and apparently they were right). I started running full-page ads in newspapers, which read as follows:

Dear Federal Government,

PLEASE PROSECUTE ME.

I, Larken Rose, have not filed a federal income tax return for 1997 or any subsequent year. This is not because I am protesting any law, or because I do not want to pay my "fair share"; it is because I refuse to be a victim of the biggest financial fraud in history. I also refuse to remain silent while government lawyers illegally defraud my fellow Americans.

People by the thousands are learning that the "conventional wisdom" about the federal income tax is just plain wrong. As more and more Americans are discovering that the law itself shows that the income of most Americans is *not taxable*, DOJ and IRS officials are desperately trying to distract from the issue by dishonestly portraying it as a frivolous "tax protestor" argument, and by trying to silence (via court injunctions) those who publicize the issue. This summary shows why the IRS and the DOJ refuse to have an open, honest discussion about what the government's own regulations say:

Point 1: The federal income tax applies only to one's "taxable income," not to all income, and the income tax regulations (e.g. 26 CFR §§ 1.861-1(a)(1), 1.861-8(a)(1), 1.863-1(c)) clearly show that one's taxable *domestic* income is to be determined under the rules of 26 USC § 861(b) and the related regulations beginning at 26 CFR § 1.861-8. (Other sections explain when income from *outside* of the U.S. is taxable.)

Point 2: So why does it matter whether we use those sections to determine our taxable domestic income? Because more than 80 years of statutory and regulatory history prove beyond any doubt that 26 USC § 861(b) and 26 CFR § 1.861-8 show income to be taxable only when it comes from certain types of *international* or *foreign* commerce. In other words, contrary to what "everyone knows," most Americans do not receive taxable income, and do not owe federal income taxes.

IRS employees across the country refuse to honestly address the issue, and instead resort to threats, evasions, and accusations, because their own law books expose the biggest financial fraud in history: the misrepresentation and misapplication of the federal income tax. (See www.taxableincome.net for more information.) The nationwide pattern of Gestapo-like tactics by the IRS and DOJ against those who speak the truth is shown in detail at www.Theft-by-Deception.com/declaration.html.

I will not stand by and allow myself, my family and my neighbors to be extorted simply because some power-happy bureaucrats huff and puff about all the nasty things they will do to anyone who does not "comply" with the IRS's *mis* application of the law. To the DOJ and the IRS I say this: You know I am among the most vocal about this issue. Stop terrorizing the American public and come get me. Make an "example" of me. Surely if my position is "frivolous" and completely devoid of merit, then the DOJ attorneys can easily refute my position in front of a jury, and have me convicted and imprisoned. (I'm not exactly hiding, am I?) You already have what would be "Exhibit A" in my defense: my *Theft By Deception* video. So take your best shot.

www.Theft-by-Deception.com
www.861.info
It's time for the fraud to end.

I ran that ad starting in 2001, and it appeared in papers in several states, including Texas, Hawaii, Idaho and Missouri. It was also printed up as a one-page flier, and I invited anyone to post it wherever they wanted. One particularly enthusiastic ally spent hours in front of IRS and DOJ headquarters in Washington, D.C., handing out around 900 copies of the flier to passers-by, especially those going in and out of the government buildings. In January of 2003, part of the ad was read on CNBC, though they didn't mention my name, nor did they get into the substance of the issue at all.

(Several papers actually refused to run the thing, even as a paid advertisement. As one example, the *St. Petersburg Times* down in Florida was all set to run it at one point—for a *lot* of money, I might add—when the guy handling their advertising pages called to tell me that the higher-ups at the paper had suddenly said that the ad could not be run. They didn't say why. Even the *Times*' ad guy found that to be a little strange.)

So, you may be wondering, why on earth would I do such a thing? It was an attempt to bring more attention to the issue, as I said before, but there were other reasons, too. For starters, if the government was going to prosecute someone for something 861-related, I wanted it to be me, because I didn't see anyone in a better position to defend himself than I was. I knew the issue forward and backward, could quote most of the relevant sections from memory, and had my video and report to show what I believe and why. More importantly, it was *my* research; I didn't have to point to what someone else had done and say, "I believed this guy."

It also helped that I hadn't done anything sneaky or deceptive. I wasn't a criminal, and I wasn't breaking the law, so I felt no need to behave like a criminal. I had gone out of my way to tell the IRS about my income, to tell them I had stopped filing, and to explain why.

The IRS is a big bully, and everyone knows it. Just like a schoolyard bully, it routinely picks some victim to publicly beat the tar out of in order to keep everyone else scared. The IRS's own manual openly acknowledges (and advocates) this method of achieving obedience via intimidation.

> **"News coverage to advance deterrent value of enforcement activities encouraged: The Service will endeavor to obtain news coverage of its enforcement activities in order to: (a) help deter violations of the internal revenue laws, and (b) increase the confidence of conscientious taxpayers that the Service prosecutes violators." [IRM § 1.2.1.2.41]**

And such scare tactics usually work. But even one loss can seriously damage a bully's reputation of invincibility, and that reputation, and the fear it creates, is the source of every bully's power. If some 50-pound weakling on the playground stands up to the bully and *beats* him, the thug's bullying days are all but over. I didn't see anyone in a better position than I was to take a shot at the IRS bully. So, picturing all the nice little kids who'd had their noses bloodied by the bully, I volunteered to be the 50-pound weakling taking a shot.

All joking aside (just for a moment), while individual IRS agents often seem to be merely stupid and incompetent rather than malicious, what the agency does as a whole is often downright evil. It grinds up and spits out financial lives, not just of "cheaters" or of those who challenge the conventional wisdom about the tax, but also of thousands of innocent folk whose only sin was to have their case selected for "review" by some paper-pusher at the IRS who can't add or think, but who can send threatening letters, levy bank accounts, file liens, and so on. The horror stories are numerous. Just to give you a taste, below are a few comments of an IRS employee who testified at Congressional hearings concerning IRS abuses:

> **"Sadly, some [IRS] employees repeatedly do not follow proper collection policies and procedures and thereby repeatedly abuse taxpayers. There are several reasons why this occurs: … When management condones the abuse, the Revenue Officer believes the mistake is acceptable and is free to repeat the error again. … Revenue Officers capitalize on the taxpayer's inherent fear of the IRS and the intimidation that they can inflict on taxpayers without any consequences for their improper enforcement."**

> **"I have witnessed Collection Division Branch Chiefs, Assistant Division Chiefs, Division Chiefs, Problem Resolution (PRO) employees, and even an Assistant District Director, violate or ignore Internal Revenue Manual procedures and Treasury regulations simply because they wanted to punish a taxpayer."**

Most people know someone who has been through the IRS wringer and is still trying to recover. Now add to the routine heartless thuggery of the IRS the fact that most of its victims *never owed a*

dime of federal income taxes to begin with, and you might begin to understand why I was so desperate to try to *do* something about it. The act of running those "please prosecute me" ads is what I compare to some little peasant kicking a dragon. Some would view that as an act of sheer stupidity more than anything else, and they might be right. Nonetheless, I saw it as my duty, being in the position I was in, to at least make the attempt to do some good. (Personally, I think a dragon is far too majestic and noble a creature to associate with the IRS, but "*Kicking the Giant Bloated Maggot*" just doesn't have the same ring to it.)

(As a quick aside, if you want an example of profound hypocrisy, get this: In October of 2004 a story hit the press about how tax "noncompliance" was on the rise among—brace yourself—IRS employees. Yes, you read that right. And though a 1998 law says that any IRS employee who doesn't file tax returns is supposed to be fired, the IRS refused to do so. Why? They said they feared that it would dampen enforcement efforts. What? Enforcing the law—at least their twisted view of it—would *dampen* enforcement efforts? Yeah, that makes loads of sense. So remember, when I say that the IRS gang thinks it's above the law, I'm not kidding.)

Making It Criminal

There were several reasons why I wanted the fight to be in the form of a criminal trial, instead of just daring them to try to swipe my money through the "civil" process. (Personally, I don't consider stealing people's property to be a very "civil" thing to do, but that's what they call it to distinguish it from a criminal prosecution.) First of all, a prosecution is more noteworthy and more likely to get public attention than a lawsuit or the IRS levying a bank account. Furthermore, as I had already seen, civil cases usually last just long enough for some judge to holler "frivolous" and throw the case out.

In a criminal case, on the other hand, the defendant has one important advantage. Federal tax crimes all have a component of "willfulness." In short, it is not a crime to accidentally determine your taxes incorrectly. (If it were, a million or so tax preparers would be locked up—and then it would be *really* boring here in prison.) It is only a crime to intentionally report or pay the wrong amount. This is an exception to the usual rule of "ignorance of the law is no excuse."

In the case of *Cheek v. United States*, 498 U.S. 192 (1991), the Supreme Court explained that acting "willfully" means intentionally violating a "*known legal duty*." As a result, if someone truly believes he was not required to file or pay, there is no "willfulness" (and therefore no crime), "*however unreasonable a court might deem such a belief*." In any criminal trial, the prosecution has the burden of proof, and must convince the jury, beyond a reasonable doubt, that the defendant committed the crime. So in my case, to get a conviction, the government would have to prove beyond a reasonable doubt that I *believe* my income is taxable, and that I therefore believed I was required to file. (Receiving tax-exempt income doesn't trigger a filing requirement.) In case you doubt the opinion of a nasty convict like me, here is what the DOJ's own prosecutor's manual says about "willfulness":

> **"[I]n a failure to file prosecution, the government is required to establish that the offender voluntarily and intentionally failed to file returns which he knew were required to be filed. ... Willfulness is thus established when the government proves that the failure to file was 'voluntary and purposeful and with the specific intent to fail to do that which he knew the law required'." [Criminal Tax Manual, § 10.04[5]]**

So, unless one is *trying* to break the law, intentionally doing what he believes to be illegal (which I wasn't), there is no crime. I know what I "believe" (and what I know), and I had a paper trail a mile long documenting in great detail what I believe and why, including piles of statutes and regulations supporting my conclusions. And while my position was consistent and well-documented, the IRS, from top to bottom, for eight years had been unable to refute my position, unable to answer my questions, and unable even to state the specifics of its *own* position. (I don't consider frothing at the mouth and screaming "frivolous" to constitute a substantive rebuttal.) When you add in my "Taxable Income" report, my *Theft by Deception* video, and dozens of other articles and letters I've written about the issue, I couldn't imagine how on earth the government could even try to prove that I don't believe what I'm saying.

Furthermore, in a criminal case the final decision is not made by a government hack, but by a jury of (supposedly) average Americans. The following is from a message I sent to my e-mail list several months before my trial began, explaining that point:

"*If I thought the final decision would be made by someone whose fat paycheck comes from the system, I would never have done this. The one hope for justice in a case like this—as intended by the authors of the Constitution—is the JURY. Yes, lots of nasty things can be said about some juries, and even about juries in general. They can be biased, ignorant, unintelligent, etc. BUT they are still mere peasants, like you and me, which makes them far more trustworthy than anyone whose life blood comes from the system. And yes, judges can tamper a lot with what a jury will hear. (How much that happens in our case remains to be seen.) But unless Judge Baylson* [the judge assigned to my case] *declares at the opening of trial, 'the Court has decided not to let the Defendants speak at all at this trial,' the government still has a major problem on its hands. Would YOU like to have to prove to twelve people, beyond a reasonable doubt, that Tessa and I BELIEVE that our income is taxable? I wouldn't. They know we have committed no crime, and they know they have no case. What they present will be 100% fabrication, deception and slander, because that's all they have*."

Amen. Other than having hope that a jury would do the right thing, my prediction was dead-on, including the part about Judge Baylson pretty much prohibiting me from defending myself, as you'll see. I did what I know the law requires, and so I committed no crime. I expected those in government to lie and cheat all over the place—and they did—but I found it hard to imagine, given the evidence I had, that any jury would in the end be able to say, "Yes, we're sure he believed his income was taxable." To even take the case to trial would be absurd.

There was another motive behind my decision to "kick the dragon," which did not depend upon the outcome of the trial. Having witnessed the IRS's brainless persistence in various meetings, it had become quite clear to me that mere reason and proof were not going to deter them from their lawless, unthinking, mechanical routine of extorting people. But at least I could *publicize* their actions, for all the world to see (or at least the small percentage paying attention).

I'm no Gandhi, but he used an interesting tactic against the British soldiers in India. He couldn't force them to stop being butt-heads, but he could make their butt-headedness very public and obvious, so as to encourage more anti-butt-head resistance. I decided to apply the same approach to the United States government: whatever the outcome, I could at least publicize everything the federales did, in an

effort to show the American people what their government has become. And, as you may have guessed, that's also why I'm sitting in front of this typewriter in prison, writing this book.

As you also may have guessed from the fact that I'm in prison, the feds eventually took me up on my request to be prosecuted (several years after I ran those ads), but some other things happened in the interim which must be mentioned.

One Day in May

I described above how my second meeting with the IRS ended with their promising me that they would not close the case without first contacting me. Eventually, they did. They didn't send a bill, or ask for another meeting. Instead, the next time the IRS "contacted" me concerning the fact that my wife and I had stopped filing returns came two and a half years later, on the morning of May 6, 2003, when a dozen or so armed federal agents showed up at my front door, forced their way into my house, scared the heck out of my wife and then-six-year-old daughter, and then spent eight hours rummaging through our house, taking away boxes and boxes of our records and personal belongings.

Hmmm, that wasn't quite the "contact" I was picturing when they said they would get back to me.

In planning this book, I knew I wanted to avoid making it too technical or too serious, mainly because that stuff isn't usually fun to read. However, there are some things I don't want to make light of. My little girl ran and hid under a dresser in her own bedroom, reduced to tears as a dozen armed strangers dressed in combat black invaded her home. There is nothing funny about that. Some people I know opined that I had every right and moral justification to respond to such fascist thuggery with force, even deadly force. And if you must know, I agree completely. Furthermore, I had the means to do so, locked in my gun safe (which I easily had time to retrieve). But, though some have criticized me for it, I left the guns locked up, and I unlocked the front door. Why? Because unlike the jack-booted Nazi bastards who work for the IRS, it is my deep desire to see this issue settled *without* violence.

After hearing them banging on the door, yelling "Federal agents, open the door!"—and after a few moments of disbelief, in which I wondered whether it might be a friend of ours joking around—I unlocked the door, opened it a crack, and demanded to see a warrant. I got that several minutes later, but only after they had forced their way inside, spreading throughout the house, temporarily separating my wife from our daughter.

For a while after the initial invasion, the three of us sat on our living room couch, watching as a dozen unthinking, order-obeying thugs violated our home. The feeling of that, both during and afterward, is beyond my ability to describe, so I won't even try. (One notable little anecdote was when IRS agent Gerald Loke, slimeball extraordinaire, with a big grin on his face, commented on my ability to use a camera, referring to the glamour and topless photos of my wife he had just rummaged through. So if I do a little "name-calling" regarding these walking heaps of putrid excrement, please forgive me.)

Again, I could never put into words just what it feels like to watch helplessly as your home is

invaded by armed scumbags and thugs (no wonder the Founders had a revolution over it), but there are two things worth telling about this completely unwarranted (pardon the pun) invasion of our home-sweet-home: the legal excuse for the raid, and the *real* reason for it.

The legal excuse was a search warrant, purportedly authorizing a search for evidence of various possible crimes, including tax evasion, failure to file tax returns, corruptly interfering with the administration of tax laws, signing a false return, filing a false claim, and the ever-popular, all-encompassing "conspiracy" (to do what?). What they did not give me on the day of the raid, because a magistrate had ordered it "sealed," was the "affidavit of probable cause"—the legal document supposedly justifying the search.

As an aside, there was no arrest warrant, and we were always free to leave. My wife and daughter left shortly after the raid began, but I chose to stay, sitting on my living room couch for the whole eight hours, to at least try to keep half an eye on the jack-boot brigade. (When I had to go to the bathroom, they let me do so only with an agent in the room, and with the door open. When I was finished, I asked if I had urinated in the proper, federally approved manner. They wouldn't say.)

During their eight hours of rummaging, they wouldn't let me make or receive phone calls, and when Tessa returned some time later, they wouldn't let her back in. After a while I was "interviewed" by "Special Agent" Donald Pearlman, the head fascist on the scene (who has about as much personality as a dead fish). Mostly he asked things that any decent investigator—or even a mildly observant spectator—would already have known, about the video, the web sites, etc. At one point, some other inferiority-complex punk on a power trip summed up the real reason for the raid, saying, "*When people hear you've been raided, no one's going to listen to you anymore*." Thanks for the tip, Adolf. In reality, they weren't seeking any "evidence"; they were trying to silence me.

(A couple of people have made the odd argument that I shouldn't complain about my home being invaded by a dozen jack-booted imbeciles, because I had invited the government to prosecute me. But had I meant "Please needlessly and illegally invade my home," I would have said that. Instead, I had already given them all the relevant information they could have wanted, thus rendering any "search" completely unnecessary.)

Below is the account of the raid from my wife's perspective, from a sworn affidavit filed with a court motion:

The date was Tuesday, May 6, 2003. It was about 9:45 in the morning. I had returned from a walk in the park. Elyssa, my six-year-old daughter, had put on her dance clothes. I was about to give her some breakfast and take her to dance class. Larken was awake, half dressed, and still in bed. I heard a loud knock at the door. I went to the door, pulled back the curtain to see who was there, and saw a bunch of men in black, yelling "Federal agents, open up!" or something like that, in a very loud, very threatening manner. I was not sure what to do; just letting these loud, violent people into my house didn't seem like the best idea, so I ran back to get Larken, saying something like "Larken, it's federal agents!" He'd gotten his pants on and went to the door, saying, "It's probably a joke, it's probably Mark and Chad" (two people who do work for us). By the time Larken was unlocking the door, they were preparing to break it down. He yelled, "I'm unlocking it!" and opened the door a little. There were a few moments of Larken holding them all off with the door, yelling "Show me the warrant!" before they all swarmed in. There were about ten of them, in black jackets, with hands on their guns, ready to draw any second. I don't think anyone actually drew a gun—I'm sure I would have remembered if someone actually pointed one at me—but they were all ready to. And they started yelling

about guns right away. “Where are your guns?”

A lot of thoughts went through my head very fast at this point. I was sure these guys had something to do with Larken’s video, but I didn’t know exactly what they were there for, or whether this was a legal raid or not. All I knew for sure was that these loud, threatening, armed men wanted us defenseless and gave no reason. It was possible they wanted us dead. So my first action was to pick up the phone to call 911 and get the local police there. An agent swiped the phone from my hand before I could dial three numbers, and I was surrounded in the dining room, cut off from my husband (in the living room) and my daughter (in the bedroom). They kept on yelling, demanding our guns. My memory is a bit fuzzy, because this all happened so fast, but this is my best recollection of the order in which things occurred and what people said. I think Larken was looking at the warrant, and he was surrounded in the living room. They were yelling something about “securing the site” and I yelled back that the site was secure before they broke into it. At some point I yelled, “There’s a child in this house!” hoping to shame them into calming down.

A female agent, who was between me and the bedroom, said “Where’s the child?” I think I indicated the bedroom, but when she started moving in that direction, I screamed, “I don’t care if you’re a woman, don’t you touch my child!” (trying to sound as intimidating as a petite, defenseless woman surrounded by large, armed thugs can possibly sound). She stopped moving that way, and the armed thugs around me must have made some space so I could move toward the bedroom, but they were all harping on about where the guns were. I wouldn’t tell them (still not knowing why or under what authority they were in my home). They wouldn’t let me enter the bedroom to locate my daughter. I said, “Okay, watch me. I’m standing right here.” I stood in the doorway, but I couldn’t see Elyssa. I called for her. She peeked out from under the dresser and said, “I’m here, Mommy.” Her little face was streaked with tears. For a while I was standing in the doorway, between them and Elyssa, and it was a standoff. They wanted to go in there and look for guns, but they didn’t want me in there first, and I didn’t want them between me and my daughter. She was obviously frightened enough without these hostile strangers swarming into her bedroom while she was all alone in there. I was determined to get to her first. But I was afraid they would shoot me if I went in there first. I slid down to the floor so I could see Elyssa better as she cowered under the dresser. If I couldn’t go to her, at least I could talk to her and soothe her. The thugs kept demanding to know where the guns were. At one point I said I wouldn’t talk to them and I wanted to see my husband. I said if they wanted to know where anything was, to ask him. One thug said that “the melodramatics aren’t necessary,” as if I were the one “creating a scene” there. I was trying to act as rationally as possible to protect my child and myself without actually knowing what was going on.

This standoff continued until Larken told them that the guns were in the safe in the bedroom closet. Then I told them that I would go in first, and take Elyssa through the bedroom into the front room so they could look in our closet. I scooped up Elyssa and headed for the front room. We were about halfway there when the thugs noticed there was a closet in the front room also, and started demanding to know which closet the guns were in. I was afraid they would shoot me, and I indicated the bedroom closet, which of course was exactly what Larken had told them. All I wanted was to get myself and my daughter away from these nervous, hostile, and heavily armed people, who seemed to think that loaded guns were just lying around the house and that we were just waiting for a chance to shoot them. Our family has always been peaceful and law-abiding; the local police who know us know this very well. The hostile and suspicious demeanor of these federal thugs was completely unreasonable and only served to make me wonder if they were acting unlawfully.

I don’t remember how we got back to Larken in the living room. I think I eventually demanded that they let me go to my husband, and they let me come through holding Elyssa. Larken was sitting on the couch looking at the warrant. I rushed to him with Elyssa in my arms and sat next to him on the couch. I don’t remember what happened then very well. Elyssa was crying and clinging to me, and I spent some time comforting her, and Larken spoke to her too. We told her that these people were the IRS. I told her that these people wanted to scare Daddy because they don’t like Daddy talking about the income tax. I told her that everything would be okay, and hoped I was telling the truth.

An Abington police officer was leaning over Larken’s shoulder, discussing the search warrant with him. I had not seen him up until that point, and didn’t know that any local police were present. He must have been behind the pack of federal thugs as they swarmed in. I remember one of the thugs saying that Larken should be ashamed for bringing this on his family. I don’t remember Larken’s retort, or mine, but it was a ridiculous

thing to say under the circumstances, as well as being inflammatory and (again) gratuitously rude. Larken established that the search warrant was valid as far as he could tell, although there was a lot he couldn't tell at the time.

The first concern of the thugs was to "secure" all our weapons. That's what they said, but of course the weapons were much more secure before they arrived. They brought out the safe from the bedroom closet, and Larken had to tell them how to open it. There was only one gun, and Larken remembered that the other one was locked in the car because he'd gone to the 7-Eleven late the night before. One of the thugs said something about paranoia, and said to the Abington cop, "I guess he doesn't trust you to do your job," or something like that, probably trying to turn the local cop against us. Larken gave them the key to the gun safe downstairs. The guns would have been quite secure if one of them just held the key to the safe. But they insisted on taking all the guns out of the safe, "seeing if anything else was in there," and taking all the guns, other weapons, and ammunition out to the trunk of one of their cars.

Aguy read us some rights, and asked us to waive some of them, which we both declined to do. I said I was going to take Elyssa to dance class, and they said I could go. I asked the local cop if he would be staying until the federal thugs left, and he said yes. I told him I didn't trust them not to harm my husband, and that I was asking him to stay. He assured me that he or another cop would be there. Some thugs were sent out to search the car.

One thug made a big point of telling me not to talk to anybody while I was out there. He said that this was a very good piece of advice, and many people had come to grief for not following it. He said something like "You just want to let this happen quietly." I got my purse and keys and left with Elyssa. I was very relieved to find my cell phone in my purse. I was sure they would have confiscated it if they knew it was there. Some guys were working on the water lines on the street right in front of our house on the Pike. As a guy waved me through to the road, I stopped and said, "By the way, we're the good guys. My husband is telling people the truth about the income tax, and they're trying to shut him up." So it took me about two minutes to throw the fascist's advice out the window. I figured if he stressed that so much it must be something that would help him, not me.

I drove a little way and then called Tom (Clayton) and told him about the raid. Then I called Chad. I said that it would be good if they showed up as soon as possible, to keep an eye on things. Tom called back, and gave me the name of a lawyer I could call who would understand what was going on here. I called the house to tell Larken that, but couldn't get through. I tried and tried. Then I called Tom again. He said a search warrant had just been served at his home also, and he had to go. He was at work, and his wife was home with a sick child when this happened. ...

I called Larken to see if he was okay. No one answered the phone. I left a message, saying "Larken, pick up the phone," but no one picked up. I called again and again, always leaving messages like that. "Larken pick up the phone," or "Will you people let my husband pick up the phone?" or "Let my husband pick up the phone!" I called about ten times and the phone was never picked up. I got back to the house, and Chad and Mark were there outside on the Pasadena sidewalk near Mark's car. I gave Chad my cell phone so it wouldn't be confiscated, and I walked to the house. On my way up the driveway, a thug blocked my path, and when I tried to continue, he pushed me back. "I told you not to talk to anyone!" he shouted. I shouted back, "Let me through! I have to pee, and I want to see my husband!" I was worried about Larken in there, since I couldn't get through on the phone. What were they doing to him? Was he alive? The guy told me I wasn't allowed back in. I yelled at them, but there was nothing I could do. I couldn't force my way in through a bunch of armed men. I had no way to find out if my husband was okay, and I felt frantic. ...

Chad and Mark told me that while they were watching, before I came back, thugs came out and took our guns out of the trunk of the car and measured all the gun barrels. (Guns were not mentioned on the search warrant.) ...

At the end of the day, a bunch of spectators (neighbors and friends) were standing around watching the thugs as they brought out our computers and boxes and boxes of papers and piled it all into their cars. We watched them take the firearms and other weapons back into the house. Finally Larken came out, and a big cheer went up as I hugged him in the middle of the street. The thugs left shortly after that. They left an inventory of the stolen goods, and promised we would have it all back on Friday. This turned out to be a lie. We got all the computers back by the end of the next week, I think. And we've gotten a few papers back. But

the vast majority of what they took, they still have, nine months later.

Tessa David Rose

During the raid, one IRS agent claimed that he was "putting me on notice" that my income was taxable. I found it amazing that he thought that there was any authority behind such a comment, and that his unilateral decree could make me owe a tax, and I told him so.

One or more IRS agents tried to tell me what my own beliefs are, one claiming that I didn't think wages are income, and another claiming that I think the tax laws are invalid, neither of which I've ever claimed. So these bozos didn't bother finding out what I believe or what I say before storming my house. One agent arrogantly said that he would come visit me in prison. (He hasn't so far. Darn.)

The agents asked several questions about our firearms, questioning the need for us to own or carry such weapons, one calling me "paranoid" for having carried a firearm to the 7-Eleven at 1 a.m. the night before. (I am licensed to carry concealed firearms in Pennsylvania.) After they continued to ask me why I owned firearms, which I perceived to be an attempt to imply that I'm some dangerous criminal, I responded by saying that I could quite easily have come to the door armed and "*blown your* [expletive] *heads off*," but that I instead chose to leave the guns locked up, came to the door unarmed, and unlocked the door for them, so they should just "*shut the* [expletive] *up*." As I recall, that ended their questioning about the firearms.

At one point I loudly proclaimed to anyone in the house that I would give any of them $1,000 if they could answer six questions about how, according to the law, I should determine my taxable income. No one took me up on my offer.

While we're on the subject of the IRS Gestapo tactics, I might as well include a message written by Dr. Clayton about his own experiences, which I forwarded to my e-mail list in June of 2004. They raided his home down in Texas on the same day they raided mine. His message is a bit long, but it gives yet another telling view of the issue, and of what "our" government does to people who say things it doesn't like. (The underlined emphasis is his own.)

One year ago CID [the IRS's "Criminal Investigation Division"] special agents Jack Bell, Jacob Avery, Paul Howard, and approximately ten other agents came (with firearms) to my private residence in Texas (about 30 minutes after they showed up at Larken's house) after I had gone to work. My 11-year-old daughter was home alone sick, while my wife was taking my youngest daughter to school. They yelled, "THIS IS THE POLICE; WE HAVE ASEARCH WARRANT, OPEN THE DOOR!" My daughter became hysterical, saying "You aren't going to arrest my mommy and daddy!"

This single event galvanized me into coming out from behind the scenes, where I had been working with Larken for over five years for the sole purpose of educating the public about the correct application of the federal income tax law (i.e., those parts of the law that show that the only incomes that are taxable are related to international commerce, which of course does not include the incomes of most Americans).

I am sure my becoming more public was the exact <u>opposite</u> of what the DOJ was hoping for. I'm sure they thought that they would be able to <u>intimidate</u> me into shutting up. What were they threatening? To indict me and to throw me in jail? Just like they threaten everyone else? What for? Because I read the law and could <u>prove</u> that I did not owe federal income taxes? Or because I dared to show others <u>what the law said</u>?

What was wrong with this picture? I had broken no laws. I had provided financing so that the public would

have free access to the evidence in the law (via the taxableincome.net web site), and this type of activity is protected by the First Amendment. I had worked with Larken for years for the sole purpose of undoing what the government had done, which was to write and arrange the law in such a manner that it was virtually impossible for the public to read the law and understand it. The truth is in the law, but it is buried so deep and in such convoluted regulations, that most of the public was being deceived.

I became involved so that the public could read and understand what the law said for themselves. Some crime, huh? But the DOJ will have a hard time proving that I or Larken broke any laws. How about their tactic of avoiding what the law says in the courtroom by painting "tax protestors" (sorry, guys, we are "government lie protestors") as dirtballs, or as people who are engaged in get-rich-quick schemes? They have bitten off a very unpleasant snozzcumber (remember Roald Dahl's The Big Friendly Giant, or BFG?) that is hard to eat and even harder to swallow. They have come up against honest people and the truth in the written law.

I am at least $50,000 in the hole and I am giving more money all the time in order to keep showing the evidence in the law to the public. I had never given tax advice or done anything such as hiding income, and yet here were armed Gestapo agents invading my home, stealing hundreds of videos (which as you all know is a gross violation of constitutional rights) because they were "mad" at me for funding the video. Larken has done a wonderful job of using the pile of 300 videos as an obvious proof of their deliberate violations of the law and civil rights.

Do any of you think that this is a reason to break the law and violate rights? When you get mad at your neighbor, do you go over and hold their child at gunpoint? It was this episode that convinced me that the federal government doesn't care what the law says; doesn't care about the constitutional limits on what they can and cannot do. This is a very ominous situation indeed. This raid originated by command of the top lawyers at the DOJ in Washington, those charged with enforcing the laws and protecting the public. The fact that they are violating the law for political ends will only backfire on them, and it already has.

These lawyers are supposed to be held to a "higher standard," yet here they were using thugs to knowingly break the law (the term they like to use when attacking the public). Which DOJ lawyers knowingly broke the law to try and shut us up? What do they think, that the public will not find out eventually?

My involvement in this educational mission has never been "because Larken says it," it has been because this is what the law says. When I read an earlier version of the "Taxable Income" report on the "Taxgate" web site, I realized from the written and published evidence in the law itself that he quoted word for word that the law really was much more limited in scope than the public has been led to believe.

Since the beginning, independent of Larken, I realized that the focus of this battle must be on the written law, because the government has always said that I am (just like any other citizen) required to go to the law, read it, and determine on that basis alone what the law did or did not require me to do.

Before the Internet, this was extremely difficult. The Internet and computer search engines (that could search the entire law almost instantly) made certain that nothing critical was "overlooked." Once the structure of the deception was understood, when it came to determining "taxable income," every single reference (including the indexes of the United States Code and Code of Federal Regulations) pointed to Subchapter N, Section 861 and following. The evidence is nothing less than overwhelming, but most of the public had never seen the law before the Internet. This needed to be remedied.

I offered to finance Larken's own website (he did not ask me) so that there would be nothing else to interfere with the educational process of helping the public understand what the law says, where it says it, and why it says what it does. He and I were as one when we agreed to have no theories or speculations; nothing but the written law itself from the government's own law books. In other words, nothing but what the government has told every citizen that they must do.

Since I strongly believe in following the law as written, whether or not I "agreed" with what the law said was irrelevant, it was not a "choice" that I could make. I could not file an incorrect return (reporting my income as "taxable income") just to "keep out of trouble." If I did file a federal income tax return stating that I had "taxable income" and signed it under penalty of perjury when I knew and could prove that I did not, I would be knowingly committing a crime, which I refuse to do.

But this was not a personal issue; it really bothered me that most Americans were being deceived. It really bothered me that a person had to have excellent reading comprehension to understand the law even with the regulations (which are supposed to explain the correct application of the statutes so that the public can understand what the law does or does not require them to do). It really bothered me that the Treasury Department was knowingly stealing from the public, taking advantage of their lack of knowledge about the law. How many "tax professionals" were in on this, getting lots of income from turning over client incomes with no basis in law to do so? More importantly, how many tax professionals were honest and had been deceived as well?

I decided that no matter what it cost, I felt that I had a social obligation to help the public understand how to read and understand the law correctly. No matter what the government tried to do to stop the public from seeing the law, it would not work. The law does not lie and the evidence will not go away. The more publicity that is brought to the issue, the better it is.

When confronted with such a massive contradiction between what was being done by the IRS and the Treasury Department and what the law actually said, I did the only thing that seemed reasonable: I wrote directly to the regulation-writing lawyers in the Treasury Department to find out why their own regulations said something so very different than the public has been led to believe (see below). I knew that my situation was exactly like that of most Americans. I knew that the law required them to answer me truthfully; in fact, government lawyers are supposed to be held to a higher standard, according to their own ethics publications. Not IRS lower-level employees; the government lawyers who write the law and to whom even the Supreme Court defers. How could they lie, with the published law to prove that they lied?

How would they respond? I must confess, initially I felt reasonably sure that when confronted with the irrefutable evidence, they would have no ethical, moral or legal choice but to admit that the regulations do mean what they say (which of course, they do whether a government bureaucrat says so or not).

As you have seen on the www.taxableincome.net website, I was the (anonymous) person who first asked these "experts" the questions about the regulations, written very clearly, using language from the regulations themselves. They were asked in such a way that they could be answered "yes" or "no."

These "experts" answered me with everything but the law I asked about, answering questions that I did not ask. It was obvious that I was not asking about the "items" (types) of income in Subchapter B and elsewhere that may be taxable, I was asking about the taxable sources (types of commerce which generate the income), as specified over and over again in the regulations under Section 861 and following. After that, they refused to answer the questions.

The government lawyers have not only been stealing from the public, but when faced with what the law itself said, refused to correct their error. It made me sick to my stomach. They try to distract and confuse you first, and when that doesn't work, they stop responding.

I am a doctor. I am a formally educated person (which is no guarantee of being able to think objectively, by the way) who can read and write and who presented the evidence in the law to them in a very logical fashion. It was obvious that I was not a tax protestor or fringe person. Here was the massive administrative structure of the federal government with a "chain of command," where (you would think), as one proceeded up this chain, the people in those more responsible (higher paid) positions would actually be more responsible, honest, and, once notified of the fraud, would do everything in their power to stop the robbery.

Instead, every single person in power, including the Inspector Generals of the DOJ and Treasury Department, charged with dealing with and preventing employee misconduct, and politicians such as Charles Grassley (Finance Committee) did nothing. For over three years, I have documented letters to Andrew Card, President Bush's Chief of Staff, of the deception, asking him to stop it and stop the misconduct of the executive branch agencies that are desperately trying to keep the evidence in the law from being understood by the public.

In the summer of 2001 I think that I got through to Marc Weinberger, Assistant Secretary of the Office of Tax Policy, the person in charge of all the federal tax regulations, because he resigned after only one year of his two-year term, at the top of his game. Was this because he was honest? But how is it that the honest people resign and the fraud continues? Who is directing this theft? Does that mean that whoever is left is

determined to keep stealing from the public? Are they "lifer" bureaucrats?

This in and of itself reveals corruption of the federal government on a scale that most of the public cannot even imagine. They will not police themselves and will not follow the law as written; meanwhile they are beating up the private sector for fraud, and attacking people like Larken and me for exercising our First Amendment rights to freedom of speech, for simply showing the public what the law says.

If we do not stop this corruption now, then it will only get worse. We are a nation of the rule of written law, and, armed with the Internet, we will no longer be ignored. I know that all of you see how serious that this is; we must do what the founders of this country did, which is to confront tyranny and stop it, no matter the cost. Like the Terminator, we will not stop until this fraud is ended.

Sincerely,
Tom Clayton, M.D.

After reading the above, do *you* think that the raids on my home and Dr. Clayton's home were designed to obtain actual evidence of actual crimes? I understand that people don't usually want to think ill of their "leaders," but just how blatant do tyranny and oppression have to be before the public faces the ugly truth?

Fishing Expedition

Regarding the raid on my home, the list of things they were there to steal ("seize" is their term for it) included dozens of types of items and documents, including anything remotely resembling a record of anything financial, as well as anything expressing anyone's opinion about anything tax-related, all computers and disks on the premises regardless of content, and last but not least, every copy they could find of my "Taxable Income" report and my *Theft by Deception* video.

With that in mind, the real motivation for their raid should be obvious: it's called *censorship*. All they needed was the rubber-stamp blessing of U.S. Magistrate Thomas Rueter, and they had official permission to forcibly steal every copy they could find of a perfectly legal video. And Mr. Rueter, in keeping with the usual contempt for the Constitution shown by the federal judiciary, gave his blessing to the IRS's Gestapo routine.

(Later on, after I publicly criticized Magistrate Rueter for endorsing such unconstitutional terrorism, someone apparently sent him a threatening letter. As a result, U.S. Marshals showed up at my house. They told me what had happened, but since I hadn't threatened anyone, or told anyone else to, they couldn't really say what the purpose of their visit was. To be fair, they were relatively polite and professional—and made it a point to quickly say that they were *not* from the IRS. Obviously Magistrate Rueter had sent them out to try to make me nervous, even though I hadn't done anything wrong, which the Marshals had to admit. I then put out another message to my e-mail list, as I had done before, telling people to please not threaten violence, as it only causes trouble, makes us look bad, and makes U.S. Marshals show up at my house. But I also have a word of advice for people like Mr. Rueter: If you don't want people hating you so much that they would threaten you, maybe you should stop giving your blessing to fascist police state oppression. Just a thought.)

The IRS spent eight hours swiping thirty-five boxes of property and records from my house. Despite the impressive laundry list of alleged (made-up) violations they claimed to be investigating,

the end result, years later, was (drum roll, please) an indictment for several counts of one misdemeanor charge: willful failure to file federal income tax returns. To justify the raid, the IRS claimed to have "probable cause" to think that they'd find evidence of half a dozen different alleged offenses, most of them felonies. The fact that we were charged only with the *least* serious offense, a misdemeanor (which we also didn't commit), shows that the raid was nothing more than a giant fishing expedition.

Was the raid even necessary for the one misdemeanor they eventually charged me with? Well, maybe they wanted to find evidence proving that I didn't really believe what I had been saying for five years—that I was just pretending to believe it. They certainly got a lot of information about my beliefs, including dozens of letters I had sent to government officials, in addition to my video, my "Taxable Income" report, and around *ten thousand* private e-mails. Guess how many of those e-mails showed that I don't really believe in all this 861 stuff. Zero. And, due to the element of "willfulness," if I believe I don't owe the tax, there is no crime, whether I'm right or not. The IRS bureaucrats can try to collect if they think I'm wrong, but the criminal tax statutes are *not* supposed to be used to punish people for having a "*frank difference of opinion*" about the application of the tax laws. So said the Supreme Court in the case of *Spies v. United States*, 317 U.S. 492 (1943).

Modern-Day Book Burning

"What distinguishes a democratic state from a totalitarian one is the freedom to speak and criticize the government and its various agencies without fear of government retaliation." [Wichert v. Walter et al., 606 F Supp 1516 (3rd cir)]

Well then, I guess it's obvious which kind of government we have. The next sentence from the ruling in that case said this: "*It is difficult to envision any right more fundamental to the establishment and continuation of a free society*." Amen.

When "law enforcement" officers do something, most people like to assume that it probably has a legal basis. The very label "authority" implies that what they do is legal and proper. Because of that, it's difficult for me to fully convey how legally (not to mention morally) bogus it was for IRS agents to come to my house and forcibly steal every copy they could find of my video, my written report, and even a box of www.Theft-by-Deception.com" bumper stickers. Was there some dispute over the legality of any of that stuff? Nope. Not a bit. The government has *never* alleged that the video is itself illegal. Nonetheless, when I asked Donald Pearlman (head IRS thug at the raid) when I would get my videos back, he said *never*. What about when the investigation is over? Nope, not then either, he said. He said those things while still at my house, during the raid, demonstrating that he *showed up* with the premeditated plan of taking every copy he could find of a *perfectly legal video*, with the intention of never returning them.

Soon after the raid, I sent Stormtrooper Pearlman a letter, pointing out that the Supreme Court says that it's illegal to do what the IRS had done: swiping a bunch of videos or books under the guise of searching for "evidence." As you'll see below, their own sworn affidavit acknowledged that they already *had* the video, because I had previously *given* it to them voluntarily. So they didn't even need to take *one*, much less entire cases of them. But despite the fact that I provided Agent Pearlman with Supreme Court citations proving that he broke the law by swiping the videos, in a subsequent phone call he *again* said that the videos would never be returned, even after the case was over.

(Almost two *years* later they did return the videos and "Taxable Income" reports, shortly before my trial, probably at the suggestion of some government lawyer with enough brain cells to realize how utterly, indisputably, blatantly illegal it was for them to take them in the first place. The videos were still shrink-wrapped, and many were still in the unopened cases the factory sends them out in. When they were sent back to me, there was no letter with them, so at first I thought they were just cases from the factory, until I noticed the DOJ return address. They also returned the "Theft-by-Deception.com" bumper stickers. After two years of storage in who-knows-where, I couldn't in good conscience sell the VHS tapes anymore, not knowing whether they would still play properly. So instead, I sold them for $40 each as censorship souvenirs, and gave all proceeds to the *861 Evidence* mini-CD project, described below.)

"The use by government of the power of search and seizure as an adjunct to a system for the suppression of objectionable publications is not new. ... The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression." [Marcus v. Search Warrant, 367 U.S. 717 (1961)]

Yep, it sure can be used for that.

Let's review. I made a video accusing the government of wrongdoing—precisely the type of "speech" that the First Amendment was specifically intended to protect—and the IRS barged into my home and stole every copy of that video that they could find, with the admitted intention of *never* returning them. You can try all you want to come up with some legal, logical, or moral justification for their actions, but you will fail. Or, instead, you can face the obvious fact that we now live under a police state which has no qualms about forcibly silencing opinions it doesn't like. The IRS, the Department of Justice, and two "judges" gave their blessing to what was the equivalent of a modern-day book burning. It was censorship, plain and simple.

Incidentally, if you're thinking, "Well, if your legal conclusions are wrong, you shouldn't be allowed to speak them"—first of all, you're a fascist; second, the Supreme Court has made it abundantly clear that whether an idea is incorrect or unpopular has absolutely no bearing upon one's right to express it (*NAACP v. Button*, 371 U.S. 415 (1963)). Incidentally, after the raid we contacted both the left-leaning ACLU (at its Texas, Pennsylvania, *and* national offices) and the supposedly libertarian-leaning "Institute for Justice," but neither would lift a finger to help us fight the modern-day book burning the IRS had carried out.

So it wasn't enough for the government to ridicule and threaten thousands of Americans who had started asking questions about the law, and it wasn't enough for them to insult and vilify me and others for reaching legal conclusions they didn't like. They were no longer content to merely publicly slander and demonize us; too many people were being exposed to the truth, so the government had decided it was time to *forcibly silence* us.

But we wouldn't shut up.

The Mini-CD

Some people like to actually *understand* things, but most are content to merely *believe* things. The *Theft by Deception* video was (and is) helpful for those willing to put in some mental effort to examine the evidence, but in our ten-second sound bite culture, most people (we soon realized) would never invest the time and thought it takes to really grasp the substance of the issue. They wouldn't watch an 88-minute video, much less read a sixty-page legal report.

Eventually I and some of my fellow conspirators (us nasty folk who like to tell people when they're being robbed) came to the depressing conclusion that to get the message out to the general public, we needed to use a lot less evidence and logic and a lot more snazziness and salesmanship. We needed a way to explain the issue to those people who don't really want to have to think about stuff (you know who you are), and we needed it to be easy to distribute far and wide.

Shortly after my home was raided, the idea of making a "mini-CD" slowly started to come together. (A mini-CD is one of those spiffy little miniature compact disks that works in almost all computers, though many people don't know it.) The planning and production of the presentation ended up being a fairly haphazard improvised rush job, done by several people who had never met each

other, and who for the most part didn't entirely know what they were doing (including me). Nonetheless, I'm still pleased with the outcome, the quality of which in large part came from the fact that I'm *not* the one who put it together.

The presentation ended up being just under an hour long (which was still pushing our luck with the attention span of the average American) and included the basics of the legal issue, but also included interviews with various people, information about our letter-writing campaigns, the government's less-than-polite tactics, etc.

In addition to trying to deal with the very limited attention span of a lot of people, we also kept in mind the expert-worship mentality that so many people seem to have. Since credentials apparently carry more weight than actual evidence and logic, at least in a lot of people's eyes, we included a heaping dose of credentials. By that time, more than a few CPAs and attorneys had come out and publicly *agreed* with the 861 evidence, including a few who used to work for the IRS and DOJ.

There was Sherry Peel Jackson, a feisty former IRS Revenue Agent who has gone to great lengths to try to combat the lawlessness and lies of the IRS. (As a result, she too has been subjected to the harassment, intimidation, and persecution tactics of our beloved federal government, including having her home invaded by armed IRS thugs in July of 2004.)

There was Joseph Banister, a former IRS Special Agent for the Criminal Investigation Division of the IRS, who has also been very vocal about the IRS's disregard for the law. (Mr. Banister was fired from the IRS—or told to resign, which amounts to the same thing—for asking some of his superiors to answer some of the questions the so-called "tax protestors" were asking, though they weren't specifically about 861.) He was so vocal, in fact, that the federal government *prosecuted* him in an attempt to silence him. I'm happy—if slightly envious—to report that in June of 2005, the day before my 37th birthday, a thoughtful jury found Mr. Banister "not guilty" on all of the bogus charges thrown at him.

There was Terry Croghan, a former federal prosecutor, who was nice enough to appear in the presentation despite the government's nasty habit of terrorizing anyone with credentials, especially former government folk, who dares to say "861" in public.

There was Robert Lock, an experienced attorney who had helped to *write* legislation (relating to telecommunications laws), and who therefore knew more than a little about how law works, and how it is to be read and understood.

And there were several other individuals such as John Green, who were veteran attorneys as well as very principled individuals. (Imagine someone being both of those things at the same time.) There were quite a few others who, if they are reading this, are probably hoping I *don't* mention their names, lest they be the next to incur the wrath of the federal leviathan. (Actually, everyone in the presentation had his or her face and name there for all to see, so none of them are cowards by any stretch of the imagination.)

It took a lot of work and a lot of organization, mostly from a few fairly disorganized people (including me), to put the whole "861 Evidence" mini-CD project together. But we intended to make

obscene profits from the results, so it was worth it.

Just kidding. Actually, it was a non-profit endeavor from the beginning. The goal was to mass-produce the disks, and then sell them in bulk at cost for less than twenty *cents* apiece. And that's just what we did.

A lot of people, whom I can't thank enough, donated money for the production costs. And then, when the disk was released in April of 2004, a lot of people donated even more time, effort and money to get it distributed. At this point, somewhere between 200,000 and 300,000 copies of the mini-CD are in circulation. Or maybe they're in garbage cans; it's hard to know which.

In addition to spreading the little disks around, we made the entire presentation downloadable and viewable on the internet at "www.861.info," and many thousands of people viewed it online. (What might be on that web site, if anything, by the time you read this, I have no idea, for reasons which will become apparent shortly.)

Prosecuting the Innocent

So we were getting the word out, by way of my "Taxable Income" report, my *Theft by Deception* video, the "861 Evidence" mini-CDs, and several web sites. (After the www.taxableincome.net, www.theft-by-deception.com and www.861.info sites, we made www.861evidence.com, the main purpose of which was to have a place where people could download scans of all the older tax statutes and regulations not available elsewhere online.) Tens of thousands of people—if not hundreds of thousands—were out there talking about the issue. Meanwhile, the government was trying to come up with some way to keep the issue quiet.

As you digest the rest of this story, an important question to keep in mind is this: Did those in government at least *think* I had broken the law? It goes without saying that trying to put someone in prison for a crime the prosecution *knows* the defendant did not commit is both illegal and profoundly evil. In fact, trying to imprison someone for exercising his First Amendment rights is actually a crime in itself (see 18 USC § 241). So, is there any way that the prosecutors in my case at least *thought* they were going after a criminal? Is there any way they could have had legitimate and legal motives for prosecuting me?

Remember, because of the issue of "willfulness," as long as I did what I *believed* the law required—even if my beliefs were wrong, unpopular, or unreasonable—then no crime was committed. So, did the feds have some reason to think that I was *lying* about my beliefs, in all those dozens of letters I sent them, explaining in great detail my legal conclusions? Or did they know full well that I was doing what I believed to be legal and proper, but chose to prosecute me anyway, for a crime they knew I hadn't committed? The evidence shows that whether or not I was guilty of any crime didn't matter to them in the slightest; their goal was to shut me up using any means necessary.

Don't believe me? Consider this: When the IRS raided my home and the home of Dr. Clayton, they stole every copy they could find of my *Theft by Deception* video. When Dr. Clayton called the Civil Rights Division of the DOJ to complain about the blatant violation of our First Amendment

rights, he got a very interesting response. The DOJ attorney he talked to said that Dr. Clayton could file a complaint if he wanted, but it probably wouldn't go anywhere. Why not? Because, the government lawyer replied, it would be a "conflict of interests." How so? Because, according to the attorney working for the *Civil Rights Division*, the Department of Justice was trying to "*stop the distribution*" of our perfectly legal video. Remember, they have *never* alleged that the video itself is illegal, yet there was the "civil rights" branch of the DOJ (how ironic is that?) openly admitting that the DOJ was trying to *suppress the video*.

Talk about the fox guarding the hen house. The "Civil Rights" division of the DOJ is the one with jurisdiction over 18 USC § 241, which makes it a crime for government agents to "*oppress, threaten, or intimidate any person in any State ... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same*." When the IRS and Tax Division of the DOJ did exactly that, the "Civil Rights" phonies just looked the other way.

And if the DOJ attorney who just happened to take Dr. Clayton's call just happened to know off the top of his head that the DOJ was trying to silence the video, you can bet that a lot of DOJ folk, all the way up to the Attorney General, Führer Ashcroft, knew of, approved of, and participated in this blatantly illegal attempt to crush free speech. Who cares about the law? Who cares whether the troublemakers broke any law? There is power at stake! Lock up the dissenters! Crush the resistance!

It should be mentioned that the IRS isn't exactly subtle about its terrorist techniques. At one press conference, an IRS spokesman (Terry Lemmons) was asked about a bunch of people protesting outside, objecting to the government's failure to answer various questions about the tax laws (including 861, among others). Mr. Lemmons' response was that the IRS was "answering" those questions via "*enforcement actions*." In other words, fining or prosecuting people is how the wonderful Internal Revenue Service deals with anyone who has questions about the law.

That was in keeping with the attitude of Mark Everson, the new IRS Commissioner, who publicly stated in October of 2003 that "*effective enforcement of the tax laws rather than further improving customer service*" would be the main focus of his administration. Yeah, the heck with helping people understand and comply with the tax laws; it's time to *crush, kill, destroy*! (When the fraud eventually collapses, I wonder what "enforcement actions" the victims of Mr. Everson's Gestapo will impose upon him.)

> **"Service employees, in handling such matters in their official relations with taxpayers or the public, will conduct themselves in a manner that will promote public confidence in themselves and the Service. Employees will be impartial and will not use methods which are threatening or harassing in their dealings with the public." [IRM § 1.2.1.2.1]**

Yeah, right.

Harassment

There are many ways in which the government misuses its power in order to silence opinions it doesn't like. Overt censorship, like stealing videos, is one way, but there are many more subtle ways

in which the government creates what the courts call a "chilling effect" on freedom of speech, causing people to choose not to speak their minds in order to avoid trouble. It's indirect censorship, and it's just as unconstitutional as the direct kind. The fines and prosecutions are pretty obvious, but the feds also have the power and resources to engage in large-scale, prolonged harassment techniques, all disguised as "law enforcement," against anyone they don't like.

Granted, it's sometimes hard to tell the difference between law enforcers just doing an investigation, and government thugs intentionally engaging in intimidation tactics. It's also true that most people who have run-ins with the cops complain that they are being "harassed." So I'll give you a few examples of the IRS's methods of "investigating" me, and you can decide for yourself what you think their motives were. See if you think they were simply following possible leads to evidence of criminal conduct, or whether they were engaged in a giant fishing expedition and terrorism campaign.

1) I happen to have a very generous relative who once loaned me and my wife a significant chunk of money, interest-free, when we were having a tough time financially. For that good deed, she had two IRS goons show up at her house unannounced, to question her about me. The two goons apparently had to drive several hours to get there, and yet they seemed to know almost nothing about the case (and admitted as much). Did they have any reason to suspect something shady? Not at all. The relative loaned us money, and we paid it back, as she told them. There was nothing even hinting at anything illegal, but that didn't stop them from pestering her.

2) I'll let a message I sent to my e-mail list (in late March of 2004) describe the next example of IRS harassment.

> **"Well, darn. My wife and I almost got away with it, but that oh-so-resourceful fighter for truth and justice, Donald Pearlman (the same IRS agent who led the armed invasion of our home last year) has just uncovered documents which show that my wife and I are nasty, evil criminals. We had hoped they wouldn't find these documents, but alas, our nasty crime spree has come to an end. It turns out that unbeknownst to any of you, last year my wife and I gave several thousand dollars to a privately run orphanage in Nepal, which takes in abused and abandoned children, and gives them a home, a family, and an education. (It is run by people we know personally who went over to Nepal to do this.) Good thing our valiant public servants are protecting all you good folks, by harassing people who run an orphanage in one of the poorest countries in the world. I feel safer already. Don't you? Someone has to uncover all the nasty deeds of the nefarious 'tax scheme promoters,' right?"**

The IRS called up the people who run the orphanage, demanding all the records they had related to us. Why? How could us *giving away* money possibly be evidence of a crime? It couldn't, of course. But that didn't stop the IRS from harassing them.

3) A cousin of mine ran a home-school type preschool/play group that our daughter attended for a while. Sounds criminal, huh? Well, that paragon of virtue, Special Agent Donald Pearlman, showed up at her house to interrogate her about us. He asked her lots of questions about the preschool, when our daughter started attending, when she finished, etc.—all things that are none of his business, and which can't possibly be evidence of any crime. But my cousin reported to me that Pearlman's "questioning" of her was more like a lecture than an investigation. He didn't seem to be in search of any particular information or evidence, but wanted to tell her that my legal conclusions are "fraudulent." When Pearlman asked her if she knew that, she responded that she knew that the IRS thought my position was "fraudulent." Then Agent Pearlman said he was "putting her on notice" that

my legal conclusions are incorrect. Wow, how much of a delusional nutcase does someone have to be to think that his unilateral, unsupported assertion would be legally binding on anyone, or persuade anyone? (Amusingly, when my cousin said that she thought that it might be educational for her own home-schooled kids to observe the IRS's "investigation" techniques, Pearlman said he'd prefer they didn't. Gosh, Mr. Pearlman, what is it that you don't want the youth of America to see?)

4) Pearlman also made an unannounced visit to the home of friends of ours—a married couple. The wife had worked as a typist for us years before. What important evidence was he after that time? Hard to say. He asked whether they had seen my video, and asked about the husband sending a copy of those pesky questions to government officials. The husband responded that he didn't think it was illegal to ask the government questions. (Silly him.) The "interview" once again seemed entirely legally pointless, and again turned into an anti-me lecture by Stormtrooper Pearlman. Of note, Agent Pearlman warned them, as he would warn others, that I'm "*very persuasive*." (Maybe that's because I'm *right*, you fascist jackass.)

5) The IRS thugs also showed up unannounced at the home of someone who did occasional housework and baby-sitting for us. Since she wasn't at home, they went to her place of work (again, unannounced). What for? To ask her if she had ever been in our basement, and what she had seen there. Luckily she didn't mention the meth lab and the human body parts. (For any federal employees reading this, that was sarcasm.) She reported that she saw me working at a computer. What a shocker.

6) IRS thugs visited the home of another former typist and her husband, and again lectured them about us and asked asinine questions about their working for us. Let's see: IRS "Criminal Investigation Division" agents just showing up at all these places, without having any idea what evidence of a crime they were looking for, but determined to inconvenience and harass all these people we know, and tell them what awful people we are. Anything seem a little creepy to you yet? Well, there's more.

7) The IRS also paid a visit to the home of yet another person who used to type for us. In addition to wanting to go over every check we had every sent the typist (hoping to find something suspicious, though I can't imagine what), Agent Pearlman asked the former typist if he ever hung out with me and my wife, and whether he was aware of my "Taxable Income" report. Pearlman then asked the guy's wife, whom we also know, if she had anything negative to say about us. (Too bad for Pearlman that the Berlin wall fell; otherwise he'd have a great alternative career with the East German Stasi if the IRS gig falls apart.) Eventually the victims of this pointless harassment got tired of Führer Pearlman trying to coerce them into saying something bad about us, and told him to get lost. (Interestingly, though none of the victims of the IRS harassment ever had any legal obligation to say anything to the IRS inquisitors, this was the only instance we know of where a victim of the harassment tactics actually cut the conversation short.)

8) IRS thugs showed up at the medical practice we performed medical transcription services for, and interrogated the office manager there. Um, why? Everything they paid us was reported, and we had already told the IRS—in writing and in person—what we did, and what we got paid, and by whom. What criminal evidence were they looking for? None. They just wanted to harass our business associates.

9) IRS thugs also called the people who managed the estate of my wife's father. They wanted all the records related to a trust, for which Tessa was a beneficiary. We didn't own the trust, control the trust, or ever put money into the trust, and the trust had always paid its (supposed) taxes. So what was the point? Harassment.

10) In late April of 2004, two IRS CID thugs showed up at the Kansas City university at which Peter McCandless teaches, to ask him about the post office box we used there for "861 Evidence" mini-CD orders, and to ask Peter what he thought my "motivation" was for what I was doing. Peter told them my motive was spreading the truth. I don't think they liked that. So, what was the supposed criminal act they were "investigating"? Speaking my mind? When the IRS thugs were done with their lecture/harassment/interrogation, Peter asked them if they had ever read Section 861 or the related regulations. They said they were familiar with the issue, which isn't what he asked. So he asked again. This time they confessed: No, they had never read that part of the law. Figures.

11) The IRS/CID called and then visited a lawyer who happened to be the father of a friend of mine who was also vocal about the 861 issue. Why? They wanted to ask the father if he had ever seen my video, and if he knew anything about a talk I had given on the subject six years before. He hadn't, and he didn't, but how would either of those be evidence of a crime anyway?

12) In April of 2004, the same IRS bonehead who was investigating my non-existent "abusive tax shelter" sent PayPal a summons, demanding all the records of anyone who donated to our non-profit 861 mini-CD project. Why? When did donating to a non-profit, perfectly legal endeavor warrant government nosiness and harassment?

13) In July of 2004, the IRS thugs harassed and questioned the people who maintain the web service business that hosts my e-mail list (the one I use to send messages to thousands of subscribers). Why? What "crime" were they investigating?

Keep in mind that lots of people, if they received such unannounced visits from IRS jackboots, wouldn't say anything to us about it. So the incidents listed above are just the ones we found out about (and not even all of those). I don't know how many others were harassed and didn't tell us about it.

In short, the feds harassed just about everyone they could find with any connection to me, without ever hinting at the existence of any actual evidence of any actual crime. Don't think for a moment they aren't aware of, and don't intend to cause, the natural effect of such tactics. They are designed to make people mad at us for causing *them* inconvenience, make people suspicious of us by painting us as criminals, and so make people not want to do business with us or associate with us. Just imagine if all of *your* friends and business acquaintances started getting unexpected and unwanted visits from "criminal investigators" pretending to "investigate" you. Wouldn't that be fun?

And these harassment tactics kept going right up until the trial. In late July of 2005, we attempted to reduce the feds' harassment and terrorization campaign by filing a motion to quash subpoenas issued to five people who had done work for us and four people we had done work for. The federal rules say that a court "*shall quash or modify the subpoena if it ... subjects a person to undue burden*." As our motion explained, trying to drag all these people into court to testify about things we had freely *admitted*, such as the nature of our business, amount of our income, etc., was nothing more

than a harassment technique. Their own subpoenas cited testimony about "*income evidence*" and "*the operation of defendants' medical transcription business*"—which was all an open book—as the reason for dragging in people who had typed for us. Likewise, they wanted to harass our clients and drag them into court to testify about "*income evidence*," despite the fact that we had stipulated to the accuracy of all of the income-related documents they wanted to present. They even wanted to drag in an old friend of Tessa's, for the express purpose of authenticating a letter that she had already stipulated was authentic. Obviously *all* of their subpoenas were intended to harass our friends and business acquaintances—a tactic the IRS routinely uses on its enemies, to try to embarrass them and put them out of business.

At one point, after Tessa and I had stipulated to the authenticity of *all* of the government's proposed exhibits for my trial, while refusing to stipulate that they were *admissible*, the lead prosecutor on the case, Floyd Miller, told me to my face that if we did not stipulate to their admissibility, he would proceed to issue the twenty or so subpoenas in retaliation. The only thing the witnesses would be for was to testify that documents were what they appeared to be, which we had already stipulated. Whether such documents are admissible at trial, i.e., whether they are legally relevant to the case, is something the court decides. Amusingly, twice the judge had to explain to Mr. Miller that stipulating to the authenticity of something—which we willingly did for *all* of their exhibits—was not at all the same as stipulating that something is relevant and admissible at trial. In our stipulation letter, we even made it a point to say this: "*Of course, the stipulation of the above facts will not constitute an agreement that any such documents are relevant or should be admitted at trial*."

Mr. Miller was clearly trying to bully us into giving him permission to introduce all sorts of irrelevant garbage into the trial, by threatening to needlessly subpoena over twenty of our friends and business acquaintances. Slimy bastard. So we asked the court to sanction him for it. Since the motive for the subpoenas was so obviously illegitimate and malicious, in the motion we pointed out that, according to the rules, anyone requesting a subpoena "*shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena*," and that the court has the authority to impose sanctions on anyone who fails to take such steps, which is just what I requested: sanctions against Floyd Miller for imposing an undue burden on all those people.

A hearing was held about our motion, and Judge Michael Baylson said that he wasn't going to impose sanctions at that time, because there hadn't yet been a burden on anyone. He added, however, that if Mr. Miller did pull people into court only to testify about matters already stipulated, he would reconsider. I guess Mr. Miller got the message, since in the end they didn't call any typists, and only one business associate, to testify (though even that was unnecessary). But that didn't stop all those people from getting the subpoenas, though in the end they weren't required to appear in court.

Of course, for all the stress and inconvenience they imposed upon numerous friends and acquaintances of ours, there were never any adverse consequences for anyone at the DOJ or IRS. They know they can act like Mafia thugs and get away with it, and they know the fear, stress, and inconvenience it causes. That's why they do it.

Scare Tactics

As should be obvious by now, neither the IRS nor the DOJ gives a rodent's buttocks about "enforcement of the tax laws." They are interested only in coercing people into giving them lots of money, whether they owe it or not. If "law enforcement" was their actual goal, their enforcers would *know* what the law says, and would be eager and willing to *tell the public* what the law means, neither of which is the case. They are no more "law enforcers" than the thugs who smash kneecaps for the Mafia. They are extortionists and thieves, and the fact that they wear suits and put up a façade of being "legal" does not change that. People who have not been the targets of the lawlessness of the federales have a hard time believing this; they want to believe that "law enforcers" just enforce the law. Those of us who have met the beast face to face know better. Fear is their bread and butter; intimidation and terrorism are what they do.

The feds particularly like high-profile cases with lots of publicity—as long as they win. So they target lawyers, doctors, and whenever possible, famous folk (like Willie Nelson and Leona Helmsley). As of the time of this writing, they are going after Hollywood actor Wesley Snipes (star of the *Blade* series, *Undisputed*, *U.S. Marshals*, and about a zillion other movies). Mr. Snipes filed claims for huge refunds—which he never received—based upon the 861 evidence, so the feds would really love to make an example of him, dishonestly characterizing those self-explanatory amended returns as "false claims" against the U.S. (The media assisted in the slander, saying that Mr. Snipes was being charged with "tax evasion" and "tax fraud," neither of which was true.) However, the feds' method of public terrorism occasionally backfires.

When they went after Vernice Kuglin, a FedEx pilot who had stopped filing (for reasons not specifically related to 861), they bit off more than they could chew. In August of 2003, Ms. Kuglin was acquitted of all charges, and afterward the story hit the mainstream media. Not surprisingly, for the most part the well-indoctrinated mainstream "reporters," including the supposedly conservative Sean Hannity, did little more than bash Ms. Kuglin as an unpatriotic tax cheat, without bothering to find out the true story.

The government, by way of the lazy mainstream media, loves to make a big show when it convicts someone, but when someone is acquitted—such as those mentioned above, as well as Lloyd Long and "Whitey" Harrell—the media usually does an exceptionally bad job of reporting it. And, of course, the real reason the feds were prosecuting me was to have another trophy head mounted on their wall, to scare away anyone else who might otherwise look into matters like the 861 evidence.

Last-Minute Addition: While this book was in the editing phase, the IRS and DOJ lost another big one, when Louisiana attorney Tom Cryer was acquitted of willful failure to file. Mr. Cryer had relied upon the 861 evidence, in addition to some other issues. As of the date of this writing, the mainstream media had, for the most part, ignored the story entirely.

PART IV:
The Witch Hunt Begins

The Not-So-Grand Jury

Before the government can put someone on trial, it must first (with some exceptions) get a grand jury to sign off on an "indictment" (which, for some reason, is pronounced "in-dite-ment"). In theory, requiring the government to get a grand jury indictment before prosecuting someone is supposed to deter malicious or vindictive prosecutions. The Supreme Court says that, in addition to determining whether there is "probable cause" to think a crime has been committed, a grand jury is also supposed to act as the "*protector of citizens against arbitrary and oppressive governmental action*" (*U.S. v. Calandra*, 414 U.S. 338 (1974)), and to prevent prosecutions which are "*dictated by an intimidating power or by malice and personal ill will*" (*Wood v. Georgia*, 370 U.S. 375 (1962)). In reality, however, since the grand jurors almost always see only what the prosecution wants them to see, they do little or nothing to protect anyone from malicious prosecution. In fact, prosecutors have hijacked the process and converted it into an extra power for themselves, since the grand jury has the power to issue subpoenas and summonses, which the prosecution can easily persuade them to do, in cases where a government subpoena or summons could more easily be challenged.

These days a federal grand jury "investigation" consists of prosecutors showing the grand jurors (16 to 23 of them) whatever evidence the government wants to show, while leaving out whatever it wants to leave out, all behind closed doors, without anyone associated with the defendant present, and with all of the records and transcripts usually kept secret. No judge is present, and in most cases the target of the "investigation" doesn't even know he's being investigated. I found out I was under investigation only because I happened to file a FOIA (Freedom Of Information Act) request at the right time, by coincidence. The government would never have told me otherwise.

To be blunt, most modern grand juries just serve as "rubber stamps" for the prosecutors. All the advantages are in the government's favor. In addition to those mentioned above, getting an indictment does *not* require the grand jury to conclude "beyond a reasonable doubt" that someone committed a crime (as a trial jury must); they just need to find "probable cause" that a crime was committed. Also unlike a jury trial, a grand jury does not need to be unanimous in its decision; just over half of the grand jurors can vote to issue an indictment.

With that in mind, maybe you can understand why there is a saying that, if it wants to, the government can indict a ham sandwich. (No doubt if a ham sandwich were unfortunate enough to have "861" written on it, it would be indicted, convicted, and burned at the stake.) My wife and I managed to make things a little more difficult for the federal persecutors, however. Having learned that a grand jury was "investigating" me, I asked to be allowed to speak to it. (To say the grand jurors were "investigating" anything is a joke; they did nothing more than sit around listening to government lawyers and IRS agents lying to them.) After sending the government several letters asking if I could speak to the grand jury, the lead prosecutor in the case, Floyd Miller, said I would be allowed to do

that at the "appropriate" time—which I later learned meant "after we've been vilifying you in front of them for over a year."

(I must confess that Mr. Miller very likely could have prevented me from talking to the grand jury at all, even though that would be against normal DOJ policy once someone has asked to do so. For some reason I don't think Mr. Miller let me do it out of the kindness of his heart.)

The first time I thought that my wife and I might meet the grand jury was when Tessa received a subpoena, ordering her to "*appear before the grand jury*" in early May of 2004, to give a handwriting sample (apparently to compare with something else she had written). Silly us, we thought appearing before the grand jury would involve being in the same room with them, so we prepared a few comments. Nope. "*Appearing before the grand jury*" actually meant sitting in a room by herself, scribbling page after page of nothing.

In fact, Tessa came close to walking out when the feds refused to give her even three minutes before the grand jury. Curiously, Mr. Miller at first denied that the subpoena said that she was to appear "*before the grand jury*," even though we had the subpoena right there, and it said exactly that. Eventually she decided to just get it over with, after Miller threatened to request that the judge find her in "contempt of court" for refusing to give a handwriting sample. Of course, that's not what we were doing; we were asking to *see* the grand jury as the subpoena told us to. Mr. Miller responded that the grand jury was not going to sit there "*while she writes her name twenty times*." Well, that's not exactly what they made her do. They made her sit in a room by herself for a couple of hours, making her handwrite forty-two *pages* of stuff, which she afterward accurately described as physical torture.

The following week I got to do it too, sitting in a room by myself for hours, getting writer's cramp scribbling out dozens of pages of nonsense. I later realized that this was all about a few words I had written before, which, had they thought to ask, I would gladly have admitted I had written. So the whole episode was mostly just another harassment tactic.

However, while there, I took the opportunity to hand-deliver to Floyd Miller, the federal prosecutor in charge of vilifying—I mean "investigating"—us, the following letter:

May 11, 2004

Mr. Floyd Miller (Assistant U.S. Attorney)
15 Chestnut Street, Suite 1250
Philadelphia, PA 19106

Dear Mr. Miller,

In light of your actions against myself and my wife, I would like to once again give the government a chance to be open, honest and rational. It is clear that the government's displeasure with me stems from the fact that based on my own research, I have found that if I determine my taxable income (for federal income tax purposes) the way the law *requires* me to, my income does *not* show up as taxable, contrary to popular opinion. (Mostly the government is annoyed that I dared to publicly express that conclusion.) Clearly you believe that I am determining my taxable income incorrectly. I know several thousand people who would like to avoid having their homes invaded, their friends and acquaintances harassed, and the government trying to put them in cages, but who nonetheless have reasonable questions about how they should determine what (if anything) they owe. As a public service, I would be happy to tell them how *you* believe they should determine their taxable income, so they might personally avoid such an intimidation/harassment campaign as you've waged against myself and my wife.

Please provide me with direct, written answers to the six enclosed questions (including any elaboration you deem necessary), and I will post your answers on my web site (www.taxableincome.net). If my conclusions are in error, as you seem to think, what could be better for you than a chance to have me forward *your* answers (unedited and in their entirety) to the people interested in the issue? That way you could "straighten out" the thousands of people currently researching what you call my "*tax fraud scheme*."

When I gave the same opportunity to the IRS Commissioner and the Secretary of the Treasury, they failed to answer the questions, and instead sent out thousands of form letters *insulting* and *threatening* the people who had asked the questions. When I (and others) sent the questions to your boss, Patrick Meehan (U.S. Attorney), he refused to answer. You have since tried to characterize my suggestions that people *ask the government how to determine what they owe* as an attempt to *interfere* with the administration of the tax laws. (Frankly, that is insane.)

If you're qualified to investigate alleged *violations* of the tax laws, surely you are capable of telling people how to *obey* the law. If even now you cannot explain how I *should* have determined my taxable income, it might look to some like you are nothing more than a hired thug, sent to punish me for speaking my mind, rather than someone involved in a legitimate investigation. You wouldn't want people getting that impression, would you?

Sincerely,

Larken Rose
[home address redacted]

Enc: Questions Regarding Determining Taxable Income

You get one guess as to whether he ever responded in any way.

Several times on the day that I did the silly handwriting exemplar routine, Mr. Miller suggested that I should seek counsel (have an attorney represent me). No doubt he would have much preferred to deal with some system-worshiping lawyer than with me. Too bad.

I also pointed out to Mr. Miller that it was up to the grand jury, not him, to decide what evidence to hear, and when. He insisted that that was not the case; that it was totally up to him when we would be allowed to speak to them. The Supreme Court, however, says that the grand jury "*may determine alone the course of its inquiry*" and "*may compel the production of evidence or the testimony of witnesses as it considers appropriate*" (*United States v. Calandra*, 414 U.S. 338 (1974)). And in

Hale v. Henkel (201 U.S. 43 (1906)), the Supreme Court *disagreed* with the idea that "*grand juries are confined, in their inquiries, to the bills offered to them, to the crimes given them in charge, and to the evidence brought before them by the prosecutor*." But hey, who cares what the law says when there are troublemakers to silence; right, Mr. Miller?

My Visit with the Grand Jury

Many weeks later, over a year since I started asking to talk to the grand jury, I was finally allowed to do so. In preparation, I put together twenty-three identical folders, one for each grand juror, containing various citations of law, copies of correspondence I had sent to the government, a copy of my *Theft by Deception* video (on DVD), and a copy of the *861 Evidence* mini-CD. I was allowed to give them the folders, though whether any of them ever actually looked at any of the contents, I don't know. When Tessa later had her chance to talk to them, the comments and questions of the grand jurors implied that they hadn't looked at any of it. Thanks, guys, for doing such a swell job of protecting the citizenry from over-zealous, lawless prosecutors.

Each of the folders I gave them contained, in addition to the things mentioned before, a copy of a letter from Sherry Peel Jackson, CPA and former IRS Revenue Agent, which she had written to me for the express purpose of forwarding to the grand jury, to show that there are tax professionals who agree with my conclusions. Her letter began with her credentials, showing that she was a CPA, a CFE (Certified Fraud Examiner), and a former IRS Revenue Agent who had received numerous awards, including one from the IRS Commissioner himself, for her work at the IRS.

She then described her own journey that brought her into the realm of unorthodox tax "theories," eventually leading to the 861 evidence. Her 134 research eventually led her "*to understand that the salaries and wages of most Americans is not taxable, and what is taxable is income from engaging in commerce with other countries*." Sound familiar? She stated that she was "*very impressed*" by my research, and the fact that even though I "*do not even have a business degree*," I "*tore the IRC* [Internal Revenue Code] *apart and logically made sense of that 'mound of mass confusion',* " adding that my "*efforts to show the correct and logical flow of the evidence, from the beginning through the changes, are superb*." (Sorry if this sounds like bragging, but I'm just quoting what she wrote for the grand jury to read.) She further agreed with my conclusions that the changes which have occurred to certain sections of the law over the years demonstrate "*a deliberate attempt by someone or some group to make most Americans believe that they are liable to pay the federal income tax*," when in reality they are not.

Her letter went on to say that she had become skeptical of people's motives, but after meeting me and talking to me, she found my motives "*to be as pure as* [my] *research*," saying that she saw me as a "*seeker of truth*," like herself. She then discussed the government's extremely curious inability or unwillingness to answer perfectly reasonable questions about the tax laws, which were being asked by so many Americans: "*The government's refusal to answer these questions speaks louder than the church bell rings on Sunday*." Her letter also included this:

"*Most of the rank and file IRS employees don't know anything beyond IRC Section 61, and when I have attempted to talk to my former co-workers about it, they have stated that they were not*

allowed to discuss these things with me, nor could they accept any questions or inquiries about anything questioning the income tax. This is another sad state of affairs—people can't talk freely about what should be their job."

Each folder for each of the 23 grand jurors also contained a copy of a letter from Terrill Croghan, attorney and former *federal prosecutor*, also sent to me for the express purpose of being forwarded on to the grand jury. In it, Mr. Croghan spoke of his recent research into federal tax laws, and explained that, up until recently (long after working for the DOJ), his "*knowledge about the actual wording and meaning of this body of law was, I am embarrassed to admit, superficial and based solely upon assumption and what I'd been 'told' the law said and meant*." He reviewed many theories which left him "*less than satisfied, simply because they didn't address what the law actually said, or meant*," but instead just "*protested its existence*" or were the result of "*questionable legal analysis*." (Sounds a lot like the beginning of my own journey.) Then, his letter explained, he came across my "Taxable Income" report. And, just as I had been, he was initially very skeptical about the idea, based on his past experience with anti-tax "theories."

He added that since I'm not a lawyer, he wasn't very hopeful that he could "*learn anything of value or substance about the tax law*" from my report. After reading my report, however, he decided that he "*had been very wrong about that*." He read the report looking for "*analytical weaknesses or deficient logic*," and found none. "*The deeper my analysis of the law became, the more I became convinced that the conclusions expressed in Mr. Rose's report were correct*." He described his own fruitless attempts to get a half-decent rebuttal from those in government, and how, because of their utter failure to give any real refutation of the issue, he became "*more and more convinced there must be none that exists*."

Interestingly, Floyd Miller, in front of the grand jury, then implied that Mr. Croghan had never actually worked for the DOJ, which in turn implied either that I was lying or that I had been tricked by someone pretending to be a former federal prosecutor. Mr. Miller explained how he had done a search for Mr. Croghan's name, and had come up with nothing. That's not surprising, since he spelled Mr. Croghan's name incorrectly. Nonetheless, since he had made the insinuation, very soon after that, and at my request, Mr. Croghan sent a rundown of his credentials and history, giving the name of a sitting federal judge whom Mr. Miller could contact if he wished to verify Mr. Croghan's previous employment at the DOJ. When Tessa later appeared before the grand jury, she gave that document to Mr. Miller, in front of the grand jury.

In addition to giving each of the grand jurors a folder of the prepared materials, I also wanted to give them a brief overview of my case in person. Once I was sworn in, Mr. Miller said he would let me have fifteen or twenty minutes to talk. I hate to bring up the law again, but legally he has no say whatsoever in what the grand jury chooses to hear. Nonetheless, expecting this tactic, and taking into account the ten-second attention span of the average American, I had planned to keep it short anyway.

I gave a quick overview of the basic facts, gave a quick lesson on what "willfulness" means, and spoke briefly about how one of the main functions of a grand jury is to prevent government misconduct—a concept I suspect Mr. Miller failed to tell them about. After that, I spent a couple of hours answering questions from the grand jurors and from Mr. Miller. It was very interesting to observe a group of people who had been regularly exposed to an ongoing demonization of me for

over a year. The government's lies seemed to have done the trick, at least on many of the grand jurors.

Of particular note were two perpetually grouchy middle-aged women who my wife and I thereafter referred to as the "wicked witches." They were an interesting combination of clueless, bitter, and judgmental. Here is what one of them said to me:

"*Mr. Rose, I think your interpretation of the law is totally irrelevant. I don't care what your interpretation is. As an academic exercise, that's fine. You have a right to think what you want. It's putting your—having the arrogance to act upon your interpretation. If everyone in the country interpreted the laws and acted upon those interpretations, that's the definition of anarchy*."

Wow. What an interesting (and delusional) attitude. Incidentally, whilst foaming at the mouth with her righteous indignation at the diabolical nonconformist (me), she apparently failed to realize that if I *believed* I had no taxable income, as she seemed to concede, then it's impossible for me to have committed *any* of the crimes alleged, because of the "willfulness" element. But little things like law and logic weren't about to get in the way of this witch-led witch hunt. She also wasn't satisfied when I pointed out that it's a crime for any person to sign a return which he doesn't *personally* believe to be accurate—i.e., which doesn't coincide with his *own* understanding of what the law requires.

At one point the other wicked witch commented that it was up to "the courts," not to me, to "interpret" the law. (Later I'll have a few words to say about the misuse of the term "interpret.") Oddly, when I then quoted the *Supreme* Court (from *United States v. Correll*, 389 U.S. 299 (1967)) saying that it is primarily the job of the regulation-writers, and *not the courts*, to administer and interpret the tax laws, she didn't want to hear about it. So apparently, in her view, the hierarchy of legal authority has me at the bottom, the courts in the middle, and her at the top—and the written law itself isn't even in the picture.

Ironically, I believe it was the same witch who, on another occasion, opined that even if my income wasn't taxable, I still had to file returns. When I quoted from memory the regulations saying the opposite, she used the preferred debating method of grouchy witches the world over: scrunched up her face (even beyond its baseline degree of scrunchedness), looked down, and shook her head. So when I say that what the statutes and regulations say didn't matter at all to the witches, I'm not kidding.

Curiously, the witch sitting more or less in front of me, while asking me questions, kept turning all the way to her right to face Mr. Miller, as if seeking his approval, hinting at what a fine, independent, objective investigation these people had done. At another point, one of the witches also said, in a tone that made it quite clear that it was supposed to be an insult, that I was a very "complicated" person. (I'll try to be more of a simpleton next time, to please the wicked witch contingent.)

I have no doubt that many of the comments from the grand jurors were simply echoes of the lies Mr. Miller had been drilling into their heads for so many months. To wit, in his closing arguments at my trial, Floyd Miller repeated almost verbatim the line quoted above, about how each person interpreting the law for himself is the definition of "anarchy." Well, now I know where the witch got

that goofy idea. She wasn't even being original in her idiocy; she was plagiarizing it.

The Inquisition

What a prosecutor is supposed to do in front of a grand jury is present evidence. He is not supposed to ramble on about his own opinions, and he is not supposed to demean or vilify the accused. In fact, such behavior is often grounds for having an indictment thrown out by the courts. (One court threw out an indictment because the prosecutors engaged in "*unrestrained, abusive histrionics, giving their personal evaluations of what a low-down fellow the defendant really is*" in front of the grand jury.) Nonetheless, even when I was there, Mr. Miller was in full demonization mode, openly accusing me (without a shred of evidence) of doing what I did just for monetary gain, not for any "patriotic" reason. For all the days I wasn't there, when the proceedings were held in secret, I can only imagine how Mr. Miller characterized me.

One thing I am sure of is that Mr. Miller was not exposing the grand jury to the relevant evidence, such as my meetings with the IRS, my letters to the IRS, my video and my report, etc. How do I know this? Because when I was there, one of the grand jurors asked me to summarize my legal position. He was not asking for a lot of details; he just wanted the general idea. How on earth could this group of people have been "investigating" my case for over a *year* and still not know even the general gist of my legal position? Answer: the prosecutors carefully avoided dealing with the real issue (which Mr. Miller continued to do while I was there), and instead spent the time drilling into the grand jurors' heads that I am a nasty, greedy, unpatriotic, scheming villain.

Even in legal filings, the prosecution made a habit of referring to my legal conclusions as a "scheme" or a "fraud," implying that I was doing something deceptive or dishonest instead of just stating what I believe. They had to use such slimy vilification rhetoric because to admit that I honestly believed my income was not taxable would be to admit that I had committed no crime. And that wouldn't help the government's inquisition-style, demonize-and-punish agenda. Floyd Miller even took the opportunity of my visit to the grand jury to try to demonize me some more. He brought up several private e-mails that the IRS acquired when they raided my home, and asked me about them. This is what he thought would make me look like a criminal:

1) He brought up one e-mail (I don't remember to whom) which I addressed: "*To anyone who is the enemy of my enemy*." Mr. Miller asked me who my "enemy" is, and I responded, "*Those who try to defraud my fellow Americans*." In that e-mail I explained how I think that the overall "propaganda war" is what we should focus on, informing Americans of the truth until the fraud becomes unenforceable, rather than trying to find some procedural solution to make the IRS obey the law. I started to explain to the grand jury that, despite the usual negative connotation, the term "propaganda" does not mean only *false* information. Mr. Miller interrupted me, however, and moved on to another topic.

2) He brought up another four-year-old e-mail in which I said that a few lower courts were wrong in claiming that the "income tax" is a direct, unapportioned tax. Mr. Miller wanted to make a big deal out of the fact that a mere peasant like me dared to say that a *judge* was wrong. So I pointed out that the Supreme Court also disagreed with that *lower* court judge, and I quoted from memory the

high court's rulings from the *Brushaber*, *Stanton*, and *Peck* cases as examples.

3) Mr. Miller brought up another e-mail I had sent to Dr. Clayton, in which I was telling him to take money from video sales out of our merchant account, to start to pay him back for what he had put in. The message included this flippant "command":

"*You will not argue with me on this one. I am the High Exalted Pain in the Ass Emperor of Anarchy. I have spoken. As soon as the merchant account has the money in it to reimburse the copying and shipping costs for this 5000* [copies of the video] *, TAKE IT*."

I was wondering why Mr. Miller would bring that up. It was too bizarre for me to guess: he pointed out the phrase about me being the "*High Exaulted Pain in the Ass Emperor of Anarchy*," and asked me, with serious suspicion, what that phrase meant. I could barely keep from laughing while explaining that it was sarcasm. (I hate to have to state the obvious here, but "Emperor of Anarchy" is a contradiction in terms. It's called a joke. Maybe the feds should investigate the concept.)

So that was it. *That* was what was supposed to make the grand jury think I was a criminal. If you want an indication of just how non-existent their case against me was, this was it: they had a chance to question me, under oath, without a lawyer, in a setting where anything I said could be used in court, and *that* was what Mr. Miller asked me about. Incidentally, defense lawyers really don't like their clients talking to grand juries, for that very reason: the government can question them and use their statements against them later. Guess how much of what I said in front of the grand jury came up at trial? None of it.

In the end, what most of the grand jurors were thinking—or whether they were thinking at all—was hard to tell. But two men, one being the grand jury foreman, seemed both attentive and thoughtful. Each of them, on separate occasions, made comments along the lines of "*you obviously believe in what you're saying*," and said they sensed that I was both intelligent and well-informed on the subject. Once again, I'm not sure they were aware that if I "believed" I didn't owe the tax, it was impossible for me to have committed any of the crimes being investigated. Anyway, I said my piece, and left my freedom in their hands.

Tessa Visits the Grand Jury

Weeks later, Tessa got her chance to speak to the grand jury, and her experience wasn't much different from my own. The following are some excerpts from her comments to my e-mail list about the experience:

I explained what a willful tax crime is, and told them that the prosecutor must show evidence that I'm doing something other than what I believe the law requires. I explained why Miller's attempt to paint Larken as doing all this for money is ridiculous, not to mention irrelevant to the crime in question. I explained that an indictment would have a chilling effect on speech about this issue and all speech criticizing the government.

Some of the grand jurors obviously didn't look at Larken's stuff (he gave them DVDs of Theft by Deception and the 861 Evidence and some written material). This just demonstrates that many of them are already so prejudiced they don't even want to look at the other side. ...

One dude said, "You have to pay your taxes whether you believe it or not!" I replied that I DO pay my taxes, and that I have to do what I believe the law requires. In retrospect, I should have pointed out that there are thousands of taxes in this country. Which ones should I pay—the ones I believe apply to my situation, or ALL of them? Of course paying every tax that exists would be impossible, so there must be SOME way to tell which ones apply to me. Hey, what about LOOKING AT THE LAW?

Miller brought up that the judge in Thurston Bell's case said this "argument" was "nonsense." So shouldn't I believe him? I said that the only thing that matters is what the law says. Saying something is nonsense doesn't make it nonsense. Anumber of jurors also asked questions like that—would you believe this kind of judge? or this kind of judge? I just kept saying that I believe what the law says. If the judge says something that's firmly and logically based on legally binding statutes and regulations, then I would agree with him. But if he's just shouting "frivolous!" based on nothing, or based on one statute out of context, that has no merit.

One lady asked if it would be possible for anyone to come up with a different interpretation that I would believe. I said theoretically yes, and this is what we'd been asking the government for, over and over again, from the beginning—an interpretation based on statutes and regulations that makes our income taxable. After six years of asking for this and not getting it, however, I am convinced that such an interpretation does not exist.

I told them that what most convinced me that Larken's interpretation was correct was the IRS response, or lack of response, to his questions. We truly wondered, back at the beginning, if we were missing something that might change the picture. We wanted to make sure we were doing the right thing. We asked and asked and asked. Surely if there was a missing piece, the IRSwould have found it and showed it to us. But they never answered the questions, never came up with citations to support a different position, never clarified what their own position was, and ultimately just tried to bully us into changing our minds. Even when thousands of other people asked the same questions, they never answered. ...

I did note some of the taxes we do pay—property, school, sales. No one really said so, but I got the feeling some of them didn't think this was "enough," which is really sad. And I think Miller tried to play on this by noting something (totally irrelevant) about our credit card statements, and how we, according to him, went out for dinner a lot. He also brought up something I wrote about "sources of stress," and noted that "these things are stressful for all of us." I think this was all intended to make the jury folks envious and hateful towards me. Some people are so attached to their depressing way of life, and so unable to think outside their little public-education/mass media thinking box, that they really hate people who try to open the cage door and show them the way out. We can only hope that some of them were smart enough to see through this. At least one or two men asked me intelligent questions, and one of them asked Miller if they could have an 861 expert come in and testify. I think it was a different guy who asked if it would be someone from the government. Of course, Larken is the number one 861 expert in the country, and he was already there. Do they really think the government is going to allow an expert who disagrees with them to testify? Are they really incapable of seeing the conflict of interest here? If the grand jury had any sense, they'd be doing their own research, not asking Miller to spoon-feed it to them.

Another man said he would like to see the legal basis of judges' opinions (the ones who say our interpretation is "nonsense," or "frivolous"). That would seem to indicate a bit of open-minded rationality in one person at least.

Miller asked me what I will do when I'm 65 or if I become disabled, which I pointed out was completely irrelevant to the issue before the jury. He asked me if I thought I should get money from the government if I hadn't paid into Social Security. After duly noting the irrelevance of this for the record, I pointed out that I HAD paid into Social Security for many years. But I want no money from the government anyway. I said, "I think people who pay into it should get something out of it, and people who don't pay into it shouldn't." So much comes to mind on this topic, I could write about it all day, but it didn't belong in that room.

Miller then asked me what I thought would happen to the country if our interpretation of the law were taken to its logical extreme. He did use the word "extreme," which was sort of odd. As if applying the law correctly to EVERYONE would be an EXTREME measure. After duly noting the irrelevance of this for the record (again), I said that I thought we'd most likely have an economic boom because the government wouldn't be wasting so much of our money.

Much later we received the transcripts of our testimonies before the grand jury. In addition to the things mentioned above, there was one other thing she said to the grand jury that is worth quoting here.

"*Now, Mr. Miller has had approximately 16 months, I think, since a bunch of armed men attacked and robbed my home, to pick through all our computers and all of our personal papers, and find things to take out of context and twist, and find something that would make you not like us. I'm pretty sure, if I were given the same chance with his computer and some personal papers, I could probably make you not like him, too. But I seriously doubt that, even after all the searching and picking and twisting and taking things out of context, that he's come up with anything that demonstrates that we don't believe what we're saying*."

She was exactly right. Mr. Miller had absolutely *nothing* even hinting that we believe we owe federal income taxes. Mainly he harped on the fact that our finances improved, in an obvious attempt to stir up envy among the grand jurors, and implied that the world would come to an end if we were right, but he presented nothing at all suggesting that we thought we owed the tax, which was an *essential* element of all of the alleged crimes they were "investigating."

Avoiding the Willfulness Issue

I guess it wasn't enough for the prosecutors to lie to the grand jury about the facts, because they also lied to them about the law. When I met the grand jury, and later when Tessa met them, the prosecutors mischaracterized and/or omitted entirely the concept of "willfulness." Common sense and established law (which don't usually agree) both dictate that an indictment is bogus if the grand jury didn't understand the basic elements that constitute the alleged crime. (You obviously can't find "probable cause" to think a crime has been committed if you don't know exactly what the alleged crime *is*.) Because of this, after the indictment was issued, I filed a court motion to have the grand jury transcripts unsealed, so I could use Mr. Miller's gross misrepresentation of what "willfulness" means to have the indictment thrown out.

Normally grand jury transcripts are kept secret, and the Supreme Court explains several reasons for this: 1) witnesses might be "*hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony*"; 2) some witnesses might be "*less likely to testify fully and frankly, as they would be open to retribution as well as to inducements*"; 3) those indicted might flee; 4) those about to be indicted might try to influence individual grand jurors to vote against indictment; 5) those accused but not indicted would be held up to public ridicule.

To make sure that *none* of those would be of any concern at all, we asked only to see what the *prosecutors* said to the grand jurors. We didn't care what the grand jurors said, or what witnesses said. (Originally we asked for the testimony of IRS witnesses, but later dropped that part of the request.) With that out of the way, the rules say that grand jury transcriptions should be unsealed if the accused can even show that "*grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury*." We demonstrated that we had reason to believe that: 1) the government had failed to properly instruct the grand jury on the law to be applied (specifically, the element of "willfulness"), and 2) the government had engaged in improper and irrelevant

demonization of me and my wife in front of the grand jury. Either of those issues can result in an indictment being thrown out.

Not surprisingly, the prosecutors wanted to keep what they had said to the grand jury a secret. In their response to our motion, they argued that grand jury secrecy is desirable "*to preserve the freedom and integrity of the deliberative process*." That's nice, but we weren't asking for anything from the deliberations; we wanted to see only what the prosecutors had said. They also argued that a court "*has no authority to dismiss* [an] *indictment on the basis of prosecutorial misconduct absent a finding that petitioners were prejudiced by such misconduct*," and they added that "*even if there was some improper conduct, there are more appropriate sanctions than dismissal of an indictment*." That's nice, but we weren't yet asking that the indictment be dismissed; we were only asking to see the grand jury transcripts.

Oddly, they then argued that "*the prosecutor is not even required to give legal instructions to the grand jury*." Huh? How are grand jurors supposed to investigate alleged crimes if no one tells them what actually constitutes a crime? Oddly, the same government motion went on to explain that a prosecutor's job in front of a grand jury is "*to present evidence to the grand jury and to instruct them on the applicable law*." Well, which is it? Then they argued this: "*Even assuming, arguendo, that the grand jury was not fully instructed on the law, 'erroneous grand jury instructions do not automatically invalidate an otherwise proper grand jury indictment'*." Again, we weren't yet asking that the indictment be dismissed; we were asking only to see the transcripts. Their motion also cited language from the indictment itself, which says that we "*willfully failed to make an income tax return*," despite "*knowing*" that we had a requirement to file. They were claiming that *that* was a sufficient explanation of willfulness, even though it says nothing about what the term means.

The grand jurors clearly did not understand "willfulness," as demonstrated by their comments (mentioned above) about how they didn't care what I "believed," that I shouldn't have acted on my own "interpretation" of the law, etc. For good measure, here is yet another quote from a grand juror, demonstrating complete ignorance of the concept of "willfulness": after Tessa said, "*I am obligated to do what I believe the law says I should do*," a juror said that the grand jury had looked at the law, "*and I think it's a matter of interpretation; so maybe we're interpreting it differently, that's all*." It's not a crime to have a different interpretation of the law, and if they had been told what "willfulness" means, they would have known that.

Regarding our accusation that Mr. Miller improperly demonized and personally attacked us in front of the grand jury, the government argued that the fact that we were allowed to speak to the grand jury "*all but eliminated any danger that the grand jury was misled or improperly influenced*," and so the government had difficult seeing how the grand jury "*could have been prejudiced by the alleged prosecutorial misconduct*." So the feds can say whatever they want about us for over a year, behind closed doors, but because we then each had a couple of hours to talk to them, the grand jurors couldn't possibly have been prejudiced or improperly influenced. Huh? Talk about a "frivolous" argument.

Well, we had a court hearing about our motion to unseal grand jury transcripts, and we won! At least Judge Baylson *said* we won, and ordered the government to give him the grand jury transcripts so he could see if anything needed to be redacted (blacked out) before the transcripts were given to

us. Hooray! A little justice at last!

Nope. What I later received was a copy of the transcript of only *one* day—the last day of grand jury activity. I was not pleased, and immediately filed another motion, asking that I be supplied with *all* of the transcripts, as the judge said was supposed to happen. The government's response to that second motion said very little about the issue, demonized us a bunch, and then said this: "*Confident that the jury will reject the defendants' claim, the so-called '861 evidence' will become, like other tax protestor scheme, a relic of a bygone era*." Aside from deserving an "F" in basic English, that statement accidentally reveals the government's real motivation: to silence the issue.

So we had yet another court hearing about my second motion, at which Floyd Miller claimed that the very last day was the only day instructions about "willfulness" had been given to the grand jury. Huh? You mean the grand jury spent 18 months "investigating" me, but weren't told what would actually constitute a crime until the *last* day? Bullpoop, Mr. Miller. Insanely, the judge ruled that, *without* looking at the transcripts, he would take the government's word for it that those were the only instructions given on willfulness. After all, Judge Baylson explained, lying about something like that could get a prosecutor in big trouble, so the court chose to blindly believe the habitual liar, Floyd Miller. How, exactly, would it get him in trouble, if no one (including the judge) is ever allowed to see the transcripts, to find out that Mr. Miller lied?

So not only did the prosecutor decide what the grand jury would see and hear, but also, with the court's permission, he was allowed to decide what the *judge* was allowed to see. (Throughout this story you may notice a common pattern of the government trying to hide what it does, while I am completely open about what I am doing. That ought to tell you who the real criminals are.)

Ironically, after all that, the one day of transcripts I received—which presumably would be the *least* damning to the government, since that's what it chose to release—showed Mr. Miller misrepresenting the issue of willfulness. He defined "willful" failure to file as being the opposite of an "*accident or mistake*." Obviously my not filing was not an oversight; it was very much on purpose, based upon my discovery that my income isn't taxable. But the way Mr. Miller mischaracterized the concept pretty much forced the grand jury to indict, while an accurate explanation of "willfulness" would have forced them *not* to indict. Just to make it perfectly clear, here again is what the Supreme Court said about it, in what both the DOJ and the courts acknowledge to be *the* governing case on "willfulness":

> **"A good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable." [Cheek v. United States, 498 U.S. 192 (1991)]**

If the grand jury understood that, i.e., if Miller had told them what the law means, they could only have indicted if they had found probable cause that we *believe* our income to be taxable. Since there was no reason at all to think that, and the government had no evidence of it (because it isn't the case), Mr. Miller chose to lie to them about the law instead. And that was just on the one day for which they let me have the transcripts. How badly he lied on all the other days he talked to the grand jury, I can only guess. In keeping with the DOJ's avoidance of the issue, the indictment itself, in describing the offense, said nothing about our beliefs, and did nothing to establish "willfulness," nor did it even talk about the issue of "willfulness" at all, despite it being an essential element of the

alleged crime.

So, based upon just two days of grand jury transcripts—the last day, and the day I was there (which they had to give me for other reasons)—I filed a motion arguing that the indictment was invalid and should be thrown out, because: 1) the prosecution had grossly misrepresented an essential element of the alleged crime (willfulness), and 2) the prosecution had personally vilified and maligned me in front of the grand jurors, in order to prejudice them against me. Again, each of those reasons alone is grounds for dismissing an indictment.

As to the issue of vilification, the government simply ignored it, as did the court. They acted as if I had never raised the issue at all. Interesting technique, equivalent to closing one's eyes, putting one's hands over one's ears, and saying, "I'm not listening, blah, blah, blah."

Concerning the issue of misleading the grand jury about the nature of the crimes alleged, the prosecution made a couple of rather odd arguments (in writing, even). Not only did they again argue that the prosecution isn't required to explain to the grand jury all of the elements of the crimes alleged, but they also argued that the grand jury heard "*extensive testimony from* [me] *regarding* [my] *interpretation of willfulness*," and therefore concluded that, "*By the end of both defendants' testimony, the grand jury was well aware of the concept of willfulness*." What? Now the *accused* has the responsibility of explaining the law to the grand jury? (That argument is a bit ironic in a case where the government contended that I am neither qualified nor authorized to interpret the law.) And of course, the well-indoctrinated grand jurors are infinitely more likely to believe the government's statements about the law than those of the accused. Nonetheless, the feds really did argue that because I had explained willfulness to the grand jury, it was okay that they hadn't—and in fact okay that they had *mischaracterized* the issue.

Incidentally, when I spoke to the grand jury, I quoted verbatim the Supreme Court's ruling in the *Cheek* case (shown above), after which Mr. Miller said that he had a different "interpretation" of willfulness. So I guess Floyd Miller now outranks the Supreme Court as well.

Our motion to have the indictment thrown out was denied. So, by lying to them about the law and about me, while withholding all relevant evidence, the government convinced at least half of the grand jurors to issue an indictment for misdemeanor "willful failure to file" federal income tax returns.

> **"The prosecutor's responsibility is to advise the grand jury on the law and to present evidence for its consideration. In discharging these responsibilities, the prosecutor must be scrupulously fair to all witnesses and must do nothing to inflame or otherwise improperly influence the grand jurors." [U.S. Attorneys Manual (USAM), Section 9-11.010]**

In case you think there is some room for different interpretations about "willfulness," or that its meaning remains debatable, the following is from the *government's* requested jury instructions in my case. Yes, this is what *they* requested the judge tell the jury about what "willfulness" means: "[I] *f a defendant had a subjective good-faith belief, no matter how unreasonable, that the law did not require him to file a tax return or to pay federal income taxes, he did not act 'willfully'.* " And this, too: "*A good-faith misunderstanding of the requirements of the law can be based upon information given a person from other individuals, a person's interpretation of case law, meaning court cases,*

as well as statutes and regulations, no matter how unreasonable a person's interpretation seems to you."

Not exactly how they portrayed it to the grand jury, is it? So the grand jury indicted, with the impression that if my not filing wasn't accidental (which it obviously wasn't), it had to be "willful." For whatever reason, however, they indicted only on the *least* serious offense: misdemeanor willful failure to file.

In the one day of transcripts we received, something else very interesting showed up. One grand juror asked whether they had "investigated" all the other alleged crimes (tax evasion, conspiracy, attempt to corruptly interfere with administration of tax laws, filing false claims, etc.) for nothing. Here is the amazing reply by Assistant United States Attorney Floyd Miller:

"*No. You did, it is—it is because this is, I don't want to sound like a patriot, but because this is the United States we have to make sure that before you, essentially, you know, fire the starting point that there is clearly evidence there beyond a reasonable doubt that a jury could find that somebody committed a crime. I guess what I'm trying to say is, the problems that we're trying to solve are these, the Constitution, the First Amendment to the Constitution allows certain individuals to have freedom of expression, I mean, to say some pretty horrible things even if you don't like it*."

Wow, there's a lot of insanity in there. Let's see:

1) Mr. Miller doesn't want to sound like a "patriot"? After all, only a total extremist wacko would talk about constitutional rights, right? Don't worry, Mr. Miller, you don't sound like a patriot. You sound like a fascist.

2) To our wonderful "Department of Justice," the First Amendment is a "problem" to be "solved." That about says it all. He might as well have just said, "There are these damn rights that we have to find a way around."

3) The First Amendment allows only "certain" people to speak their minds? Mr. Miller must have a different version of the Constitution than I do.

4) Apparently discussing tax laws is a "pretty horrible" thing to do. I feel so ashamed.

Anyway, in the end the feds had to settle for only *one* false charge against me and my wife. Poor them.

Incidentally, I had written to the DOJ ahead of time, asking that if we were ever to be indicted, they not do the dramatic Gestapo-style arrest routine, but just send out a subpoena, which we promised to comply with by turning ourselves in. And at least they did that (because they knew we were not a flight risk or a danger to anyone). After we got the letter saying we had been indicted, on March 10, 2005, Tessa and I went downtown for our arraignment, at which we pleaded "not guilty," and were released on a $20,000 unsecured bond each.

So we were going to trial. We had been totally open and honest about our actions and our beliefs, we had gone out of our way to tell the government what we were doing and to ask them to show us anything in the law we might be missing (which they failed to do), and now they were going to try to put us in prison for it. It was time to prepare for battle.

One Arm Tied Behind My Back

When I let it be known that I was going to represent myself at trial, lots of people, including several good friends, roundly criticized me for it. (As the saying goes, he who represents himself in court has a fool for a client.) But being a bonehead wasn't the only reason I made that choice, though it probably contributed. There were other reasons why I felt I had to do it that way, and I still think so.

My goal was not just to get myself out of trouble. Remember, I volunteered myself *into* trouble, and that wasn't just for the fun of trying to get out of it again. I was attempting to expose the biggest financial fraud in history, and to serve that purpose, I could not have an attorney represent me.

First of all, attorneys are creatures of the system, and the system can expel them from the game if they don't behave. As a result, very few attorneys would want to allege that my conclusions are actually correct, especially since several attorneys have already been punished for saying so. So where would that leave me if I used an attorney? He would have to essentially argue, "My client's conclusions are wrong, and stupid, but he really believed them." That would be the game plan of almost any defense attorney, in an effort to preserve his own reputation while trying to defend me. Needless to say, having that as my defense wouldn't exactly help a lot in the effort to expose and end the fraud.

In addition, a lawyer couldn't possibly demonstrate my beliefs better than I could. In fact, it would take many hours—expensive, billable attorney hours—just to get the average lawyer to understand my legal position, at least well enough to not botch it up in court.

It was also important to me that I keep the trial understandable to the general public. I didn't want to win on some weird technicality, nor did I want a trial which was 90 percent procedural bickering and legalese gobbledygook. To inflict a real blow against the fraud, the issue had to be kept as simple as possible: Did I break the law by not filing federal income tax returns, or not? A resounding "no" from the jury would have been devastating to the government's intimidation and propaganda campaign. And, if I'm allowed a little wishful thinking, it could have brought some real public attention to the fraud.

On the other hand, had the trial consisted of the usual circus of legal tricks, incomprehensible to the general public, it would have accomplished little or nothing, even with a "not guilty" verdict.

I also wanted to be the one to cross-examine the government witnesses, because I was more familiar with the facts of the case—and therefore better able to catch the IRS in their lies—than an attorney would be. I could not do this if I were represented by a lawyer. Despite the fact that I lost, I still think that in general I did pretty well cross-examining the government's witnesses, but I guess you can judge that for yourself from the following account of the trial. If nothing else, at least I had fun

doing it.

Yes, representing myself did put me at a distinct disadvantage in several ways, especially since I knew only a little about court procedure (after my self-study crash course), and wasn't sure what dirty tricks, "legal" or otherwise, the prosecution might try. But to accomplish what I had set out to do, I had to represent myself. Had I won, as a little non-lawyer nobody, against the all-powerful federal government, it couldn't help but make waves, and would have put a huge crack in the IRS's reputation as an invincible bully—an image it tries very hard to maintain.

For all the court procedure, however, I decided I should have "standby counsel," an attorney I could consult with during the trial about procedural and legal questions. Due to scheduling problems and procedural details, there was quite a stressful, complicated drama involved in getting standby counsel, pretty much at the last minute. At the same time, Judge Baylson decided to split the trial in two: one for me and a separate one for Tessa. That last-minute decision did quite a bit to mess up our plans for how to present our defense. Coincidence? I doubt it. (I still think the judge's legal excuse for splitting the trial was more than a little dubious.)

I ended up using Larry Becraft as my standby counsel. He had been in battle before with the IRS and DOJ, and had given them at least a couple of black eyes along the way. (He was involved in the cases in which Vernice Kuglin and Lloyd Long were acquitted of tax-related charges.) Even though he was essentially stuck in the role of procedural assistant in my case, since I was still officially "pro se" (representing myself), he helped a lot with preparation, especially considering the fact that we had about two seconds to prepare (which was not at all his fault). I also don't fault him at all for the verdict; he did a fine job of preparing and questioning me.

Some people have suggested to me that "winning is everything," no matter how it's done, and that I should have had a lawyer represent me. But I still maintain—as I sit here in prison—that I had to do it the way I did. (I'm a bit stubborn, as you may have noticed.)

Part V:
Pregame Show

Preliminary Skirmishes

And that brings us almost to the story of the trial itself. Of course, there won't be any suspense about the outcome, since you know I ended up in prison. (At the moment people still don't get thrown in jail after being found not guilty, but I'm sure the DOJ is trying to have that changed.) But despite the lack of suspense, what happened at trial tells a lot about just how far downhill our "justice system" has gone.

Preceding the actual trial, however, a lot of preliminary legal skirmishes occurred, some of which entailed just boring procedural stuff, but some of which were very educational.

The legal motions and hearings regarding the illegality of the IRS's raid on my home, for example, actually began before I was indicted, and continued right up to the trial itself. Long before I was indicted, I filed a "Motion to Quash," arguing that the search warrant should be declared unconstitutional and that everything they swiped should be returned. After Tessa and I were indicted, my Motion to Quash evolved into a Motion to Suppress, asking the court to exclude from the trial anything the IRS swiped during the raid, on the basis that the raid was blatantly unconstitutional. What follows is an overview of the arguments back and forth over the bogus search warrant.

Show Me the Justification

When any government agency wants a search warrant, an agent must fill out an "affidavit of probable cause" (APC), giving facts which are supposed to legally justify a search of private property. That "APC" is given to a magistrate, whose permission is required to make the warrant legal. (These days, however, most magistrates simply rubber-stamp anything put in front of them.) Well, the ever open and honest IRS had its APC "sealed" by the court, meaning that no one was allowed to see it. So I filed a motion to have it unsealed, so I could challenge the constitutionality of the raid on my home. On February 27, 2004, a court hearing about it was held in front of U.S. Magistrate Linda Caracappa.

As an aside, I filed that motion to unseal in the same envelope as a motion to quash the search warrant, which is discussed more below. Judge Caracappa informed me that, by their arbitrary, asinine rules—though she didn't use those words—they process only the first thing in the envelope and ignore the rest. So they pretended I hadn't filed a motion to quash, which I then filed again. For the first hearing, I had prepared to discuss mainly the motion to quash. I didn't learn, until *at* the hearing, that only the motion to unseal would be discussed.

Judge Caracappa began by telling me that even though I had filed the motion *pro se*, she would treat me just as she would a lawyer, and not give me any special consideration. Sounds fair.

I received the government's response to my motion to unseal the APC as I sat at the table in the courtroom right before the hearing began. Apparently I was supposed to give an impromptu, off-the-cuff response to their filing, which I had never seen before. (How many lawyers would have put up with that?) Swell. No problem.

Judge Caracappa stated at the beginning that the government had the burden of proving that the APC should remain sealed. So Floyd Miller gave his argument: the APC should continue to remain sealed because unsealing it might reveal the identity of witnesses, other subjects of investigation, etc., and therefore would jeopardize the government's case. That was Mr. Miller's *entire* argument in court, and that was most of what his written motion dealt with: the supposed dangers of revealing the identities of potential witnesses and people under investigation.

The idea hit me on the spot: how about if all names and identifying information about any such witnesses or potential subjects were redacted (blacked out) from the affidavit before giving it to me? Judge Caracappa agreed that that would be a reasonable solution. Well, that should have taken care of all of the government's concerns, right?

Nope. Mr. Miller then completely changed his reason for wanting the APC to remain sealed (demonstrating that he was lying about why he wanted the thing kept secret in the first place). Then the truth came out: Mr. Miller wanted the APC to remain sealed because he knew *I intended to publicize it*. I was a little surprised that he freely admitted that in open court. Judge Caracappa had to then inform Mr. Miller that I had every right to publicize the document. In its written motion, the government whined that I wanted the APC unsealed "*for propaganda purposes, namely, to reassure their 4000 e-mail subscribers (and other potential adherents) that they need not follow the law and file tax returns for the current tax year*." What? How the heck would publicizing the government's document, which was supposed to prove that I'm a nasty criminal, "reassure" anyone that "*they need not follow the law*"? (It may very well prove that the *government* need not follow the law, but that's a different issue.) What a peculiar thing to claim: that allowing the public to see a constitutionally required document, supposedly justifying an armed invasion of my home, would "*impede and impair the Internal Revenue Service in carrying out its statutory duty which is to collect taxes*."

In its motion, the government even whined about "*numerous letters being sent to United States Attorney for the Eastern District of Pennsylvania and the Internal Revenue Service questioning the authority of the Internal Revenue Service to collect taxes on income of Americans earned in the United States*." Wow, that's some fine lawyer-spin. (Not surprisingly, the motion didn't mention that neither the U.S. Attorney nor the IRS ever answered the questions; he just whined about us asking them.)

I'm not sure what she had been told, or what she had been smoking, but out of the blue, Judge Caracappa opined that the government had "*bent over backwards*" trying to accommodate us. Yeah, they "bent over backwards" to refuse to answer my questions, to refuse to send the issue to their lawyers, to refuse to state the specifics of their own position, to publicly slander and demonize me, to try to silence my web sites, and to do an armed invasion of my home and steal my videos and reports. Yeah, that was some quality "service" they provided. If all that constituted "bending over backwards" to accommodate us, I wonder what Judge Caracappa would consider to be IRS misconduct.

The argument at the hearing ended with those as the only two issues: 1) the feds didn't want identities of certain people revealed, and I agreed to have all such information redacted from the APC before it was given to me; and 2) the feds didn't want me publicizing the APC, though the judge admitted that I had every right to do so. Since the feds had the burden of proof, and both of their arguments had been utterly and completely demolished, it was an easy win for me.

Well, no. Caracappa ruled against me anyway, and decided that the APC would remain sealed. The only justification she offered was to say that the country is "at war," with the 9/11 thing and all, and so ten months isn't a long time for the IRS to keep my stuff and to hide its affidavit of probable cause. Um, how is that even slightly relevant, since they showed no legitimate need to keep it secret at all (in light of my suggestion that names be redacted before unsealing)? And how does being "at war" matter? Is Floyd Miller engaged in hand-to-hand combat with al-Qaeda when he's not busy prosecuting me? Anyway, Judge Caracappa said I could wait a while and then try again to have the APC unsealed.

I am thoroughly convinced that the outcomes of such hearings are often foregone conclusions, and they hold a hearing and allow "arguments" just to give the appearance of due process, pretending that the judge is actually "judging" something. Considering the fact that the "argument" was a slam dunk in my favor after it was acknowledged that the *government* had the burden of proof and yet Judge Caracappa didn't hesitate to rule *against* me, I can only conclude that she knew exactly what she was going to "rule" before even stepping into the courtroom, and the "hearing" was all just for show.

There were two other noteworthy occurrences at that hearing:

1) When I mentioned that the IRS took all my *Theft by Deception* videos and said they would never return them (even after their "investigation" was finished), instead of denying it, Mr. Miller quickly alleged that those videos were evidence of a crime, though he didn't say *what* supposed crime they were evidence of.

2) Prior to the hearing on my motion, we sat in court through several arraignments of accused drug dealers and bank robbers. Judge Caracappa sincerely wished each of them "good luck." Neither I nor my wife ever heard Judge Caracappa wishing us good luck. Gee, I wonder why. (Hint: drug dealers and bank robbers pose no threat to the system of power which provides Ms. Caracappa with her paycheck and her prestige.)

So in August of 2004, well over a year after the raid, I again filed a motion asking that the APC be unsealed. This time, I sent a letter to my e-mail list inviting the subscribers to write their own letters to Ms. Caracappa, saying that they too wanted to see the APC, because they too had questions about the legality of the raid. So as to not annoy Ms. Caracappa too much, I had people send the letters to me, and I sent them all in one package. There were 150 letters from people across the country.

The government again opposed my motion to unseal the APC, still wanting the legal justification for invading my home to be kept secret. In a follow-up letter to Caracappa, Floyd Miller said this: "*Mr. Rose recently sent an e-mail message to his 'subscribers' which suggested that the*

'subscribers' should write to you for the purpose of encouraging you to unseal the affidavit." Since I told her that myself, and sent her the letters myself, I don't really think Mr. Miller needed to tell her. But then his letter said this: "*I will refer to* [sic] *this matter to the United States Marshal's Office for review. Mr. Rose has previously been warned about this type of conduct when he suggested to his 'subscribers' that they write to Judge Rueter*."

I bet some of you silly people were under the impression that we have the right in this country to petition the government for a redress of grievances—in other words, tell them what we think and ask them to do what we believe is just. Well, in the eyes of Mr. Miller, that's apparently a crime. Incidentally, I was not "warned" not to tell people to write to judges—I have every right to do that, *as the U.S. Marshals conceded* when they visited me before, regarding a threatening letter Judge Rueter apparently received from someone else (as I described above). When they visited me then they admitted, though somewhat reluctantly, that I had done nothing wrong, neither threatening anyone nor telling anyone else to threaten anyone. Yet the U.S. Department of Justice (at least some of their goons) consider it *criminal* when the peasantry politely writes letters to judges. Oddly, in his letter whining about my actions, he included copies of the two e-mails I sent to this list about it, which included this:

> **"If you think that you have a right to see that Constitutionally mandated, 'public' document (the affidavit of probable cause for the search warrant), then by all means write a short (one page), polite letter to Magistrate Linda Caracappa, saying you believe the affidavit should be unsealed. But send your letters to ME (not to her). ... I will then send all the letters at once to Judge Caracappa, in one envelope. It will let your voices be heard, without being an unnecessary annoyance (like 100 individual letters would be)." (Me, from 10/29/04 e-mail)**

Does anything about that look criminal to you? How about this one?

> **"So now I think it's worth letting the court know that you don't like the government acting in secret, and you want to see the Constitutionally required affidavit justifying an armed invasion of a private residence. Again, I don't want to annoy or anger Judge Caracappa, but I do want her to know what YOU think. So if you want to send a simple, one-page letter, written to her but sent to ME (at the address below), then on November 6, exactly 18 months since the raid, I'll send them all along to Judge Caracappa (in one package). ... You don't need to rant, or be nasty (please don't). It is enough to simply state that you want to know WHY the feds would do such a raid, and so you want to see the affidavit of probable cause justifying it." (Me, from 10/31/04 e-mail)**

Yeah, that really sounds like something the U.S. Marshals need to look into, doesn't it? Better pull a few of them off of kidnapping or serial killer cases, and have them investigate my e-mails instead. (Incidentally, the U.S. Marshals never contacted me about the obviously legal, polite, non-threatening letters to Judge Caracappa. They probably thought Miller was a bit batty to "refer" the issue to them at all.) Just for good measure, here is the letter I sent to Judge Caracappa myself, along with all the letters from other people. See if this sounds criminal to you.

November 8, 2004

U.S. Magistrate Linda Caracappa
U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1789

Dear Judge Caracappa,

It is now a year and a half since the IRS executed an armed invasion of my home, took hundreds of copies of a perfectly legal video (*Theft by Deception*), as well as dozens of written reports and bumper-stickers, confiscated all of my financial records, and copied or confiscated all of my computers. (See case #03-401-M.) As you know, I dispute the legality and Constitutionality of that raid, and because of that I have been seeking to unseal the affidavit of probable cause on which the search warrant was based. Now, 18 months after the raid, it remains sealed.

I am not the only one for whom the tactics of the IRS and DOJ in my case have raised suspicions. I have every reason to believe that the raid was motivated, not by any need for evidence of any crime (the DOJ in a court motion even conceded that I have done nothing to hide my actions), but by a desire to intimidate me into silence. The affidavit will show, one way or the other, whether the raid was justified and legally valid.

Many people are watching my case, and I wanted you to hear their concerns. However, because I did not want to unnecessarily burden your office with dozens of individual letters about the case, I asked that people send their letters to *me*, so that I could forward them to you in one package (to avoid the annoyance and inconvenience which dozens of separate letters would cause you). Enclosed are some (not all) of those letters.

The public has a right to know what their government is doing, and a government which functions in secret is a threat to the liberties of everyone in this country. Please unseal the affidavit, and let the people see for themselves what their government is doing.

Sincerely,

Larken Rose
[home address redacted]

Enclosure: 150 letters from concerned citizens

(P.S. Some of the enclosed letters request a copy of the affidavit, but I will be posting it publicly when it is unsealed, so fulfilling such requests individually is not necessary.)

Note the ironic contrast here: the APC is required to prove that there is "probable cause" to believe that I'm a *criminal*. So why is it that the feds wanted it kept *secret*, while I wanted to *publicize* it? (Their legal excuse was that they thought that somehow unsealing it might jeopardize an ongoing investigation, which, not surprisingly, also turned out to be absolute bunk, as you'll see.)

Motion to Quash

Right after the raid, long before I was indicted and long before I ever saw the APC, I filed a "Motion to Quash" the search warrant, asking the court to declare it unconstitutional and force the IRS to give us our stuff back. Since I didn't yet have their supposed legal justification (the APC), I had to guess a bit about what their lame legal excuses might be.

I should mention here that since 1998 I've been pushed into an involuntary education about various aspects of federal statutory and constitutional law, by being harassed, raided, prosecuted, and

otherwise terrorized for speaking my mind. One such topic is the Fourth Amendment, which outlaws unreasonable searches and seizures. (It outlaws them, but it doesn't actually stop them from happening, obviously.) The best way to explain what I learned about the Fourth Amendment is simply to summarize what was in my Motion to Quash, and later my Motion to Suppress.

My Motion to Quash began by giving some background about my research, my meetings with the IRS, etc., and then gave a report about the IRS raid itself, what the agents were seeking, what they took, how they behaved, and so on. The motion then argued that the "search" (i.e., armed invasion and robbery) was unconstitutional for five separate reasons. Without quoting the entire motion, I'll just summarize each point.

"1. The search was unnecessary and the warrant was obtained in bad faith."

First of all, a search warrant is not supposed to be used at all unless it is truly necessary.

"[A]ny intrusion in the way of search or seizure is an evil, so that no intrusion at all is justified without a careful prior determination of necessity." [Coolidge v. New Hampshire, 403 U.S. 443 (1971)]

The Supreme Court, and even the IRS's own manual, explain that searches shouldn't be used at all unless it's absolutely necessary for obtaining specific evidence of a specific crime that cannot be obtained from less intrusive means. And they already had all the pertinent info—about our beliefs, our finances, and our actions—because I had given it to them voluntarily.

"2. The warrant is defective because of a total failure to show a legitimate reason for its issuance, and because it is outrageously overly broad."

A search warrant is supposed to be used to search for *particular* evidence of a *particular* crime, which the government has "probable cause" to believe exists in a certain place at a certain time. Search warrants are *not* supposed to be used to engage in a "let's-see-what-we-can-find" fishing expedition. In my case, the warrant sought *twenty-eight* categories of items, including just about any financial documents imaginable, all computers and disks on the premises regardless of content, and any documents written by anyone relating to "*any tax-related issues*," as well as all IRS publications, documents related to the creation of my web sites, all copies of tax statutes and regulations, and more.

My Motion to Quash then considered each supposed criminal "offense" listed in the warrant (only the *least* serious of which we were ever charged with), and considered what relevant evidence the IRS might have needed to search for related to each:

1) Tax evasion (26 USC § 7201) and failure to file returns (26 USC § 7203). The IRS knew we had income, they knew we had stopped filing, and they knew why, because we *told* them all that, at the meetings and in writing. The feds did not allege that we were hiding income or assets, or lying about anything (and we weren't), or that we were being at all secretive about our actions or our legal conclusions. So what on earth did they need to "search" for related to those alleged crimes? Nothing.

2) Signing an incorrect return (26 USC § 7206(1)) and filing false claims (18 USC § 278). Both of these were about the claims for refund we had filed, which they already had (obviously). Since the claims explained themselves, and there was no dispute over any financial specifics, there was

absolutely no further relevant information or evidence which could possibly require a search.

3) Corruptly interfering with the administration of the tax laws (26 USC § 7212(a)) and conspiracy (18 USC § 371). Those allegations seemed to be related to my report, my video, my web sites, and my e-mail list, all of which the IRS already had complete, unlimited access to.

Those were all of the "offenses" alleged in their search warrant. Since they already had all the relevant information for all of them, and since the warrant didn't even *allege* the existence of any other evidence, or anything hidden, you might wonder (as I do), *Why the #@%$#& did they need to raid my home*?

Actually, I don't wonder that. The answer is obvious. They invaded my house for several reasons: to do a fishing expedition in the hopes of finding some "dirt" on me, to try to scare me into shutting up, to try to take my report and video out of circulation, and to try to scare other people away from listening to what I have to say. In other words, the raid was done entirely to help with their completely illegal, terroristic censorship agenda.

If you think I use the term "terrorist" lightly, think again. Even the way the federal government itself defines the term describes the tactics of the IRS perfectly: "*the unlawful use of force and violence against persons or property to intimidate or coerce ... the civilian population, or any segment thereof, in furtherance of political or social objectives*" (28 CFR § 0.85(l)). Can you say, with a straight face, that the IRS doesn't do that? (Ironically, there is a new law making it a crime to give money to terrorist organizations, which, if read literally, would make it illegal to send money to the IRS.)

Anyway, back to the Motion to Quash.

"3. The warrant and seizure violated both the First Amendment to the Constitution of the United States of America and the Privacy Protection Act of 1980 (42 USC Section 2000aa)."

Not only does the Supreme Court warn that searches can be used as an instrument for censorship, but federal law also specifically forbids the use of searches to deprive people of the tools they use to publicly express their beliefs and opinions (42 USC § 2000aa). So wasn't it a tad improper for them to use a warrant in such an obvious effort to shut me up? Of course. As it happens, the Supreme Court has specifically condemned the use of search warrants to carry out wholesale confiscation of books and videos—even if they *are* alleged to be illegal (which was not the case here).

"[S]eizing films to destroy them or to block their distribution or exhibition is a very different matter from seizing a single copy of a film for the bona fide purpose of preserving it as evidence in a criminal proceeding." [Heller v. New York, 413 U.S. 483 (1973)].

Note that the court said that seizing a single copy can be justified, but since I had already sent over *one hundred* free copies of the video to various IRS agents, even taking one would have been entirely unnecessary and unjustified.

(I hope everyone who reads this story at least skims through my "Taxable Income" report, which is Appendix A of this book, or better yet, watches my *Theft by Deception* video, so they can see how asinine it is to portray them as something "corrupt." Neither of them tells how to deal with the IRS,

nor do they tell anyone to do anything—they are nothing more than purely academic explanations of my findings regarding what the law shows to be taxable. But the feds tried to paint them as part of some "corrupt" endeavor, in order to try to justify mass theft of perfectly legal items of free speech.)

"4. The conduct of the search was abusive and the seizure of numerous articles of property was unlawful."

This item had to do with various things the IRS did during the raid, such as not letting Tessa back into the house when she returned, not letting me use the telephone or even answer incoming calls, "supervising" me while I went to the bathroom, and measuring the barrel lengths of my rifles (hoping to find that they were illegal—which they weren't).

"5. No Affidavit of Probable Cause was attached to the Warrant."

As mentioned before, the APC was sealed, and so it was not with the warrant. The case law about the legality of that tactic is contradictory, but we decided to bring it up.

The motion concluded by asking the court to "quash" the warrant (declare it to be invalid) and to order the IRS to return everything it stole. Attached to the motion were affidavits from myself and Tessa, describing the events of the day of the raid. (Hers is quoted from above.)

My Motion to Quash was the first official court motion I had ever filed, and I was quite proud of it. I considered it to be thorough, well-reasoned, and well-supported. In preparing it I did get some help from a very nice gentleman who (amusingly) used to be an attorney for the IRS. (I would mention him by name, but I think the IRS already dislikes him enough as it is.) Not to toot my own horn, but I do want to add that most of the numerous Supreme Court and Internal Revenue Manual citations in the motion I found myself.

With the motion filed, with all the various copies going where they should and all the obscure procedures and rules followed to the letter, I sat back and waited for the government's response. What awesome legal analysis and substantive rebuttal would the highly trained, experienced government attorneys come up with? Well, they didn't respond at all within the legal time limit, so I filed a "Motion for Default Judgment." My Motion to Quash was officially "unopposed" because the government had filed nothing to rebut it. After that came their response.

The Government Responds

Above is a drastically abbreviated summary of my motion. In reality it quoted dozens of legal citations, showing point by point how the IRS agents not only did everything the way the Supreme Court says *not* to do a search and seizure, they even directly disobeyed a dozen or so citations from their own Internal Revenue Manual explaining how warrants should be prepared, requested, and executed. For those interested in such things, I have included my subsequent Motion to Suppress—basically a second draft of my Motion to Quash—in full as Appendix B in the back of this book, to show just how thorough and well-supported it was.

When I finally received the government's response to my motion in the mail and sat down to read it (tense and full of trepidation), I could barely believe my eyes. Let me begin by backing up and

stating the obvious: my motion was challenging the constitutionality and legality of their search warrant. Their response, therefore, had only one legal purpose: to *defend* the validity and legality of the warrant and the search.

Their motion never even mentioned the warrant or the search.

I'm not exaggerating, and I can't overstate how bizarre that is. Other than on the first page, where they stated that their motion was in response to our motion to quash an illegal search warrant, nowhere did their "response" even *mention* the warrant, or any of the legal issues I had raised. Not one word about any of it. Instead, it was seven pages (double-spaced) of pure lunacy. The highlights are as follows:

1) Their response stated that we had a medical transcription business and had stopped filing tax returns, and then admitted this: "*Notably, the Movants have not attempted to conceal their conduct*." Well, nice of them to admit that. But if we weren't concealing what we were doing, why did they need to carry out a surprise, armed invasion of our home?

2) Their motion also said: "*In a daring display of willfulness, the Movants have asked the government to prosecute them for failing to file tax returns*." Actually, it was a display of the exact *opposite* of willfulness, because it carefully explained why we had every reason to believe that we weren't *required* to file returns.

3) Their response summarized my legal position regarding why our income isn't taxable, cited a worthless Tax Court case disagreeing with my conclusions, and then spent a couple of pages making a fatally flawed attempt to refute my position (alleging that I should look only at 61, not 861). Keep in mind, whether or not my conclusions about the 861 evidence are correct has *nothing* to do with whether the search warrant was constitutional or not.

4) Their response said that I had devised a "*get rich scheme*," selling my video to "*other individuals who may be disaffected with paying taxes in general*."

5) Their response alleged that we claimed to have "*discovered the path to tax nirvana*" and that we were "*engaging in a series of corrupt endeavors to impede, impair, obstruct and prevent*" the IRS from administering the tax code. What "corrupt" endeavors? You mean *asking questions*? Or quoting the law?

6) They alleged that we were "*hoping to earn in excess of $2 million from their tax fraud scheme*," meaning selling the video. Here is Tessa's response to that point (as sent to my e-mail list back then):

> **"Mr. Miller must have found some notes I scribbled while playing with my calculator and pondering questions like: What if every household in the country bought a video? What if all 1040 filers bought a video? Mr. Miller's obvious intent here is to cast doubt on the sincerity of our beliefs by arguing that we're doing this just to make money. Anyone familiar with our history knows how lame this is."**

When did *hoping* to make money from selling something perfectly legal become a criminal "*fraud scheme*"? Then their response showed how really diabolical we are, citing our motive of

making enough money so that Tessa "*can devote her time to writing books for children*." I'm not kidding; that's what their motion said. Aren't we the scum of the earth? It also said the "*exploitation of the emotions of others*" was what we hoped to use to "*speed* [us] *forward toward* [our] *goal of becoming rich*." Again, this is from Tessa's note to my e-mail list:

> **"I believe it's legal in the U.S.A. to exploit people's emotions for profit. If not, a great many advertising agencies and movie producers are in a lot of trouble! That said, anyone who can watch Theft by Deception and call it emotional exploitation is off their rocker. What emotion, exactly, does this dry explication of the history of federal tax law appeal to?"**

7) For the grand finale, their response opined the following: "*Needless to say, if the Movants' philosophy regarding the nonpayment of federal income taxes was adopted, civilization in America, as it* [sic] *know it today, would cease to exist*." Wow. Once again, here are Tessa's comments on the matter:

> **"Our philosophy regarding the payment of federal income taxes is that people should not be bullied and frightened into paying more than the law requires. Our philosophy is also that the government should be open and honest about its laws, answering the questions of citizens and helping them understand their tax obligations. If civilization in America (as we know it today) is incompatible with this, then it needs to be changed for the better."**

In a footnote in its motion the government also bashed me for being an anarchist, and for once asking someone the question: "*Do you believe there is a moral difference between killing a carjacker trying to take your car and killing an IRS agent trying to take your car?* " No answer, from me or anyone else, was included.

(The mother of all "program think" responses has to be the standard knee-jerk response to the label "anarchist." Because so many people associate the term "anarchy" with death and mayhem, many have chosen the somewhat more cumbersome, but also more succinct label of "voluntaryist," meaning one who believes that humans should, whenever possible, interact and trade on a mutually voluntary basis, without using force or coercion, including the force of "law." In other words, libertarianism taken to its logical conclusion. How ironic is it that such a belief routinely gets confused with bomb-chucking punks? And what does that have to do with the crime alleged? Nothing. It was included only to prejudice the judge against us.)

That was it. That was their "response" to my Motion to Quash. They said *nothing at all* about the warrant, didn't even try to rebut any of the arguments I had made (didn't even mention them), but instead gave an absolutely irrelevant ad hominem attack against us. Again, I can't overstate how bizarre that is: we explained in detail how their raid on our home had violated the law in half a dozen different ways, and their entire response amounted to "But they're bad, nasty poo-poo-heads!"

So far in my research into constitutional law, I haven't yet discovered the "bad-and-nasty-poo-poo-head" clause that makes the Fourth Amendment requirements not apply to searches against nonconformists like myself, but apparently our wonderful "Department of Justice" thinks that saying "They're bad people!" is a sufficient legal argument to justify armed home invasion, confiscation of videos, and whatever other Gestapo thuggery they choose to use. They decided we're bad, so we have no rights. That's good to know.

(That particular ad hominem attack/tantrum was by no means an isolated incident. In another of its pre-trial motions, the government claimed that we "*chose rather than file tax returns and pay taxes to engage in continuous acts of disobedience and antagonism toward the government agency tasked with enforcing the tax laws*." Disobedience and antagonism? You mean like telling them what we were doing, asking them to meet with us, asking questions about the law, and not accepting "you owe because we said so" as a sufficient response?)

Offer from a Tax Fraud Schemer

In response to their asinine, libelous, legally irrelevant diatribe disguised as a court motion, I sent the following letter to Patrick Meehan, Floyd Miller's boss and the U.S. Attorney for the Eastern District of Pennsylvania.

May 24, 2004

Mr. Patrick L. Meehan
U.S. Attorney for the Eastern District of PA
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

Dear Mr. Meehan,

In early May of 2003, the IRS (with DOJ approval) executed an armed raid on my home based on a warrant which was ridiculously overly broad, completely lacking in probable cause, and which constituted an unquestionable violation of the First Amendment, by using the guise of a search warrant to take videos out of circulation (see Fort Wayne Books v. Indiana, 489 U.S. 46 (1989)). On March 2, 2004, my wife and I filed a Motion to Quash that search warrant, citing several reasons why the warrant and the search were unreasonable, unlawful, and unconstitutional.

Your subordinate, Mr. Floyd Miller, filed (two months late) what purported to be a motion in response to our Motion to Quash. However, I was stunned to find that nowhere in the supposed response did Mr. Miller even attempt to justify the search or the warrant, or respond to any of the solidly documented points indicating that the warrant and the search were illegal and unconstitutional. In fact, Mr. Miller's "response" failed to even *mention* the warrant or the search, except on the first page summarizing the purpose of the motion.

Instead of citing or arguing anything concerning First and Fourth Amendment issues—the only issues actually relevant to the Motion to Quash—Mr. Miller chose to use the "Motion" as an opportunity to malign and vilify me, repeatedly making the asinine accusation that the expression of my beliefs constitutes a "tax fraud scheme," and making the libelous allegation that my primary motive for speaking out as I have done is personal financial gain (a "get rich scheme" as Mr. Miller called it).

To be blunt, if that emotional, libelous, unprofessional and legally irrelevant "motion" is any indication of Mr. Miller's legal knowledge and competence, not to mention his respect for the law and the Constitution, he should be fired immediately. (Your name also appeared on that motion, implying that you condone such a frivolous, substance-free filing.) But pointing out the absurdity of that motion is not the main purpose of this letter.

If those at the Department of Justice truly believe that I am merely a "tax fraud scheme" promoter, out to make a quick buck by selling videos, then I would like to offer you an easy way to put me out of business. Here is my offer:

1) I will transfer the copyright of my "Theft By Deception" video (the only thing related to the tax issue which I have ever sold for profit) to someone else of my choosing (but no blood relation of mine), who would then receive all future profits from the sale of that video, and my wife and I would agree to never accept any compensation or gift, directly or indirectly, from that individual.

2) My wife and I would both agree to never again receive any money, directly or indirectly, from the sale of anything having to do with the 861 evidence.

3) Finally, I would determine (with documentation) the total profits received to date by myself and my wife from sales of the "Theft By Deception" video, and would voluntarily surrender that amount to the U.S. Treasury as a donation.

In short, I would retroactively erase every dime from what Mr. Miller (dishonestly) calls my "get rich scheme," and agree never again to profit from any sales of anything (written, audio, video, etc.) concerning the 861 issue. I pledge to do all of that immediately, if and when the government does this one thing:

The Commissioner of the IRS must assign three attorneys from IRS Chief Counsel (who he deems to be the best qualified for the job) to spend two hours answering—verbally, in-person, and on camera—the enclosed six questions about how to determine one's taxable income, as well as any related follow-up questions I may have.

In short, the government need only do what it should already be doing: answering reasonable questions which citizens have about how to properly determine what taxes (if any) they owe. If the government will do that, I will shut down my own so-called "get rich scheme," and will donate all the profits from past sales to the United States government.

Mr. Floyd Miller, having no legal foundation, and having been caught cooperating in a clearly unreasonable and unlawful fishing expedition under the guise of an "investigation" (while admitting that we are not hiding what we are doing), has now decided to insult me and my wife, impugn our motives, and mischaracterize what I am doing. Your response to the above offer will show the public

quite clearly whose motives should really be questioned.

Sincerely,

Larken Rose
[home address redacted]

(P.S. If the government wishes to accept the above offer, the agreement can be put into the form of a legal contract acceptable to both parties. If the government does not respond to the above offer by the last day of July of 2004, the offer will be revoked, unless I choose to extend it voluntarily.)

cc:

Mark W. Everson, Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

cc:

John Ashcroft, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Enclosure: Questions Regarding Determining Taxable Income

So, in short, I offered to put myself out of business permanently, and *donate* to the government every penny I had ever made from video sales—which by then, after the video had been out for more than two years, was in the tens of thousands of dollars (not two million, unfortunately). All they had to do was have their lawyers spend a couple of hours answering questions about how Americans are supposed to determine what they legally owe—something they should have been willing and eager to do for free.

Guess how they responded to my offer to give them lots of money and put myself out of business.

They didn't.

So, to sum it up, I filed a substantive, solidly supported motion challenging the legality of the search warrant, and the government, after the filing deadline, filed a temper tantrum and called me names, while forgetting to even mention the warrant they were supposed to be defending.

And guess what. The court ruled in their favor.

Guess who made that ruling. None other than Magistrate Thomas Rueter—the one who had rubber-stamped the unconstitutional warrant in the first place. (How many judges do you think would give an unbiased answer when faced with the question "Did you sign off on a constitutionally bogus warrant?") Here was Judge Rueter's reason for the denial: "*After careful review of the motion, it does not appear that the Government displayed a callous disregard for the constitutional rights of the movants*."

Careful review, huh? Now I feel much better. Thanks for that thorough and objective constitutional analysis.

Unsealed at Last

Keep in mind, all of the court skirmishes mentioned above took place *before* I ever got to see the supposed legal justification for the raid: the "affidavit of probable cause" (APC). Well, at long last, over a year and a half after the raid on my home, in January of 2005 the APC was finally unsealed and I received a copy.

There was nothing redacted and all the names and facts in it were already well known to me, and the government knew it. Why does that matter? Because it proves that the feds' pretended fear of revealing identities—the excuse they gave for keeping the APC sealed so long—was an outright lie.

The first thing worth noting about the APC is that it was dozens of pages long, which by itself doesn't mean much. Here's the weird part: *nowhere* does the APC suggest the existence of any supposed evidence not *already* in the IRS's possession. In fact, the bulk of the affidavit talked in detail about the information I had already given to the IRS of my own accord. It shouldn't take a legal scholar to figure out that an APC that doesn't allege the existence of anything not already in the government's possession is bogus.

Rather than being about anything I had hidden or lied about, the APC went on and on about what I had done right out in the open. Specifically, the APC explained that: 1) I told the IRS about my income, in person and in writing; 2) I told them we had stopped filing, and explained why; and 3) they already had my written report, my video, and everything from the web sites (which is all publicly available anyway). Yes, in the very document requesting permission to steal every copy they could find of my *Theft by Deception* video, they acknowledged that they already *had* it. Nowhere did the APC even allege that there was anything we were concealing or lying about. Nice attitude: "We're not saying you hid anything or lied about anything, and we're not alleging that there's any evidence in your house we don't already have, but we want to do an armed invasion of your home anyway." And the Honorable Führer Thomas Reuter *twice* gave his blessing to that fascist thuggery.

(If you find my verbiage a bit too strident here, too bad. When I use terms like "thug" and "fascist," I use them accurately, and in their literal sense. And if you're wondering why I'm not more polite and civil in my terminology, let me remind you that I'm sitting in a stupid prison camp as a I write this, miles from my family, because I committed the sin of telling the truth. Does that make me a little angry and bitter? Damn right it does. So if you don't like my tone, you have my permission to put this book down and go jump in a lake.)

For the allegations regarding "conspiracy" and attempts to "corruptly" interfere with the administration of the tax laws, the APC went on and on about how I had "advocated" my conclusions about the correct application of the tax laws, on our web sites, in my video, in my "Taxable Income" report, on my e-mail list, and elsewhere. If you're thinking that none of that is illegal, you are exactly right. If you're horrified that the government in "the land of the free" would treat *speaking your mind* —"advocating" your beliefs—as a *crime*, join the club. (It's also more than a little nutty to call

openly voicing one's opinions a "corrupt" endeavor.)

Motion to Suppress

The best way to illustrate the insanity of the IRS's APC is to cover some of the highlights of the "Motion to Suppress" which I filed after finally getting a copy of the APC. In many ways that motion was just a beefed-up reincarnation of my previous Motion to Quash, but this time we were asking that the court bar the government from using at trial anything it had obtained from the raid on our home, on the basis of the search being unconstitutional.

The issues raised in my Motion to Suppress included (paraphrasing here): 1) the search was unreasonable and unnecessary, as all relevant information was already in the government's possession and the APC didn't even suggest the existence of any evidence the IRS didn't already have; 2) the warrant was an overly broad, unconstitutional "general warrant"; 3) the search was motivated by a desire to retaliate against me for exercising my First Amendment rights and was not a valid search for evidence of a crime; and 4) the seizure of First Amendment materials was unquestionably illegal.

There is something called an "exclusionary rule," whereby evidence obtained via an illegal search is not allowed at trial. As my Motion to Suppress explained, the purpose of this rule "*is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable search and seizures*" (*United States v. Calandra*, 414 U.S. 338 (1974)), and while innocent procedural errors or technicalities should not result in relevant, properly seized evidence being suppressed, such suppression should occur "*where a Fourth Amendment violation has been substantial and deliberate*" (*United States v. Leon*, 468 U.S. 897 (1984)). And if you think my motive in filing a "Motion to Suppress" was to keep any actual criminal evidence from the jury, read on.

As much as I'd like to go into detail about all the points raised in my Motion to Suppress, and all the citations included therein, proving that in every way they were wrong and we were right, doing so would probably either give a lot of people headaches or put them to sleep. So instead, I will just summarize the highlights here. For those of you with a high legalese tolerance level, I include the entire motion in the back of this book, as Appendix B. Here are the main points:

1) The courts have always held that it is extremely important that actions as intrusive as a forced invasion of someone's home be used only when completely necessary and justified.

> **"The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."**
> **[Silverman v. U.S., 365 U.S. 505 (1961)]**

Nonetheless, contrary to what the Internal Revenue Manual instructs, the APC said absolutely *nothing* about why the search was necessary, what hidden evidence it was needed to find, or why less intrusive means could not obtain the evidence sought.

2) The APC itself gave no justification whatsoever for swiping every imaginable financial document in our house. In the feds' response to my Motion to Suppress, here was the excuse they gave for doing so: "*To accurately compute taxable income, it is necessary to identify and account for income that is specifically excluded from taxation. Consequently, there are few financial records that are not directly or indirectly relevant to computation of income. Moreover, the defendants refused to provide business expenses, preventing the IRS from accurately determining taxable income*."

Two things are worth noting here. First, they were arguing that they needed a warrant, not to find any hidden *income*, but to find documentation of *exemptions* and *deductions* we might be entitled to. What? We're supposed to believe that they needed to invade our home so they wouldn't *over*-state the taxes they thought we owed?! (The only thing records of exemptions and expenses would do, of course, would be to *lower* the supposed tax due.) Wow, that was really thoughtful of them. "We're just stealing all your records to make sure we give you every exemption and deduction allowed." How sweet. (By the way, they lied again: the expense records they did swipe, clearly showing that well over *half* of the money our business brought in went to the people working for us, never showed up in their calculations.)

Second, as their own manual explains, neither a charge of tax evasion nor willful failure to file requires the government to calculate someone's taxable income: "*the government need prove only that a person's gross income equals or exceeds the statutory minimum*" (Criminal Tax Manual, § 10.04[2]). So the 1099 forms showing we received substantial income was all the "evidence" they would ever need regarding our income, though they also had our repeated, open admissions—on tape and in writing—that we had received that income. (If they had "probable cause" to think we were *hiding* income or assets, that would have been another story, but there wasn't the slightest peep in the APC suggesting that we were doing so, and we weren't.)

In its subsequent response, the government blatantly lied about the law (again), saying this: "*Although computation of taxable income is not required to prove willful failure to file, it is required to prove tax due and owing for a section 7201charge of tax evasion*." But the official manual of the Tax Division of the DOJ, speaking specifically of section 7201 charges, says the opposite: "*it is not necessary to charge or prove the exact amount of the tax that is due and owing*" and that "*the government only has to prove that a substantial tax was due and owing*"

(Criminal Tax Manual, § 8.05[3]). In other words, the government's bald-faced lie notwithstanding, there was *no* legal justification for swiping all of our financial records, since the feds already had complete documentation of our income. They needed exactly no additional financial information about us for the crimes alleged.

3) The APC failed to even *mention* the issue of "willfulness," though it is an essential element of the alleged crimes. An APC, to be valid, must show "probable cause" for *each* element of each crime alleged. Of course, the APC showed no evidence even hinting that we believe our income to be taxable. And without that, there can be no "probable cause," and no justification for a warrant.

4) The APC also brought up something interesting that I didn't know before. After my second meeting with the IRS, I invited IRS supervisor Charles Judge to dinner, not to discuss my case but to

have an off-the-record chat about what he really thought about what I had shown him. That meeting is discussed in detail later on, but it was while reading the APC that I first learned that, without my knowledge or consent and in violation of Pennsylvania state law, Mr. Judge audio-recorded that meeting.

I'm sure that in putting together the APC, Donald Pearlman really wished he had something, anything, hinting that I don't really believe in the 861 evidence. Well, he didn't, so he just lied instead. Speaking of my meeting with Charles Judge at the restaurant, the APC said this: "*ROSE conceded that his argument might be wrong stating 'even if our argument is the stupidest thing imaginable.' He further stated, at one point, that 'I'm holding out the possibility that I'm just plain wrong'.* "

At the time I was responding to the APC, I didn't yet have the recording or the transcript of my meeting with Mr. Judge at the restaurant (I had only just learned that it was taped), but I already knew darn well that Pearlman had misrepresented what had happened there. So in my Motion to Suppress I said that I was "*confident that the complete transcripts of that meeting, which* [I] *have requested through the Freedom Of Information Act, will reveal that the selective quoting of those sentence fragments in the APC was intentionally misleading*." And, of course, it was. Here is the first quote, in context:

> **"I really appreciate you meeting with me, and it's been really disturbing how few people inside the system are willing to even talk. I mean, all they know how to do is threaten. I mean, <u>even if I were arguing the stupidest thing imaginable</u>, they should at least say, Here's why you're wrong..."**

Slimeball Pearlman was trying to paint *that* as me conceding that my "argument might be wrong." To do that, he not only took it out of context, but *changed the words*, to make it sound like I was saying that *my* position might be "the stupidest thing imaginable," which I wasn't saying at all.

And here is the second quote, in context, which he also mischaracterized:

> **"So, you know, more and more people are getting curious about, well, why can't they explain their law to us? This isn't, you know—yeah, it's a big mess, and I even, around the first of the year I was asking the Chief Counsel's rep to answer questions, I was saying look, <u>I'm holding out the possibility that I'm just plain wrong</u>, and they're going to come up with some section that says, 'notwithstanding blah, blah, blah—.' And the fact that they can't or won't has gotten a lot of people's attention."**

Did that look as if I was confessing that I didn't really believe in the 861 evidence? Of course not. So, are we to believe that Agent Pearlman read the transcript of that meeting and concluded that I don't actually *believe* what I'm saying? I guess he missed this part of the transcript:

> **Me: "I seriously would <u>bet my life on the fact that I'm right</u>, and I wouldn't bet my life on very many things."**
> **Charles Judge: "You believe that strongly in it."**
> **Me: "Yeah."**

Oh yeah, that really sounds as if I'm unsure or saying I might be wrong, doesn't it? Hey, Mr. Pearlman: Liar, liar, pants on fire! Funny how these are the same jackasses who accuse people like me of taking things out of context.

5) If you think it's bogus for the IRS to characterize me voicing my opinions as somehow a

"corrupt" endeavor, which the APC did repeatedly, you're not alone. The courts say that the word "corruptly," as used in the very section the feds referred to (26 USC § 7212(a)), doesn't just mean being inconvenient: "*there is no reason to presume that every annoyance or impeding of an IRS agent is done per se 'corruptly'*." (Again, that's from the DOJ's own prosecutor's manual.) What the term actually means is "*to act with the intent to secure an unlawful advantage or benefit either for oneself or another*." How exactly does saying "I don't think my income is taxable" give me (or anyone else) an unlawful advantage or benefit? (What it gave me was a dozen armed thugs invading my home and a year in prison—not quite what I'd consider an advantage.)

6) Further misrepresenting what the law is, in an effort to characterize my perfectly legal activities as criminal, the APC, under the heading of "*Rose's Attempt to Defraud the United States*," went on and on about how I "*advocated* [my] *claims*" on web sites, on my e-mail update list, in my "Taxable Income" report, and in my *Theft by Deception* video, and how I said that the Tax Court was wrong, that I hoped the fraud would end, and otherwise spoke my mind. Over a dozen pages of the APC consisted of nothing more than whining about all the ways in which I *expressed my beliefs*. As my Motion to Suppress put it, "*rather than alleging conduct designed to conceal or mislead, the APC instead seeks to characterize the mere expression of opinions as criminal fraud and conspiracy*." First Amendment? Never heard of it.

Again, First Amendment protections do not depend upon "*the truth, popularity, or social utility of the ideas and beliefs which are offered*" (*NAACP v. Button*, 371 U.S. 415 (1963)). And even if I were wrong, since when does honestly speaking one's mind constitute "fraud"? Again, the government's own Criminal Tax Manual—why do they even *have* that thing?—says that "*deceit or trickery in the scheme is essential to satisfying the defrauding requirement in the statute*" (Criminal Tax Manual, § 23.07[1][b]). The Supreme Court agrees, saying that the words "to defraud" "*usually signify the deprivation of something of value by trick, deceit, chicane, or overreaching*" (*Hammerschmidt v. United States*, 265 U.S. 182 (1924)). Where did I ever do anything like that? Nowhere, and they never alleged that I had. In short, their APC proves that they raided my home because I had publicly voiced an *opinion* they didn't like.

Lest you think I exaggerate, the APC puts Agent Pearlman's delusional attitude on display for all to see when it opines that Dr. Tom Clayton and I *expressing our beliefs* using two web sites and a video constitutes "*efforts to reach a mass audience in an effort to gain support for ROSE's agreement, with others, to attempt to defraud the United States and to corruptly interfere with, and impede, the administration of the Internal Revenue Code*." Wow. Speaking your mind is now a crime, especially if you hope to convince others to agree with you.

7) The APC mentions that I sent free copies of my *Theft by Deception* video to numerous IRS employees, along with a cover letter asking them to take personal responsibility for their actions and to do the right thing, and that I posted on my web site the names and office addresses of IRS employees who had been sent the tape. The APC characterized that as an attempt to "corruptly" interfere with the administration of the tax laws, because my letter was (they claimed) "*a direct attempt to have IRS employees stop enforcing the internal revenue laws*." (Actually, I was hoping they would apply the law *correctly* for once.) In my Motion to Suppress, however, I pointed out that the Supreme Court says that the First Amendment is important, precisely because it allows the people

to communicate their thoughts and opinions, "*whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs*" (*Near v. Minnesota*, 283 U.S. 697 (1931)).

8) The APC whines about how I attended the meetings a few other people had with the IRS. Once again, they tried to characterize that as a "corrupt" attempt to interfere with the administration of the tax laws. Not even trying to hide his lunacy, Agent Pearlman (in the APC) opined that I was using one meeting "*as an opportunity to get IRS reactions to his own views 'on the record,' thereby corruptly interfering with, and impeding, the administration of the internal revenue laws*." So, asking the IRS to answer questions or to state its own position on the record is now a *crime*?! In my Motion to Suppress I responded to Pearlman's bizarre statement as follows: "*Attempting to get the government to state its own position on the record is not a crime, nor is it 'corrupt' by any sane definition, regardless of who is doing the asking, or in what context*."

9) Adding to the list of what the APC pretends is "corrupt" behavior were my "*non-violent threats*" to take legal action, including the filing of formal complaints against IRS employees who ignore the law or procedures. Their own procedures say that that is what one *should* do if he believes that an IRS employee is engaging in misconduct. Now it's a *crime* to complain about IRS lawlessness? Once again, their own manual states that a "corrupt interference" charge "*can not be based on nonfraudulent complaint against IRS agents*," and of course there was nothing fraudulent about what I did, nor did the APC allege that there was.

10) The APC also complains about three other people (two of whom I don't even know personally) quoting my publicly available materials in their own dealings with the IRS. Yep, that too is somehow "corrupt." Again, in their entire laundry list of these supposed "corrupt" endeavors, *nowhere* do they allege that I did anything deceptive or fraudulent.

11) The APC complains that Sherry Peel Jackson (former IRS agent) and Dr. Tom Clayton also had the gall to speak their minds, trying to spread their own beliefs, which match mine. I guess that too is "corrupt." As it happens, the courts have specifically cautioned that the "conspiracy" statute (18 USC § 371) is so broadly worded that "*there is a danger that prosecutors may use it arbitrarily to punish activity not properly within the ambit of the federal criminal sanction*" (*United States v. Shoup*, 608 F.2d 950 (3d Cir. 1979)). Yeah, tell me about it.

12) Despite the requirements described in the IRS's own manual, the APC completely failed to relate how anything the IRS sought to seize was connected to any of the alleged crimes. Bizarrely, the government's own response to my Motion to Suppress admits that "[t] *he Affidavit must set forth in detail how the objects seized constitute evidence of a crime or otherwise relate to criminal activity*." Why they would say this, in a motion defending an APC which didn't say *one word* about how any of the items sought were connected to any crime, is beyond me.

13) The APC, of course, completely failed to justify the insanely broad scope of the warrant, which sought (among other things), any documents (by any author) having any connection to "*any tax-related issues*," and any and all computers and disks, regardless of content. Amazingly, despite the all-encompassing scope of their fishing expedition, they still managed to swipe a bunch of things *not* on the list, including the deed to my house, a transcript of a court hearing, "Theft by Deception"

bumper-stickers, the list of numbers from my phone's Caller ID, a couple of newspapers, two blank checks, a family reunion video, scribbles my kid made when she was a few years old, about fifty bucks in cash, and boxes and boxes of unsorted, irrelevant clutter.

> **"It is familiar history that indiscriminate searches and seizures conducted under the authority of 'general warrant' were the immediate evils that motivated the framing and adoption of the Fourth Amendment." [Payton v. New York, 445 U.S. 573 (1980)]**

Oh, really? No kidding. Regarding their swiping or copying every computer and disk they could find, my Motion to Suppress not only quoted from the Internal Revenue Manual saying *not to do that*, but also quoted extensively from a "Department of Justice" publication called "*Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*." In short, that document explains in great detail how the Fourth Amendment forbids exactly what they did in my case. (As I pointed out in my Motion to Suppress, a search for any and all computers, hard drives, or disks, regardless of content, in this day and age, "*is the equivalent of conducting a search of someone's home thirty years ago seeking 'any and all pieces of paper'*.") 174

14) The APC made no mention at all of the First Amendment, or gave the slightest hint that any precautions were taken to avoid tromping on our First Amendment rights via the warrant. Instead, the APC goes on and on, citing the public expression of my beliefs as the *reason* for the warrant.

> **"[W]hile the general rule under the Fourth Amendment is that any and all contraband, instrumentalities, and evidence of crimes may be seized on probable cause ... <u>it is otherwise when materials presumptively protected by the First Amendment are involved</u>." [Fort Wayne Books v. Indiana, 489 U.S. 46 (1989)]**

You mean government agents have to be particularly cautious when swiping stuff that could constitute protected "free speech"?

> **"[T]he constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is <u>the ideas which they contain</u>." [Stanford v. Texas, 379 U.S. 476 (1965)]**

I may not be the world's greatest legal scholar, but "*any publications, research material or other documents relating to the IRS, federal income taxes and any tax-related issues*" (one of the classes of things the warrant sought to seize) doesn't sound quite like "scrupulous exactitude" to me. As my Motion to Suppress put it, "*It seems that the IRS does not share in the 'profound national commitment to the free exchange of ideas' (Harte-Hanks v. Connaughton, 491 U.S. 657 (1989)), or the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open" (New York Times v. Sullivan, 376 U.S. 254 (1964))*."

Well, it's pretty obvious why the government wanted to keep their APC hidden from public view. The official document which was supposed to show that I'm a nasty criminal did nothing more than complain that I believed something the government didn't want me to believe, and that I had the gall to publicly express my beliefs. Um, why exactly did that make it necessary to send a dozen thugs to raid my home?

> **"However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." [Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974)]**

That's sure not what the IRS depends on. It can't even come up with a coherent opposing view, much less one that is more compelling than the 861 evidence. But it can come up with something which, at least to most people, is more persuasive: terrorism. It's not exactly a fair fight when one side is allowed to use only words and the other is allowed to use all manner of violence, intimidation, and harassment. My Motion to Suppress sums it all up:

"*One has to wonder what additional information the Defendants could have given to the government, or how the Defendants could have been any more open about their actions and beliefs, in order to avoid an armed invasion of their home by federal agents. To have the government committing such acts of forcible intimidation and retaliation, and to have the courts condoning such actions, based on nothing more than an open, honest disagreement about the law, obviously goes against the core purpose of the Fourth Amendment, which is to allow anyone 'to retreat into his own home and there be free from unreasonable governmental intrusion' (Silverman v. United States, 365 U.S. 505 (1961)*."

Fourth Amendment? What's That?

Judge Baylson ruled against my Motion to Suppress. (If he had ruled in my favor, I highly doubt there would have been a trial at all.) His discussion of the Motion to Suppress was less than two and a half pages, double-spaced (in other words, about one page of normal text), which contained a grand total of *one* mention of case law, which was this:

"*The warrant, and the affidavit in support, meet the requirements of the Fourth Amendment pursuant to Illinois v. Gates, 462 U.S. 213 (1983) and many other cases*."

His memorandum basically asserted, without support or real explanation, that: 1) there was probable cause for the search; 2) it wasn't overly broad; and 3) it wasn't based on an improper motive. And then, to top it all off, there was this line:

"*The Court rejects the Defendants' assertions that the government activities were in retaliation of the Defendants' First Amendment activities as frivolous*."

Frivolous? Don't these people have a thesaurus? So Baylson's ruling asserted that it was utterly ridiculous (a.k.a. "frivolous") to allege that the raid was done as retaliation against me for me speaking my mind—even though the IRS thugs raiding my home and Dr. Clayton's home *admitted* it, and even though the DOJ attorneys *admitted* it, and even though it should be obvious to anyone with an IQ above that of a cabbage. Is Judge Baylson so utterly idiotic that he couldn't see what any kindergartner could see: the censorship motivation behind the raid? Or did he intentionally rule against the truth and the law in order to give his blessing to what he knew was, in essence, a modern-day book-burning?

Well, there is a third option: he didn't write the ruling at all. Either the government wrote it for him, or some brainless authoritarian law clerk wrote it for him. Though neither would be at all unusual (quite often judges do not write, or even read, their own "rulings"), it's pretty darn pathetic to have a federal judge just rubber-stamp some idiotic diatribe which some doofus puts in front of him.

(And these are the people whose "rulings" I'm supposed to revere as incontestable gospel.) But I suspect it was the prosecutors who chose the word "frivolous" for the ruling—it may be the only three-syllable word they know. It seems to be what they say when they can't think of anything else to say.

Lying to the Court

As most people know, lying to the court, or attempting to mislead it, is a crime. Regarding the theft of my *Theft by Deception* videos, the government did it twice.

1) As mentioned before, during the IRS's raid on my home, I asked Agent Pearlman when I would get my videos back, and he said *never*. I asked him that again later on the phone, and both he and Agent Gerald Loke said they would *never* be returned, not even at the conclusion of their bogus "investigation." (But remember, Judge Baylson says it's "frivolous" to think the raid was about the IRS trying to shut me up.) Not only was there no shred of legal justification for taking *any* of them, but the Supreme Court also specifically condemns such censorship-via-seizure, as cited above. Well, the issue came up in the court hearing about my Motion to Suppress (on May 19, 2005), where I had a chance to question Agent Pearlman on the stand, under oath. It went like this:

Me: "Since you knew what was in the Theft by Deception video already, and the IRS was already in possession of at least one copy of it, what was the purpose of seizing every copy you could find from my home?"
Judge Baylson: "Every copy of the same videotape?"
Me: "Every copy of the same videotape, your honor."
Judge Baylson (to Pearlman): "Can you answer that?"

Judge Baylson seemed genuinely curious at that point. (I guess he didn't yet think the issue was "frivolous.") Pearlman's response—his explanation for why they took the videos—was priceless:

Pearlman: "Yes. In consultation with the attorneys that we consulted prior to the drafting, during the drafting and ultimately at the signing of the affidavit and the search warrant, that is what we concluded that we could seize at the search warrant, and we did."

What? No wonder this guy works for the IRS. He has the skill the IRS most values: the ability to use lots of words to *not* answer a question. When I asked again what the *purpose* of swiping all the videos was, Pearlman's response was slightly more coherent, if no more valid: he said the videos were evidence of "conspiracy" and attempt to corruptly interfere with the administration of the tax laws. Of course, that bogus accusation still gives no justification for swiping every copy they could find, all still in the shrink-wrapping.

But aside from lame, tap-dancing cop-outs, Pearlman said he did remember me asking when I'd get the videos back, but then said (under oath): "*I don't recall telling you that* [the videos] *would never be returned*." Oh, really? I didn't have it at that hearing, but later, through the "discovery" process, I obtained Agent Pearlman's notes, in which he acknowledged that I asked when I'd get the videos back, and acknowledged that he said they would never be returned. Liar, liar, pants on fire (again)!

But wait, there's more. In the government's response to my Motion to Suppress, they made the

odd argument that because copies of my *Theft by Deception* video still existed somewhere *else*, it was okay for them to swipe every copy they could find from my house and from Dr. Clayton's house. Here is how their motion argued it:

"*It should be noted that the 'Taxable Income Report' was always available online, and the videotapes were not wholly removed from circulation (another 8,000 copies were warehoused in California, awaiting distribution). ... As the seizure of the videotapes and bound reports did not remove these items from circulation completely, there was no infringement of First Amendment rights*."

On the stand and under oath, however, I got Agent Pearlman to admit that at the time the search warrant was executed, he did *not* "*know that any other* [Theft by Deception] *videotapes were stored in any other location*." In other words, as far as they knew, they were taking every copy in existence. The fact that they were mistaken—that there were other copies elsewhere—doesn't make their censorship attempt more benign (it merely makes them incompetent). Yet their motion was trying to trick the court into thinking that they already *knew* there were more copies at the time of the raid. Liar, liar, pants on fire (again)!

It may occur to you that, even if they had known of those other copies of the video, their argument is still pretty lame. Just because we managed to have some copies somewhere else that they couldn't find doesn't make it okay to swipe every copy they *could* find. If you don't believe me, ask the Supreme Court. The following is from a case regarding a seizure of materials which were actually alleged to be illegal (under obscenity laws). The government has never alleged that my video is illegal, making its seizure far less justifiable. But even in a case where the government was claiming the materials to be illegal, and where they took every copy they could find, the Supreme Court said this:

> **"But there is no doubt that an effective restraint—indeed the most effective restraint possible—was imposed prior to hearing on the circulation of the publications in this case, because all copies on which the police could lay their hands were physically removed from the newsstands and from the premises of the wholesale distributor. ... Their ability to circulate their publications was left to the chance of securing other copies, themselves subject to mass seizure under other such warrants. The public's opportunity to obtain the publications was thus determined by the distributor's readiness and ability to outwit the police by obtaining and selling other copies before they in turn could be seized. In addition to its unseemliness, we do not believe that this kind of enforced competition affords a reasonable likelihood that nonobscene publications, entitled to constitutional protection, will reach the public."**
> **[Marcus v. Search Warrant, 367 U.S. 717 (1961)]**

No kidding. So, to state the obvious, the fact that we had other copies of my video stored elsewhere, which the IRS did not know about when raiding my home, did not make it okay for them to steal every copy they could find at my house and at Dr. Clayton's house. But the courts didn't care. One judge after another just rubber-stamped the IRS's blatant censorship tactics. Oh, I forgot: it's "frivolous" for me to say that the IRS was motivated by a desire to shut me up. Sorry. I won't let it happen again.

To Show or Not to Show

After the issues relating to the raid on our home, the next most important pre-trial game had to do with the question of what would be allowed to be introduced as evidence at trial. To save time and avoid inconvenience, it's normal for the two sides to argue ahead of time about what the jury will and will not be allowed to see and hear. (That's not a good thing to argue about in front of the jury, for obvious reasons.) So, many weeks before trial, the government filed its "motion in limine," making its case for what it wanted included in and excluded from the trial.

Keep in mind here, this case was all about the issue of "willfulness," which hinges entirely upon what the jury concludes I *believed* about the law when I stopped filing. If I believed I was required to file, then I committed a crime by not doing so; if, however, I did not believe I was required to file, then there was no crime, whether my beliefs were correct or not. So, in a case in which the jury's only task was to decide what I believed, let's take a look at what the government wanted to keep them from seeing.

First off, the prosecutors' motion said they anticipated that at the trial I was going to "*challenge the constitutionality or legal authority of the 16th Amendment, the Internal Revenue Code, and the Treasury regulations*." Whoever wrote their motion was either utterly clueless and hadn't bothered to find out what I believe before prosecuting me for my beliefs, or he was intentionally lying. (My position has nothing at all to do with challenging the constitutionality or legality of any law, and the Sixteenth Amendment doesn't have a dang thing to do with my position.)

Next, the government's motion argued that "*the Court should only permit the defendants to present testimonial evidence that they relied upon legal authority in good faith, without quoting bits and pieces of the legal authority*." So, according to them, I should be allowed to say I relied on the law, but I shouldn't be allowed to *show* the jury anything from the law. In other words, they wanted me to have to do what they do: give assertions with no evidence backing it up. (I guess it would be unfair if I was allowed to cite the law supporting my position, since the government is obviously incapable of doing the same for its position—or lack of position.)

They also argued that I shouldn't be allowed by the court to "mask" my "*disagreements with the law in a facade of legitimacy by citing to legal authority in the presence of the jury*." In other words, they wanted to lie, saying I just had a moral disagreement with the law, and they didn't want me to be able to correct their lie by showing that my conclusions are based upon the law.

At least they were fairly blunt about their game. One paragraph of their motion begins, "*In short, juries may not decide what the law is and should not be given the opportunity to do so*." As odd as that may seem, and as contradictory to long-standing principles as that may be, it's actually standard procedure in today's court system. (You can bet that every April 15th, however, the IRS definitely expects those same jurors to decide what the law is—as long as they decide they owe the IRS lots of money.)

Then the government's motion said that while I must be allowed to "*testify as to how* [I] *interpreted a particular code section or regulation*," I should not "*be permitted to quote portions of code sections or regulations*." Why not? Because, according to the feds, if I was "*allowed to quote or display portions of the law, the jury might easily become confused as to what the pertinent law was*." In other words, if I am allowed to show them the law, they might start to think my conclusions

are *correct*. And we obviously can't have that!

Consider the insanity of their request. They acknowledged that "*the primary issue in this case will be the defendants' willfulness*," but they didn't want me to be allowed to actually show the jury *anything* from the law itself upon which my conclusions and beliefs are based. How exactly could I show the jury how I "interpreted" a section of law, if I'm not allowed to *show* them anything from the law itself? Luckily, in this case the court didn't quite give the prosecutors everything they wanted.

(Their battiness continued in a later motion, in which they argued that, because the question was whether I held a *subjective* belief that I wasn't required to file, "*the basis on which defendant reached his opinion is of little relevance*," and therefore "*documentary evidence, even that upon which the defendant arguably relied, is irrelevant to proving a subjective good faith belief*." In other words, since it didn't matter whether my belief was reasonable, how I reached my stated beliefs and what they were based upon didn't matter and the jury shouldn't be allowed to see that stuff. If that makes sense to you, please go have yourself institutionalized.)

In keeping with their usual dishonesty, their motion referred to my report and video as "*protest documents*," again trying to mischaracterize me as a "tax protestor" who just doesn't like the income tax. Their motion went on to say that "*any materials created by* [me] *such as the video and 'Taxable Income' report, and offered by* [me] *into evidence would be either unduly prejudicial or lacking foundation*," and so they wanted all of that excluded from the trial. (I guess "unduly prejudicial" is government-speak for "it proves he's innocent.") Oh, but the government was nice enough to say that I "*can refer to the documents*," but "*without having them admitted into evidence*." So I should be allowed to mention them, but not to quote from them or show them to the jury.

Then, using their mind-reading powers, the authors of the government's motion opined that my "*only real purpose in offering these materials into evidence is to preach tax revolution to the jury*." Yeah, I couldn't possibly have wanted to show the jury that stuff to demonstrate *what my beliefs are*, in a case revolving entirely around *what my beliefs are*. Since they were in lying-through-their-teeth mode already, they went on to say that those materials (my video, report, etc.) "*are more indicative of the defendants' disagreement with the law*" than of a different opinion about the proper application of the law. Of course, if that were true, they would *want* the jury to see that stuff. But it's a bald-faced lie: nothing in the report, the video, or the web sites has anything to do with objecting to or morally disagreeing with the law; it's all about the correct meaning of the law.

Two Kinds of Disagreement

The above brings up a legal technicality that is important to understand—which is why the government tried very hard to make sure the jury *wouldn't* understand it. There are two distinct ways in which someone can be said to be "disagreeing" with the law: 1) His reading and interpretation of the law, for whatever reason, doesn't match what the law actually requires (in other words, he misunderstands the law) or 2) He thinks he owes the tax, but for whatever reason, he doesn't like the law.

The second kind of "disagreement" (e.g., "This tax stinks!") is not a valid defense against a

charge of willful failure to file or tax evasion. If you think you're required to file and pay, then failing to do so is a crime, regardless of whether you like doing so or whether you think the law is unconstitutional or invalid. And that is what the courts mean when they talk about "disagreeing" with the law.

The first type of "disagreement," on the other hand, *is* a complete defense against such charges. As quoted above, the Supreme Court says that an honest misunderstanding of the law is *not* a crime; only intentionally violating the law is a crime (for tax cases). The government tried to muddy the distinction so they could falsely claim that I was "disagreeing" with (objecting to) the law, when I was doing nothing of the sort.

(Actually, in my case I wasn't "disagreeing" with the law in either sense—I neither misunderstood nor objected to it. I understood it and complied with it. But since at trial I wasn't *allowed* to argue that my conclusions are actually *correct*, and since I knew the judge would declare that my conclusions were wrong, the jury was only allowed to choose between: 1) I "misunderstood" the law; or 2) I disobeyed the law on purpose. Deciding I was right wasn't allowed.)

Last-Minute Addition

At Tessa's trial, which occurred well after mine, Cathy Spaulding testified that Tessa and I "*felt that* [we] *weren't required to file a return*." She also said, "*Mr. Rose had his position of the law*" and the IRS had "*a different position*." She also said that our second meeting had ended at an "impasse," adding that "*they had their position, and we had ours, and that was it*." She also said that *my* position was somewhat convincing, and admitted that when she met with us, she said she understood why I believed my argument to be correct. Also at Tessa's trial, Charles Judge testified that at my second meeting with the IRS, I was well-prepared and seemed passionate about my beliefs, and said he "*knew that* [we] *were in disagreement with Cathy Spaulding's position, which was the government's position*." He also said that we had a "*disagreement about the interpretation of the law*."

Wait a second. Why would the *government's* witnesses keep acknowledging that this was simply a case of an open, honest disagreement about the correct application of the law, when that is the *opposite* of "willfulness"? Again, the Supreme Court says that the criminal tax statutes are *not* to be used to penalize "*frank difference of opinion*" about the laws (*Spies v. United States*, 317 U.S. 492). If my wife and I simply had a different understanding or interpretation of the law, as the government's witnesses kept admitting during her trial, then we *couldn't* have been guilty of the crimes we were charged with.

For a long time—all the way through my prison stay, in fact—I assumed that the government was trying to confuse our juries about the issue of "willfulness." Only later did I stumble upon evidence conclusively proving instead that the federal prosecutors themselves really are so clueless that they don't *know* what "willfulness" means. In a motion in my wife's case, the DOJ argued the following:

"*As the Court correctly instructed the jury, and myriad courts including the Supreme Court have made clear,* ***a disagreement with the IRS cannot constitute a good-faith defense****. … Tessa David and her husband's 'studied conclusion' that the Section 861 argument was used to justify their failures to file returns and pay income taxes cannot form the basis of a good-faith defense.* "

What?! That is the exact *opposite* of what the Supreme Court has ruled! The Court did say that a "studied conclusion" that the law is *unconstitutional*—something we have *never* argued—is not a valid defense against willfulness, but also explained that "*a good-faith* ***belief that one is not violating the law negates willfulness****, whether or not the claimed belief … is objectively reasonable*" (*Cheek v. United States*, 498 U.S. 192 (1991)).

The government's own witnesses repeatedly admitted that we merely disagreed with them about the proper application of the law, and that we *believed* our income was not taxable, and that we therefore weren't required to file. But the federal jackasses prosecuting us misread the ruling in *Cheek* to mean that it is a crime to *disagree* with an IRS bureaucrat. Wow, what fascist dictatorship did these twits come from? (I think it's called "Washington, D.C.") And since *all* federal tax crimes have the element of "willfulness," how ridiculous is it for prosecutors specializing in *tax* cases to fail to grasp the concept?

No Defense Allowed

Just when I thought the government's "motion in limine" couldn't get any weirder, it said this: "*The defendants should not be permitted to give legal opinions during their testimony, nor quote legal precedent to support their testimony*." What?!

How the heck can we show that we did what we believe the law requires without giving our legal opinions? They might as well have said, "The defendants should not be permitted to defend themselves," which is obviously what they were really requesting.

They then argued that we shouldn't be allowed to show that *other* people, including attorneys and CPAs, have publicly agreed with our conclusions, in order to show that our beliefs are not so "unreasonable" as they may at first seem. Why not? Because, their motion said, whether my beliefs are objectively reasonable is "irrelevant." Again, the Supreme Court says the exact opposite: while an honestly held belief does not need to be objectively reasonable in order to negate willfulness, a

jury *can* consider the reasonableness of a belief in deciding whether the person truly held that belief. Oddly, the government's motion then contradicts itself, saying the jury *can* decide the "reasonableness" of my conclusions in deciding whether I really believed them.

(As you will soon see, the government's entire case can be summed up as "People with credentials *told* you that you were wrong," so it was more than a little slimy for them to want me to be barred from also mentioning the people with credentials who told me I was *right*. You see, in the persecutors' eyes, it's relevant and important for the jury to hear about people *disagreeing* with me, but it's irrelevant and "unduly prejudicial" when people *agree* with me, which the jury should never hear about.)

Their motion also argued that I shouldn't be allowed to ask IRS agents, on cross-examination, "*about Internal Revenue Code sections and definitions of legal terms, such as what constitutes taxable income*." Hmmm.

For the grand finale, their motion said this:

"*Incredibly, the defendants' position, articulated on Mr. Rose's website, during meetings with the IRS, and through various documented statements, is that the IRS is knowingly and intentionally misapplying the law.* "

Right on! Damn straight! Yer darn tootin'! You finally got something right. And, at the same time, acknowledged that it is my position (i.e., my *belief*) that my actions are in accordance with the law and that the government's actions are not. And holding such a belief makes me *not guilty* of any willful tax crime. So why did you prosecute me, after conceding my innocence?

As an aside, their motion kindly conceded that I would, "*of course,* [be] *free to play recordings of* [my] *meetings with the IRS*." At trial, however, they changed their tune, and I wasn't allowed to do that either.

So there you have it. In a case where my beliefs about the law were the only thing the jury had to determine, the government asked the court to forbid me from showing the jury any section of law, from quoting from any section of law, from showing the jury anything I had written or said about the law (on the web sites, in the video, in the report, in letters to the government, or anywhere else), and even from stating my "legal opinion." Yes, that's what our fine Department of Justice asked for. And most of it they got.

On many issues, Judge Baylson kept saying he wouldn't make a ruling until later. A couple of months before trial, we were still under the impression that all correspondence with the IRS, and our meetings with the IRS, *would* be allowed, and that the government would *not* be allowed to bring up our political beliefs or our improved finances. But leaving many of those matters up in the air until trial made it a pain in the neck to try to plan the defense, because we didn't even know what we'd be allowed to present (if anything).

Hearsay or Recordplay?

In the end, the "hearsay" rules were used as the excuse to keep me from showing much of anything to the jury. It may be debatable whether the judge was bending and/or breaking the hearsay rules, but either way the result was a "mock trial" if ever there was one.

Genuine "hearsay" does pose a problem. A person testifying about what someone else said (the witness *hears* it and then *says* it, making it "hearsay") can be unreliable. Having a bad memory, or misunderstanding or hearing wrong what someone said, or just plain making stuff up makes "hearsay" unreliable as evidence. As a result, in many cases hearsay is not admissible in court, for good reason.

Now comes the lesson in how to take a reasonable concept and distort it into something outrageous and ridiculous. Suppose I write a letter explaining my position and why I'm not filing tax returns, and I send that letter to the IRS. I admit I wrote the letter, and the government admits I wrote the letter. No one disputes the authenticity of the letter, or that I mailed it to the IRS. So can I show it to the jury?

Nope. Why not? Because, Judge Baylson proclaims, it's "hearsay." No one *heard* anything or *said* anything; I wrote a letter, and no one is disputing that. No deal: it's "hearsay" and I can't show it to the jury, even though *none* of the things which make "hearsay" unreliable apply. So what rational excuse is there for suppressing it?

How about my "Taxable Income" report, which I've sent to all sorts of government officials?

Nope. Hearsay. Jury can't see it.

Well, at least I can play the recordings of my meetings with the IRS. Even the government's pre-trial motion conceded that.

Nope. Hearsay.

How can a digital recording, the authenticity of which *no one* disputes (the IRS made their own recordings of those meetings) constitute "hearsay"? If anything, it's "recordplay," and unless someone is claiming it was doctored or edited (and no one was alleging that), it's about as reliable and trustworthy as evidence could possibly be.

Nope. Hearsay. Jury isn't allowed to hear it.

How about all the stuff on the web sites, which I wrote, and which the government admits that I wrote?

Nope. Hearsay. Jury can't see it.

How about my video, the one I spent a year and a half making, for the sole purpose of explaining my legal conclusions? How could anything be more relevant to my "state of mind" than that?

Nope. Hearsay. Jury can't see it.

How about my "*Please Prosecute Me*" ad? Surely the jury should see *that*.

Nope. Hearsay.

Let's sum up the insanity here. I was completely denied a fair trial—or any "trial" at all, really, since defending myself was prohibited—under the excuse of the "hearsay" rules. I was supposed to show that I had a "good faith" belief that I was not required to file tax returns, and I had tons of evidence proving that. And the judge, the prosecution, and the defense (me) all agreed that my state of mind was the *only* thing the jury needed to decide. (We stipulated to the other important facts: that we received income and didn't file.) But, while trying to show that I acted according to what I believed the law to require, I wasn't allowed to show or play for the jury *any* statement I had ever made about the issue, to anyone, in any forum, in writing or in person. In case you think I'm exaggerating, here is a direct quote from the government's "trial brief": "*Documents created by Defendant Larken Rose are inadmissible hearsay*." In other words, they were claiming that I shouldn't be allowed to show the jury anything I had ever written or said that demonstrates my beliefs. Sound fair?

What about the government? Oh, didn't I mention that? There is an exception to the hearsay rule: they could use *any* statement they wanted from me, to anyone, in any forum, in writing or in person. No, unfortunately I'm not kidding.

Playing Devil's Advocate

One of the more unusual "statements" of mine the government wanted to present to the jury was a recording of a sort of mock audit I did with a friend of mine, where I played the role of an IRS thug, so my friend could practice explaining and arguing the issue. (The IRS got the recording of that when they raided my house.) To use the government's own words, they wanted to introduce the recording of that mock audit "*to show that* [I] *knew and understood the position of the IRS with respect to the taxability of domestic income and the 861 argument*." Yes, I am well aware of the IRS's completely bogus, inconsistent, baseless, constantly fluctuating position. I also know how to slice and dice it. (Incidentally, so does my friend. He soundly thrashed me in the mock debate. But then, it wasn't exactly fair: he was arguing the truth, while I had the task of trying to make the IRS's convoluted and self-contradictory bunk sound convincing.)

I have to wonder: do federal prosecutors understand that when someone in a movie pretends to kill someone, he isn't actually doing it? Because they didn't seem to grasp that when I *pretended* to disagree with the 861 evidence—and they admitted that's what I was doing—it doesn't mean I actually disagree with it. The fact that I can articulate their stupid, incoherent position better than any of them doesn't mean I agree with it. Even the judge could see that me pretending to believe something I don't really believe would confuse the jury more than tell them anything worthwhile, so that tape was excluded from the trial.

Self-Serving

A phrase Judge Baylson used on several occasions, while saying why I couldn't show or play for the jury any of my letters, articles, web sites, radio show interviews, etc., was "self-serving hearsay." Of course, only a bonehead would introduce evidence that is *not* "self-serving," so what I

presume Judge Baylson meant is that the *statements* were self-serving. In other words, I made those statements to show the good faith of my beliefs. Yeah, I did. So?

So the jury wasn't allowed to hear them.

Consider the ramifications of that rule: There was *nothing* I could have done during all those years to show good faith, to demonstrate the sincerity of my beliefs, that I would have been allowed to show the jury. Why? Because (the judge proclaimed) it would constitute "self-serving hearsay." So going out of my way to explain my position, to document my findings, to seek answers from those in government (the jury wasn't even allowed to see the questions I had asked)—all the things that illustrated that I truly believed that I wasn't required to file, and all the things someone with an honestly held belief would and should do—were utterly worthless at trial. No amount of openness or honesty made any difference, because it was "self-serving" for me to be open and honest about my beliefs, so the jury wasn't allowed to see or hear any of it.

I was put on trial for acting on my unorthodox but sincerely held beliefs, but there was no way for me to demonstrate my beliefs, to show the jury my state of mind, because all relevant evidence—everything I had said or written on the topic—was excluded from the trial. Except, of course, whatever the government wanted to introduce.

You can argue legal and procedural technicalities all you want, but a good old-fashioned layman's term describes it best. The term starts with "bull" and ends with a synonym for poop. In short, defending myself was forbidden. If evidence was relevant, and demonstrated my state of mind and my honestly held belief that I did not owe the tax and was not required to file, then I was not allowed to show it to the jury. It's really that simple, and that insane. It's hard to make a trial any more unjust than that.

As an honest citizen who had reached an unusual conclusion, what should I have done to demonstrate my sincerity? Write to the IRS? Did that. Write to the Commissioner of the IRS? Did that. Write to the Secretary of the Treasury? The Attorney General? The head of the Tax Division of the DOJ? Write my senators and congressman? The President? Did all of that. Explain my beliefs, publicly and repeatedly? Did that. Provide extensive legal support for my position, and ask—no, *beg*—the government to discuss the issue? Did that.

I continually did all of that, for many years. And the Honorable Judge Michael Baylson made sure the jury wasn't allowed to see *any* of it. It was not a trial; it was a witch hunt. There was almost no relevant evidence presented: none from me because I wasn't allowed to present it, and none from the government because nothing relevant helped their case. (That's one problem with prosecuting innocent people.) So I was looking forward to several days of vilification and character assassination, all with the blessing of the kangaroo court, with no opportunity to actually defend myself. Gosh, what a swell legal system we have.

Scum of the Earth

If you ask me, Floyd Miller and Shawn Noud, federal prosecutors, are the scum of the earth. (I

mean that in a nice way.) It's one thing to act as paid advocates, arguing some side of a dispute you're paid to argue. Even that can get a tad slimy, but to intentionally prosecute someone—to steal a chunk of someone's life for a crime you know damn well he didn't commit—well, that about takes the cake for slimeballness. My hat's off to you—and my middle finger is up at you—Mr. Miller and Mr. Noud, for being unscrupulous, dishonest pawns of a tyrannical regime.

> **"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." [Berger v. United States, 295 U.S. 78 (1935)]**

Yeah, right. Go tell Miller and Noud that. (The above quote is from the U.S. Supreme Court, as you may have guessed.) In a case focused entirely on state of mind, the prosecution did everything in its power—both legal and illegal—to *prevent* the jury from seeing the piles and piles and piles of evidence showing what I believe about my tax-related legal obligations. It wasn't a pursuit of the truth by any stretch of the imagination; it was a desperate attempt to conceal the truth, to confuse the issues, to vilify and malign the accused, and to do everything except honestly examine what I believe. Perhaps their train of thought in preparing for trial went something like this:

"Let's see, we have to show the jury what this guy believes, and what was in his mind. Well, to start with, let's make sure they never see any of the things he wrote about his beliefs. Then let's keep him from playing the recordings of his meetings with the IRS, at which he explained his beliefs and invited a discussion of the matter. Then let's keep the jury from seeing anything he used to express his conclusions, like his video, his report, his web sites, all the radio shows he was on, and all the letters he sent to the government. Then let's see if we can prevent him from even explaining his beliefs, by having the judge prohibit him from showing or quoting anything from the law. Then we can prove his guilt by slandering him, calling him a tax cheat, and making the jury resent him."

That was their game plan. It wasn't an accident, and it wasn't an "indiscretion" or two; it was a premeditated plan to cover up all relevant evidence in order to imprison someone they knew to be innocent. If they had any evidence suggesting that I don't really believe what I've been saying for years, of course they would have used it. They had no such evidence because no such evidence exists. So not only did they have no evidence to prove to a jury that I was guilty, they had no reason themselves to even suspect that I *might* be guilty of a crime. Nothing I had done or said gave the slightest hint that I wasn't being honest about my legal conclusions—their own damn witnesses acknowledged that I seemed sincere in my beliefs—but they didn't care. The truth didn't matter a bit to them. Miller and Noud acted as legal hit men, sent to shut me up at all costs. I hope they are proud of having put an innocent man in prison.

As you may have deduced, however, I'm still not going to shut up.

Part VI:
Heretic on Trial

Game Day

The months leading up to my trial were frantic, to put it mildly. We gave our medical transcription business to someone we knew, both so we could prepare for trial and so our customers wouldn't be left high and dry if we were convicted. We did a sort of dress rehearsal of the trial in my parents' living room, though that was without Larry Becraft, who ended up being my "standby counsel." (At the mock trial, I was acquitted by a jury of my actual peers.) I also went through the annoying process of buying several suits and ties—which I hate wearing, and hadn't worn for years.

The trial date was postponed several times, due to our requests and the court's scheduling conflicts. Once we thought the date was finalized, we arranged to have our daughter's favorite aunt come out and entertain her during the trial, and reserved hotel rooms downtown for all of us. Tessa and I had put in a lot of work planning our opening and closing statements, expecting a joint trial for the two of us together. But when Judge Baylson decided to split the trial in two at the last minute, we had to basically start over and prepare completely independent defenses. Then we had to reschedule hotel rooms and plane tickets for witnesses. Just before trial, we managed to sneak away for a quick break (with permission from our government babysitters) to land we had recently purchased up in New Hampshire.

Finally, the day came for the trial to actually begin. We awoke in our hotel room, got up, got dressed for trial, and took the shuttle to the courthouse, along with a fair number of our supporters who were staying at the same hotel. And then, on the morning of Monday, August 8th, 2005, we strolled into the federal courthouse in downtown Philadelphia, to be put on trial for reading and obeying the law.

Bonehead Selection

Before the trial itself could , we had to go through the process of jury selection. Both sides, prosecution and defense, are present as potential jurors are asked certain questions to see if they have any bias or situation that would get in the way of their giving an impartial verdict. The two sides whittle down the jury pool, and eventually what is left is the actual jury, consisting of twelve jurors and (in this case) two "alternates"—people who can step in if one of the twelve can't continue for some reason. Jury selection is pretty boring, but we were impressed by how many of our supporters showed up to witness it.

Not much worth mentioning happened during jury selection. One potential juror openly admitted, "*I'm not very good friends with the IRS, as far as I'm concerned*." (You and me both, pal.) When asked if he thought he could set aside his anti-IRS bias and make an objective ruling, he said "no." Not surprisingly, the judge dismissed him. (Darn.) I later received an e-mail from the anti-IRS

gentleman, wishing me luck. I'm sure I would have had more "luck" with him on the jury, but it wasn't to be.

I requested that another potential juror be dismissed because she was the mother of an IRS employee. I found it slightly humorous when the juror stated that her daughter worked in "customer service" for the IRS, and when asked to elaborate, said that her daughter's job is "*calling people and telling them to pay up*." Wow, that's some quality "customer service" she provides. Anyway, that juror was dismissed as well.

One potential juror was a nice lady who really had been a tax protestor in the past, objecting to being forced to fund the military. She also admitted to having "*an inherent distrust for the IRS*." Does that make her unfairly biased, or sane? (What kind of moron would *trust* the IRS?) She did not end up on the jury either.

There were a couple of questions that I wanted potential jurors to be asked, one being whether they might hesitate to render a verdict of "not guilty" for fear of retaliation by the IRS, but the judge refused to ask them that. The judge also refused to ask them whether their verdict might be influenced by the possible political ramifications of a "not guilty" verdict. In other words, would they think "The country will collapse if we don't find him guilty!"?

Once the jury was selected, the judge gave the jury some initial instructions about the government having the burden of proof, the jury having to find guilt "beyond a reasonable doubt" in order to convict, and so on. One thing Judge Baylson said to the jury—which isn't an unusual instruction, but still seems ridiculous to me—was this: "*I specifically instruct you, you may not go on the internet, you may not open a dictionary, and you may not try to find out anything about the law*." Hmm. Slightly Kafkaesque, if you ask me.

The Demonization Begins

The trial began with the government's "opening statement," delivered by Shawn Noud of the DOJ. A transcript cannot convey a person's demeanor, but all the people who were present at the trial can attest to the fact that Mr. Noud 192

appeared extremely nervous, if not downright terrified, during his opening statement. My own mother says that at the time she actually felt sorry for him as he fumbled, hesitated, stammered, and generally looked as if he was about to wet his pants. (Mom has since gotten over her pity for him.) Mr. Noud looked a lot more like a guilty defendant than a confident prosecutor. Then again, he was knowingly lying in front of a courtroom full of people who were there to support me, and I guess that could be a mite stressful. (I wouldn't know for sure, since—unlike Mr. Noud—I've never lied to put an innocent man in prison.)

Here is how he began, with all the conviction and gusto of a scared rabbit:

"This is a case about a man who knew the law, who defied the law. The defendant, Larken Rose, failed to file tax returns for five years, even after receiving, time and time again, notice from the IRS that he had a duty to file his return and pay taxes."

Note that so far he had given no hint as to *why* I stopped filing. Instead, he started with a lie, and then went right for envy and vilification tactics, going on to say that instead of filing returns, I was paying off my mortgage early (which of course makes me the scourge of humanity), and going on a "*campaign to harass the IRS*." Oh, that poor, innocent, helpless and defenseless IRS, being "harassed" by nasty old me, who wouldn't stop asking them questions about how I should comply with the law. How heartless and cruel of me. (Good grief.)

Mr. Noud went on to summarize the nature of the charges, and promptly lied about the law, just as Floyd Miller had lied to the grand jury. There are three elements to the alleged crime. Mr. Noud got the first one right: they had to prove I didn't file (which was pretty easy, since it was formally stipulated, and I'd been admitting it for years). The second element he botched a bit, saying they had to prove I had enough "income" that I would be required to file, without a peep about whether my income was *taxable*.

But on the third element—really the only issue the jury needed to consider—Mr. Noud lied outright. He said that to prove the third element, "willfulness," the government had to prove that I "*failed to file* [my] *tax returns knowingly and intentionally; that is* [I] *was willful*." As you've seen, that is *not* what "willful" means. Obviously I "knowingly and intentionally" didn't file. It certainly wasn't by accident, or because I forgot. It was because I had no taxable income to report. He left off the part about intentionally breaking the law, which I did not do, and which is what "willfulness" actually means.

Mr. Noud agreed that there was no dispute over the fact that my wife and I had received income, and that we hadn't filed tax returns for 1997 or since, as we had been telling the government for years. But, just to play the envy card again, he proclaimed that in the five years in question, our medical transcription business brought in a total of around $500,000—a half a million dollars! "*That's an average of one hundred thousand dollars a year*," he added. The obvious message was, They're the evil rich and you should hate them!

Apparently Mr. Noud "forgot" to mention that well over half of our business receipts went to pay our typists, with the result being that my wife and I, both working on the business, were bringing in less than $50,000 a year. But pointing out that fact, which the prosecutors were well aware of, wouldn't make the jury resent us as much, so Noud didn't mention it. (Remember how Pearlman said they needed to raid our house to get info about our *expenses*? He lied. All the expense documentation they got, they ignored.)

After that Noud touched on "willfulness" again, but this time got it right (more or less). Then he again falsely asserted that I "*knew* [I] *was required to file a tax return for each year, and failed to do so*." Did he intend to introduce any evidence showing that? Nah.

The text alone of what he said next conveys some of the sniveling condescension of the prosecutors:

"*The government anticipates that the defendant will try to put forth a story about how it was he didn't really know he was required to file a tax return. This ridiculous story, which I'll refer to as the 861 argument—*"

At that point the judge, to his credit, cut Mr. Noud off, since opining about what they think I *might* say in my defense is not appropriate for an opening statement.

"Ridiculous story"? If my mom wasn't going to read this book (Hi, Mom), I might have a few choice words to say about Mr. Noud. But I'll refrain.

So, you might wonder, how was the government planning to prove that I believed I was required to file? Well, according to Mr. Noud, they intended to show that:

1) I filed in the past (before ever looking at the law): "*He knew how to file a return*." (No kidding.)

2) I knew I had income. (No kidding.)

3) The IRS sent me "notices" saying they hadn't received a return from me.
(Yeah, and I sent them "notices" saying that I hadn't filed one, and explaining why.)

So far, what does any of that have to do with what I believe about my legal obligations? Nothing.

Then Mr. Noud said that "*the evidence will show that the defendant put forth this section 861 argument, which stated that he believed that his income was not taxable*." Hey, he got something right! He went on to say that I had sent the IRS letters explaining "*that the income that* [I] *received as a United States citizen within the United States wasn't taxable*." Right again! So where is the evidence that I don't really believe that, without which there is no case?

Mr. Noud then declared that the IRS had sent me letters saying "*This argument of yours is invalid; your income is taxable*." The IRS, said Mr. Noud, had told me "*eleven times that this 861 argument was not valid*."

So, I had explained why I believed my income was not taxable, and some IRS letters said they thought it was taxable. Based on that, Mr. Noud concluded, "*This wasn't about a mistake; this was about a defendant who knew the law and who defied the law*."

"We Told You!"

Take a moment to ponder the implications here. What they were trying to pass off as proof that I believed my income to be taxable was the fact that *someone else* (IRS bureaucrats) said my income was taxable. The only way that proves "willfulness," or even suggests it, is if it is *impossible* to believe something contrary to what some paper-pusher asserts. The implication is clear (but absurd): I can't have believed my position after a bureaucrat said I was wrong. Notice that they had nothing at all from *me* saying that I think my income is taxable; Mr. Noud had just acknowledged that I explained to the government why I believe I *don't* owe the tax.

Let's do a little mental exercise here: *I hereby inform you that 2 + 2 = 5*.

From now on, don't you go pretending to believe that two plus two adds up to four, because I

just *told you* it doesn't. And, as the DOJ's reasoning dictates, it's not humanly possible to continue believing something after someone has told you that you're wrong. Oh, I almost forgot:

I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.
I hereby inform you that 2 + 2 = 5.

There, now I've told you *eleven times* (just as the IRS told me), so how can you possibly claim to still think that two and two make four? (If this reminds you a bit of George Orwell's writings, especially *1984*, you get a gold star.)

Notice that Mr. Noud didn't allege that anyone at the IRS ever explained *why* I was wrong, or cited anything from the law contradicting my position; no, all they needed to do was *tell* me my income was taxable, and that (according to Mr. Noud) made it impossible for me to believe otherwise. And I do mean impossible: they were claiming that "we told you so" constitutes proof *beyond any reasonable doubt* that I thought I owed the tax.

(Considering the eventual outcome, apparently those on the jury agreed. I hope they all get audited. Speaking of which, at one point during the proceedings, though outside the courtroom, Mr. Miller admitted, with obvious frustration, that the IRS was in the process of auditing *him*. Hmmm, maybe that had something to do with why he was willing to repeatedly lie through his teeth to get me convicted. Maybe there was a little intimidation going on?)

Ironically, more than two years earlier, in an e-mail to my list of subscribers, I had facetiously pondered what a prosecution of me would have to look like. My comments included the following:

"Exactly how will the prosecutor prove that I didn't really believe it? Imagine the lunacy of it... Prosecutor: 'Well sure, you have seven or eight legally binding citations TELLING you to use 26 USC § 861(b) and 26 CFR § 1.861-8 to determine your taxable domestic income, but you couldn't possibly have really believed that, because once a bureaucrat made a legally worthless assertion that you should ignore those sections!'" (Me, 5/18/03)

As you can see, that's exactly what they did argue—that was the basis of their entire case! (I think that e-mail qualifies me for at least "apprentice prophet" status.)

More Opening

Mr. Noud then said that prior to learning about 861, I had been "*looking at other ideas about how to not pay your taxes*," which was also a mischaracterization. I had looked into various theories and claims alleging that the income tax is invalid, unconstitutional, or was being misapplied. What Mr. Noud failed to mention is that I found such theories and arguments to be flawed, and publicly *refuted* them. I guess the mere fact that I would even *look* at unorthodox claims makes me a

despicable creep. (How dare I be suspicious of the federal government?)

Now prepare yourself for something truly shocking. Mr. Noud then pointed out that (brace yourself) our finances improved when we stopped giving the IRS $10,000 a year! No poop, Sherlock. What does that have to do with whether I believed our earnings were *taxable*? Of course our finances did better, and would have done better whether I believed I owed income taxes or not. But once again, Mr. Noud was not trying to prove guilt—he knew he couldn't; he was trying to stir up more envy among the jurors.

Then he explained how that noble, selfless public servant, Ms. Cathy Spaulding (IRS auditor) had twice "sat down" with me, letting me "*explain this 861 argument*," and then *told me* my income was taxable and my position was incorrect. Just listen to the sad story: "*She sat down to help prepare the tax returns. And what did the defendant do instead? Did he take her up on her offer? No, he filed a complaint against her and threatened to have her fired*."

Oh, evil, heartless me—I wouldn't take her up on her "offer" to help me prepare *false* returns, incorrectly reporting my income as if it were taxable. Out of the kindness of her heart, the virtuous Ms. Spaulding was trying to "help" me give the IRS money, and I was a meanie to her. Boo hoo. Of course, Mr.

Convenient-Omission Noud didn't bother to say what the complaint against Spaulding was actually about. He wanted it to sound as if I filed a complaint because she tried to "help" me. Hardly. I filed a complaint because she blatantly and intentionally disregarded and disobeyed both IRS procedures and Treasury regulations, even after I showed them to her, by refusing to properly process my request for "technical advice."

As for "*threaten*[ing] *to have her fired*," when did I acquire the ability to have IRS employees fired? If I had such a power, there would be about 100,000 more unemployed people tomorrow. I filed a complaint, which is what IRS procedures say I should do when one of its bureaucrats disobeys the law and willfully disregards proper due process. (Not surprisingly, under our fake system of due process, Ms. Spaulding was never punished in any way for blatantly violating official IRS procedures.)

To further show what a really low-down sort of fellow I am, the government intended to show that I "*wanted to end the IRS's existence*." Damn straight I do! Call me crazy, but I don't like organizations which illegally rob and defraud my fellow Americans of over a *trillion* dollars a year. In addition, the charge was about not filing tax returns; it wasn't about wanting to put the IRS out of business. Just how does my animosity toward the IRS prove that I believe I owe the tax? Wouldn't I be just as anti-IRS, if not more so, if I thought they were taking money from people who don't owe it? Of course I would.

As icing on his substance-free cake, Mr. Noud talked about two "judges" asserting that my position (or a position like it) was wrong. That might indicate what those judges believe, but how does it indicate what I believe? Oh, I forgot: disagreeing with people in government is impossible. That was the entire premise of the government's case: that I *couldn't* have honestly disagreed with federal bureaucrats.

(Incidentally, and as a reminder, the U.S. Supreme Court says that if someone holds a belief that his actions are legal, there is no willfulness and therefore no crime, "*however unreasonable a court might deem such a belief*" (*Cheek v. United States*, 498 U.S. 192 (1991)). In other words, for "willful" tax crimes it doesn't matter a bit what any judge thinks; it matters only what the defendant believes.)

So that was it. That was the prosecution's opening, in which they summarized the case they intended to present. They didn't even pretend to have anything from me giving any hint that I didn't really believe in my stated position. In short, their own opening statement demonstrated that I was being prosecuted, not for hiding anything or lying about anything, but for having an open, honest disagreement with the IRS folk about the proper application of the law. Is that something someone should be prosecuted for? Look at what the prosecutor's manual for the Tax Division of the DOJ says:

> **"There are obvious questions raised as to willfulness when the law is vague or highly debatable, such as whether a transaction has generated taxable income. ... To aid in establishing willfulness at trial, items turning on reasonably debatable interpretations of the Tax Code and questionable items of income should be eliminated from the case." [Criminal Tax Manual, § 8.06[2] ("Proof of Willfulness")]**

The manual goes on to quote from the Supreme Court case of *Spies v. United States*, 317 U.S. 492 (1943), which, as the manual puts it, gave "*excellent guidance on the type of evidence from which willfulness can be inferred*," including keeping double books, falsifying documents, destroying records, hiding income or assets, or engaging in "*any conduct, the likely effect of which would be to mislead or to conceal*." Of course, in our case none of that happened, as the government admitted. We hid nothing, and we lied about nothing. Here is something from the same Supreme Court case, regarding the purpose of the federal criminal tax statutes:

> **"It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the deficiency of tax and its collection with interest for the delay." [Spies v. United States, 317 U.S. 492 (1943)]**

In other words, if they disagree with my understanding of the law, they are supposed to try to collect money from me, not prosecute me. But in my case they never tried to collect. They went right to prosecution, without so much as sending me a bill first. Their own opening statement plainly shows that they were doing exactly what their manual and the Supreme Court says that they are *not* supposed to do: prosecuting someone for having a difference of opinion about the proper application of the law.

Reality Check

Imagine yourself walking into a grandiose federal courtroom, about to be put on trial, facing possible jail time. Now imagine that you're representing yourself, even though you're not a lawyer, have never had any formal legal training, have never been on trial before, and have never even *watched* a trial before (unless you count a few episodes of *The People's Court* from twenty years ago). Your freedom is on the line, and several experienced government lawyers are going to do their best to have you thrown in prison for up to five years. The court docket reads "*United States v.* [your name]." Wow: the whole government versus you.

I can tell you, it feels really weird. It helped to know that I wasn't guilty of the charges and that

the government had no evidence suggesting otherwise. But since it was up to twelve couch-potato Americans to make the final decision, it was still rather stressful (to say the least). It did help to have dozens of people in the courtroom who knew the truth, who knew who the real crooks were, and who were there to support me in my slightly insane endeavor.

(At one point I had hoped to have the trial televised, and lots of supporters wrote letters requesting that that be allowed, but federal courts pretty much never allow that anymore, so that effort fizzled fairly quickly.)

My Opening

It was time for my opening statement. In retrospect, I think the fact that I was *not* very nervous may have counted against me in the eyes of the jury. In this age of moral relativism and the worship of self-esteem, where everyone's opinion—no matter how asinine it might be—is supposed to be considered equally "valid," and therefore (paradoxically) no one is supposed to think that his own opinion is the *correct* one, many people see confidence and being sure of one's convictions (no pun intended) as arrogance. Perhaps if I had appeared more nervous and worried, the jury would have liked me more. (It seemed to work for Shawn Noud.) But having given many talks in public and on the radio, and knowing the facts of the case backward and forward, I had no uncertainty about what I wanted to say. Since my opening statement is pretty self-explanatory, mostly I'll just let it speak for itself. Here is how it started:

> **"Good afternoon. My name is Larken Rose, and as you heard, I am the defendant in this case. And with some help from Mr. Larry Becraft, my assistance of counsel, I will be representing myself here."**
>
> **"As you've already heard, this case has to do with taxes. But this case is very unusual, and should be rather interesting, for several reasons. For starters, as you will hear when I testify, I requested this; I asked the United States government to prosecute me. Now, when I testify you'll hear why on earth I would do such a thing."**
>
> **"You'll also quickly learn that this is not your average tax case, where someone was caught lying about something on a tax return, or hiding their income, or doing anything deceptive. You will see that from the beginning I have been completely open and honest about what I have been doing, and why. You'll see that I made no secret about the fact that my wife and I earned income in all of the years in question from our medical transcription business, which we have run out of our home—and that that income, as the government stated, was reported to the IRS on 1099 forms. You'll also see that we went out of our way to make sure the government knew that despite receiving that income, and despite having faithfully filed tax returns for years and years, my wife and I stopped filing income tax returns. We did not file tax returns for 1997 or any year since. There's no dispute over those facts; there never has been."**
>
> **"As an aside, looking at the government's witness list and exhibit list, it appears they intended to spend a lot of time documenting the fact that we had income. I'm not exactly sure what the purpose of that is, because we freely admit that we had that income. We have never denied that, and we do not deny it now. We stipulate to that fact."**

(Just a word about stipulations here. When both sides in any case stipulate certain facts, they don't need to be proven or argued about. In the weeks leading up to trial, my wife and I kept *trying* to stipulate to all sorts of facts, only to have the prosecutors refuse to sign their *own* stipulation requests. A little later on I'll explain why they would do such a thing—why they didn't *want* us admitting certain facts.)

"I also openly acknowledged, as I've said, that I stopped filing tax returns. The relevant question here is Why? Why did I stop filing tax returns? During my testimony you'll hear how years ago I assumed, as most people do, that the tax experts, the people at H&R Block, the people who write TurboTax software, the CPA down the street—I assumed these people knew the law. And when they told my wife and I that we had a tax obligation, we believed them. We assumed they know the law and we acted accordingly, paying and filing every year."

"Now, many people dislike taxes, but when I testify, you'll see that this case has nothing to do with protesting the law, or complaining about taxes, or anything of that sort. You'll hear that I used to openly criticize the income tax as being unfair, and economically and socially destructive, and generally a bad idea. But at the same time, even in our toughest financial years, my wife and I filed tax returns and kept paying every year, because we thought we owed it."

"Then you'll hear how sometime in 1997 I stumbled on something that started me off on a very strange, almost surreal journey. And when I testify, I will walk you through that journey. You will see what I saw, and you will hear what I heard, and you will see what led me to where I am now, standing in front of you on trial—a trial I asked for."

"You will learn how, based on what the law itself says, I came to the strange conclusion, not that there was some trick or loophole for getting out of paying my taxes, but that my income was never taxable to begin with—that it was incorrect for me to file a tax return reporting my income as taxable."

I then went over a few technical points. For example, I explained that by the rules of the court, I wouldn't be allowed to argue about what the law is; I could only talk about what I "believe" the law to be. While I find that rule absurd in a supposed "court of law," it's actually standard operating procedure in all federal trials, so I planned accordingly. I had to keep everything in terms of my beliefs, while the judge would declare that he and he alone could instruct the jury on what the law is.

Next, I explained to the jury the concept of "willfulness":

"For many crimes, what a defendant believes doesn't make any difference, but in federal tax cases it's different. There's something called 'willfulness,' and a willful tax crime is where an individual does something other than what that individual believes the law requires of him. In other words, acting willfully means to intentionally break the law. As the court will instruct you, I believe, as long as someone does what he honestly believes is in accordance with the law, even if you think his beliefs are unreasonable, then there is no willfulness, and there is no crime."

I wanted to make the heart of the matter painfully obvious:

"I will show you that I stopped filing because of what I found in the written law, where the law talks about what income is taxable and what income isn't. That right there is the entire crux of the case: Did my wife and I owe taxes on the income we received, or didn't we? I'll show you why I concluded that we did not."

I also acknowledged how wacky my conclusions sound at first, saying this:

"We all know that popular opinion says, 'Of course your income is taxable,' and at this point I can't blame you if you're thinking that any claim to the contrary is preposterous. I can't blame you, because that's exactly how I reacted to the exact same claim years ago."

I told the jurors that they would see that "*when I examined the law itself, what it actually said didn't match the so-called conventional wisdom.*" I continued:

"And you'll see and hear what happened when I confronted the IRS and others in government about what I had found. You'll see how they were quick to throw out terms like 'frivolous' and 'tax cheater,' and even 'fraudulent scheme.' And I expect the prosecution to use similar rhetoric, as they already have, but you'll see

that aside from insults and name-calling, for the last eight years the government has had very little substantive evidence to present about the issue, and has shown me nothing from the law itself which contradicts my conclusions. And of course, that had a major impact on my beliefs."

To counter Mr. Noud's mischaracterizations, I also threw in this:

"You'll also hear, when I testify, that this was not something I just believed right away. In fact, it was something I disbelieved right away. As the government mentioned, yes, I had looked into many so-called tax protestor theories, claims that the tax was invalid, or we didn't owe it, or things of that nature. But I found that those theories didn't hold water, and I continued to file and pay. I studied them for myself and found that, no, they were invalid. They sounded good—gosh, I wish they were true, but they weren't, so I kept filing."

"But then something very strange happened. I heard about another claim, with a similar-sounding 'punchline,' if you will. But when I looked into it, instead of disproving it, I found more and more evidence supporting it—evidence from the law supporting it, which is not at all what I expected to find."

"You will see how the laws of this country, all by themselves, led me to conclude that popular opinion about the income tax is dead wrong. I will show you sections of the law that I discovered that say something dramatically different from what I always assumed the law said. And you'll see and hear evidence demonstrating that many tax professionals, including IRS employees, are completely unaware that these sections of law even exist, and so reach their conclusions based on an incomplete picture of the law."

"When I testify, you will see things in the law you have never seen before. Now, the tax code is renowned for being insanely long and complicated, but this is not about some loophole, or a typo, or a mistake. I'm talking about where the law addresses the most basic issue: who owes federal income taxes and who doesn't. This isn't about some philosophical theory or some complaint about taxation in general. This case is about what certain specific sections of the law say about a certain specific tax: the federal income tax. That's all."

After pointing out that the jury isn't even allowed to decide whether my conclusions are actually correct, but is only to decide whether I *believe* my actions to be in compliance with the law, I made sure to add this: "*At the end, when you deliberate, if you have questions about what the law is, I believe you'll have an opportunity to ask the judge*." In the end, however, they never asked the judge anything. After the entire trial, they had a grand total of zero questions about the law. Keep that in mind when you see the things I showed them over the course of the trial.

"When something runs counter to conventional wisdom, of course you hesitate to believe it. And you'll see, not only that I did not reach my conclusions without first doing extensive and thorough research of my own, but that during my research I also went out of my way to seek out opposing views from those inside and outside the government."

"You'll also hear how along the way, various credentialed individuals did their own research into the issue, and ended up agreeing with me. And you'll hear that many still disagree with me—obviously, or there wouldn't be a trial about this. You'll learn that I don't believe that whether something is true or not is determined by how many people believe it. Almost everyone used to think the earth was flat, and all of the learned scholars of the time ridiculed the claim that the earth is round, and even imprisoned some people for saying so. When I testify, you'll see that I believe the way to find the truth is not by blindly believing anyone's opinion, but by examining the evidence."

"And when I testify, you'll see the contrast between the responses of those who ended up agreeing with me, and the responses of those who still insist that I'm wrong. On the one hand, you'll see thorough, objective analysis of all of the evidence, not just a section or two out of context. And you'll see that as hard to believe as my conclusions are, more and more rational, educated Americans have come to agree with it, including CPAs and attorneys, and including former IRS employees and a former federal prosecutor, in addition to thousands of other Americans."

"On the other side, you'll see that the people who are supposed to be experts on the tax laws made it quite plain that they really couldn't refute what I was showing them. Many have been quick to say 'That's

ridiculous!' Usually followed by 'You'll get in trouble if you believe that.' Well, lots of people got in trouble for believing the earth is round, too, but they were still right."

"You'll hear how I asked to meet with the IRS to discuss the matter. After asking several times, they met with me, twice, as the government mentioned. I intend to play the actual recordings of those meetings I had with the IRS, so you can hear for yourselves how they responded to what I was showing them from their own law books. You'll also see what happened when I and many others sent letters to various government officials, politely asking for clarification, asking perfectly reasonable questions, based completely on what the law itself says, about how to determine taxable income. I think you will be stunned by some of the nonresponsiveness of some of our public servants; their garbled non-answers, their unwillingness to engage in a rational discussion, their eagerness instead to hurt anyone who would challenge conventional wisdom. You will see that our openness and honesty was met with threats and insults by some in government."

"You will learn how it wasn't long before my journey wasn't just about what my wife and I did or did not owe anymore. It was about uncovering what I believe is the largest financial fraud in history, perpetrated by the United States government, and my efforts to expose that fraud for all to see, in the hopes of ending it. You'll hear how, for that purpose, I asked the United States government to prosecute me. I was sure then, and I am sure now, that if any twelve Americans are allowed to hear the whole story that has led up to this, they would easily see that I have committed no crime, and would never vote to convict. And I am still willing to bet my freedom on that."

Since the jury was *not* allowed to see the whole story (as you'll soon see), or even a tenth of the story, the accuracy of my prediction remains uncertain.

"In this case, in deciding which things I should talk about when I testify, and which documents to present as evidence, my challenge was not finding enough stuff to present; it was figuring out how to limit it to just the most essential things, because we could easily spend months in here going through the volume of citations and information and evidence I went through before reaching my conclusions. Cutting it down to a couple days, however, creates a huge challenge for me, because I will have only a few short hours to expose you to some of the evidence that I have spent thousands of hours going over, and going over, and researching, and questioning, and researching some more. And in that short amount of time, I will be competing with your lifetime of hearing the conventional wisdom, including from those who are presumed to be well versed in the law: CPAs and attorneys."

"I certainly wasn't convinced in a couple days, and I don't expect you to be either. However, I am certain that even after just a few hours, based upon just a small sampling of the letters I've written, meetings I've had, sections of the law I've studied, you at the very least will know that I am doing exactly what I understand the law to require, and that I strongly feel, not just that what I chose was justified, but that I had a moral, legal, and patriotic duty to do exactly what I did."

I must say, sitting here in prison going over these transcripts, the more I review the case, the more I want (figuratively speaking) to strangle the braindead jurors who unanimously declared, at the conclusion of the trial, that they didn't even have a "reasonable doubt" about my beliefs: they *knew* I believed I owed the tax. Gack.

"Again, the facts of what happened here are not in dispute. I earned money and I did not file. Really the only question for you is simple: Did I do what I believe the law requires or not? If by the end you are convinced beyond a reasonable doubt that I set out to break the law, then do your civic duty and find me guilty. But if you instead conclude that I believed I was obeying the law, whether or not you think my beliefs are reasonable, then find me not guilty. I believe that the evidence will show, unmistakably and undeniably, that I have committed no crime—that I have done exactly what I believe the law requires of me, and that my understanding of the law, though obviously contrary to popular opinion and contrary to what some people in government loudly assert, is nonetheless solidly based on the law itself."

"On a final note here, as the defendant I'm supposed to be on the defensive, but over the course of this trial, it should become obvious that this case is not just about me proving my innocence. Keep in mind, this

is not a case of someone getting caught doing something sneaky. I ran full-page ads telling the government what I was doing and asking them to put me on trial. I chose to go through this. Who would choose trouble just to try to get out of it again? Nobody. There is something far more important to me here than just being found not guilty. By the end of this trial, I hope you'll understand what it is."

"Thomas Paine once said, 'If there must be trouble, let it be in my day, that my child may have peace.' Well, I saw trouble which could not be avoided except by tolerating an injustice, and I was not willing to do that. I believe it is my duty to fight this fight."

"So after the government finishes its case, you'll be hearing from me again, and I'm certain that by the end of this trial, you will know that if anyone here is breaking the law, it certainly is not me. Thank you."

That was how day one of the trial ended. We all headed back to the nearby hotel we were staying at and started preparing for the next day. At this point I was feeling good, and all our supporters seemed to think that things were going quite well.

Day Two Begins

The trial resumed a little after 9:00 a.m. the next morning (8/9/05), with the government starting its case. I got to play the strange game of referring to myself as "the defense," just as Mr. Baylson called himself "the court" and the prosecutors called themselves "the government." (Given the choice, I would have called them something considerably less polite but a lot more accurate.) At my table, other than myself, were Larry Becraft (my "standby counsel") and Don Traub, the guy managing the computer display stuff which was hooked up to the courtroom's electronic monitor system. At the other table sat Floyd Miller and Shawn Noud, and their own technical dude (who wasn't nearly as good as mine).

For their first witness, the government called Mary Soma, an IRS employee I had never heard of before. She was being called to testify about what the IRS records showed about my case, which is basically that we received income but didn't file returns. Why, you might ask, would they bother calling a witness to testify about that when we openly admitted it? Good question, which I'll answer later.

The prosecution had Ms. Soma testify, in the most boring and tedious manner possible, that IRS records showed no returns being filed by us for 1997 or any year since, and that the IRS had sent out notices "*asking* [me] *for a return*." Those automatic form letters, she said, were sent out on 8/9/99 and 10/4/99. Whenever income is reported to the IRS by payors, but no return is filed by the recipient of the income, the IRS computers automatically spit out "CP" (computer paragraph) letters asking for a return. Therefore, because the people who paid us for doing medical transcription reported those payments to the IRS, the IRS computers flung out those "reminder" letters to us.

Ms. Soma then testified to the equally non-surprising fact that IRS records showed that we had filed returns for years up to and including 1996, and that those older returns showed us making about $40,000 a year, about $10,000 of which we sent to the IRS. (Again, all of this had already been stipulated.)

Then Ms. Soma testified about the records showing that we later filed "claims for refund" for 1994 through 1996, asking for money back which we had already sent to the IRS for those years

(before learning what the law says). Ms. Soma twice incorrectly stated that our claims for refund were alleging that we had no "income," which is not at all the same as saying we had no *taxable* income, which is what the claims actually said.

Then she mentioned that the records showed that the IRS imposed two $500 "frivolous return" penalties on us for daring to file claims mentioning 861. Actually, the IRS never sent letters saying they had imposed such fines, but instead sent a letter demanding $1,000 (two times $500), without giving any clue what the demand was based upon. (After we figured out the reason for it, I wrote to the IRS, pointing out that despite their blatant lies to the contrary, their own regulations said that we had the right to appeal any such penalties *before* paying them. We were never allowed to do so.)

The prosecution then had Ms. Soma read what I had written on one claim for refund, in the space provided for explaining the reason why the original return was being amended. She read it, with only a few errors, to say this: "*Initially we incorrectly assumed the specific remuneration received was subject to the taxes imposed by 26 USC § 1 and 26 USC § 1401* [the self-employment tax]. *On examination of 26 USC § 861 and the regulations thereunder, it is clear that our specific type of compensation is exempt from these taxes*."

Obviously we were not saying we had no income, and Ms. Soma corrected herself then, saying, "*They're changing the compensation they received as not being taxable income*." Then she read the explanation on another of our claims, which said, "*On filing the original return for 1996, we assumed that the payments received in 1996 were subject to federal taxation. We now realize that the income did not derive from a taxable source and is exempted by law from taxation*." Then the claim said to see the attachment for further explanation, but the government's exhibit didn't include any attachment.

Ms. Soma then explained that no refunds were issued to us, but letters were sent to us saying that the IRS was denying our claims. What was their reason for doing so? The entire explanation, in a letter sent to us in late 1998 from a "Maryanne Joyce" at the IRS, read as follows: "*Your claim has been reviewed, and a determination has been made that the income is taxable*." What determination? Made by whom? Based upon what? It didn't say. In another letter denying our claims, the explanation was "*The amounts you received are gross income as determined by the Internal Revenue Code*." Who determined that? Under what sections of the code? How did they determine that? It didn't say. (As you may have noticed, they are quite fond of the "because we said so" argument.)

Then Ms. Soma read from another letter, sent to us by the IRS on April 3rd of 2000, saying that "*All the theories which* [we had] *presented have been contested many times in the courts, including the Tax Court and various United States District Courts. They have been determined to be meritless and in some cases frivolous*." Which cases? Determined by whom? Based on what? The letter didn't say, but it did go on to say this: "*Therefore, we will not further debate your theories or legal decisions with you*." Swell. Nothing like a baseless assertion, followed by a refusal to talk, to prove me wrong.

Ms. Soma then admitted that "*anything that comes into any* [IRS] *service center that may appear to be frivolous information is all sent to Ogden for them to make a determination*." In other

words, if you mention 861 or any other unpleasant ideas, you get special treatment, and your case is whisked off to the buffoons in Ogden, Utah (buffoons like Jim South, mentioned before). Then you get an asinine form letter back, with a rubber-stamp "signature" from a probably non-existent thug by the name of "Dennis Paiz" or "Dennis Parizek," threatening and insulting you.

Then Ms. Soma read from yet another letter, saying that my position "*has no basis in law*" (oh, really?) "*and represents a frivolous position*." That letter also ended with the ever popular "*we will not respond to any future correspondence from you concerning these same issues*."

(Remember, the IRS "mission statement" says that the IRS exists in order to help people *understand* and comply with their tax responsibilities, and, amazingly, their official regulations also say that the IRS "*encourages the discussion of any Federal tax matter affecting a taxpayer*" (26 CFR § 601.501(c)). I guess they mean any matter *other* than 861.)

Finally, Ms. Soma read from a letter that actually mentioned a section of law! It said this: "*Section 63 defines taxable income generally as gross income minus the deductions allowed by chapter one*." If that sounds familiar, it's because my report, my video, and this book all explain it. That was the extent of the IRS's legal analysis. There were no more sections of law cited, and no more talk of taxable income.

So that was why the government called Ms. Soma: to say a bunch of things that had already been stipulated (about our income, our not filing, and our claims for refund) and to read from IRS letters basically saying "that's frivolous and we're not gonna talk to you anymore; nah-nah na-poopoo."

Cross-Examination

Then it was my turn to cross-examine Ms. Soma. First, I asked whether those IRS "reminder" letters are the result of some legal analysis, or whether they're sent out automatically when payments are reported to the IRS but no return is received. Here is how that went:

Me: "So if, for example, someone reported on a 1099 income which was actually exempt, would the computer know the difference, or would it still spit out one of these notices?"
Ms. Soma: "The 1099 information that we receive would generate this notice if there was no return. We're not looking, at this point, if it's exempt or not. That would be looked at further down the line."

So they weren't even claiming that a Form 1099 is proof that *taxable* income was received. I then asked her, when someone gets one of those notices and writes back to the IRS, "*explaining why no return had been filed*" (which I did in response to all of the notices I ever received), "*would that have shown up on the exhibits we've looked at?* " She admitted that it would not show up in those records. "*As far as correspondence coming back in,* " she said, "*explaining your situation or whatever, no, there would not have been something like that put onto the master file*" (meaning the IRS system of records we were looking at).

How convenient for them. They can say, "Look, we sent him letters," without also showing whether the person *responded* to those letters (which, again, I always did). Next, I asked her to read a line from one of the letters—a line that the prosecutors did not have her read. It says: "*If you believe*

you are not required to file or have previously filed, please contact us" by phone or in writing, which is just what I did. But they wanted to look only at records which don't even show if anyone responded or not.

(In a really bizarre twist, which I still cannot fully explain, the IRS's internal records about our case include an entry dated 3/19/2002, which said that Diana Loden, an IRS agent who took over our cases after the meetings, stated that the Examination division of the IRS "*does not want Tessa David & Larken Rose to actually file tax returns*." Got that? The IRS didn't want us to file. The same entry later said that they might not want to continue "*trying to secure the returns if Exam does not want actual filing of tax returns*." Why would they not want us to file? Heck if I know. Maybe they were afraid we'd file returns showing no taxable income, or maybe they wanted to prosecute us for not filing. Whatever the reason, for all their indignant whining about us not filing, it's interesting to note that they didn't even want us to file. This probably explains why the IRS fell silent for two years after our second meeting. I suppose they thought that the "Criminal Investigation Division" of the IRS would do a better job of shutting me up.)

Next, I asked Ms. Soma about the attachment to one of our claims for refund, which was missing from the government's exhibit. (I later found that attachment, which cites regulations supporting my position. And I found it in the *government's* "discovery" files. Gee, I wonder why the government chose to *remove* it from the exhibit.)

Then I brought up the first IRS letter she had talked about, telling me my conclusions are wrong, and asked, "*In this letter, do you see any quotations from any income tax statutes or regulations explaining the basis of that statement?* " She said "no." Did the so-called "notice" explain what the IRS's "determination" was based upon, or give any sort of legal explanation? "*No*." Then I brought up the second letter. "*Do you see any quotation of any income tax statute or regulation in this letter supporting the statements of the IRS?* " She answered: "*Not in this letter*." How about in the third letter? Was there any quote from, or citation of, any statute or regulation? "*No*." Same question for the fourth letter: any law cited? "*No*." In the fifth? "*No*."

Then Mr. Noud had a chance to do what is called "redirect examination" of Ms. Soma, to follow up on things addressed during my cross-examination of her. He wanted to point out that one letter (as noted above) did mention, but did not quote from, sections 61 and 63. Whoopie. On follow-up I asked Ms. Soma if the letter made any mention of Section 861. "*No*."

So, after about an hour of mostly pointless testimony, Ms. Soma was dismissed and we took a mid-morning break. Just to keep it fresh in our minds, let's summarize the government's case so far:

1) We received income (stipulated).

2) We stopped filing (stipulated).

3) The IRS computers sent us form letters asking for a return.

4) The IRS sent us letters asserting that my conclusions were wrong, without explaining how or why, and with only one of them mentioning any statute or regulation (and that one was just about the

general definitions I mentioned before).

More Time-Wasting

At about 11:00 a.m. the government called its second witness, the office manager for the doctors for whom we did medical transcription. What did they want her to testify about? What our business does and what we were paid. Wasn't all of that already stipulated? Yes. So what was the point?

Presenting testimony, displaying canceled checks, and generally putting on a show about us making money tend to give the impression, even if only subconsciously, that we were hiding something, and that this was important "evidence" uncovered by the diligent prosecution. In reality, it was a big, fat, stupid waste of time.

At one point I objected to their pointless dog and pony show, pointing out that all of what they were talking about had been stipulated already. The judge even explained to the jury that "*by entering into a stipulation, it sometimes simplifies the case, because instead of presenting lengthy testimony about detailed documents, in this case they've reached a stipulation about certain facts*." Well said. However, immediately after saying that, Judge Baylson *overruled* my objection and allowed the government to waste more time harping on undisputed facts and figures. So we got a chance to look at checks made out to us, one at a time, see bills we had sent to our customers, and heard testimony about other things that were never in question.

After more of that, and no sign that it was ever going to end, I objected again, pointing out that "*there are hundreds and hundreds of pages of stipulated facts and figures*." Judge Baylson then asked Mr. Noud what his intentions were, and pointed out that "*the amounts* [of income] *themselves have been stipulated to; isn't that correct?* " The unnecessary banter only dragged on a bit longer after that.

(Interestingly, regarding Tessa's subsequent trial, when her attorney asked Floyd Miller why the government wanted to include so much evidence and testimony about income numbers which were already stipulated, Miller proclaimed, right in front of me, that if he didn't present that undisputed, boring, factual stuff, he would have no case. Well, then, maybe he shouldn't have prosecuted her.)

On cross-examination, the only thing I bothered to bring up was the fact that the amounts paid to us were not all profit for us, and that much of it went to the typists who worked for us. As a result, contrary to what the government wanted the jury to think, we were not making anywhere near $100,000 a year from the business—in fact, it was less than half of that.

Things Heat Up

Next the government called Cathy Spaulding (IRS agent) as a witness. At last, things were getting interesting, or at least stopped being painfully boring. Up until then, the SpongeBob SquarePants screensaver on Floyd Miller's laptop (I kid you not) had been the most interesting thing at the trial.

Mr. Noud began by asking Ms. Spaulding to explain the nature of her job at the IRS, and then explain how she got involved with our cases, both concerning our claims for refund and the fact that we had stopped filing. Ms. Spaulding's first lie was saying that she contacted me about our claims for refund, asking, "*Could we schedule a meeting to get together?* " In reality, I had been the one demanding such a meeting for a couple of *years*, while the IRS was trying to *avoid* giving me one.

Then Ms. Spaulding testified about our first meeting, back in April of 2000, regarding our claims for refund. She correctly said that at the meeting, I claimed that I had no taxable income, and therefore wanted the money back I had already sent to the IRS. Her summary of the disagreement was that the IRS's argument was based "*mainly on Section 61*," while I was "referring" to Section 861. At least she acknowledged that I "*didn't deny that* [I] *received this income*," but that I said "*that it should not be considered taxable income*." Very true. Then she said that I had argued that "*861 should supersede 61*," which is not true. When asked how she responded to my position, she answered as follows: "*Well, my response was that, you know, Mr. Larken* [sic] *, you're incorrect; 61 dictates that compensation for services is one of the things that we consider gross income*."

She sounds pretty sure of herself, don't you think? However, on the stand she then admitted that initially she said (at the meeting) that she "*wasn't familiar with 861*," but told me she thought I was incorrect, and said she "*would do some research on that*." She testified that at the meeting she also told me that she "*did not think 861 would apply in* [my] *circumstances*."

Let's pause the story for a moment to do what I was *not* allowed to do at trial: examine the actual transcripts of the meetings, to see what Ms. Spaulding really said. For example, when I asked at the meeting whether she agreed that Section 861 and following, and the regulations thereunder, "*determine the sources of income for purposes of the income tax*" (which is exactly what the regulations say), she answered: "*I cannot give you a definitive answer right now without doing further research on Section 861*." Later on, she added, "*At this point I would say, as I stated before, under Section 61 it is taxable income; under 861, I'm not familiar with it, but if you were gonna push me with it, then I would say I would disagree with your findings, but I want to do some additional research*." She doesn't sound so sure of herself there, does she? At the same meeting, I also asked her whether or not she agreed that "*26 CFR 1.861-8 and following are specifically what I should use to determine taxable income from sources within the United States*." Her response was this: "*I would say Section 61 and Section 63 are used to determine gross income and taxable income. As far as the regs, I can't answer. I admit, I'm much more familiar with the Code, because that's primarily what we use*." (Actually, what they primarily use is rumor and wild guess.)

Remember, at trial the government was claiming that Ms. Spaulding and her fellow IRS bureaucrats had told me I was wrong and shown me the error of my ways. What really happened at that first meeting, when I kept asking how they thought I should determine what I owe, was that they kept responding with gems like this: "*At this time I think you want to sort of tie us down to an answer, which I can't do right now*." Was I really supposed to be persuaded by such confessed cluelessness and uncertainty? At the actual meeting, I asked them just that:

> **Me: "You personally have had my [Taxable Income] report for weeks. The Service has had my report for more than a year. This argument has been around for several years. And, as I understand it, there are special sections of the IRS devoted to trying to come up with a response to this. Now, you're implying that I owe you**

something and that I have some requirement to file, and in your letter you even mentioned that you were gonna ask me to file later returns. Is this really what's supposed to persuade me here?"
Ms. Spaulding: "No."
Me: "Am I supposed to be persuaded by this?"
Ms. Spaulding: "No, we're not saying you're supposed to be persuaded."

But at the trial, where I wasn't allowed to show the jury those transcripts or play the actual recordings of the meetings, that is *exactly* what they were saying: that the boneheaded stammerings of these ignorant paper-pushers should have made me completely abandon my conclusions. In fact, the government was implying that it was *impossible* for me to still believe in the 861evidence, having been put in my place by the brilliant and knowledgeable Ms. Spaulding. (Ironically, at Tessa's trial, Ms. Spaulding testified that she found *my* argument to be somewhat "persuasive." I can't say the same for hers.)

During her testimony at trial, Ms. Spaulding then tried to pass the buck, saying that she had "*mentioned that there were a couple of court cases*" disputing my position. In other words, she couldn't tell me where I was wrong, but she told me that some courts could. Only one problem: it was a lie. Ms. Spaulding never cited any court case at either of the meetings I had with her. Michael Enz, IRS Special Buffoon, brought up one irrelevant court case which then exploded in his face, with Mr. Enz eventually conceding, "*I misread it*." That was all. At trial, Ms. Spaulding said she couldn't remember which court cases she had cited, but that "*it's in the transcripts*." Those would be the transcripts I was not allowed to show to the jury, which show that Ms. Spaulding never cited a single case.

(In a pre-trial motion, the government claimed that at our meeting on September 22nd of 2000, Ms. Spaulding "*stated that the 861 argument was frivolous and had been rejected by the courts*." Neither was true: she never used the word "frivolous," or anything of the sort, and never once mentioned the courts at either meeting. So apparently Ms. Spaulding and the DOJ lawyers suffer from the same "creative memory syndrome.")

When asked whether the IRS had shown me anything at that first meeting that proved me wrong, Ms. Spaulding mentioned the editorial explanation found in the CCH printing of the code (comments of the printers), adding, "*it's not, quote-unquote, the law, but it's a good interpretation of the law*." Great, another opinion carrying zero legal weight.

In her testimony, Ms. Spaulding admitted that, when I requested that the issue be sent to the IRS lawyers via the procedure called "technical advice," she refused to send it to them. Then Mr. Noud had Ms. Spaulding read her awe-inspiring, extremely thorough rebuttal of my conclusions, as it appeared in her denial of our claims for refund: "*Per Internal Revenue Code Section 61,* [we were] *liable for income taxes*" on our transcription business income. (I wonder how much time and effort it took for her to come up with that brilliant treatise on federal tax law.)

Having dramatically mischaracterized our first meeting, Ms. Spaulding then testified about her second meeting with me, this one concerning the fact that we had stopped filing. She gave a brief story about how I had filed a complaint against her because, as she put it, I claimed she was "*disregarding* [my] *rights in connection with [my] claim for refund*." She was, and I did. She then said that at the second meeting I "*was still carrying on this argument of Section 861, that it was not*

to be considered taxable income." Yep. Let's see how she characterized her response to me this time: "*My response was that we've already made a determination on that issue, that 861 does not apply; 61 does*."

(As an aside, I still marvel at the psychotic habit of government personnel to proclaim that a "determination" has been made about something. "I am the great and powerful bureaucrat! I have spoken!" What profound arrogance, to think that saying "Yep, I decided it was taxable" precludes all further discussion and removes all opportunity for disagreement. Imagine how they'd react if my *entire* position was: "I've made a determination that my income isn't taxable.")

Once again, let's do a quick flashback to see what actually happened at that second meeting—which, again, I was not allowed to do at the trial. Let's see how Ms. Spaulding proved that 861 doesn't apply. This is from the transcript, right after I handed Ms. Spaulding a printout of their precious Section 61.

Me: "This is on Congress' web site. Look down in the cross-references. It's a few lines down. It says, 'Income from sources—within the United States, see section 861 of this title.' Section 61 itself, regarding income from sources within the United States, directly refers to 861."
Spaulding: "All right, you're referring to 861, I believe, because it suits your purposes."
Me: "Congress' web site is referring to 861."
Spaulding: "Excuse me, can we just have a little bit of courtesy? I was speaking. I didn't interrupt you. Please."
Me: "Go ahead."
Spaulding: "All right, 861 is referring to U.S. citizens who have sources outside of the United States."
Me: "Cite, please?"
Spaulding: "Okay, and—which is not the case here."
Me: "Citation, please."
Spaulding: "I'm just making a statement. Okay, I'm not actually citing the law. I'm just making a brief interpretation."
Me: "Based on what? I want to see what your interpretation is based on."
Spaulding: "All right, I'm just gonna discontinue that. I don't like speaking with somebody who doesn't follow common courtesy."

Well, I don't like speaking with somebody who: a) robs people for a living; b) can't read simple English, much less legalese; and c) is dumb as a stump. If you think I'm being too harsh, read on.

Later at that second meeting, I read back to her numerous statements she had made at the first meeting saying she intended to do more research, and then I asked her, point blank, if she had done that research. Here was her answer: "*Yes, I did do research; 861, per my information, is referring to foreign source income, which is not the issue in this case*." I wonder how many hours of thorough, scholarly research it took for her to conclude that a section called "*Income from sources within the United States*," which is entirely about income originating *inside* the U.S., is really only about income from *outside* the United States. It's hard to get any more wrong than that. She couldn't, of course, cite anything from the law supporting her patently asinine claim; no, she was merely giving an "interpretation"—interpreting the section to mean the exact opposite of what it actually says. And the government thinks the statements of this dimbulb were supposed to persuade me that I was wrong? (Again, even the dimbulb said she didn't expect me to be persuaded.)

I don't really know how to convey this without sounding pompous, so I'll just sound pompous. I know a *lot* about Section 861 and its history. I know by heart the eighty-year story of how the section

evolved, what changes happened in which years, what all the corresponding regulations said, when they changed, and so on. Most of the pertinent parts I can quote from memory, from all three versions of the statute over the years, and from the dozens of related regulations. Several people who know me well can attest to my borderline-psychotic ability to rattle off verbatim section after section, tracing all the section numbers from year to year, which is the result of intensely studying one subject for several years. That being the case, it was a bit much to take to have to sit there while some absolute ignoramus (Ms. Spaulding) made one asinine blunder after another, while acting as if I should have some respect for her utterly worthless, provably idiotic opinion. The only thing I can think of to compare it to would be some twit wandering off the street into a repair shop and telling a veteran mechanic that the engine of the car is really the radio.

(Time for another "program think" check: Do you have a hard time believing that IRS employees, federal judges, and other supposed "experts" could be completely clueless when it comes to federal tax law? Do you find yourself assuming that there must be *some* basis for the opinions they give? If Bob Bureaucrat proclaims that you aren't supposed to be using a certain section of the law, do you feel an uncontrollable urge to believe him, just because he ought to know the law? I must say, time after time over the past several years, I have been absolutely stunned by how often people whom I expected to be knowledgeable displayed profound ignorance of even the most basic, indisputable truths. It took a long time for me to come to grips with just how inaccurate the "expert" label often is.)

Back at trial, Ms. Spaulding then testified about how I was opposed to the IRS doing a "substitute for return" (filing a return on my behalf, saying I owed them money), pointing out their lack of legal authority to do so. (Incidentally, John Turner, a man who used to be an IRS Revenue Officer —the ones who do "substitute for returns"—has since done a great job of documenting the fact that when someone does not file a Form 1040, the IRS does *not* have the legal authority to file one on his behalf, or to assess a tax liability without a return.

Of course, having no legal authority doesn't stop them from doing it.) Next, Ms. Spaulding bemoaned the fact that at the second meeting I "*was harping on the fact*" that they "*were denying* [me my] *constitutional rights*." (Don't you just hate that? What is the world coming to when an extortionist can't violate people's rights without the victims *complaining* about it?) She also claimed that I said I could have them "arrested," which I didn't. I did say that if they did things they knew to be outside their legal authority, while ignoring the law I had put on the table right in front of them, I would file complaints (criminal and/or administrative) against them. Again, Ms. Spaulding whined on the stand that "*he kept on harping that we were denying him his rights*." That's because they were denying me my rights. Here is a quote from their own regulations, which I read to them at the meeting, "harping" on the same point:

> **"An exaction by the U.S. Government, <u>which is not based upon law</u>, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution." [26 CFR § 601.106]**

Back at the trial, what she testified about next I had never heard about before the trial, and I believe it qualifies Ms. Spaulding as a paranoid schizophrenic. Here is what she said:

> **"The second meeting, like I said, got a little heated, and he was coming on pretty strong as far as with, you know—and by this time I was informed that he had filed a complaint against me, and his saying I was denying**

him his constitutional rights. I was just doing my job. It made me a little uneasy, because I also happened to live and work in Abington township, and it's a pretty close community—I said, to be on the safe side, I'm just going to notify my police and tell my neighbors, just in case there would be some kind of problem. There wasn't, but I just wanted to put a few other people on notice."

She did what?! Good grief! She whined to the *police* because I filed a procedural complaint against her (the way their rules say I should)? She called it "*coming on pretty strong*" when I kept asking for them to show some legal justification for their attempts to rob me of many *thousands* of dollars?! Obviously the IRS extortionists are used to dishing it out, but are, like other bullies, actually thin-skinned cowards. (I also liked the use of the Nuremberg defense, à la "just doing my job," in order to avoid personal responsibility for extorting people.)

"Waaah! He wanted me to cite the law justifying my demands for tens of thousands of dollars! Help, help! Call the police!" There are only two possibilities I see here: either Ms. Spaulding has some screws loose, or the government had her say that to portray me as some dangerous villain. Or both.

But since, as she admitted, I never had any contact with her at all outside of official correspondence and meetings, how exactly were Ms. Spaulding's neurotic delusions relevant to the trial? They weren't, obviously. Her unfounded paranoia was brought up as one more way to demonize me.

Spaulding Cross-Exam

Since Ms. Spaulding had done such a fine job of mischaracterizing what happened at the meetings, my cross-examination began with a request that the actual audio recordings of the meetings, which we had right there on our computer, ready to play over the courtroom speaker system, be admitted into evidence. In one of the government's pre-trial motions, they had even said this: "*Mr. Rose is, of course, free to play recordings of his meetings with the IRS and offer them into evidence in support of a good faith defense*."

At trial, however, the government did an about-face, and objected to me being allowed to play those recordings. And Baylson sided with them, calling the *recordings* "hearsay." He said I could play "selected excerpts" just of statements by Ms. Spaulding, but not anything I said. Since we weren't prepared for that (it would have taken hours to go through the recordings to prepare that), I asked if I could just play the tapes later, during the defense case. Judge Baylson said, "*We'll cross that bridge when we come to it*." I later learned that what that really meant was "no." But at the time, I decided to just question Ms. Spaulding, and save the tapes for later.

I brought up one of Ms. Spaulding's letters to me (one of the government's exhibits), in which she claimed that Section 861 is only for "*U.S. citizens that have U.S. source and foreign source income*." I asked her if that letter cited any statute, regulation, or court case supporting that assertion. She said "no."

I brought up their next exhibit, another letter sent to me by the IRS, and asked how many quotations from the law were in it. She said, "One." I asked her to read that quotation, warning her

that I intended to interrupt her at certain points in the quote. So she started reading from where the letter quoted from the lower court ruling in *Coleman v. Commissioner*, saying that "*some people believe with great fervor preposterous things that just happen to coincide with their self-interest. They have convinced themselves that wages are not income—*"

At that point I interrupted Ms. Spaulding's reading of the letter to ask whether I had ever argued that wages are not income. She answered "no," and so I asked her to continue reading from the letter, which she did: "*...that only gold is money—*" I interrupted again. Had I ever argued that? Ms. Spaulding answered "no." She continued the quote: "*...that the 16th Amendment is unconstitutional —*" Had I ever argued that? She answered, "*I don't believe so*." Then I asked, "*Does anything in that paragraph reference anything about 861?* " Her answer: "*No*." So the one case cited in the letter had nothing at all to do with my legal position, and mentioned only things I had never argued. (In fact, the ruling in the *Coleman* case happened in 1986, before the 861 evidence had even become public, so it was impossible for it to have been about my position.)

Next, concerning the complaint I had filed against her, I asked Ms. Spaulding whether the reason for the complaint was that she "*had not followed the technical advice procedures as published in the Treasury regulations*." She said she didn't know, claiming she never saw the complaint. Nice try, but I sent her a copy of it when I filed it. She was determined to make it sound as if I filed a complaint just to be mean, which of course was untrue.

Next, I questioned her about whether, at those meetings, she had really been as sure of herself as her prior testimony might imply. I asked whether, at the meetings, she had "*showed me where the law itself shows my conclusions to be incorrect*." Her answer: "*I don't know. I don't remember if I did. I do know for a fact that Mike Enz did*." Actually, neither of them did. Other than Section 61, none of them ever quoted *one word* from any statute or regulation, at either meeting. Wouldn't it have been nice if I could have demonstrated that to the jury?

Ms. Spaulding then said that Agent Enz had shown me "*reference materials*," which I again got her to admit was not the law but only some unnamed author's commentary on the law. So I asked, "*Are you bound by the law, or by interpretations of a private company?* " Her answer: "*We're bound by the law*." (Yeah, I wish.)

Then I brought up yet another of the "notices" the government introduced, and started to ask, "*Does it contain any quotation from any statute, regulation, or—*." At that point Ms. Spaulding interrupted me to say, "*No, it does not*." She seemed to be getting rather testy. (I wonder if I should have reported that to the police, just in case she might show up at my house in the middle of the night with a chainsaw.)

A Hallucinated Threat

I then asked Ms. Spaulding about her going to the police, and asked if I had "*threatened to do anything illegal*." She responded, "*You hadn't in words; however, in body language you did. I mean, if—you could tell if you would hear the tapes*." Those would be the tapes I *wanted* to play for the jury, which the government *prohibited* me from doing. Ms. Spaulding continued: "*I mean, your*

tone of voice, the use of words, your manner, your demeanor, your body language—it was very intimidating."

Unfortunately, it's impossible to show, in writing, just how delusional Ms. Spaulding's claims were. The best I can do is to include the transcript of what was far and away the most heated part of either of the meetings. This happened at the second meeting, after they had tap-danced and dodged the substance of the issue for many minutes:

Michael Enz (IRS): "Uh, did you check with attorneys? The last time we met we went to our attorneys before we proceeded."
Me: "And you still don't have anything, do you?"
Enz: "No, we do. We didn't send for tech advice—"
Me: "Where? Where?! You talked to your attorneys. Where is it?! [shouting]"
[silent pause]
Me: "Do I have to wait for hell to freeze over? Where is it? You called District Counsel."
Enz: "We'll present our case [pause] when you move on."
Me (laughing): "What, it's some secret? Present it now. Come on, show me."
Enz: "I didn't bring it with me."
Me: "Oh, yeah. Right."
Enz: "I didn't. I didn't bring the file."
Me: "Go get it. Go get it."
Enz: "I work in center city. You want to—"
Me: "Call center city. Have them read it over the air."
Enz: "We're not staying here that long. Get real [angrily]. Move on."
Charlie Judge (IRS): "Relax, relax."
My Brilliant and Beautiful Wife: "But why come to this case without that?"
(Good question, dear.)

Now ask yourself, would *you* run to the *police* because of such an exchange? Of course not, because unlike Ms. Spaulding, you're not a certifiable nutcase. (Note also that Ms. Spaulding wasn't even in the conversation at that point.)

A Bit About Violence

This calls for a sidebar, and a few words about violence, since the government (which constantly resorts to using force) wanted the jury, and the general public, to view me as some horribly dangerous villain.

Philosophically, I believe that forcible resistance to unjust government demands is absolutely morally justified. (Before you faint from shock, remember that that principle is what this country was founded upon.) However, I also think that as civilized human beings, we should seek nonviolent solutions to disputes whenever possible. And that leads me to the ultimate irony in this case.

Years before I had ever heard of 861, I was lamenting what I saw as this country's not-so-gradual transformation from its pro-freedom beginnings into what is essentially a police state. Without going into a political rant here (which I'll save for later books), let's just say I expected the situation to keep getting worse, until the good old U.S.A. would follow in the footsteps of the not-so-good old U.S.S.R., or the Roman empire. In other words, I was convinced that the American experiment—a system designed around the idea of individual freedom—was very close to going

belly-up for good.

Then along comes this "861" thing, and suddenly I saw, not just a really nasty fraud that needed exposing and resisting, but potentially a means of achieving real positive change (not the fictional kind that politicians endlessly yammer about), *without* violence, and without even breaking the law. I could see that if 100 million victims of the "income tax" fraud learned the truth, no amount of government huffing and puffing, or even robbing and prosecuting, would keep the deception alive. Imagine that: a nonviolent way to rein in some of the government's gargantuan power. Sounds good to me. To be blunt, I still see exposing the income tax deception as the only way to avoid an eventual (but not too distant) large-scale violent conflict between the U.S. government and the citizenry.

As for myself, so far I've survived thirty-seven years without even punching anyone, much less having to do something really unpleasant, like shooting someone. I'd like to continue that record if at all possible. You see, I don't even want stupid and/or evil people to suffer unnecessarily. (I'm such a radical extremist.) And that applies to all of the boneheaded bureaucrats I love to bash (with words, not tire irons).

To put it another way, I did what I did in part because I saw this endeavor as the best hope for avoiding large-scale violence *against those in government*. No, that wasn't a typo. I believe that ending this fraud is the best way for those in government (as well as others) to escape a very nasty end, by allowing for a "revolution" that requires no bullets and no blood. In talking to hundreds if not thousands of people, mostly via e-mail, more than a few have opined that my efforts were (and are) futile, and that things are going to keep getting worse until we're forced to "shoot the bastards." I was determined to prove them wrong, and told them so. I thought I saw a way to push back tyranny without a drop of blood being shed. And, maybe stupidly, I'm still hoping for that.

And what was the result of my burning desire to see a nonviolent solution? A dozen armed thugs invaded my home, the feds tried to forcibly silence me, and then they threw me in prison, after trying to paint *me* as the violent one. If anyone now wants to tell me "told ya so," I don't have much of a rebuttal, but I had to try what I tried. I really wish I had some compelling argument left supporting some hope of success via nonviolence, but I don't.

To be blunt, if you read in the news that some IRS paper-pusher or collection thug, or some pseudo-judge, got his or her "determination" overruled with a baseball bat or a pipe bomb, I won't be very surprised. I've always discouraged people from resorting to violence, and I still do, but to be frank, I'm running out of arguments to persuade people. What evidence is there that politely petitioning the system has any chance of achieving freedom and justice? Just as the Declaration of Independence described it when King George III was mistreating the colonists, "*our repeated petitions have been answered only by repeated injury*." Yeah, tell me about it. The government, all by itself, is teaching a lot of people that the law does not matter to the government, that the last thing our "justice" system cares about is justice, and that being open and honest, and obeying the law, does nothing at all to keep one safe from power-happy bureaucrats, police, prosecutors, and judges.

I was recently interested to come across a Supreme Court ruling saying that the more important it is to *prevent* "*incitements to the overthrow of our institutions by force and violence*," the more important it is to *protect* the rights of free speech, so that changes "*may be obtained by peaceful*

means" (*De Jonge v. Oregon*, 299 U.S. 353 (1937)). John F. Kennedy expressed a very similar sentiment when he said that when you make nonviolent change impossible, you make violent change inevitable.

I really do hope, even as I sit here in prison for a crime that the prosecutors and the judge know I didn't commit, that a bunch of IRS headstones don't start to appear as a confirmation of JFK's words. So many in the federal government have done so much to vilify, hurt and forcibly silence many people whose sole "sin" was to be open and honest and seek a "redress of grievances." I am only one of many, and many have paid a far higher price than I have. That being the case, if someone decides that his only recourse against such a system is violence, I'm fresh out of arguments to use against him. I tried things the open, honest, legal, nonviolent way, and it didn't turn out very well. But I'm just dumb enough to keep trying.

On with the Show

After Ms. Spaulding admitted that I never threatened her and never contacted her in any way outside of the official meetings and correspondence, my cross-examination of her moved on to something else.

One of the government's exhibits was a letter I sent to Ms. Spaulding. (The jury was allowed to see such letters only if the government chose to introduce them as evidence, which it did for this one.) The letter explained that I expected the IRS to misapply the law, reminded them that it is a crime for an IRS employee to demand more money than the law requires (26 USC § 7214), and in light of that, informed them "*that the Secretary of the Treasury, by way of the federal income tax regulations, has stated the following*," and then my letter gave several direct quotes from the regulations. After the quotes were up on the courtroom monitors, so everyone could read along, I asked Ms. Spaulding if she had looked up these regulations I had cited. She said she had. I then asked her whether, as an IRS agent, she is required to obey the regulations. She admitted that she is. What happened next speaks for itself, though it probably went way over the heads of the jurors.

Me: "Could you read that second highlighted [quote from the regs], the one that's three lines long?"
Spaulding (reading from the regs): "Sections 861(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined."
Me: "Have you also verified that this is an IRS regulation that's binding on you, or that these words are from the regulations themselves? Did you ever verify that?"
Spaulding: "Yes, I believe they're from the regulations. Like I said, I don't recall what I looked at four years or five years ago, but—"
Me: "Okay, I understand. Could you read the next citation, please, the next paragraph?"
Spaulding (reading from the regs): "Determination of taxable income. The taxpayer's taxable income from sources within or without the United States will be determined under the rules of Section 1.861-8 through 1.861-14T for determining taxable income from sources within the United States."
Me: "Okay, could we see the next paragraph? That may be all you need to read. Okay, we can skip the next one. [It was just another section saying the same thing again.] So you agree that the citations you just read were confirmed to be in the—you believe to the best of your recollection—I realize it was quite a while ago—that those are the words of the regulations as quoted in my letter, and that they are binding on you; is that correct?"
Spaulding: "Yes."
Me: "Could we zoom in on the third paragraph there, the short one? That one. I'm just going to ask this one

question, and then I'm done: Did you use Section 861(b) and 863(a) to determine my taxable income from sources within the United States, after determining domestic gross income?"
Spaulding: "No, I did not."

Read that carefully, until the lunacy of it sinks in. She was *admitting* that I showed her this in the regulations, *admitting* that the regulations say that, *admitting* that she is legally required to do what the regulations say, and then admitting that she *had not done* what those regulations commanded her to do. *That* is defying the law. *That* is knowing what the law is, and choosing to disregard it. *That* is "willfulness," and the IRS employees were the ones guilty of it, not I. In retrospect, I should have really hammered this point home, verbally bludgeoning Ms. Spaulding into admitting it over and over again, so that even my moronic jury might have noticed the significance of what she had just said.

After that amazing (albeit accidental) confession, we took our lunch break. After the jury left, there was a brief discussion about the audiotapes of the meetings, and Judge Baylson said, "*I'm not sure I'm going to allow the tape to be played just on the issue of tone of voice, because I'm not sure that it's that material*." So while Ms. Spaulding was allowed to talk about my supposed "tone of voice" (which she bizarrely imagined to constitute a threat), I wasn't allowed to play the actual tape to show the jury the truth. Swell.

Judge Baylson said that during the defense case, I could testify about my "recollection" of the meeting, but he hesitated to let me play the actual recording of it (though he still didn't give a definite ruling at this point). How goofy is that? The *most* reliable evidence, the actual recording, was going to be excluded, while the *least* reliable evidence, five-year-old recollections, would be allowed. Then the judge said I could play "excerpts" of the tape, but only to refute "specific statements" of Ms. Spaulding which I believed "*are contrary to what she said in court here this morning*." I could not use the tapes to show what I had said, to show the general nature and content of the discussion, or to show how badly they had floundered and equivocated when faced with the law. Nor could I use the tapes to show what they did *not* say at the meetings. Most of Spaulding's lies consisted of claiming to have said things at the meeting which she did not actually say, which of course cannot be refuted without playing the *entire* recording (which I wasn't allowed to do). Since Baylson's ruling made the tapes worthless for cross-examination, I said I would save them for the defense case.

After Lunch

Over lunch I decided I wanted to ask Ms. Spaulding a few more things, so my cross-examination of her continued when court resumed.

I wanted to show the jury a letter I had sent to Ms. Spaulding prior to our first meeting, and (of course) the government didn't want me to. After a little confusion, I was allowed to put the letter up on the courtroom monitors, and have Ms. Spaulding read from it, but I wasn't allowed to have it actually "*admitted into evidence*" so the jury could have a copy during their deliberations.

I had Ms. Spaulding read the first sentence of the letter, which said, "*In order to facilitate a meaningful and constructive meeting, I have attached a brief description of a few issues which I believe to be central to a possible contention between myself and the IRS*." (I wonder if Ms. Spaulding interpreted that as a threat, and ran to the police.) I then had her read another part of the

letter, which said this:

> **"It is my position that 26 USC § 861(b), and the related regulations in 26 CFR § 1.861-8, are the sections to be used for determining taxable income from sources within the United States."**

The letter then referenced a separate sheet of citations supporting my position on that point, a couple of which she had read earlier. Note the difference: I state my position in clear, specific terms, and then provide legally binding citations supporting my conclusions, while they throw out baseless, often idiotic assertions, backed by absolutely nothing.

Next, I wanted to address a handout I had given to Ms. Spaulding at the meetings, which showed how Section 61 includes a cross-reference referring to Section 861 regarding "*Income from sources within the United States*." However, Ms. Spaulding said she couldn't recall me giving her that, so I wasn't allowed to show it to the jury. In fact, I had given her a copy of it at both meetings, and she had once responded to it (as mentioned above) by saying that she thought I was citing 861 because it "*suits my purposes*." But she now conveniently "couldn't recall" me giving it to her.

(Incidentally, Sherry Peel Jackson—former IRS agent, current truth-teller, and very courageous lady—later explained to me how IRS agents who testify at trials are *trained* to give vague and forgetful answers on cross-examination, while giving concise, definite answers when testifying for the government.)

Oddly, when I asked Ms. Spaulding about the cross-reference again, but in a different way, her memory improved. But then her psychological denial kicked into high gear. I mentioned the cross-reference (from 61 to 861), and asked whether she recalled me pointing it out at our meeting. On the stand she responded, "*Yes, I do. However, that also—you're bringing out a very little narrow scope of it. You're not bringing in the whole thing*." I asked her to explain what she meant by that, and she continued: "*When it says 'sources within United States, see section 861,' they're also saying for people who have income as in addition to that, outside of the United States*."

The cross-reference says nothing of the sort, and never has, and she had it right in front of her while she was testifying. So I asked if she was looking at it at the moment, and she then said that it "*does not appear to be part of the Code or the regs*," but instead appeared to be "*some interpretation that you came up with*." What?! What was sitting right in front of her was a printout directly from Congress' own web site. (Did she think I wrote Congress' web site?) When all else fails, the bureaucrats just go into complete psychological denial. That's what she did at the meeting when I showed it to her, and she did it again on the stand at trial. She couldn't accept what she was seeing, so she simply pretended it wasn't there, or decided I had made it up or something. Here is what that cross-reference under Section 61 says:

> **"Income from sources—**
> **Within the United States, see section 861 of this title**
> **Without the United States, see section 862 of this title"**

What part of that is too complicated for Ms. Spaulding to grasp? Where is the part that she thinks means "not for you!"? She was simply incapable of believing that what she was looking at was from the government's own law books, because it didn't match her foregone conclusions, so she went into

utter denial. "It can't mean that, so I'm gonna plug my ears, close my eyes, and go 'blah, blah, blah'." Ah, due process at its finest.

What Is Binding

I then got Ms. Spaulding to admit that at the meeting she had acknowledged that statutes and regulations are legally binding. I then asked whether she remembered me showing her citations from the IRS's own manual saying that the IRS does *not* consider lower court rulings to be binding. She said yes.

I then asked whether she remembered me explaining that "*the regulations state that the items in 61 are sometimes exempt*." Yes, she remembered that too, though she couldn't remember exactly what citations I had shown her. Got that? She admitted that the regs say that the things listed in their beloved Section 61 are *not always taxable*! But she still didn't want me to look beyond Section 61 anyway.

After that, Mr. Noud was allowed to do some "redirect" questioning of Ms. Spaulding. The only thing he brought up was a letter Ms. Spaulding had read before, which asserted that my conclusions were incorrect. On follow-up cross-examination, I asked if that letter was an actual regulation. She admitted it was not. I asked whether she thought IRS form letters were legally binding. She said "*It depends on which form letters*," which she knew to be a lie (form letters never carry any legal weight). She couldn't say which form letters might carry legal weight, and said she didn't know "*what the legal weight is of this particular document*." I do: it has no legal weight whatsoever. Could it be that maybe she really didn't know? Let's do a little flashback to the first meeting I had with her:

> **Mort Kafrissen (IRS): "The Code is the law. The regs try to define it, give examples where they feel they need examples."**
> **Me: "Is an interpretation of it. Right."**
> **Spaulding: "Interpretations. Right."**
> **Kafrissen: "Alot of Code sections don't have regs, period."**
> **Me: "Right, but <u>the regulations are the interpretation that is binding on you</u> and the public, when published in the Federal Register. Do you agree to that?"**
> **Kafrissen: "Sure."**
> **Spaulding: "Yes."**
> **Kafrissen: "We have—we put out books, ya know, to try to simplify for the taxpayers to read."**
> **Me: "Right, but <u>the regulations are actually binding. The publications and stuff aren't</u>."**
> **Spaulding: "<u>Yeah, that's correct</u>."**

So why, at trial, did Ms. Spaulding suddenly "forget" what is and isn't legally binding? Simple. Because if they admitted that none of those so-called "notices" carry a shred of legal weight—which they know to be true—there goes their entire case. I believe Ms. Spaulding, and the other IRS witnesses, were instructed by the prosecution to *not* answer questions about what is legally binding. (As you'll see, Ms. Spaulding was not the only government witness who danced around the question.)

And what a coincidence that when I later asked the judge to give a jury instruction explaining that different documents carry different legal weight—a point which would demolish the government's entire case—Judge Baylson refused to give such an instruction. He knew damn well that

I was correct on that point, but he also knew what it would do to the verdict were he to tell the jury the truth: that I had no legal obligation to agree with or comply with any of those worthless "notices."

(After Tessa's subsequent trial, where an equally clueless jury declared her to be guilty based on an even more pathetic case—if you can imagine that—her attorney filed a Motion for Acquittal, which included the following: "*The government offered* [IRS form letters] *to support its tenuous argument that Ms. Rose knew that her position was frivolous because the government told her so. These letters, even when viewed most favorably to the government, do not create an inference that Ms. Rose knew her husband's theory was frivolous. As the Court instructed the jury, these letters only contained the IRS's position, which defendant was not required to accept as an authoritative statement of the law*." Yeah, what she said. In denying that motion, Judge Baylson's ruling included the following schizophrenic, self-contradictory statement: "*Defendant argues that the IRS is not necessarily authoritative on these matters and although the Court would agree with that general statement, the IRS certainly put the Defendant on notice that the arguments that she and her husband were making, that their income was not subject to taxation and that they did not have to file tax returns, was not accepted*." What on earth does that mean? All in one sentence, the ruling agreed that the opinions of IRS bureaucrats are *not* binding on us (i.e., are not "authoritative"), and then cited opinions of IRS bureaucrats as proof of willfulness. So I guess we don't have to agree with the IRS unless they say something lots of times. It makes no sense whatsoever, but Judge Baylson simply refused to admit what he knew to be the truth: that we had no obligation whatsoever to agree with or abide by the opinions of IRS paper-pushers and their worthless form letters, no matter how many there were. Had Judge Baylson admitted that indisputable fact, however, both cases would have evaporated, so he fudged the truth and the law to make sure we would both be punished for crimes we didn't commit.)

Back at my trial, further showing his bias and agenda, at one point Judge Baylson jumped in to make a point on behalf of the prosecution, stressing the fact that after my claims for refund were denied at the administrative level, I could have sued the IRS in District Court, but didn't. In fact, during Ms. Spaulding's testimony, the *judge* kept needling her, trying to get her to say that she had told me that I could sue for a refund (though she didn't say that at either meeting). It goes without saying that a supposedly neutral "judge" is not supposed to be suggesting arguments to either side.

> **"A central tenet of our republic—a characteristic that separates us from totalitarian regimes throughout the world—is that the government and private citizens resolve disputes on an equal playing field in the courts. When citizens face the government in the federal courts, the job of the judge is to apply the law, <u>not to bolster the government's case</u>."**
> **[Beaty v. United States, 937 F.2d 288 (6th Cir. 1991)]**

Yeah, right. I then pointed out that, regarding the case of our not filing—the only thing the trial was supposed to be about—there was nothing we could have appealed, or filed a suit about, because the IRS had never tried to collect, or even sent us a bill, which Ms. Spaulding conceded. And as for the claims for refund, it's utterly ridiculous to imply that we had any legal or moral obligation to invest the time and money it would have taken to sue the IRS in an effort to get money *back* which the government already had. Yet that is exactly what Prosecutor Baylson (while pretending to be a judge) repeatedly harped on as if it were proof of "willfulness." What a crock. And after the judge kept pushing that illogical argument, eventually Mr. Noud picked it up too.

The Other Pro-IRS Judge

The government's next witness, this time questioned by Floyd Miller, was Charles Judge, Ms. Spaulding's supervisor, who attended the second meeting I had with the IRS. After describing his job at the IRS, he was asked about the meeting. Mr. Judge said that I "*maintained a position under Code Section 861 whereby* [I] *felt that* [my] *income was not taxable*." Well, he got that right at least (sort of). Not to sound like a broken record here, but if I "felt" my income wasn't taxable, I couldn't have been guilty of any "willful" tax crime. So why was I on trial?

Then Mr. Judge summed up what the IRS's position was at that second meeting. He said that at the meeting, the IRS "*explained that under Code Section 61 all income is taxable, from whatever source derived, unless specifically excluded by other sections of the Code*." Is that not a fine description of the false assumption that is made by the vast majority of tax professionals? His statement directly contradicts decades of regulations which say that, in addition to the exemptions in the tax code, some other income is also exempt from the tax because of the Constitution itself. What makes Mr. Judge's blunder more interesting is that he made it long after I had given him (in writing) direct quotes of regulations proving that his position is absolutely incorrect.

I'm not exactly sure why, but immediately after pointing out that Mr. Judge had worked for the IRS for *thirty-two years*, Mr. Miller then asked him whether, prior to meeting me, Mr. Judge had "*had any dealings with Code Section 861*," to which Mr. Judge answered, "*No, sir*." I think it was very nice of Mr. Miller to help illustrate the profound legal ignorance of this veteran IRS supervisor. As I said, tax professionals, including IRS agents, are not familiar with that part of the law. And there you have it, right from the jackass's mouth. (Sorry about all the "told-ya-so"s, but someone has to point it out.)

Oddly, at trial Mr. Judge then gave his "understanding" of 861 and its regulations (which he just said he had never had any dealings with before), which was that those sections are for taxpayers who "*may have income from sources within and without the United States*," and added that "*861 deals with sourcing the income for purposes of determining, for example, foreign tax credits*." Wow, that sounded almost coherent (albeit totally incorrect). At the actual meeting, however, no one ever mentioned foreign tax credits at all. In fact, Mr. Judge never said *one word* about the purpose of 861. At that meeting the only statements by the IRS about the purpose of 861 were the following:

1) Cathy Spaulding twice made the asinine assertion that Section 861 is about foreign source income. Again, she was claiming that a section called "*Income from sources within the United States*" is only about income from *outside* the United States. That's brilliant. (For the record, Section *862* is about income from outside the United States.)

2) When I then asked Michael Enz if he agreed that 861 (titled "*Income from sources within the United States*") was about income from *outside* the United States, he answered, "*The whole section, that 800 series, is meant so people who have sources from inside and outside the United States can see what's taxable in the United States, and what isn't taxable in the United States*." Of course, he cited nothing supporting that, since nothing in the law does support it. (As it turns out, by sheer coincidence, I actually had about thirty bucks of foreign source investment income in at least one of

the years in question, so he just *agreed* that I should be looking there to "*see what's taxable in the United States, and what isn't taxable in the United States*.")

That was their *entire* explanation at that meeting of what 861 is for, backed by absolutely nothing. If you want to see what Mr. Judge himself actually said at the meeting, as opposed to his "creative recollection" of what he said, here is a taste. This was right after I had given him a handout quoting several IRS regulations, which I read out loud, which state, unequivocally and unconditionally, that I should use 861 and its regs to determine my taxable domestic income.

Me: "Do you see what this says?"
Mr. Judge: "I do."
Me: "Do you understand what I just read?"
Mr. Judge: "Yeah."
Ms. Spaulding: "Yes."
Me: "Do you understand why I think what I think?"
Mr. Judge: "Yeah, I—look, I don't know why there's, ya know, not more of an obvious—I think we're missing something somewhere here under 861."
Me: "Well show me it, because right now you have, on the record in front of you, the Treasury regulations."
Mr. Judge: "Well, right. Yeah, but, uh..."

Yeah, he really set me straight and showed me the light. That's what the meeting was actually like, while at trial he testified as if he was confident, knowledgeable, and persuasive in his rebuttal of my position. I have no doubt that Floyd Miller, before trial, spoon fed his own twisted, provably flawed "interpretation" of 861 to Mr. Judge, to be spouted back on cue, with Mr. Judge pretending that he had held that position at the meeting, when he absolutely had not. In reality, he hadn't expressed any position at all, but (again) I wasn't allowed to show the jury the transcripts or play the recordings which prove that. They were allowed to lie about what happened, and I wasn't allowed to introduce the evidence I had right in front of me, exposing their lies. Sounds fair, right?

A Night Out with the Rat

Based upon that first meeting with Mr. Judge (my second meeting with the IRS), he seemed to me to be somewhat reasonable, though ignorant, and lacked the overt hostility and malice of many IRS employees I had met. Since he seemed genuinely disturbed by the IRS's complete inability to refute or even address what I was showing them, I started to wonder what he really thought. Of course, while on tape at an official meeting, he couldn't afford to treat my position as even slightly debatable, but what did he really think? (Remember, by that time other former IRS folk had already joined the 861 bandwagon, publicly *agreeing* with my conclusions.)

So, as mentioned above, I decided to invite Mr. Judge to an off-the-record, informal meeting, not to discuss my own case (which I knew would be improper), but to see what he really thought about what he had seen at our meeting. I sent him a letter inviting him out to dinner, and included a copy of my *Theft by Deception* video. I made it clear that the meeting would be off the record and I would not repeat anything he said there without his permission. I wanted him to feel free to speak his mind. As I told him, I just wanted his honest opinion, even if his opinion was just that I was nuts. I said he could bring his wife, and I'd bring mine, if he wanted, thinking that might make it less weird for him. I was surprised when he left me a phone message accepting my offer, saying he would prefer to meet

without the wives. We set up a time to meet at a nearby TGI Fridays.

To make a long story short, we had a very pleasant discussion for well over an hour, over a nice dinner. There was no hostility in either direction, and no talk about my own case. Mr. Judge said he had watched most of my video, said he was "intrigued," but added (more than once) that he still wasn't convinced. I said that was perfectly reasonable. Afterwards we went our separate ways with friendly goodbyes.

Again, what I didn't learn until many months later, when I finally got a copy of the "affidavit of probable cause" supporting the raid of my home, was that Mr. Judge had taped our meeting without my knowledge (in violation of Pennsylvania state law). At trial, the excuse he gave for that slimy stunt was that under IRS rules, he was "compelled" to report anything that seemed like it had "*bribe overtures or possible bribe indications*." So, after calling "TIGTA"—the Treasury Inspector General for Tax Administration—that office conspired with him to illegally record the meeting without my knowledge or consent.

Without me knowing, or even suspecting, I was being recorded, it was the perfect opportunity to catch me making some kind of confession, hinting that maybe I don't really believe all this 861 stuff. But the tape showed the exact opposite. The main thing the government brought up about the meeting is that I told Mr. Judge that prior to looking into the 861 evidence, my wife and I were getting "clobbered" by taxes. That was it. That was my awesome confession (minus all the things the government didn't bring up about the meeting, as you'll soon see). At least Mr. Miller was nice enough to bring this up at trial:

Mr. Miller: "Now, no bribe was actually offered at this dinner, was it?"
Mr. Judge: "No, sir."
Mr. Miller: "No threats were made?"
Mr. Judge: "No, sir."

So once again, an IRS employee displayed paranoia and suspicion in response to my honesty and openness. Mr. Miller's last question for Mr. Judge was whether Mr. Judge had made it clear to me "*what the IRS's position was regarding* [my] *story that* [my] *income was not taxable*." Mr. Judge answered, "*Yes*." Once again, let's compare what actually happened at the meeting to Mr. Judge's claim that he had firmly shown me the error of my ways.

Ms. Spaulding: "I would think our next step would be to give you more—to mail you more information supporting our argument before our report is prepared."
Me: "All right, because I don't want what happened last time to happen again, which is you never answer the questions, you never present your position, and you close this stage and send it to Appeals. Due process requires more than that.
Mr. Judge: "Okay, we will talk to—like I said, I'll talk to Mike [Enz] and we'll talk to—we will answer—we will present you with information."
Me: "Okay, and I'm always available for questions." [Here the IRS recorder stopped and they replaced the tape.]
Me: "I was just saying, I'm always available if you have questions, and I don't want this sneakily closed and bypassed without due process here."
Mr. Judge: "No, no. We will—but this is your managerial conference. I want you to be aware of that. Whatever additional discussions we have, like I'm gonna talk to Cathy and look at what you gave us and all, and I'll talk to Mike. I don't really see a need for us to get together again. I'm either gonna agree with your position or disagree with your position."

Me: "I am requesting right now that we do get together again if you can actually supply legal support for your argument, because I don't want one of your form letters that says, 'Oh, we decided you were wrong,' and send it to Appeals, which is what happened last time. There was never an answer to the questions. She [Ms. Spaulding] admitted she couldn't answer the questions, and never did."
Mr. Judge: "I have to see what the procedure is, as far as that goes. But we'll—<u>we will not close the case without contacting you in some manner first</u>."
Me: "Okay."

As mentioned before, they never contacted me again about the case, unless you call the armed raid on my home two and a half years later "contacting" me. So, does it sound to you as if the issue was resolved? Does it sound as if they had confidently and persuasively proved me wrong? Or does it sound as if the ball was in their court and that they still intended to provide me with something supporting their position, or at least something saying what their position was? (Wouldn't it have been nice if the jury had been allowed to hear the tape of that meeting?) So, for future reference, when a federal bureaucrat says "we'll get back to you," he might mean "we'll do an armed invasion of your home and prosecute you later."

After Mr. Miller helped Mr. Judge mischaracterize what happened at the meeting at the restaurant, it was time for cross-examination. Right off the bat, he caught Ms. Spaulding's selective amnesia, claiming he couldn't "recall" me showing him the cross-reference under Section 61 which points to Section 861. Then I asked if he remembered me handing him "*a copy of a regulation that states that Section 861 and following, and related regulations, determine the sources of income for purposes of the income tax*." His answer: "*Yeah, I believe I recall that. Yes, sir*." And did he recall me giving him a handout with "*specific citations of regulations stating that 861 and its regulations are to be used to determine the taxable income of a taxpayer from sources within the United States*"? His answer: "*I believe so, yes*." Got that? He conceded that I had shown him legally binding citations *telling* me to use 861 and its regs when determining my taxable income.

I asked if he had looked up the sections I cited at the meeting, to see if my quotes were accurate. He basically said yes, but then jumped into repeating his own unsupported "interpretation" of 861—the one he *did not* actually articulate at the meeting, and which is provably incorrect anyway. Note the contrast: he admits I showed him actual citations supporting my position, and he responded only with assertions (which he then mischaracterized while under oath). To emphasize the point, I asked him if he recalled "*quoting to me or telling me of any statute or regulation which says that a U.S. citizen should not use 861 unless he has foreign income*." His answer: "*Well, I don't believe I ever showed you anything that stated that*." So I showed him the law, and he didn't show me squat, and he admitted it. To clarify—and to rub it in—I then asked Mr. Judge if he had "*expressed* [his] *interpretation, but didn't cite a particular regulation stating that*." Instead of answering that inconvenient question, he went on a rant about how our request for "technical advice" was denied. That of course had nothing to do with the question, but he obviously didn't want to give the truthful answer, which would have been: "That's right, I never cited a damn thing supporting my position!"

Next, I asked if he recalled when, at our meeting on 9/22/2000, I "*broke my legal conclusions down into specific points, and asked the IRS to agree or disagree on each point*." Yes, he remembered that (not fondly, I expect). Well then, I asked, was the IRS "*able to state its position on those specific points?* " His answer: "*I don't believe we debated or discussed each point individually, but again we reiterated that under the Internal Revenue Code and regulations, you*

had a liability to file tax returns and pay tax." That about sums it up: they weren't sure of the specifics of their own position, didn't cite anything from the law supporting their assertions, and couldn't answer my questions, but they could say "You owe it!" And that kindergarten-style method of argument should have changed my mind?

I asked if he recalled the IRS folk (including him) stating at my meeting that they "*were not familiar with Section 861 and its regulations at the time of the meeting*." Yes, he remembered that. And did he recall them "*stating that* [they] *could not answer my specific questions at that time?* " Yes, he remembered that, too. So, Mr. Charles "Consistent" Judge testified that at the meeting they: 1) told me, in no uncertain terms, their "interpretation" of 861, and 2) told me they weren't familiar with the section, and couldn't answer my questions about it. That's a little odd, if you ask me. How exactly does one give a confident "interpretation" of something he admits to being unfamiliar with?

I then asked if he remembered when, at the meeting, I gave him a handout, quoting the IRS's own manual as saying that while statutes and regulations are legally binding, lower court rulings (anything below Supreme Court) are not. He said he couldn't recall. For the record, here is the text of the handout I gave them at the meeting, which Mr. Judge (supposedly) didn't recall:

What Is Binding on the IRS

"*The Federal Income Tax Regulations (Regs.) are the official Treasury Department interpretation of the Internal Revenue Code...* " [IRM, [4.2] 7.2.3.1 (05/14/99)]

"The Service is bound by the regulations. " [IRM, [4.2] 7.2.3.4 (05/14/99)]

"[T] *he Secretary shall prescribe all needful rules and regulations for the enforcement of this title.* " [26 USC § 7805(a)]

"*Interpretative regulations are issued under the general authority of IRC section 7805(a), which allows regulations to be written when the Secretary determines they are needed to clarify a Code section.* " [IRM, [4.2] 7.2.3.2 (05/14/99)]

"*Decisions made at various levels of the court system... may be used by either examiners or taxpayers to support a position... A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts... Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.* "
[IRM, [4.2] 7.2.9.8 (05/14/99)]

"*Rulings* do not *have the force and effect of Treasury Department Regulations, but they may be used as precedents.* " [[4.2]7.2.6.1 (05-14-1999)]

"*IRS Publications, issued by the National Office, explain the law in plain language for taxpayers and their advisors... While a good source of general information,* publications should not be cited *to sustain a position.* " [IRM, [4.2]7.2.8 (05-14-1999)]

The jury wasn't allowed to see that.

I then got Mr. Judge to admit that, to his knowledge, the IRS never issued me a "30-day" letter or a "Notice of Deficiency" for any of the years we didn't file. In other words, they never tried to collect, or even sent us a bill, or even alleged a specific dollar amount owed. Because of that, there was nothing for us to appeal; the ball was still in their court, and they chose not to proceed.

Restaurant Revisited

On cross-examination concerning our supposed-to-be-off-the-record (but-illegally-recorded-by-him) meeting at the restaurant, Mr. Judge acknowledged that the meeting was "friendly" and "non-confrontational." I asked him if he remembered my letter to him inviting him out to dinner, saying that I wanted to give him "*an opportunity, off the record, to say what* [he] *thought, and that I wouldn't share with anybody any comments or opinions* [he] *had*." Yes, he said he remembered that. And had I kept my word? Yep. (In case you're wondering, since he illegally recorded it, and then while under oath mischaracterized what happened there, I no longer feel obligated to keep quiet about it.)

Again, since I didn't know I was being recorded, it was the perfect set-up to catch me saying at least that I wasn't totally sure of my conclusions, if not making them up completely. Instead, what they "caught" me saying at the meeting (which the government didn't mention) was that I would "*bet my life on the fact that I'm right*" about the 861 evidence. I asked Mr. Judge if he remembered me telling him that at the restaurant, but he would only reply, "*That's a possibility, but I don't recall*." Of course, the tape and transcript show exactly what I said, but the jury wasn't allowed to hear or see them. You see, IRS employees lying about what happened is reliable, admissible evidence, while the

actual recordings are inadmissible "hearsay."

Redirect on Judge

On "redirect," Mr. Miller started to ask Mr. Judge about his legal opinion regarding 861. I objected, since by the rules, as the government strenuously argued long before trial, a witness isn't supposed to instruct the jury on the law. (If I wasn't allowed to do it, I wasn't about to let them do it without objection.) The first time, Judge Baylson sustained my objection, but a minute later Charlie Judge started giving a monologue about his "interpretation" (hallucination) of the law, and that time the judge let him continue, ignoring my second objection and overruling my third, fourth and fifth objections, letting Mr. Miller and Mr. Judge give a prolonged joint lecture about their provably bogus legal conclusions, in blatant violation of the rules of federal court.

On follow-up cross-examination regarding the legal opinion he had just given, I asked Mr. Judge, "*Were those all points that you explained to me*" at the 9/22/00 meeting? He answered "yes," which was an absolute, indisputable, unadulterated bald-faced lie. Again, at the actual meeting he never said one word about his own "interpretation" of 861, unless you count "*I think we're missing something somewhere here under 861*." But I wasn't allowed to play the tapes or show the jury the transcripts to prove it.

Stan the Tax Man

The next witness called by the government was Stanley Escher, the neurotic IRS supervisor whom I had met out in Harrisburg, Pennsylvania, when I was a witness at John Hoffman's meeting with the IRS (as described before). At trial, Mr. Escher testified that, at the meeting, John and I were "*intent on getting* [the IRS] *to answer those twelve questions that dealt with code section 861*." How diabolical of us. Then, once again, in violation of the rules and over my objections, Judge Baylson let the witness give a long speech about his own legal conclusions regarding 861 (which, again, were fatally flawed). Mr. Escher then testified that at the meeting he had told us "*numerous times*" that "*861 was not applicable*." Why? Because, as he put it, Mr. Hoffman "*had no foreign involvement at all*." (During this testimony, the ever-slimy Mr. Miller kept referring to the 861 issue as a "story.") Then Mr. Escher said this:

> **"These twelve questions—it was very important for them to get the twelve questions, and I repeatedly told them that I didn't want to answer the twelve questions, because they were not applicable, and they pressed the point and pressed the point, and after a while I did answer the twelve questions, reluctantly. I felt I was being pushed into a corner on something that I had no idea why that—after my explanations to them, they still wanted these questions answered."**

That's a lot of weirdness packed into two sentences. Let's see: 1) Why would he not want to answer questions about how to determine what someone owes? 2) How on earth can *questions* not be "applicable"? 3) If the answers were clear, why was he "reluctant" to give them? He was happy to give a long-winded monologue explaining his erroneous conclusions, but he didn't want to then answer twelve basic, yes-or-no questions (and then whined about our persistence in asking them). Why? 4) It's a big stretch to say he answered the questions; he didn't even understand half of them.

At trial, Mr. Miller then asked Mr. Escher whether he "made it clear" to us at the meeting that, in Mr. Escher's opinion, our "*story was wrong about income not being taxable*." Mr. Escher answered that he "*said it over and over again*." That about sums up the standard government bureaucrat mentality: You're wrong, you're wrong, you're wrong! Take my word for it, don't ask me for citations, and don't ask me any more questions!

On cross-examination, I mentioned that Mr. Escher had "*talked a little about foreign tax credits*," and asked him if "*that's what 861 is all about*." He answered, "*That's part of what it's about, yes. Well, it's not exclusively about foreign tax credits*." When I asked if 861 itself ever mentions foreign tax credits, he said that to his "recollection," it does, but he didn't know where. At trial we did a word search which showed that, in Section 861, foreign tax credits are only mentioned in obscure rules applicable to hardly anyone. Had the jury been awake, they should have been able to see that Mr. Escher was just saying what he was told to say, and that in reality he knew little or nothing about the law, and that his position was not based at all on reading the law.

Much of Mr. Escher's subsequent testimony was as muddled as it was at Mr. Hoffman's meeting. For example, I asked whether the twelve questions were about "*how to properly determine someone's taxable domestic income*." After Mr. Escher's first rambling, uncertain non-answer, I said, "*I'm not asking whether you agreed with* [Mr. Hoffman's] *conclusions, but were the questions about how to determine taxable income?* " He gave another odd answer: "*The term 'taxable income' was used in the questions, yes*." Do these people go to obfuscation school, or what? Why couldn't he just say "Yes, they were about determining taxable income"?

Not much else coherent happened after that, so Mr. Escher was dismissed as a witness and we took our mid-afternoon break.

Next Witness

The government's next witness was Evan Davis, an attorney with the Tax Division of the DOJ, who had previously been involved in illegally shutting down several web sites (owned by others) mentioning 861. The government did this by misapplying the "abusive tax shelter" laws (as I described earlier), to circumvent the First Amendment. Mr. Davis had "deposed" (officially questioned) me in 2002, during his efforts to forcibly silence, via court order, Thurston Bell, the author of the "Gross Income" article which first introduced me to the 861 issue. On the stand, Mr. Davis quickly lied, saying that Mr. Bell "*was selling an abusive tax scheme*," when he had done nothing of the sort. (Mr. Bell had expressed his conclusions about the law, and then tried to help people get a little due process in their dealings with the IRS. That was all.)

Mr. Davis then testified that during my deposition, I explained that I had looked into "*tax protestor theories*" (his wording), and that I "*had disproven them*" prior to hearing about 861 in late 1997 or early 1998. Always eager to divide and conquer, at my deposition Mr. Davis brought up a minor disagreement between Mr. Bell and myself about the significance of older statutes and regulations. Mr. Bell had suggested that courts wouldn't want to consider "legislative history" (the origin and evolution of certain parts of the law) in a civil case, to which I answered that "*I don't care what the courts will accept*," because I wasn't planning to go to court—I was focusing on showing

the truth to the public. In other words, the history of 861 shows a clear pattern of intent to deceive, whether any court wants to look at it or not. No doubt Mr. Davis was hoping the jury would hear that as "I don't care what courts think"—which, to a certain extent, is actually true, though it's not what I was saying.

Again from the deposition in 2002, Mr. Davis pointed out that he had asked me if I knew of any court rulings upholding my position, and I answered, "*No, I haven't really seen any court case that addresses the substance at all*," adding that I had seen "*a few Tax Court cases in which they basically assert that it's frivolous, and refuse to talk about it, and dismiss it*." Then he asked about an Appeals court case, to which I responded, "*From what I recall, they simply said, 'Well, the Tax Court said it's frivolous, and we're just agreeing'; I don't believe it actually addressed the substance of it*." Then the prosecutor had Mr. Davis read something I said at the deposition, which was that "*the law says what the law says*," and if some judge wanted to say that "*the law doesn't mean what it says, I'm not going to believe it until they show me the law that says it*."

Faith versus Judgment

Let's pause the story for a moment to consider something. Why would the government want the jury to be seeing and hearing this stuff? To me it sounds like the attitude of an objective, skeptical thinker. Isn't that how people should approach life?

Not according to most people. The government was probably quite confident that most people would react to such an attitude, not with agreement, but with disdain and disgust. "Who are *you* to presume to question what a *judge* says? Who are you to use your own judgment to decide what's true, instead of blindly accepting whatever authority tells you (as the rest of us do)?" Apparently that's how a lot of Americans (I can think of twelve in particular) think—or fail to think, to be more precise. The government continued its theme of "how dare you question the government" throughout the trial, and apparently it worked quite well on the anti-thought brigade in the jury box.

They Have Spoken

Mr. Davis then explained that Mr. Bell, in his injunction case, submitted my *Theft by Deception* video as evidence. Then he quoted the judge in that case as saying that he agreed with the government that the 861 evidence is "*completely meritless*" and "*nonsensical*." (Again, I hope the reader at least skims over my "Taxable Income" report in Appendix A of this book, to see how asinine such accusations are.)

Then Mr. Davis testified about another injunction case he was involved in, this one down in Florida, at which I also testified. It was my job at that trial to explain the 861 issue to the judge. (I didn't have any other involvement with the person they were trying to shut up in that case.) The judge in that case, Judge Steven Merryday, struck all of my testimony from the record after I gave it. (Incidentally, right after my testimony, the judge actually complimented me on the cogency and succinctness of my explanation of the position, before he struck all of it from the record.) But during my testimony in that case, I again demonstrated what a horrible heretic I am, by saying this:

"Someone who interprets the law, their interpretation is only as valid as how closely it matches what it is interpreting. In other words, if a judge were to say that the sky is green, it would not become green."

Then Mr. Davis read from Judge Merryday's comments about my testimony, saying that while "*the sky has an inherent and inalterable feature*," "*what income is or is not subject to tax*" is not constant, "*so if the United States Supreme Court says in the laws of the United States that item A is taxable, item A is taxable*." What about what the written law actually says? I guess that doesn't matter. It seems we now have a "judiciary," where any assertion by someone in a black robe matters more than what the written law actually says.

Incidentally, the Supreme Court has never addressed the 861 evidence. However, in an interesting coincidence, it did recently mention the regulations under 861, though in a different context. In the case of *Boeing v. United States* (537 U.S. 437), the Court said that "*In promulgating 26 CFR 1.861-8 (1979), the Secretary of the Treasury exercised his rulemaking authority*," and added that even the Supreme Court "*must still treat the regulation with deference*." The ruling then admitted that even the Supreme Court "*must defer to* [the IRS Commissioner's] *regulatory interpretations of the Code so long as they are reasonable*." So, essentially the Supreme Court said that, unless there is something clearly wrong with the regulations—which no one has claimed about the regs under 861—the Court would defer the proper interpretation of the law to the regulations, such as 26 CFR § 1.861-8, which is the main section upon which my conclusions are based (since it is the section for determining one's "*taxable income from sources within the United States*"). So why should I ask judges if I'm right, when the Supreme Court says that judges are to defer to the *regulations*, upon which my conclusions are based?

(As another interesting coincidence, in a dissenting opinion in that *Boeing* case, Justice Clarence Thomas said that "*Before placing its hand in the taxpayer's pocket, the government must place its finger on the law authorizing its action*." Oh, how I wish that were true.)

Finally, the prosecution had Mr. Davis read a footnote from Judge Merryday's ruling in the injunction case, which included this: "*Having carefully viewed* Theft by Deception *, I confidently retain the conviction that the Section 861 argument is frivolous and illogical*."

Program-Think Alert!

Do you find yourself persuaded by the "because we said so" message of the government? Do you find all those letters and "rulings" using terms like "frivolous," "illogical" and "without merit" to be compelling? Does your brain automatically assign credibility and weight to the unsupported but vehement assertions of supposed "authorities"? When they say it loudly, repeatedly, and confidently, do you feel your own ability to doubt "conventional wisdom" weakening? Who are you to even examine an issue which a *judge* has deemed to be nonsense?

If such authoritarian brow-beating works on you, you're certainly not alone. Not by a long shot. When those who are supposed to be "in the know" proclaim what is true, most people don't have the intellectual confidence to resist conforming to the accepted beliefs. Who are we to disagree with the "experts"? Isn't it a safe bet that they know more than we do? Actually, no, it's not. But whatever they know, why should we ever perceive unsupported *assertions* as being persuasive? If the so-called

experts have some evidence we don't have, isn't it reasonable to ask them to show it to us, instead of just giving us unsupported proclamations?

In this case, the silliness of our tendency to believe so-called experts is greatly compounded by the fact that those same "experts" keep admitting that they are *not familiar with the evidence*. Charles Judge admitted he had never dealt with 861 prior to my case. Cathy Spaulding admitted she wasn't familiar with the sections I showed her. As you'll soon see, even Judge Baylson displayed an astonishing ignorance of federal tax law. That being the case, what rationale is there for me to set aside the many hundreds of hours of extensive research I've done, and to ignore my own in-depth familiarity with the relevant evidence, in favor of the out-of-thin-air claims of people who have already demonstrated profound ignorance of the issue and the evidence? Does someone's office or credentials give him or her some magical access to the truth which doesn't require actually looking at the evidence? And do the opinions of a *lot* of ignorant people add up to something more authoritative than the opinion of *one* ignoramus? Does something baseless and false become true when enough people repeat it? Of course not.

"Program-think" tendencies are even stronger when dealing with a subject the listener is unfamiliar with. In the absence of any first-hand knowledge about a subject, resorting to blind faith in the opinions of the "experts" happens almost automatically. If, on the other hand, some self-proclaimed "expert" says something about a subject with which the listener *is* familiar, a healthy skepticism is far more likely to occur. Think of some subject you know a fair amount about. It's likely that at some point you've heard an opinion from someone claiming to be an "expert," but you had the confidence to respond with "That guy doesn't know what he's talking about." But when it comes to things you're not familiar with (tax law, perhaps), it's all too easy to assume that anyone presenting himself as an "expert" must have reached his conclusions in some rational, informed manner.

Consider Judge Merryday's comments about my video. If he did watch it, as he said, and still declared the issue to be "frivolous" and "illogical," it's okay for you to take his word for it, right? Of course, he gave no explanation or evidence, only his conclusion, but isn't that enough? He is a *judge*, after all, while I'm a nasty convict with no credentials. So did his proclamation convince you that I'm not only wrong, but that my conclusions are "illogical" and "frivolous"?

I know that a lot of people who have actually seen my video will not be swayed in the least by Judge Merryday's asinine proclamation. As is always the case, those who have seen the *evidence* are a lot harder to scare away than those who are just choosing whom to blindly believe. Of course, that's why the government is trying so hard to suppress the evidence, not just at my trial but throughout the country.

Blind faith is so easy, and doing your own research and investigation is such a bother, that most people choose the former. The people on my jury, and probably many people who read this book, are among those people who instinctively assign more credibility to the bare assertions of government officials (people who benefit from the income tax deception) than to the evidence from the law which I directly quote. Oh well, the truth always seems to be an uphill battle, but it usually beats out the lie in the long run. Maybe it will happen this time, too.

"All truth passes through three stages. First, it is ridiculed, second, it is violently opposed, and third, it is

accepted as self-evident."
[Arthur Schopenhauer]

At the moment, we're still at stage two.

Getting back to the trial, we see a fine example of assertion versus substance. I asked Mr. Davis about the Tax Court ruling in the "Madge" case, which had come up as one of those "rulings" supposedly refuting the 861 evidence. The government had argued that, because I was aware of that "ruling," I couldn't possibly have still believed what I was saying. As I brought out on cross-examination, however, nowhere does the *Madge* ruling even *mention* Section 861, or any of the related regulations. Not one peep. And I'm supposed to view that ruling as a substantive proof that my position is incorrect? (The government seemed to think so.)

Agreeing with Myself

Because the government often wanted witnesses to read a line here and there out of context, on cross-examination I would go back and have the person read the parts that put the context back in. For example, I had Mr. Davis read the following, which is from a private e-mail I sent to Dr. Clayton:

"At least 95 percent of the form letters, press releases, or other attempts to refute the 861 evidence, both by government officials and private sector tax professionals, are nothing more than 'cut and paste' quotations from what someone else said. Someone makes an assertion, and no matter how provably wrong it is, or how little support in the law there is for it, the intellectually lazy status quo proponents, government and otherwise, just parrot the same line, as if quoting someone else making a mistake qualifies as an authoritative rebuttal. The history of the government's attempts to refute the 861 evidence looks less like an explanation and more like a rumor. The Tax Court makes some lame accusation that the issue is 'frivolous,' as in the Aiello case. The Tax Court then quotes ITSELF making that accusation as if that proves something."

Yeah, what he said.

Baseless Assertion

The term "baseless assertion," which I'm rather fond of, means a statement which isn't backed by any evidence or reasoning, such as: "You're not supposed to use 861 and its regulations to determine *your* taxable domestic income!" Many IRS paper-pushers assert that those sections are to be used only by certain people in certain situations. (Never mind that they often disagree with each other about what those certain situations are.) It's quite easy for the average spectator to simply assume that there must be some good reason that IRS bureaucrats make such a claim; there must be something in the law that led them to conclude that. And that's exactly why people use baseless assertions: because if you sound sure of yourself, most listeners will assume you have some reason for thinking what you think.

Let's turn things around with a hypothetical example. Suppose you heard the following exchange between an IRS agent and a citizen:

IRS Guy: "So Section 1 imposes a tax on every individual's taxable income."
Other Guy: "No, you're taking that out of context. That tax applies only to men over the age of 53, and

women over the age of 62."
IRS Guy: "What? Where does it say that?"
Other Guy: "See, you have to understand what that section is for. It's for taxing men and women of certain ages. It doesn't apply to me."
IRS Guy: "That's not what it says. It says 'every individual'."
Other Guy: "Look, I've told you twice, your interpretation is flawed. And here is a letter from my cousin, who also says your argument is frivolous."

If you heard that, who would you believe? Without being personally familiar with the evidence, you'd probably believe whichever individual more conveyed the image of being an authority on the subject. In other words, having no evidence, you'd be stuck comparing the apparent credibility of the speakers. (I just made up the thing about taxing people over certain ages, but how would you know that if you were not familiar with the law?)

If you have no access to actual evidence, you may be forced to guess at which person is telling the truth. What's really unfortunate, however, is how often people reject evidence they *do* have access to—such as what I've already cited in this book—in favor of the mere appearance of credibility. For example, more times than I can count I've witnessed exchanges very much like the one above, except that it was the IRS making the assertion that most people should ignore 861, while the other person pointed out all the places where the regulations themselves unequivocally and unconditionally say that one *should* use 861 and its regulations to determine his "*taxable income from sources within the United States*." Where does the law say most people should ignore those sections? It doesn't. Ever. Anywhere. Yet the government can continually fling out baseless assertions—often conflicting assertions—and a lot of people assume that if someone from the government says it, they must know better than some uncredentialed nobody like me. Not once at my trial did any government witness even pretend to cite anything from the law supporting the claim, parroted by most of their witnesses, that I had no business looking to 861. But they "told" me, over and over, so how could I possibly believe otherwise? Maybe because *the law* "told me" the exact opposite.

One More Assertion

After Mr. Davis was dismissed as a witness, court pretty much ended for the day, except for one thing that happened after the jury left. The government wanted the jury to hear about an appellate court ruling which had just come out, upholding the bogus injunction imposed upon Thurston Bell by the lower court. Of course, a ruling that just came out couldn't possibly be relevant to what I believed years earlier. Nonetheless, Judge Baylson decided to tell the jury about it anyway: one more baseless assertion by a self-proclaimed "authority" to sway the unthinking jurors. (Incidentally, the appellate court ruling was all about First Amendment issues, and did not address the substance of the 861 issue. But then, neither did most of the other "rulings" the government cites as if they prove something.)

After that we headed back to the hotel. Already more than one observer had voiced concerns that the jurors seemed to be paying little attention, with one observer commenting that he didn't think anyone on the jury had an IQ over 100. Once again, I didn't get much sleep, as Mr. Becraft and I (and another nasty conspirator) continued to prepare the defense case.

Day Three

Day three began with the government calling its star witness, Donald Pearlman, the IRS Special Agent in charge of the vilification—I mean, investigation—of me. (Picture Steven Spielberg with less hair, a lot less imagination and originality, and the personality of a crayfish; that pretty much sums up Agent Pearlman.) After describing his job, Mr. Pearlman explained how he got involved in my case. Early on in his testimony he said something about my web sites which was quite revealing:

> **"I reviewed the contents of those websites, and made a determination that there were potential violations of the criminal statutes of the Internal Revenue Code, and proceeded forward with my investigation."**

That one sentence tells a lot about Agent Pearlman's view of the world. Neither of the web sites he was talking about (www.taxableincome.net and www.theft-by-deception.com) tells anyone to do anything. They give no advice, and encourage people to look at the evidence for themselves instead of taking anyone's word for it (including mine). The sites explain my conclusions and tell people how to order the video, which also doesn't tell anyone to do anything.

What kind of fascist outlook would someone have to have to view having such web sites as a *crime*? This is the same police-state mentality that was found throughout Pearlman's request for permission to raid my home. That document made it plain that Agent Pearlman really is insane enough to view it as a crime for someone to voice an opinion that the government doesn't like.

At trial, Agent Pearlman then said that he asked for a search warrant "*Because of the potential destruction of key evidence*." Huh? Like what? Remember, they knew everything I was doing because I *told* them what I was doing. So, what "evidence" was he looking for that he thought I might try to destroy? The video I had given them? The report I had given to them? The letters I sent to them? The publicly available web sites? Their own sworn affidavit documents how I was not just open but also very vocal about everything I was doing, and it didn't even suggest that I was doing anything sneaky or deceptive. So what on earth was the supposed "evidence" that Agent Pearlman thought I might want to destroy?

Oddly, Mr. Miller even asked Agent Pearlman what other "evidence" he was looking for, and the only specific thing Agent Pearlman could think of was "*items of income or expense*." They knew about our income—because we told them about it and our customers told them about it. If they had had some reason to think we were hiding some other income, that could make sense. But they didn't, nor did they even pretend to. So is it okay for the IRS to raid someone's home just to find out whether that person has any income the IRS doesn't know about, even if there's no reason to think that he does? Apparently Agent Pearlman thinks so—and so do most IRS agents, federal prosecutors, federal judges, etc. Of course, the reason that the Fourth Amendment says that armed raids are supposed to require "probable cause" is so we *don't* have to live in a country where government agents can arbitrarily invade someone's home just to see whether that person is doing anything naughty or deceptive.

Now let's see what compelling evidence of my despicable criminal behavior the raid uncovered. After all, they took *thirty-five boxes* of stuff from our house, claiming it to be evidence of criminal activity, so there must be *something* damning in there somewhere! Agent Pearlman testified

to finding the following:

1) He found something from our mortgage company showing that once we made a payment of $7,000 at one time. (Oh, the horror.)

2) He found a canceled check for about $2,400, made out to the IRS, which said "Abolish the IRS" on the comment line. To state the obvious, that was a check from back when we were still sending the IRS money. So expressing anti-IRS opinions apparently is viewed as a crime by Jackboot Pearlman, even when one is still filing and paying.

3) He found a manila envelope containing our 1996 income tax return and on the envelope it said "'96 federal extortion pay-off." That one wasn't even sent anywhere; it was just how I labeled it in my own files. So even *thinking* bad things about the IRS, without saying anything to anyone else, and while still filing and paying, apparently is (in the eyes of looney's like Pearlman) also illegal. Can you say "thought crime"?

4) He found various form letters, sent by government folk to other people who had asked questions about the federal income tax, who then (at my request) sent copies of the responses to me. (I did this because I wanted to see if the government ever gave anyone a *substantive* response to the issue. Nope.) One of the letters was a non-response from my own congress twit, Joe Hoeffel.

5) From the computers they swiped, they found private e-mails (or at least they were private until the American Gestapo stole them) in which I expressed my dislike of the IRS, saying things like "*the IRS pisses me off*," as well as using other terminology to describe the IRS which I don't want to repeat here because I know my mom will be reading this book. One of those e-mail messages, which Mr. Miller had Agent Pearlman read, included this: "*Regardless of the proof, it isn't easy for most folks to come to grips with the fact that our government is one big extortionist fraud*." Wait a second, aren't they supposed to be proving that I *don't* believe the government is misapplying the law? So why quote something from a private correspondence which agrees with what I say publicly: that the government is defrauding people who don't actually owe the income tax?

They quoted from a few other e-mail messages which bluntly stated my goals. One said that it wasn't my goal just to save myself from the IRS's "*evil clutches*," but that I wanted "*to get the IRS in my evil clutches and end its abominable existence*." Elsewhere I said that "*defending one peasant at a time against the* [IRS] *dragon just ain't doin' it for me. I intend to* [bleep] *the dragon up while he sleeps in his own lair*."

The Sin of Hostility

Let me momentarily interrupt this listing of irrelevant "evidence" uncovered by the ever-vigilant Agent Pearlman to say a couple of words about my animosity toward the IRS, which the government brought up at trial (and which I suspect is pretty evident in this book as well). Several spectators at the trial said that they thought my anti-IRS hostility, as shown in my private emails to friends (not actually voiced to IRS employees) probably counted heavily against me in the eyes of the jury.

How exactly does a dislike for the IRS constitute proof that I think my income is taxable? It doesn't, of course. Obviously, my anger at the federal extortionists is perfectly consistent with believing that the IRS is robbing people of money they don't owe. Of note, the feds even brought up anti-IRS comments I made before *and* after learning about 861. (I didn't like their extortionist tactics even when I assumed they were "legal.") Their own evidence showed that back when we still thought we owed the tax, we continued to file and pay, while at the same time expressing our distaste for how the IRS functions. So our dislike of the IRS—which isn't exactly unheard-of in this country—was obviously *not* the reason we stopped filing.

In short, the government did not harp on our disdain for the IRS in order to prove "willfulness," because it proves nothing of the kind. (Of course we dislike an organization that illegally defrauds, extorts, and robs our fellow Americans of a trillion dollars a year.) They harped on it knowing that many people pride themselves on their own obedience to, and reverence for, authority. ("I'm good, and I do what I'm told!") The government wanted to convey to the jury the message "He's not like you! He hates the government!" In retrospect, I'm proud to say: No, I'm not like them, and never will be. They value conformity and obedience; I value truth and justice. And yes, I do say nasty things about people who commit injustice, and I have no intention of stopping.

More Non-Evidence

Let's pick up where we left off with listing the "evidence" uncovered by the ever-vigilant (ever-nosy) Agent Pearlman's raid on my home.

6) He then read from an e-mail in which I criticized the Constitution because it's too pro-government. (I believe history has unmistakably proven that the anti-federalists, including Thomas Jefferson, were right all along, and that predictions by people such as James Madison (see Federalist #45) that the federal government would remain small and limited were way off base.) My e-mails also explained my political philosophy, including statements such as this: "*Nothing can give anyone the right to rule me, even in the most limited way. Nothing can obligate me to ignore my own judgment in favor of some 'law'.* "

What did that statement have to do with the reason we stopped filing? Not a thing. I didn't stop filing because of political beliefs—beliefs I had held for years while still sending returns and payments to the IRS. So how are they relevant? They aren't. Should they have been excluded from the trial? Yes. When the tendency of something to prejudice the jury outweighs its relevance to the actual crime charged, the judge is supposed to keep it out of the trial. In fact, in pre-trial hearings Judge Baylson stated quite plainly that my political philosophy should *not* be brought up in front of the jury. But when Mr. Miller did exactly that, the judge did nothing to stop it.

7) Agent Pearlman then read from an e-mail in which I expressed a desire to see more and more people resisting the IRS's illegal demands, until such resistance against IRS lawlessness "*crushes their pathetic extortionist asses*." (And yes, I do still wish to see that, because it's quite obvious that our pseudo-justice system is never going to do the right thing on its own.) In another formerly private e-mail, I stated that "*the IRS is an extortion racket which pretends that it is backed by law*." In that same e-mail I then explained that "*if the court system was the final recourse*," I wouldn't be fighting

the fraud, and that I believed that the end of the fraud will not come from "*a court, or a hearing, or a judge, or a ruling*," but would only come when "*one million people with guns* [tell] *the IRS to go* [bleep] *itself*." In another e-mail, I put it this way: "*The government has made it perfectly clear that they will not admit the truth, or give up the income tax deception willingly, so we must make them do it unwillingly*."

Once again, how does that prove that I don't believe what I've been saying? Note how I refer to the income tax "deception" and "fraud." The government's supposed "evidence" proves that I am innocent, that I believe the IRS is taking money from people who don't legally owe it. Hating the IRS is not the "crime" I was charged with, nor is it a crime at all. (I would gladly plead guilty to intensely disliking the IRS.) Nor is it a crime to want to see massive public resistance to an illegal extortion racket.

Having been railroaded via a mock trial, I believe more strongly than ever that the system will never grant justice on its own. A lot of people don't want to hear that; they like to think that their government will end up doing the right thing. But the government wanted the jury to see those e-mails, not because they prove guilt of an actual crime—they prove the exact opposite—but so the jury would again think, "He's not one of us." Damn right I'm not!

8) After a friend of mine was terrorized and harassed into paying the IRS a lot of money that he knew he didn't owe, I made this statement, in an e-mail Agent Pearlman read from at trial: "*I decided after that that I would not stop until the IRS was nothing more than a reference in the history books. I'm glad I'm not the only one whose blood boils at this injustice*." Do I sound like someone who was just trying to get out of paying his "fair share"? Does it sound as if I didn't really believe in what I was saying and doing?

Proof of What?

Sorry to beat the point to death, but what was the government trying to prove with all this? After their massive fishing expedition, and snooping in every nook and cranny they could find for several years, where was the evidence of my "tax fraud scheme," as they like to say? Where was the evidence about me lying about anything, or hiding anything? At trial they were supposed to be trying to prove that I was intentionally violating the law by not filing income tax returns. In other words, they were supposed to be proving that I believed my income was taxable. How do any of the above-mentioned e-mails even hint at such a thing (much less prove it "beyond a reasonable doubt")? They don't. They show the exact opposite: that I believe that most people, including myself and my wife, do *not* legally owe federal income taxes, and that the IRS is illegally collecting money which is not actually owed, and that I'm really damn angry about it.

So when would the government get around to proving that I believe my income to be taxable—an essential element of the alleged crime? As you'll see, they never did. Then again, apparently they didn't need to.

The Interview

Agent Pearlman then testified about statements I made when he questioned me while the other IRS thugs were busy rummaging through my home, back in May of 2003. Most of it was pretty boring: I confirmed I had income, confirmed I had stopped filing, confirmed I was the author of the web sites, etc. Of course, all of that I had been telling the IRS (and the rest of the country) for years. Agent Pearlman also correctly testified that I told him that I do not consider form letters to be legally binding (nor does the IRS or any court, but he didn't mention that), and that I found the attempts to refute the 861 evidence to be unconvincing.

Agent Pearlman then displayed his unthinking mentality once again, explaining that I had said that if a judge "*informed*" me that I was wrong, I wouldn't agree. You see, to authoritarians it's about being "*told*" what to think, rather than being about looking at the evidence and explaining or discussing the issue. In Agent Pearlman's tyrannical view, when an authority figure says "You're wrong," no one has the right to still believe otherwise.

The Fun Part

During "direct examination" of each of the government's witnesses, I was frantically making notes of things I wanted to bring up on cross-examination. When the time came to cross-examine Agent Pearlman, one of the first things I asked was what "potential violations" of law he thought he detected when looking at my web sites. He answered that he thought that "*the websites were potentially operating in an effort to interfere with the administration of Internal Revenue Laws*." Incidentally, while there is a law against forcibly or "corruptly" interfering with the administration of the tax laws—which they "investigated" me for but didn't charge me with—inconveniencing the IRS by itself is not a crime, though I'm sure Pearlman wishes it were. So what were the supposed "potential violations" Pearlman thought he saw on my web sites? Here are his answers while on the stand:

1) On the www.theft-by-deception.com web site, I posted the names and office addresses of government officials (mostly IRS and DOJ) who had been sent free copies of my *Theft by Deception* video. Pearlman then alleged that I called everyone on that list "criminals," which was a lie. On further questioning, he talked about the cover letter I sent along with the video (the text of which I posted on the web site), which told the recipient that he could no longer plead ignorance about the information, and asked him to "*do the right thing*." Wow, when did it become illegal to ask government employees to do the right thing? A futile effort, probably, but a *crime*?

2) On the web sites I published transcripts of IRS meetings in cases where people had filed claims for refund. As it happens, those pages also explicitly told people *not* to view the transcripts as instructions on what to do themselves. So apparently Agent Pearlman thinks that publishing verbatim the stupid comments of IRS employees is also a crime.

3) In an attempt to make his list of "potential violations" less pathetic, Agent Pearlman added another bald-faced lie, alleging that the web sites were "*potentially providing guidance to people not to file their tax returns*." So, being quite familiar with what my own web sites say, I asked him whether, upon reviewing my sites, he had come across a statement of mine saying not only that I am not a CPA or an attorney, but also that "*I do not want people accepting my conclusions at face*

value." Yes, he did remember seeing that, he said. (My sites also said that people should not take my word for anything, that people must determine their own legal responsibilities, and that if they think they owe the tax, they should "*file and pay up*.") So, once again, voicing an opinion—while telling people not to take my word for anything—constitutes a crime in the eyes of Agent Pearlman.

Anything Dishonest?

I then asked Agent Pearlman whether in all of his extensive investigating he ever found any evidence of my wife and I hiding anything or lying about anything. After basically admitting that we hadn't hidden anything, and realizing how that must look, he was desperate to come up with something. So he brought up a letter I had sent years before to the Social Security Administration, asking if participation in Social Security was optional, and if so, asking how to opt out. Of course, there's nothing remotely dishonest about that, and it had nothing to do with the case or the 861 evidence, but desperate for anything to make me look bad, Pearlman characterized my open question to the SSA as "*trying to disguise at least the Social Security number*." What? That wasn't just spin; it was an outright lie. (How does one "disguise" a Social Security number? With a Groucho Marx nose and glasses?) I wasn't "disguising" anything; I was openly asking the government a question about whether one could opt out of the Social Security system—another *crime* in Pearlman's eyes, apparently.

That was it. That was all the hiding or deception that Pearlman could fabricate out of the tens of thousands of pages of e-mails and letters: we *asked* the Social Security Administration whether we could choose not to participate in the "Social Security" Ponzi scheme. (Other than asking the question, we never did anything about it.)

I'm guessing that if the feds picked a citizen at random, went through all of his correspondence and records, nine times out of ten they could find *something* he lied about or concealed. Not so with us, which is why Pearlman had to do his creative "spin" (lie) about us merely asking a question. I then got Agent Pearlman to admit that on multiple occasions, we had written to various government officials, *telling* them that we were still receiving income, and explaining why we had stopped filing —not exactly the behavior of secretive, sneaky "tax cheats."

Denying the Obvious

When I asked about our mortgage being paid off early, which I guess was supposed to be proof of something shady and devious, Agent Pearlman went into super-weasel mode (no offense to all those cute little mustelids out there). Earlier in the case the government had tried to make a big deal about this, to paint us as greedy and to stir up in the jury envy against us. I asked whether Pearlman was aware that during the time period when we were making extra payments on our mortgage, Tessa's father's estate was gifting us large checks (adding up to about ten thousand dollars a year), in about the same amounts as the extra payments we made on our mortgage. Yes, he acknowledged that. Are such gifts taxable? No, he admitted, they are not. Then I asked if maybe those checks had something to do with our making the extra payments (duh).

"*It could*," Mr. Weasel responded, prompting chuckles from the courtroom spectators. It *could*? But maybe not? Any moron looking at the record could see that those extra mortgage payments were a direct result of having received those non-taxable gifts. Yet Weasel Pearlman wouldn't admit that, because it would hamper the government's attempts to demonize me. To make sure his slimy evasiveness would be apparent even to the most unobservant juror, I had a follow-up question:

Me: "So, in other words, we had a large source of income the IRS agrees was not taxable, that could have been paying off the mortgage?"
Mr. Weasel: "I would not characterize it that way, no."

Again, the trial transcript notes laughter from the courtroom audience. No, Agent Slimeball wouldn't "characterize" the facts that way, because it would undermine their dishonest and irrelevant attempt to make the jury hate us for not paying our "fair share," by making them think we paid off our mortgage instead.

Next, I brought up an anti-IRS comment ("Abolish the IRS") found on a check made out to the IRS, and asked Agent Pearlman if it would be accurate "*to characterize this as demonstrating that I did not like the IRS, but I was paying the tax*." Who could possibly disagree with that? His response: "*I'm not going to characterize it as anything like that*." That's probably because he's a dishonest, unscrupulous heap of dung who doesn't want to admit an undeniable truth, for fear it might get in the way of them wrongfully imprisoning someone whom they know had committed no crime. (I refrained from saying that in court. Just barely.)

He used similar evasive floundering when I asked about the note on the envelope containing the copy of our 1996 tax return, which said "*'96 Federal Extortion Pay-Off*." Since the return showed that we had sent the IRS over $10,000 for 1996, didn't that also show that even though we already disliked the IRS back then (before ever hearing of 861), we nonetheless continued to pay what we thought we owed? Agent Slime wouldn't answer.

Pearlman continued his pattern of refusing to admit obvious facts when I asked him whether IRS form letters carry any legal weight. The correct answer, as every IRS employee (especially a "Special Agent") knows full well, is "No, they carry no legal authority." But instead of admitting that, he tap-danced around the question for a while, and then this exchange occurred:

Me: "When the IRS sends out a form letter—not a copy of an actual regulation, but a form letter expressing an opinion or interpretation—does the IRS consider them legally binding?"
Mr. Weasel: "You'd have to show me specifically what letter you're talking about. A form letter, I can't generalize that."

Actually, he could, but he wouldn't. The Internal Revenue Manual (cited above) makes it clear that the only things the IRS considers universally legally binding are statutes, regulations, and Supreme Court rulings. That's all. But if Pearlman had admitted what he knew to be the truth—that those "notices" the prosecution kept talking about carry absolutely *no* legal weight, and we therefore had no obligation to agree with them or abide by them—then the government's lame case would have completely dissolved on the spot. So Pearlman chose not to admit what he knew to be the truth.

His evasiveness continued when I asked whether the "notices" the government had presented were simply IRS form letters "*cut and pasted*" from IRS template letters. His evasiveness grew even

worse when I asked whether those letters actually answer any of the questions they were supposed to be responding to. (They don't.) The more specific I got with individual letters—the government's own exhibits—the more rambling and non-responsive were Pearlman's answers. He didn't want to admit that:

1) I have never said that Section 861 itself exempts my income.

2) I have never claimed that only income from outside the U.S. is taxable. (Again, Section 861 is about taxable income from *inside* the U.S.)

3) I have never claimed that only foreigners can be taxed. (Citizens are taxed on income they receive from international trade.)

4) I have never argued that wages aren't income.

5) I have never said that the Sixteenth Amendment is unconstitutional.

6) The form letters shown didn't quote anything from the regulations to support their statements.

7) One of the form letters seemed to *agree* that Section 1.861-8 of the regulations is to be used for determining one's taxable domestic income.

Pearlman knew all of the above to be unquestionably true, but he was not about to admit any of it in front of the jury. After his prolonged dishonesty, question-dodging, and pretended inability to recall things, we took our mid-morning break.

When things started up again, Pearlman testified that the IRS had seized somewhere around *ten thousand* e-mails from my computers, and that IRS employees had directly reviewed about 1,000 individual e-mails. (Computer word searches would determine which they would bother to read.) So I asked whether, in all of those previously private communications, the IRS had come across any message in which I indicated that I actually thought my income was taxable. If I had made such a statement, would it have come up at trial? Pearlman admitted that it would have (obviously). And did I ever say such a thing, in any of those e-mails they went through? His answer: "*I have to look at the contents of the e-mails. To my knowledge, no*." (As if he might have forgotten it if I had ever said such a thing. Liar, liar, pants on fire!)

Then we went through the contents of various individual e-mails—just the ones the *government* chose to present, from among those thousands of e-mails available to them, which would presumably be the most damning—to see if my statements ever hinted that I really believe my income to be taxable. In one after another of those *government-chosen* messages, my comments kept showing quite clearly that I believe that my income is *not* taxable, and that the IRS is misapplying the law. In other words, out of the thousands of e-mails the government had to choose from, even the few they decided to present proved that I was *not guilty* of the crime being alleged.

Next, I asked Pearlman whether the IRS had found statements of mine regarding political philosophy, which I had written before ever hearing of 861 (i.e., back when I was still filing and

paying). I wanted to demonstrate that my political philosophy was not the reason I stopped filing, or I would have stopped many years earlier. However, though the government had already brought up my political philosophy, despite Judge Baylson saying in pre-trial hearings that it should not be mentioned at all, the government and the judge now wanted to stop me from cross-examining Pearlman about it. Judge Baylson ruled that political philosophy could not be discussed—which actually meant it could not be discussed by *me*, while the government was allowed to discuss it repeatedly.

I then had Agent Pearlman read some parts of those e-mails which the government had skipped over when presenting them, such as one where I said that I am *not* advocating violent resistance, and another in which I said "*The feds are the ones duping people; we are the ones unduping them*."

When I again asked whether we had done anything to hide our income, Mr. Weasel said that we hadn't cooperated with the IRS at the meetings by giving them everything they asked for. So I asked whether, at those meetings, I had agreed to the amounts of income which were reported to the IRS on 1099 Forms. Yes, he admitted that I had. So the only records I didn't give them were *expense* records, which would only have *reduced* the amount they thought I owed. (See how sneaky I am? Only a diabolical scoundrel would deny the IRS access to documents which would have *lowered* that person's alleged tax liability.)

Then I asked about something else the government had "forgotten" to mention in its case: on my web site, I had publicly posted the IRS's form letters mentioning 861, and included my detailed rebuttals of each one, showing point-by-point why their conclusions were contrary to the law itself. At trial, the government had talked as if I had "ignored" those letters. Here is the exchange about that:

Me: "For the form letters I posted on my web site—the IRS form letters—and then wrote my response to them, would you characterize that as me ignoring that information that I was sent?"
Pearlman: "I would characterize it as you ignoring the message that was sent in those correspondences. Yes, I would."
Me: "Ignoring the message, or disagreeing with the message?"
Pearlman: "I don't know whether or not you disagree with it. I know that you ignored it because you didn't follow the law as it was explained, and as it was provided."

Once again, we get a glimpse into the world according to Pearlman. In his eyes—and apparently in the eyes of the rest of the IRS, DOJ, and federal judiciary—when an authority figure flings an assertion at you, you either blindly accept it as the gospel truth or you're a criminal. Or, as Agent Pearlman himself put it in a follow-up comment: "*It's been my experience by conducting this investigation that time and time again you simply will not take no for an answer, and that answer, 'no,' has been provided to you over and over again, and you simply do not listen to that answer*."

What horrifies me more than that unthinking, Gestapo-like attitude—where discussion, evidence and logic are all trumped by any unilateral proclamation of the most clueless bureaucrat—is the fact that a lot of Americans (twelve in particular) agree with that demented view of reality. "You can't possibly believe 'X,' because someone in government told you 'Z'!" It doesn't matter that I posted their form letters on my site, thoroughly refuting them with legally binding citations of law—no, I was "ignoring" their letters because I didn't blindly believe and blindly obey them.

(Another example of this common authority-worshiping viewpoint came from one of the

government's pre-trial motions, in which they opined that if Tessa and I truly believed our "interpretation" of the law was correct, we "*would have sought a judicial determination*" about it. Why? Apparently some people think that, regardless of what the actual evidence—the law itself—shows, we shouldn't dare believe it until we get an imagined "authority" to give his blessing to our conclusions.)

Not to sound pompous here, but considering the fact that I know more about the substance and history of Section 861 than 99.999999 percent of the population of this country, why would I go to someone far *less* familiar with the evidence, like a federal judge or IRS paper-pusher, to ascertain whether my conclusions are correct? Sorry, but I don't need anyone's permission to believe what evidence and logic prove. But then, I've always been a radical extremist: one of those crazy people who believes his own eyes even when people in positions of power tell him not to.

However, as the saying goes, it's dangerous to be right when the government is wrong, and that's especially true when the general public consists mostly of authority-worshiping, unthinking sheep. What you see above is the entire substance of the testimony from the government's *star* witness. And what did he prove? That IRS bureaucrats and form letters (neither of which carry a shred of legal authority) *told* me that I was wrong. So that proves I couldn't have believed otherwise, right? Twelve numbskulls seemed to think so.

The Last Witness

The government's final witness was a "summary witness," who had never had any contact with me, but just testified about lots of boring facts and figures (mostly about our income) that had already been stipulated. To make a long, painfully boring story short, *sixteen* pages of trial transcripts are filled with nothing but talking about individual checks made out to us by our medical transcription customers, which we had already acknowledged receiving, and the amounts of which we had already stipulated as accurate.

On cross-examination, there were only a couple of things I wanted to ask. The first had to do with the fact that the numbers she was talking about represented our gross receipts *before* paying the people who worked for us, *not* our actual profits. (The IRS liked saying that our business brought in half a million dollars in the years in question, without mentioning that over half of that amount went to our typists, making our average yearly income well under $50,000 per year—which doesn't sound nearly as impressive, and isn't nearly as likely to stir up envy among the jurors.)

Then came the point I really wanted to make. Once again, the transcript speaks for itself.

Me: "Now, you stated at the end that you determined that these [payments] were 'gross income.' When you go to total up these figures and get to the bottom, do you keep your eyes open for any sorts of income which may be specifically exempted by a section of the tax code?"
Witness: "I normally did, but I did not see that in this case."
Me: "Okay, but it's normal to keep your eyes open in case there's some item, and that would enter into the equation. Is that correct?"
Witness: "Sure, sure."

So far, no problem. She knows that some income is exempted by the tax code, but didn't see any

of that in our case. Here is what happened next:

Me: "My last question is, in coming to your total, did you subtract any amounts of income which are exempt from federal taxation because of the Constitution itself?"
Mr. Noud: "Objection."
Judge Baylson: "I'm not sure I understand the question."
Witness: "Yeah, I don't either."
Judge Baylson (to the witness): "Do you understand the question?"
Witness: "No, I do not."
Judge Baylson (to me): "Do you want to rephrase it?"
Me: "Did you subtract, to arrive at your bottom number, any amounts of income which are excluded from federal taxation due to the Constitution itself?"
Mr. Noud: "Objection."
Me: "Well, she either did or didn't. It's a fact."
Judge Baylson (to the witness): "Well, you can answer that 'yes' or 'no,' if you understand it."
Witness: "I'm not sure I understand the question. I mean, if you're asking if I subtracted anything from these numbers, I did not."

Since she was the one IRS witness who *didn't* lie about anything, I won't give her name, though I will point out that she testified that she had worked for the IRS for twenty-four and a half *years*. I hope the point here is self-evident, but I'll explain it anyway. As I expected they would, both this veteran IRS agent and this federal judge made it crystal clear that they had no idea that some income is exempt—is to be excluded from "gross income"—not because of any section of the tax code, but because such income is, "*under the Constitution, not taxable by the Federal government*" (as the older regulations put it).

The veteran IRS witness and the judge just demonstrated profound ignorance concerning the tax laws, yet these are the very people who expected me to accept, without question, their assertions about what the law means. These people wouldn't recognize the law if it hit them over the head—which it pretty much did at this trial, and they didn't notice.

Thus ended the government's case, and we took our lunch break.

Where's the Beef?

So that was the government's entire case against me. Notice anything missing, like proof of guilt, or even the slightest hint of guilt? Remember, for "willful" failure to file, they were required to prove "beyond a reasonable doubt" that I *believed* my income to be taxable, and therefore that I believed that I was required to file. What part of their case even hints at that? That I dislike the IRS? Well duh, I think the IRS is defrauding a hundred million of my neighbors. Am I supposed to sing their praises or something? Or is their "proof" that I had seen legally worthless form letters which—while dodging the questions asked by thousands—disagreed with me? (And contrary to the lies of the IRS and DOJ, I did not "ignore" those letters; I posted them on my own web site and refuted them point-by-point.) How does quoting what someone *else* said prove what I believe? Obviously, it can't possibly. So what did they quote from *me*? Even the few e-mails and letters they chose to show clearly demonstrate that I believe I *don't* owe the tax, and that I believe the IRS is taking money from millions of Americans who don't owe it. Their own exhibits demonstrate my innocence quite clearly. So where was the proof—or even the suggestion—of "willfulness"? Well, I was repeatedly "told," by

clueless morons who had repeatedly confessed to their own ignorance of the law and inability to answer questions, and by worthless form letters written by unidentified but equally clueless bureaucrats, that my income was taxable. So how could I possibly believe otherwise? That was their entire case.

My Turn

When the jury returned after lunch, Judge Baylson admitted that the very recent court ruling upholding the injunction against Thurston Bell was "*not directly relevant on the issue of willfulness, whether Mr. Rose acted willfully*." Oddly, he then proceeded to bias the jury by reading the admittedly irrelevant ruling, which used the standard insults such as "frivolous" and "nonsensical" while dodging the actual substance of the issue.

After that, I called myself as the first witness for the defense. In order to avoid looking like a schizophrenic lunatic ("I'm badgering myself, your honor!"), I didn't ask myself questions, but had my standby counsel question me, which Mr. Becraft had a lot more experience at anyway. There's no need to give an overly detailed account of the defense case, since it was mainly just an abbreviated, less flippant version of the first half of this book.

We started with the basics of my background and education, our medical transcription business, etc. I then explained that I started filing tax returns around 1988, not because I had ever seen the law, but because I had a job and "conventional wisdom" said that people who work need to file such returns. For all the years up through 1996, I kept filing, though "*I had never seen the law*."

Then came the question, did I file for 1997, or since? The answer, of course, was "no." Why not? That, of course, led into the story of how I started looking into the law, and what I found. But instead of telling the story all over again here, I'll just mention a few of the main points that came up at trial.

We had previously paid "self-employment" taxes—a sort of add-on income tax—in addition to the "normal" income tax. Nothing was withheld from what we were paid, since we were subcontractors, so we were sending in checks to the IRS for thousands of dollars every few months.

I researched various claims about the income tax, which alleged that it was invalid, "voluntary," unconstitutional, etc., but found that those theories "*didn't hold water*." I researched such claims mainly using the internet, where the current statutes and regulations are available on the government's own web sites, and where many court cases can be found at www.findlaw.com.

I explained that part of my motivation for looking into such issues was that we were bringing in about $40,000 a year, with my wife and I both working full time, and then giving the IRS about $10,000 of that, "*and I thought that was ridiculous*." (The parts in quotation marks here are direct quotes from my testimony at trial.) So when I started looking into various claims about the tax, "*back when I assumed I owed the tax*," I wanted to determine "*the absolute minimum cooperation that the law required of me—what are my minimal requirements under the law?* " I was not looking for a way to get out of obeying the law, but for "*the minimum amount I had to help* [the IRS] *under the*

law," while still assuming that I actually owed the tax. I had written "Abolish the IRS" on a check to the IRS because "*I thought the income tax was socially destructive and a bad idea, but I thought I owed it*." So while sending them money, the comment was "*a little way to object, without disobeying the law*."

The first time I heard about 861 and was pointed in the direction of Thurston Bell's "Gross Income" article, I didn't really look into it seriously. "*I had looked into so many others, and they didn't hold water, that I figured, Well, here's another one*." The second time someone told me to check it out, I dug deeper. To begin with, I looked up the statutes and regulations quoted in the article, to see if those sections really said what the article claimed. And they did.

The next step, I explained, was more involved. "*The tax code is renowned for being ridiculously lengthy and complicated, so the immediate question was, What is he* [Thurston Bell] *missing? What is he leaving out, or what does he not know about?* " I explained how, knowing almost nothing about federal law at the time, I had to learn what statutes and regulations are, what legal weight different documents have, and so on. Then I got into my specific study of all things 861. "*I would do internet searches, and then searches through the Code, to see, Where is this section* [861] *mentioned? What's it for? What's it about? How does it apply?* " I mentioned doing a word search to find every mention of Section 861 in the entire multi-thousand-page tax code, trying to "*find anything I could referencing these sections, that might tell me what they mean, what they're about, how they apply*."

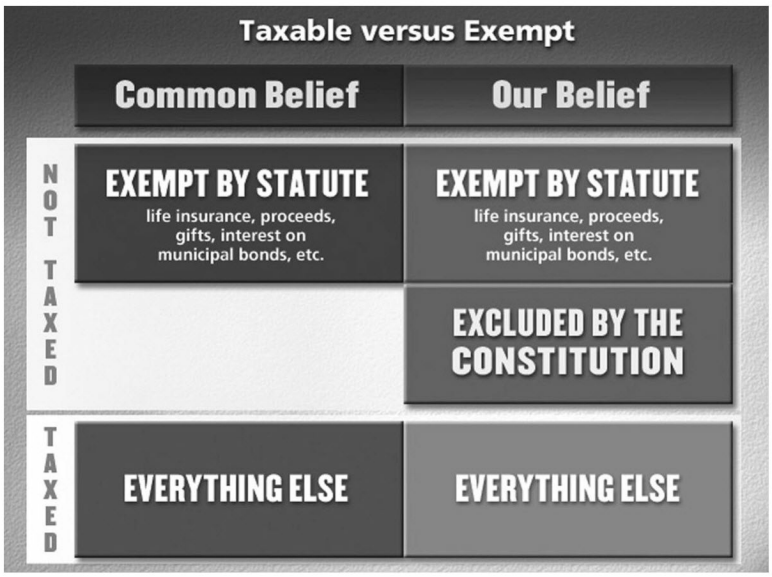
I then talked about how, having used the internet to research the current tax statutes and regulations, I wanted to find the older law books, because "*the tax code doesn't just appear brand new every year; it's the result of a very long evolution of a tax that started in 1913, and has had hundreds and hundreds of amendments to it after that*." To put it another way, "*If I know what the seed looks like, I'd understand the tree better*." To demonstrate just how extensively I had researched the issue, we talked about specific law libraries I had visited, and what documents I found at each. For example, I discussed finding the indexes of the United States Code, which for some reason are not available on the internet (though the rest of the code is). I discussed how the indexes repeatedly point to 861 regarding "gross income" from within the U.S., regarding "taxable income" from within the U.S., and regarding "sources of income" from within the U.S.

To give some indication of my understanding of the law, Mr. Becraft walked me through explaining the whole arrangement of the law, including titles, subtitles, chapters, subchapters, parts, sections, subsections, etc., and what was found where. Then I talked about finding more and more evidence supporting the 861 "argument," which I had not seen anyone else cite before, including the cross-reference right under Section 61 which points the reader right to 861, regarding income from inside the U.S. (Others may very well have found that before, but I had never seen it cited.) I explained why such findings were significant, because "*if I'm finding evidence* [that Thurston Bell] *didn't even know about that supports his conclusions, that's interesting to me*."

My first exhibit was a copy out of those old income tax regs, talking about some income being excluded from taxation because of "*fundamental law*," aka the Constitution. I explained that I checked and found such statements in every year of regulations from 1939 up through 1956. For each exhibit, displayed on computer monitors throughout the courtroom, we'd zoom in on the pertinent part, I'd

read it, and explain my understanding of what it meant. Remember, even with it sitting right in front of the jury, I wasn't allowed to say what the law *is*; I could only talk about my *understanding* of the law. (Of note, Mr. Miller objected to every single section of law or regulation that I wanted to show to the jury, throughout the entire defense case.)

Then I read right from the regulation, as it sat staring the jury in the face, where it says that some income is to be "*excluded from gross income*" because such income is, "*under the Constitution, not taxable by the Federal government*." We then put up this visual aid (only in color):



I explained again that there are certain types of income which are specifically exempted by the statutes of the tax code (" *life insurance proceeds, gifts, most interest on municipal bonds*," etc.), and that "*conventional wisdom says that everything is taxable unless you can find a specific section saying it's not*."

(As you may recall, in his testimony 32-year veteran IRS agent Charles Judge had already parroted the incorrect conventional wisdom perfectly. In addition, I had to bite my tongue to refrain from pointing out that the damn *judge*, and another veteran IRS agent, just that morning had demonstrated complete ignorance of the fact that some income is excluded because of the Constitution itself. As you may recall, they didn't even understand the question. Had I pointed that out, the government and the judge would no doubt have had a tantrum at me for daring to call into question the judge's qualifications to tell the jury what the law is. I was hoping the jury would notice it for themselves. Apparently they didn't.)

I then talked about going to Jenkins Law Library in downtown Philadelphia—the oldest law library in the country—to research even older law books than those I had seen up to that point. I testified about how the 1924 income tax regulations, for example, said that "*gross income excludes the items of income specifically exempted by the statute, and also certain other kinds of income by statute or fundamental law free from tax*," and that those regulations went on to say that such exempt income "*should not be included in the return of income*" and need not even be mentioned on a return. I then explained that "*I don't believe it's up to me to just guess at what's constitutionally exempt or not*," and that "*the law has to specifically tell me what I have to do*." Then I pointed out where those old regulations defining "gross income" then say that "*profits derived from sales in*

foreign commerce must be included in gross income."

I won't describe the rest of the defense case in such detail, but it's important to show how slowly and carefully we walked through the issue, supporting every step with actual quotes from the law books, explaining every question I had and every step in my reasoning. I wanted the jury to see that this was not a case of some doofus saying "Golly, cousin Bubba said my income ain't taxable, so I didn't file no more." On the contrary, I had done far more personal research than anyone could reasonably have been expected to do, in order to be absolutely sure about my conclusions.

We went through a lot of other concepts, like the principle of "inclusio unius," which dictates that what the law does not specifically mention, you should conclude was *intended* to be omitted. We looked at the case of *Gould v. Gould*, in which the Supreme Court said that one should not assume that tax laws apply to "*matters not specifically pointed out*," and went on to say that, in case of doubt, tax laws "*are construed most strongly against the government, and in favor of the citizen*."

By this point Judge Baylson seemed to be getting a bit agitated. Apparently my position was making too much sense, so he decided to argue with me about it. He complained that the *Gould* case wasn't about the question of domestic income versus foreign income. And it's not. So what? It spells out a basic principle of how *all* tax laws are to be understood, and was obviously relevant to my understanding of the law, which was the entire focus of the trial.

I explained how the principle expressed in *Gould* made it significant (in my opinion) that those older regulations said that income from *international* trade must be included as "gross income," while income from purely domestic trade was "*not mentioned in the regulation*." Judge Baylson interrupted me to ask, "*Not mentioned in this regulation?* " He was obviously trying to imply that some other section might mention it. But for him to try to argue with me while I was explaining my beliefs was both legally and logically inappropriate, since any argument he might come up with at trial would be completely irrelevant to what I believed when I decided not to file, which was the *only* issue in question.

We then looked at the Supreme Court case of *McCullough v. Virginia*, 172 U.S. 102 (1898), which says that every statute, however "*broadly worded*" it may be, "*is to be read in the light of the Constitution*," and that no statute should "*be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach*." I next wanted to look at something from the Federalist Papers, written by James Madison (the "Father of the Constitution"), which said that under the Constitution, the federal government was to get its revenue mainly by taxing *foreign* commerce. However, Judge Baylson, looking more and more antsy (I think my case was making too much sense) refused to let me show that to the jury. After some argument, he said I could testify about what my "beliefs" about it are, without showing the actual document, so I did.

Amazing Ignorance

Apparently desperate to interfere with my explanation of my beliefs, Judge Baylson suddenly went into an impromptu monologue about the law. Setting aside how improper that was (*his* beliefs about the tax laws have no bearing on *my* supposed "willfulness"), his comments demonstrated a

level of ignorance that stunned even me. I sat on the witness stand, right next to him, as he proclaimed the following:

> **"Well, I just want to say, if my history's correct, is that the income tax was not authorized by the original Constitution. It was only authorized by the passage of the amendment—and I don't remember exactly what date it was, but I just want to explain one reason for my ruling [not letting me show the jury Federalist #45] is that there's no provision in the original Constitution for an income tax. Congress only enacted the income tax after the United States Constitution was amended."**

Then he explained that all to the jury again, twice saying that the federal income tax was only enacted "*after the United States Constitution was amended*." He even added, "*I'm embarrassed that I don't remember my history enough*," but said he thought the amendment—and he couldn't remember which amendment it was—occurred "*in the early part of the twentieth century*" and that "*before that there was no income tax in the United States*."

As it happens, Judge Baylson was not nearly as embarrassed as he should have been, because what little he did remember, he got *dead wrong*. Let's do a little assertion-versus-evidence test. (We'll give him a pass on not knowing that it was the *Sixteenth* Amendment, and that it happened in 1913, which I and probably 95 percent of the spectators at the trial could have told him.) So let's pause for a moment, to consider what I should "believe" about the law.

1) Should I believe Judge Baylson's unsupported *assertion* that Congress could not impose an income tax under the original Constitution, or should I believe the U.S. Supreme Court, which said that the income tax is authorized by the taxing power "*possessed by Congress from the beginning*" (*Stanton v. Baltic Mining*, 240 U.S. 103)?

2) Should I believe Judge Baylson's unsupported *assertion* that the Sixteenth Amendment "authorized" federal income taxes, or should I believe the U.S. Supreme Court, which says that the Sixteenth Amendment "*conferred no new power of taxation*" upon Congress (*Stanton v. Baltic Mining*, 240 U.S. 103), that the amendment did not "*extend the taxing power to any new or excepted subjects*" (*Peck v. Lowe*, 247 U.S. 165), that the amendment did not "*render*[] *anything taxable as income that was not so taxable before*" (*Evans v. Gore*, 253 U.S. 245), and that the Sixteenth Amendment, in fact, was not intended to have *any* effect "*on which incomes were subject to federal taxation*" (*South Carolina v. Baker*, 485 U.S. 505)?

3) Should I believe Judge Baylson's unsupported *assertion* that there was no federal income tax prior to the advent of the Sixteenth Amendment, or should I believe the copies I have of the *federal income tax acts* from the 1860s and 1890s, starting over *fifty years* before the enactment of the Sixteenth Amendment?

What made this particularly frustrating is that, sitting five feet from the self-appointed sole declarer-of-the-law in that courtroom, I could have cited all of the above from memory. But by the rules of the kangaroo court, I wasn't allowed to contradict his string of colossal blunders and misstatements.

So tell me, am I really such a diabolical creep, a despicable scofflaw, because I would presume to disagree with the pronouncements of the "honorable" United States District Judge Michael Baylson

—or any other clueless, self-aggrandizing, god-complex ignoramus in a black dress—and instead choose to believe what I see with my own eyes? Perhaps now you can see why I get a little irate when the government and the courts try to paint people as *criminals* for not blindly accepting the baseless assertions of so-called authorities who, like Judge Baylson, clearly know *jack squat* about federal tax law.

Continuing Misinformation

The judge then tried to justify his continuing attempts to interfere with my explanation of my beliefs by saying that the *McCullough* case I had cited before, "*and perhaps Gould v. Gould*," occurred prior to the enactment of the Sixteenth Amendment, so I shouldn't be allowed to rely on them. (This reasoning was based on his *false* claim that the Sixteenth Amendment authorized income taxes.) First, the *Gould* case came several years after the Sixteenth Amendment (in 1917), and in fact was *about* the federal income tax. Second, the *McCullough* case was making a statement about "elementary law," and how "*every statute*" must be read. Third, who is he to say what I am "allowed" to base my opinion on? If it impacted my legal conclusions—as it certainly did—how the heck can anyone decide that it wasn't *allowed* to impact my beliefs?

Next, I brought up the case of *Peck v. Lowe*, in which the Supreme Court explained that because Congress has the general taxing power *as well as* the specific power to "*regulate commerce with foreign nations*," it could therefore "*undoubtedly*" impose an income tax upon income which American businesses receive from engaging in *international* trade. Still determined to disrupt my case, however, Judge Baylson cut in and gave another monologue, which included his saying that the Peck case "*had nothing to do with income tax whatsoever, just so the jury knows that*." Trying to remain calm, I asked if we could scroll up to the beginning of the ruling, which makes it abundantly clear that the case was entirely about the *federal income tax* of 1913. Having been made an ass of once again (albeit politely), Judge Baylson didn't relent in his obstructionist tactics—nor was he willing to admit his obvious blunder—and instead continued his clueless lecture:

> **"In the pre-trial hearings I said I was going to allow Mr. Rose to rely on cases or statutes or regulations, but they had to have some relevancy, and it couldn't be taken out of context. This is clearly taken out of context."**

And based on that utterly bogus accusation, he then wouldn't let me continue to talk about the *Peck* case. And of course, as is common among ignoramuses trying to pass themselves off as "experts," he failed to show any "context" that would change what I had read, because there is no such "context." (The ruling in the *Peck* case is fairly short, and I invite the reader to look it up for himself.) And again, who was he to tell me what I was *allowed* to have based my conclusions on, and what was *allowed* to have affected my beliefs?

Next, I wanted to bring up another Supreme Court case, in which the court explained that Congress cannot control something not otherwise under its jurisdiction simply by exerting such control via a so-called "tax." As the Supreme Court put it, "*To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the states*" (*Bailey v. Drexel Furniture*, 259 U.S. 20 (1922)). But the jury never saw or heard those words, because Judge Baylson refused to let me talk about it or put it

up on the courtroom monitors. Why? Because, he said, the issue involved in that case was "*too remote*." No, it was too persuasive, and the "judge" could see that I was making too much sense, and he wasn't about to let the government lose a major tax case in his courtroom. (How exactly can a Supreme Court's ruling concerning the *limits on Congress' taxing power* be "too remote" from the question of what Congress can tax?)

After that suppression-fest, we took our mid-afternoon break.

Making It Current

Up to that point we had been looking at older income tax regulations, so then I moved on to the current sections, to show that, while they are a lot more complicated and confusing than the older ones, they still show the same thing. We went over 26 CFR § 1.312-6, which still mentions the constitutional limit on Congress' taxing power, and then went into Section 861 and its regulations. We walked through where the regulations say that the "items" of income listed in Section 61 are sometimes *exempt*, through to the list of non-exempt income found in 1.861-8T(d)(2)(iii), which is all about international trade and possessions income.

The explanation was fairly thorough, but since you've seen it all above, I won't repeat it, except where something interesting happened at trial. For example, when explaining why I was looking at Section 861 at all, I mentioned the cross-reference under Section 61, and several entries in the indexes of the tax code which point to 861 regarding "gross income" and "taxable income" from sources within the United States. At that point Mr. Miller interrupted, saying, "*There's no evidence that there's an index that refers to 861*." I'm not sure whether he was claiming that the index entries don't exist, or whether he was just saying they hadn't been admitted into evidence at the trial (which still wouldn't mean I wasn't allowed to talk about them). Since it sounded as if he was alleging that I was making those entries up, right after court let out for the day, Mr. Becraft and I walked down the street to the Jenkins Law Library and made fresh copies of the indexes referring to 861. (As a matter of fact, I even found a new reference to 861 that I hadn't seen before.)

But a few other things happened before court let out for the day. We talked about various regulations which tell me to use 861 and its regs to determine my taxable domestic income, and we looked at the booklet for the 1040 form, and how it says that U.S. citizens must report income they receive from *outside* the United States, while saying nothing about their domestic income.

The Report and the Web Sites

I then testified about my "Taxable Income" report, including the first version which came out in 1998, which was only a dozen or so pages long, up through the sixty-page version in 2000. I pointed out that I always made that report available for free, and that it was distributed via web sites, e-mail, and sending out free hard copies to those who requested it. I mentioned again that the report doesn't tell anyone what to do; it's just an academic explanation of my conclusions. Then I mentioned how Dr. Clayton and I started our first web site (www.taxableincome.net) in mid-2000. But things ended for the day before we got into the details of that.

Before the jury was dismissed for the day, Judge Baylson again told them, "*Remember, please don't read or hear or do anything about this case. You've heard a lot about the web sites and the internet. Don't look at the internet about this case or any of these web sites*." Yeah, heaven forbid they be allowed to see what the defendant has actually been saying for the past eight years, in a case revolving entirely around the beliefs of the defendant.

Day Four

The next morning, after hardly any sleep, I continued my testimony. First, we backed up a bit and emphasized that when the regulations say that some income is exempt because of the Constitution, that is not at all the same thing as claiming that the tax is unconstitutional—which would not be a valid defense to "willfulness." I explained that "*it would make no sense for a regulation to declare a statute unconstitutional. That isn't how it works. And I want to be clear, this is not saying the tax is at all unconstitutional. This is the regulations explaining that the proper application of the law—a perfectly valid, constitutional law—is limited by the Constitution*."

I then testified about how Mr. Becraft and I, the previous afternoon, had gone to the law library to get new copies of the indexes of the tax code, where they point to 861. I explained that "*in several different places under different headings, the indexes were telling me to go to 861, unconditionally. They were not saying, in the case of certain people—just: income from within, 861, over and over again*." When we asked to enter those indexes into evidence—the indexes that Mr. Miller complained weren't in evidence the day before—he objected (as he did with literally *every* exhibit we wanted to introduce). But they were allowed in, and we went through them, showing the jury all the places where they point to 861 regarding domestic income.

Web Sites and Video

Then I testified some more about the web sites, www.taxableincome.net and www.theft-by-deception.com, as well as the more recently formed www.861evidence.com, the main purpose of the last site being "*to post scans of all these older documents that, as far as I knew, were not available online anywhere else*." We talked about the contents of all of the sites, including my "Taxable Income" report, transcripts of IRS meetings, and other articles and documents. And was all that stuff publicly available for free? "*Absolutely. No members area, no charge for anything, open to the public, the government, for everyone to look at*."

Then we talked some about the *Theft by Deception* video, how it was funded and produced, and how it took a year and a half for me to make it. After many arguments, in the end I was allowed to show just five minutes of excerpts from the 88-minute video, without any sound. Showing a few minutes of assorted excerpts without any sound was certainly not going to educate the jury about the issue, but I wanted them to at least see the nature of the video, so they would have some idea of the scope of the project.

About Reliance

Ponder this: courts have ruled that in a "willful" tax trial, the defendant must be allowed to show the jury materials he relied upon in reaching his conclusions about his legal obligations. I, on the other hand, was not allowed to show them the *Theft by Deception* video, because I did not "rely" on it—I only *made* the damn thing. The end result is that I am the only one on earth who, under the "hearsay" rules (or the misapplication of those rules), would be prohibited from showing the video in my defense. Anyone else who could show that the video affected their beliefs could show it to the jury. Unless, of course, the government came up with a new excuse for suppressing it.

(As an aside, the video was not "hearsay" at all. The term "hearsay," in common speech, refers to someone testifying about what he heard someone else say. Under that definition, my video obviously wasn't hearsay; it was "recordplay." But setting aside logic—as one must do when in federal court—the video is not "hearsay" under the legal rules either. Under the rules, a statement can be hearsay only if it is being used to prove the "truth of the matter asserted." Without getting too bogged down in the technical differences, my video was *not* introduced to prove the truth of the matter asserted in that video: that most Americans don't owe the tax. We wanted it introduced only to demonstrate my "state of mind." But no, Judge Baylson was determined to misapply the rules to keep the jury from seeing it.)

I testified a bit about what the video talks about, from the basics of federal tax law to the specifics about 861. Then I explained that "Step Six" of the video "*is where I accuse some in the federal government of intentionally deceiving the American public by rewording the sections over the years in such a way to make the truth more difficult to discover. Thus the title of the video, 'Theft by Deception'*." I also pointed out that the video does not tell anyone to do anything. I then confessed to selling the video for a whole $20. I also mentioned that I sent free copies of the video to many government officials, including the Commissioner of the IRS, the Secretary of the Treasury, the Attorney General, and well over one hundred individual IRS agents. "*I sent them with a cover letter saying, basically, I'd like you to look at this because I believe you're misapplying the law*."

Many Questions, No Answers

I then explained how, having reached my conclusions about the proper application of the law, I didn't want to "*just stick my head in the sand*" and hope I was right. Instead, "*I wanted to go out of my way to ask, Is there something that the government can show me in the law which might persuade me that my conclusions are incorrect? So I began sending letters to government officials, such as the ones I just listed, asking specific questions about how to determine taxable income. One of the most basic was, Should I be looking at 861 and its regulations to determine my taxable domestic income? And a few other questions related to that. So these were not arguments or assertions, or constitutional theory*." Instead, the questions were, "*according to the law itself, how do I determine what I owe?* "

I described how I started sending such questions to congress folk, IRS agents, and other officials, starting around early 1998. Mostly my questions were just ignored. "*They didn't even acknowledge that I had sent anything*." I explained how, when a few did finally respond, it was with form letters that didn't even mention 861 at all. (Instead, they did things such as argue that the tax is constitutional, which I agree with.) "*In other words, they were just looking for some template letter*

to send back, and whoever sent it didn't bother to see if it actually had anything to do with what I had asked."

Then I explained how it had occurred to me that "*maybe if they get a hundred letters instead of one, they might take it a little more seriously*." So the next exhibit we wanted to show the jury was the list of six questions we had sent to various federal officials. Nope. No deal. Judge Baylson said they were "hearsay," and though I was allowed to talk about them, I could not show them to the jury. Incidentally, Judge Baylson didn't even have "case law" on his side that time: both the Federal Rules of Evidence and a bunch of federal court rulings show that only a *statement* can be "hearsay"; a *question* cannot. Nonetheless, I wasn't allowed to show the jury the questions, but I did testify about them, one by one.

I wanted to show the letter I had sent to Senator Santorum asking the questions, but I wasn't allowed to. But I did point out that the Senator's response to me, which the government used as an exhibit, nowhere mentioned 861 in any way, or said anything even remotely related to the questions I had actually asked.

Next we brought up my letter to Pamela Olson, Assistant Secretary of the Treasury (Tax Policy) and "*the top government official who actually has hands-on dealings with the regulations themselves*." Again, I wasn't allowed to show the jury the letter, on the grounds that the letter was "hearsay" and "self-serving." I started to explain how Ms. Olson had ignored the first volley of over letters (from different people) asking those same questions about 861, but I was cut off, and wasn't allowed to go on, because, in Mr. Miller's words, I had "*no basis for* [my] *personal knowledge as to what the other people received*." True, but I did have first-hand knowledge of what all those letter-senders had told *me*, which is that they received no responses of any kind. But I couldn't get that out before Mr. Miller interrupted me, and I wasn't allowed to talk about it anymore. (Because the case was about my beliefs, having people tell me they received no responses, even if for some strange reason they were all lying, would still be relevant.)

Next I talked about my e-mail update list, where people could sign up (for free) to receive messages from me having to do with 861-related information. By around 2000 or 2001, there were a couple thousand subscribers. I talked about how, using that list, we organized "Operation Honest Inquiry," whereby hundreds of us sent letters to various government folk, asking just three basic questions about how to determine what we owe. The questions included (as I paraphrased them at trial), "*Should I use 861 and its regulations?* " and "*Do they show my income to be taxable?* "

Again, I was prohibited from talking about all the people who told me they received no responses to their letters. I was allowed, however, to explain how a bunch of the government's exhibits were letters that other people had received in response to asking the questions (who then forwarded those letters to me). We looked at one such letter, which I knew to be a "cut and paste" form letter, because I had received "*many copies of this exact same letter from different people who had been sent it from the IRS*." I then pointed out that, like most of their "responses," the letter was "*responding to something I didn't ask, and refuting a position I have never held*." I explained that it "*struck me as curious*" (a bit of an understatement) that the government kept sending out form letters "*that answer something we didn't ask, and don't say anything about what we actually asked*." After all, if those in government were going to "*go to all the trouble of making a form letter to send to all*

these people, it seems to me it would have been just as easy to make one that actually answered the questions." Actually, I knew full well why they were utterly incapable of answering the questions: because they would have to either directly contradict the law, or reveal the truth.

Then we looked at another non-responsive form letter, and I again pointed out that it didn't answer any of the questions we asked. (Remember, these were just the letters the government chose to introduce.) Of all the responses I had seen, Mr. Becraft asked, did I "*detect any that answered the questions that had been posed?* " My answer: "*No, I never saw one that directly answered the questions*."

Instead, they all refuted things I never argued, and answered things I never asked. For example, one of the form letters disagreed with the claim that "*only foreign source income is taxable*," which at first glance might seem relevant, but as I pointed out, "*I have never claimed that only foreign source income is taxable; 861 has to do with when income from within the U.S. is taxable; if income from within the U.S. was never taxable, there wouldn't be an 861*."

But what about the "case law" (court rulings) mentioned in the form letters? Well, the letter we were looking at mentioned four (non-binding) Tax Court rulings, one of which never mentioned 861 at all, and one of which mentioned 861 in a completely different context. Then, in talking about the two cases which did at least sort of address the 861 evidence, I made the heretical statement that when it comes to people's opinions, even those of judges, "*I judge the validity of their opinions based upon the evidence they can show supporting their opinions, not on their credentials or on how many people say it, or anything like that*." Ain't I a radical?

Next I testified about what the Internal Revenue Manual says about how much legal weight different rulings and documents carry. At my meetings with the IRS, I had even given them copies of those sections, from their own manual, "*so that if they were to bring up something that their manual says isn't legally binding, I could show them, You're citing something that your own manual says doesn't carry legal weight, and here's your manual showing that what I am quoting does carry legal weight*." And was I allowed to show the jury those sections from the IRS's own manual, explaining what they consider to be legally binding? Nope. Why not? Because Judge Baylson said it "*invades the province of the court*." Bullpoop, your honor. Translating his excuse into English, he was saying that I couldn't show it to the jury because it would constitute instructing the jury on what the law is, which only the court may do. There are a couple of reasons why this made no sense:

1) What the manual says is relevant to my *beliefs* about the law, whether the judge agrees with what the manual says or not.

2) When I later requested that the court give the jury an instruction about the different legal weights of different rulings and documents, Judge Baylson refused to do so. Had the "honorable" judge told the jury what does and does not carry legal weight, the jurors might have noticed that absolutely nothing the government cited was binding on me, while everything I cited was binding on them *and* me. Since that would have botched up the government's case pretty badly, the "judge" refused to tell them the truth, while at the same time prohibiting me from letting the IRS's own manual tell them about it.

Meetings Revisited

I then testified about my dealings with the IRS, starting with the fact that I *did* respond to all of the IRS "notices" asking where my tax return was. "*As I pointed out on cross-examination* [of government witnesses] *, the notice actually says, If you don't believe you are required to file, let us know and explain why. So we did*." And was I allowed to show the jury my responses to those so-called "notices"? Nope. "Hearsay and self-serving." So they could show their stupid "notices," but I wasn't allowed to describe or document how I responded to every one of them. So I guess when a bureaucrat "tells" you something, any response you might have doesn't matter; you are required to believe them and agree with them.

I wanted to at least describe what I said in my letter to Agent Spaulding in preparation for our first meeting. Nope. "*You can't reveal the contents of the letter*," proclaimed the judge. I could only talk about my "recollection" of the meeting. I managed to sneak in that, prior to the meeting with Spaulding, "*I wanted to first let her know my position, and then at the meeting I wanted to find out the specifics that we disagreed on*." In other words, I didn't just want to know "*whether our conclusions match*"—which of course they wouldn't; I wanted to know "*the specifics of how* [the IRS thought] *I'm supposed to be complying with the law*." I explained how, at the meeting, I broke my position down into several basic steps, showing them regulations (of which I gave them copies) supporting my position on each point, and asking them to agree or disagree with me on each point. (On cross-examination during the government's case, the IRS witnesses had already recalled all of this.)

As an example, I wanted to show the jury one of the handouts I had given to the IRS at the meeting, quoting their own regulations "*supporting the point that I believe that I should use 861 and its regulations to determine my taxable domestic income*." But I wasn't allowed to show them that. "Hearsay." Once again, the judge misapplied the hearsay rule to suppress relevant, admissible evidence. A sheet containing only citations from the government's own regulations cannot possibly constitute a "statement" by me, and therefore cannot be "hearsay." But Judge Former-Prosecutor Baylson was not about to let a little thing like the rules get in the way of suppressing exculpatory evidence.

After that we took a mid-morning break.

Right after the break, we got a whole bunch of statutes and regulations into evidence, which document the "evolution" (and the obfuscation) of 861 over the years. In retrospect, the biggest blunder in the defense case was failing to slowly and carefully go through all of those documents, to illustrate the clear intention of the government lawyers who wrote the regulations to cover up the very limited nature of the tax. I should have gone through all the suspicious changes to the wording and arrangement of the law books over the years. But I try not to lament that lost opportunity too much, because looking back now, I'm convinced that my boneheaded jurors wouldn't have followed my explanation anyway. Apparently, "They told him he was wrong" was the most complex concept they could hold in their brains.

I then talked a bit more about my "Taxable Income" report, copies of which I had given to both

Agent Spaulding and Agent Enz, in addition to dozens of other government officials. And, of course, my comprehensive written report—the result of many hundreds of hours of painstaking personal research—was not allowed to be shown to the jury. Yeah, that makes loads of sense: in a case entirely about my *beliefs* concerning the law, the jury was not allowed to see the ultimate explanation and documentation of my beliefs and the basis for them. Nifty.

Going back to the topic of my meetings with the IRS, I told how, at the first meeting, Ms. Spaulding "*admitted she wasn't familiar with the regulations under 861, and she openly admitted that she could not answer my specific questions*." Nonetheless, when I asked that the issue be sent to the IRS lawyers for a response (via "technical advice"), she refused to do so.

I also explained how my second meeting with the IRS, occurring more than five months after the first, was basically "*a rerun of the first meeting*." At that second meeting I again explained my position, and again gave them a bunch of specific, legally binding citations from their own regulations to support my conclusions.

> **"And once again, they indicated that they would not or could not answer the specific questions. Basically they said, 'Well, 61: we think your income is taxable under 61.' I showed them 61. I showed them the cross-reference under 61 which says, 'Income from sources within the United States, see section 861.' They still insisted that I should not look to 861. They never showed me a citation of any statute or regulation even remotely close to indicating I should not. They simply asserted I shouldn't be looking there, even though the <u>one</u> section they were citing <u>tells</u> me to look there."**

I explained that the second meeting wasn't as long as the first, and opined that I didn't think the IRS agents "*were having a whole lot of fun*" at the meeting.

That comment brought chuckles from the spectators, and an objection from Mr. Miller. So I rephrased it as "*They were not eager to discuss the matter*." Talk about an understatement.

I pointed out again that at both meetings they said they couldn't answer my questions and would do more "research." (Apparently the five months between meetings wasn't enough time for them to research one section of law.) I also pointed out that they kept changing their minds about who *should* use 861. "*They didn't seem clear on who was supposed to look there; they just didn't want me looking there*." I also recounted Charles Judge (Spaulding's supervisor) saying "*we must be missing something somewhere here under 861*," after I read him quotes directly from the regulations saying I *should* be using those sections. To again demonstrate that I really am familiar with IRS regulations, I recited the following section from memory, on the stand:

> **"The taxpayer's taxable income from sources within or without the United States will be determined under the rules of section 1.861-8 through 1.861-14T, for determining taxable income from sources within the United States." (26 CFR § 1.863-1(c))**

I also explained that when I asked that the meeting be rescheduled so the IRS paper-pushers would have time to do their "research," they refused.

I then testified about my supposed-to-be-off-the-record meeting with Charles Judge at the restaurant. "*I sent him a letter and said, This is off the record. I'm not going to tell people we met. I'm not going to tell them what you said. I just want to get your perspective, you know, when*

you're not on tape and being an IRS agent. Because if you say 'Hey, you might be right' when you're an IRS agent—you're not an IRS agent anymore." This again brought chuckles from the gallery, many of whom were familiar with the story of Joseph Banister, a former IRS Special Agent—like Donald Pearlman, though very *un* like him, too—who was "asked" to resign after he had the gall to suggest that his superiors should answer a few questions being raised by people who were being mislabeled as "tax protestors."

I also testified about how, at the restaurant, Mr. Judge said he wasn't convinced, but having watched most of my video, found the issue "intriguing." (Of course, at the time he knew the meeting was being recorded, but I didn't.) I also mentioned some other things we talked about, including "*people who had publicly come out and agreed with me about my conclusions, including former IRS agents and a former federal prosecutor*." At the restaurant we also discussed how I had given a few public talks about the tax issue, and how I had been on various radio shows discussing it.

I then wanted to talk about the IRS's raid on my home. The judge wouldn't let me say much about it, but I did manage to get in that when they banged on my front door, yelling "*Federal agents, open the door!* ," I was surprised, "*because I had had no contact about the case since the meeting where they said, 'We'll get back to you'.* "

After quickly covering a few other things—including my mock audit with a friend of mine, where I played the part of an IRS paper-pusher—I started to talk about my "Please Prosecute Me" flier, which had run in several newspapers. But I was interrupted, and then prohibited from showing the flier to the jury, and prohibited from explaining what it said. I was also prohibited from showing the jury other letters I had sent to DOJ officials, including the U.S. Attorney General, explaining my position and inviting them to prosecute me. I did get in a little bit about why I would do such a thing:

> **"In short, I believed a fraud was being committed, the largest financial fraud in history, and I believed it was being committed by some individuals inside our government. And the normal channels, the administrative procedure, to me, was not getting justice. It was not getting a rational discussion, and I basically concluded that this issue had to be brought to the American people. If the IRS wasn't going to talk about it, if they weren't going to answer the questions, I believed it had to be publicized. Because if there are a hundred million victims of a fraud, I believe it's my duty to tell the victims of that fraud, and to invite the government to prosecute me—to have twelve randomly selected Americans decide—"**

At that point I was cut off and wasn't allowed to finish the thought. The only significant question that Mr. Becraft asked me after that was whether I had intentionally violated the law, which of course I had not, and I said so. Thus ended my direct testimony.

Good Faith

Before we get to the government's cross-examination, let's pause for a moment to consider the effects of how the "hearsay" rules were applied in this case. In any tax case involving "willfulness" (including this one), applying the rules the way Judge Baylson did effectively makes it impossible to demonstrate "good faith"—to show that the defendant did what he believed was legal and proper—because any prior statement of the accused, be it stated or written, can be kept out of the trial. For an alleged crime that hinges entirely upon my beliefs, nothing could make a trial more of a joke than prohibiting me from showing any of the piles and piles of evidence showing me expressing and

explaining my beliefs to just about every government official, bureaucrat, or janitor I could think of. Again, there are rational reasons for keeping genuine "hearsay" out of court, but the way the rules were applied in my case was utterly insane. No one was disputing that I wrote the letters that I wanted to show, or that I made and narrated the *Theft by Deception* video I wanted to play for the jury, or that the recordings of the IRS meetings were genuine, or that I authored the "Taxable Income" report, the web sites, etc. So how on earth could such things be in any way unreliable? They couldn't. They are as reliable and verifiable as evidence can possibly get, with no one questioning their authenticity. But they would be rather inconvenient for the government, since all those exhibits clearly proved me innocent. So they were suppressed.

So, to summarize, I was supposed to prove that I believed I was not required to file, but I was supposed to do so without showing the jury anything I had ever said or written before trial. How on earth can one show one's state of mind without using *any* prior statements? The very idea is insane. In short, despite my complete openness and honesty about what I was doing and why, there was absolutely nothing I could have done to establish that I was acting in "good faith," because none of what I did to make my beliefs known to the government, none of my years of effort to get rational discussion out of anyone in the government, or to get answers to reasonable questions, or even to get the government to state the specifics of its own position—none of it was admissible at trial. If ever there was a "mock trial," where the system merely pretended that the goal was to have an informed jury decide the truth, this was it.

The icing on this absurd "hearsay" cake was that the prosecution was allowed to use any prior statement of mine that it wished; the government was free to rummage through 10,000 e-mails, picking out whichever one here and there they thought they could spin into something incriminating (and even the ones they picked proved me to be *innocent*). And I was allowed to show exactly none of the other 10,000 in my defense. So much for telling the *whole* truth. The term "double standard" just doesn't fully express the absurdity of it.

Inquisition Time

Having finished my direct testimony, I was then cross-examined by Floyd Miller. After mentioning the cases I had talked about while explaining my beliefs, Mr. Miller said he wanted to talk about a few cases touching on 861, "*because they're much more recent than these old cases that you've talked about*."

What Mr. Honesty did not mention, for obvious reasons, is that every case I referenced was from the Supreme Court—whose rulings are binding *forever*, unless and until a subsequent Supreme Court ruling amends or overturns them. On the other hand, every case Miller wanted to talk about was a lower-court ruling, and even the IRS agrees that such rulings are *not* legally binding. Mr. Miller's little dig about his cases being "much more recent" was obviously supposed to make the jury think that his cases were more legally relevant, when the exact opposite was true, and he knew it. (Keep in mind, I asked Judge Baylson to explain to the jury the legal authority of different levels of court rulings and different documents, and he refused to do so.)

Mr. Miller then asked me whether one judge had called the 861 issue "nonsensical." I said that

one had. (If, at this point, anyone reading this thinks that the entire issue can be dismissed out of hand by calling it "nonsensical," please close this book and give it to someone capable of thought.) Apparently, federal prosecutors aren't accustomed to people sticking up for their beliefs and principles, because Mr. Miller then asked, in his most accusatory tone, "*You've described the IRS as the largest extortion racket in history, isn't that right?* " In response, I leaned in close to the microphone so no one could misunderstand what I said, and with my best enunciation, firmly pronounced, "*Absolutely*." I was a little surprised myself at how loudly the sound boomed out of the speakers and through the room, which brought loud cheers from the audience (which the transcript characterized as "yelling"), prompting Judge Baylson to say, "*Any more outbursts, I'm going to clear the courtroom!* " (More than one person later commented that whatever the outcome of the trial, there was something very refreshing about hearing that accusation made, without hesitation or apology, in a United States federal courtroom.)

Much of what Mr. Miller did under the guise of cross-examination was to read excerpts from various e-mails I had written and ask me if I had said those things. Had such statements contradicted my prior testimony, this would have constituted valid cross-examination. But since they did no such thing, they were really a sneaky way to bring up things that shouldn't have been allowed in at all. For example, from one private e-mail he quoted me saying that "*I don't actually like the Constitution*" because although it was "*infinitely better than any other attempt to form a government*," it still "*gave way too much power to politicians*." In that same e-mail, I went on to say, "*To put it bluntly, I'm an anarchist*." I later said that "*politician scribbles, a.k.a. laws,* " cannot "*obligate me to disregard my own judgment*," and that "*what the law says has no bearing on what I think is right and wrong*."

Wait, aren't those statements about political philosophy? Yep. What does that have to do with the issue in this case? Nothing. (None of those statement were made in the context of discussing tax law.) Didn't both the judge and the government say that political philosophy was *not* to be brought up? Yep. So, did the judge then do anything to stop it? Nope.

(I'm tempted to briefly elaborate on what my political beliefs are, as opposed to what Mr. Miller wanted the jury to think they are. But since they aren't at all relevant, I'll just quickly point out that the term "anarchist" often carries a connotation of some violent, bomb-chucking punk—which is exactly why Mr. Miller wanted the jury to hear that word—even though that's not at all what the term literally means, nor is that at all what I believe in. A less controversial term for what I advocate is "voluntaryism": a society in which people do not use the excuse of "government" to initiate force against other people. Or, as that other radical extremist Thomas Jefferson put it: "*Rightful liberty is unobstructed action according to our own will, within the boundaries drawn around us by the equal rights of others. I do not say within the limits of the law, because law is often but the tyrant's will, and always so when it violates the rights of the individual*." And that's the foundation of my nasty, extremist "anarchist" philosophy: leave people alone, and let them do what they want, as long as they aren't hurting anyone else. Ain't I just the scum of the earth?)

In another old e-mail which Mr. Miller brought up, I said I was convinced that the feds couldn't come after me criminally for not filing because of the huge paper trail thoroughly documenting my beliefs and the reasons for my actions. Well, the joke was on me. I obviously greatly underestimated

both the government's ability to suppress all relevant evidence (i.e., the *entire* "paper trail"), and the ability of jurors to be colossal numbskulls.

Next, Mr. Miller used the guilt-by-association routine by bringing up a letter I once sent to the Militia of Montana. As with most of his "cross-examination," his method here was to take bits and pieces of comments out of context, and then quickly move on, to string together a series of misleading snippets—carefully chosen from the thousands of e-mails they had—in order to paint a completely inaccurate picture of who I am and what I believe. And that's what he did with my letter to the M.O.M. (Hi, M.O.M.)

My letter to the M.O.M was in response to an article I saw in a publication of theirs, which alleged that the income tax is unconstitutional. I wrote to them explaining that the tax *is* constitutional, though it is widely misunderstood and misapplied, and explaining that I thought there was a way to "*throw the federal government back into the constitutional role intended by the Founders*," and to do so without the help of Congress, without the support of the general populace, "*and without bloodshed*." Instead of asking me a question, Mr. Miller than opined, "*That sounds like a coup to me*."

I responded: "Without bloodshed."
Miller: "Without bloodshed."
Me: "It sounds like a coup?"
Miller: "A coup; an overthrow of government."
Me again, quoting from the e-mail: "Without bloodshed?"
Miller: "Yeah, without—well, there are bloodless coups. What—what—"
Me: "What I mean by that is when a government is acting outside of the law, and a populace refuses to comply with unlawful demands of the government, those unlawful demands become unenforceable. And thereby, without bloodshed and without violence, the people have the power to correct the wrongdoing of the government."

How the heck does one "overthrow" a superpower without bloodshed? (It would be entertaining to watch someone try.) And a "coup" means *taking over* the government. How would anyone sane interpret my statements to be advocating that? I'm still not sure if Mr. Miller is stupid enough to believe what he was saying, or was intentionally lying in order to vilify me in the eyes of the jury. He then asked how what I described could be done without the support of the general public. My answer: "*Even a relatively small percentage of the victims of this fraud resisting it would make it unenforceable—would make it impossible for the government to continue defrauding Americans who don't owe this tax*."

Reverting to his guilt-by-association ploy, Mr. Miller then asked whether I watched the national news, and didn't I know the Militia of Montana had been linked to violence? Only later did I have a chance to look it up, and found that such allegations against the M.O.M. came out *after* I sent the letter. But whether or not Mr. Miller knew that, consider his slimy spin technique: I must be nasty and evil because I *wrote a letter* to an organization which was (later) accused of advocating violence. Well, what did my letter to them say? It *disagreed* with their article saying the tax was unconstitutional, and then urged a *nonviolent* means of combatting government wrongdoing. Yet Miller was trying to use my letter to make the jury think I was a terrorist or something.

Next, Mr. Miller read from an e-mail I wrote to Dr. Tom Clayton, in which I said "*I wanted the*

whole puzzle ripped apart, ground into dust," and "*flushed down the toilet*." Then, disguising another lie as a question, Mr. Miller asked, "*What were you talking about? The Internal Revenue Code?* " No, I answered, "*I was talking about the IRS misapplying the law*." Then this followed:

Miller: "But this is your statement."
Me: "Yes, it is. You asked me what I referred to, and then you suggested an answer. I would like to tell you what I was referring to, if I may."
Miller: "No, that—thank you, sir, you've answered my question. It's your statement."
Me: "May I answer?"
Miller: "Let's go to..."

This happened over and over again, where he'd take a little piece out of context, mischaracterize it, not let me put the context back in, interrupt my answer and cut me off, and move on to something else. Fortunately, Mr. Becraft did a good job of keeping track of where I had been cut off, so on "redirect" he could give me a chance to fill in the parts that Miller didn't want the jury to hear. Here is yet another example, from another e-mail I wrote:

Miller: "Mr. Rose, when you say, 'This war has to be waged using fairly nasty techniques and propaganda. Basically, we have to use terrorist techniques."
Me: "And then I go on to say, 'not with bombs and physical violence.' May I—"
Miller: "Well, what does that have to do with a good faith misunderstanding of the law, or a belief that you don't have a duty to file federal income tax returns?"
Me: "I believe that the federal government is misrepresenting and misapplying the law, and I have sat through meetings with other individuals where the IRS agent would not look at the law, would not answer questions, would say, If you do not file this return, we will take your house. And when he was shown the law, he did not respond. That tells me that unless they have something personal to lose, such as with filing a complaint—which showed up in one of the other e-mails the government raised—filing complaints against them, publicizing their failure to answer the questions, their threats, their thuggery, their failure to follow procedures—"

At that point Mr. Miller cut me off again, saying "*Thank you for your answer, sir*," which brought chuckles from many in the audience, who could see right through his dishonest tactics. (Apparently the jury could not.) Remember, these were from private e-mails, sent to people who knew me, and would know what I meant. (Imagine what someone could put together out of a few thousand of your private e-mails, if they wanted to make someone not like you.) Mr. Miller knew full well that in "post-9/11" America, having the word "terrorist" show up, even with the qualifier of nonviolent, would make the average citizen wet his pants. They wouldn't stop to wonder how tactics could be both "terroristic" *and* "nonviolent," nor would they care. The "T" word showed up, so I was evil. A fine summary of what I mean by nonviolent terrorism, putting pressure on individual government paper-pushers, making it so they personally have something to lose, is summed up well by none other than the Supreme Court, which explained that the First Amendment is important because of "*its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs*" (*Near v. Minnesota*, 283 U.S. 697 (1931)).

Later Mr. Miller read from an e-mail in which I said that "*While I hope this will be a bloodless war, it must be fought as a war*," not by petitioning those in power to grant justice, but by having people openly refusing "*to comply with the fraud*." (For fun, look up what the Declaration of Independence says about petitions to government asking for justice being met with further insult and

injury.) Mr. Miller asked me what I meant by "war," and the following exchange occurred:

Me: "Notice the word 'bloodless' war. I mean, when a government does not obey its own laws, and the multiple levels of both procedural and judicial levels of appeal will not obey the law, or will not do the right thing, will not tell the truth, then as I said before, it is the responsibility of the people—"
Miller (interrupting): "Thank you."
Me: "—the citizenry of the country—"
Miller (interrupting again): "Thank you for your answer."
Me: "—to put the government back inside the law."
Miller (still interrupting): "Thank you for your answer."

Perhaps the best way to illustrate Mr. Miller's method is to look at a few emails one by one, seeing what Miller brought up, and then seeing what he left out. Unfortunately, this is *not* how the jury heard it. They heard all of Mr. Miller's distortions first, and probably forgot the specifics by the time I could correct any of it on "redirect" testimony. Here are a few examples:

1) As mentioned before, Mr. Miller read where I said "*I'm an anarchist*," but didn't read the next sentence: "*And no, that doesn't mean I blow things up or think that whatever I can get away with is good*."

2) He also didn't want me explaining that the "puzzle" I wanted ripped apart was the deception, not the tax. As I explained on the stand, "*I have no objection whatsoever with what the law itself actually says. My objection is with what I believe is the manipulation of the wording of the laws in such a way as to deceive the American public about what their legal obligations are. I wanted to take that deception—not the law; the deception—tear it apart, and expose it for all of the American public to see*."

3) Mr. Miller wanted me to say that good budgeting and "*not being robbed*" by the IRS was why my wife and I were able to pay off our mortgage early. What he didn't want me saying, and what Agent Pearlman left out of his notes, was that the main thing allowing us to do that were gifts from Tessa's father, which the IRS admits weren't taxable. (Obviously Mr. Miller wanted the jury to be envious of us for not paying our "fair share," as if that proves whether or not we believe we owe the tax.)

4) Using Pearlman's inaccurate notes again, Mr. Miller tried to make it sound as if I wouldn't care what any judge or jury said. Only later could I explain what I actually believe:

"The way [Pearlman] worded it makes it sound like I don't care what anybody else has to say. And I'm sure what I said to him is what I always say: whoever it is, whatever their credentials, if they can show me evidence in the law, then I will take that into account. If they cannot, if they can only show me assertions which the law contradicts, then I will not accept their word for it. It is not a matter of I don't listen to anybody else. It is I listen to people with evidence."

5) Another thing from Pearlman's notes which Mr. Miller didn't bring up at trial was where Pearlman acknowledged that I said that I wanted the IRS out of business, not to stop them from administering the law, but to stop them from *misapplying* the law.

6) Mr. Miller wanted me to agree that I had said I "*would be willing to admit that* [I was] *wrong about* [my] *position when hell freezes over*." But that's not what I said. My statement was in

response to Stormtrooper Pearlman suggesting that I'd be in less trouble if I chose to plead guilty (to the crimes I hadn't committed), and *that* is what I said would happen when hell freezes over.

7) Mr. Miller also wanted to make something of the fact that we also stopped paying *state* income taxes at the same time (for very similar reasons: the Pennsylvania income tax pretty much copies the federal fraud, taxing *nonresidents* on their Pennsylvania income). He wanted the jury to think we were refusing to pay any taxes. That's why Mr. Miller didn't want me to talk about how we continued to collect and pay state sales taxes for our medical transcription business. As I explained on redirect, we sent letters asking the Pennsylvania Department of Revenue questions about the law requiring us to collect sales tax for the state. In response, they *did* show us the law requiring that, and as a result, we collected and paid it ever since. See what happens when someone can show us the law requiring us to do something, instead of just flinging assertions around?

In another e-mail, I talked about practicing what I would say to the jury were I to be put on trial. Mr. Spindoctor Miller read this and then asked me, "*Aren't you really saying, sir, that what you intended to do was hoodwink the jury?* " I answered Mr. Slimeball's false accusation with "*No, not at all. May I explain what I was saying?* " Mr. Slimeball followed it up with "*Well, what do you mean when you rehearsed the practice speech?* " However, the judge then interrupted and wouldn't let me answer, allowing Mr. Miller's utterly fabricated accusation to remain unchallenged. Of course, every lawyer and defendant plans what he will say at any trial. Did they think that if I was innocent, I would have presented my entire defense ad lib or off the cuff? But Mr. Miller—who no doubt practiced what he would say in court—wanted my practicing to mean that I must have been planning to lie to the jury. How on earth does that logically follow? It doesn't, of course, but Mr. Slimeball wanted to get the idea in the jury's heads, whether there was any reason to believe it or not.

Burn the Witch!

Keep in mind here, the only relevant issue at trial was whether I *believed* my income to be taxable. That's all. Anything else, whether it be about my philosophical beliefs, my attitude, my actions, etc., was irrelevant to the alleged crime. But the prosecutors were so determined to vilify me that they didn't even notice when their own exhibits proved me *not* guilty. For example, Mr. Miller read this from another private e-mail I had written:

> **"Most of the country knows that the IRS lies, cheats and steals, but only a small minority knows to what extent this is true. Even those still laboring under the misapprehension that the income of most Americans is taxable know that the IRS is often unreasonable, unfair, vindictive, sadistic and terroristic, but they continue to file and pay, thinking that they owe the tax, and hope the IRS doesn't pick them to be their next punching bag."**

Now, does that demonstrate that I believe I owe the tax, or that I believe I *don't* owe the tax? The latter, obviously. So why did Mr. Miller choose this e-mail as an exhibit? Because his agenda was not to prove guilt, which he knew he couldn't do; his agenda was to make the jury disapprove of me, which he apparently accomplished.

As another example, he also read from another e-mail in which I said that "*the federal income tax, while entirely Constitutional and valid, does not apply to the income of most Americans*."

Again, these were the e-mails the *government* chose to show. Why quote something that proves that I'm *not* guilty of any "willful" tax crime? It was so Miller could then ask if any government official "*has ever agreed with* [my] *position*." Wait a second; by acknowledging that it's my "position" (i.e., belief) that most Americans, including my wife and I, don't owe the tax, he just acknowledged that I committed no crime.

Incidentally, without hesitation I answered that yes, a government official *did* agree with me: the Secretary of the Treasury. The Code of Federal Regulations, the official Executive Branch interpretation of the law, including the income tax regulations published under the authority of the Secretary of the Treasury, agree with me. Miller, obviously caught off guard by that answer, then said, "*Well, let's see if I can be more specific*," and then proceeded to ask about certain *lower* court judges, whose rulings (unlike the regulations) are *not* binding on me. So by his goofy logic, I was evil because I only had the support of the official Executive Branch interpretation of the law, instead of the approval of low-level ignoramuses whose rulings mean exactly jack squat.

(If you think I'm horrible for calling federal judges "ignoramuses," I'd like to remind you that at this very trial, when Judge Baylson—doing his best to interfere with my explanation of my legal conclusions—decided to share his opinions about federal tax law with the jury, he spewed forth an impressive series of indisputable blunders. To wit, he was *wrong* when he said that the original Constitution did not authorize an income tax; he was *wrong* when he said that the Sixteenth Amendment gave Congress a new taxing power; he was *wrong* when he said that there was no federal income tax prior to the Sixteenth Amendment; he was *wrong* when he said that the Peck case was not about the income tax, and he lied when he said that what I had quoted from Peck was taken out of context. So please don't think me despicable for daring to doubt the unsupported—and unsupportable—decrees of "judges.")

Again, the U.S. Supreme Court says that if someone believes his actions are legal, no "willful" crime has been committed, "*no matter how unreasonable a court might deem such a belief*." So where was there evidence showing that I don't believe what I'm saying? They had none, because there is none. They didn't even bother trying to prove that essential element of the alleged crime, because they knew they couldn't. Instead, they focused their rhetoric on asserting that I *shouldn't* have believed what I believed. But what I "should" have believed is absolutely irrelevant to the crime charged. Apparently the jury was too dense to grasp the distinction.

So Mr. Miller kept harping on the fact that some people (including lower court judges) had "told" me that I was wrong, and I kept committing heresy by saying things such as "*I have the proof in the law that their conclusions were absolutely incorrect*." So he pointed out that I wasn't a lawyer, and that I don't even have a bachelor's degree (" *I mean no disrespect*," he added untruthfully).

How dare I think that I know something that politicians and judges don't know? Mr. Miller and Mr. Baylson are lawyers (and I *do* mean that with disrespect), and they had already repeatedly shown themselves to be utterly clueless about tax law. But they didn't want to talk about evidence, since they had none on their side; they wanted to talk about credentials.

The World Will End!

Out of nowhere, Mr. Miller brought up another irrelevant point, asking whether, if my "position" was correct, and if a hundred million Americans stopped filing returns, wouldn't the United States, as we know it today, "*cease to exist?* " Frankly, I'm not very fond of the United States *government* as we know it today, but I simply pointed out that the fact that the President had recently been talking about scrapping the tax code entirely "*is a pretty good indication that the world would not come to an end*" if people agreed with me. But again, what was the relevance? What did Miller's fear-mongering have to do with whether I believe my income is taxable? Not a thing. (Notice that once again he accidentally admitted I was innocent, by talking about my "position" being that most of us don't owe the tax.) Mr. Miller's implied message to the jury was "If you let him go, the world will come to an end!" Lacking any evidence of guilt, the prosecution kept resorting to that kind of irrelevant emotionalism. And it seems to have worked.

Mr. Miller also read from an e-mail in which I cautioned against wishful thinking, noting that when someone acquires a "*psychological investment*" in a certain theory, he is often then unable to analyze it "*objectively and rationally*." So Mr. Miller accused me of doing just that. (Incidentally, he's supposed to ask questions of a witness, not give his own opinions or fling baseless accusations around.) I began explaining how my reasoning methods led me to dismiss as flawed numerous theories that sounded nice, before I ever heard of 861, which the e-mail he was reading from even talked about, but he interrupted and cut me off again. (What a lovely attitude for a "public servant" prosecutor to have: "I get to throw false accusations at you, but you don't get to defend yourself.")

Next, he vilified me for having asked the government *questions* back in 1998 having to do with the Fifth Amendment as it relates to the requirement to file income tax returns. As I pointed out, that had nothing to do with why I wasn't filing, but Mr. Miller tried to spin asking the government *questions* as evidence of villainy. (While this has nothing to do with the 861 evidence, briefly consider this: How can someone be required to provide lots of info on a tax return, which can be used as evidence against him in a criminal trial, when the Fifth Amendment specifically prohibits the government from forcing people to testify against themselves? Don't ask the government that. If you do, they'll cite it as proof that you're a criminal.)

After that, Miller brought up my testimony at another trial (that of Richard Simkanin), where I said that the government, by misrepresenting and misapplying the tax code, was committing the largest financial fraud in history. Mr. Miller even read aloud the exchange that occurred at that other trial, which went like this:

Prosecutor: "[Y]ou believe that there is a deliberate perpetration of a fraud in connection with the tax laws. Isn't that correct, sir?"
Me: "I believe that many of the changes over the years in the tax laws, in the arrangement and the wording and the changing of the wording, does indicate to me that somebody—whichever individual is responsible for making those changes in the wording, were intentionally doing it in such a way to make it more difficult to find the limited nature of the tax, yes."
Prosecutor: "And, Mr. Rose, have you ever made the statement that there has been perpetrated a fraud of such magnitude that it is without rival in history?"
Me: "Absolutely."
Prosecutor: "Are those your words?"
Me: "Yes."
Prosecutor: "In connection with the income tax system?"
Me: "Yes."

Prosecutor: "All right. Is this also your statement? That the truth is that some individuals inside the United States government orchestrated and successfully executed the most massive fraud and extortion racket in the history of mankind."
Me: "Absolutely."
Prosecutor: "Those are your words, right?"
Me: "Those are my words."
Prosecutor: "So would you tell us the names of the individuals in the government who are responsible for this massive fraud and extortion?"
Me: "The IRS is currently illegally in default of a Freedom Of Information Act request that would get the names of the people who made those changes, and have been for nine months."
Prosecutor: "So these are unidentified individuals."
Me: "They are unidentified because the IRS does not obey the law and comply with the Freedom Of Information Act. We know the Treasury decisions, and they will not supply those to us."

(Mr. Simkanin, after having his first trial end in a hung jury, with the vote ending at 11-to-1 to acquit, was then coerced into a plea bargain which later fell apart. In January of 2004 he was again tried, and was finally convicted of failure to withhold from his employees and failure to file tax returns. This occurred only with a lot of help from an absolute sleazeball lunatic "judge," John McBryde, who makes Judge Baylson look like Lady Justice herself. Mr. Simkanin was then sentenced to 84 months (seven years) in prison—about *double* the sentence normally given for the supposed "crimes" he was wrongfully convicted of.)

I'm not sure why Mr. Miller wanted to go through the above testimony again, but he did. Then Mr. Inquisitor, in his most condescending, obnoxious, smarmy tone of voice, asked, "*And as you sit here today, sir, is it still your position that the truth is that some individuals—and we don't know who they are—inside the United States government, they orchestrated and they have successfully executed—without anybody else finding out about it but you—the most massive fraud and extortion racket in the history of mankind. Is that your position?* "

I responded, "*If you think I'm the only one who has found out about this, you might want to turn around*." I was, of course, referring to the ninety-plus spectators packing the courtroom, just about all of whom knew the truth. In case there was any doubt, I added, "*Yes, it is still my position that this was an intentionally orchestrated fraud, and we still have not received the documents requested through our Freedom Of Information Act request*." Mr. Miller, as usual, interrupted before I finished the sentence.

The sliminess of these people knows no bounds. First of all, I had already testified that I am *not* the one who originally found the 861 evidence. Second, Slimeball Miller knows damn well that a *lot* of people know about it, including a lot of people with impressive credentials, and he was the one who prevented the jury from hearing about that because he wanted the jury to think that I was the only one who believed this. Third, for him to talk about the impossibility of such a fraud happening "*without anybody else finding out about it*," when he had been directly involved in the government's effort to forcibly *silence* the issue, earns him a place in the Slimy Prosecutor Hall of Fame.

Hearsay or Heresy?

Rather than trying to prove that I believe I owe the tax (which they knew they couldn't), the prosecutors emphasized the messages "How dare you allege such a thing?" and "Who are you to

judge what's true when you have no credentials?" In short, I wasn't put on trial for breaking the law; I was put on trial for heresy: saying something the "authorities" consider blasphemous. After harping on how people had "told" me I was wrong, Mr. Miller followed up by asking (with feigned incredulity) how I could still believe what I was saying, after someone *told* me I was wrong?

Miller: "As you sit here today and testify, it's your position that you have a good faith belief that your income is not taxable, despite what a court told you?"
Me: "I can quote the law from memory demonstrating that that judge's ruling was incorrect, yes."
Miller: "So the judge's ruling means nothing to you?"
Me: "I didn't say it means nothing to me; I said it is incorrect according to the law."

Note Mr. Miller's underlying attitude shining through: it is unthinkable that a mere peasant would dare claim that a "judge" is wrong. Blasphemy! Next, he asked if the Supreme Court is "*the only court whose decisions* [I am] *willing to accept*." "Willing to accept"? Are we talking about some blind faith in some gospel delivered by high priests, or are we talking about the written, knowable law? The possibility of examining actual evidence would never occur to Miller; the only question for him is *which* self-proclaimed authority's assertions I will blindly "accept." As I pointed out in my answer, the IRS's own manual shows that it doesn't "accept" lower court rulings either.

(After my stay at "club fed," I happened to come across Galileo's sentence and recantation. A few short centuries ago, he was imprisoned for the crime of having suggested that the earth goes around the sun, and not vice versa, and for having the gall to believe "*that an opinion may be held and defended as probable after having been declared and defined as contrary to Holy Scripture*" by the authorities. In other words, "We *told* you that you were wrong, and so it was a crime for you to continue to believe otherwise." Sounds familiar. So Galileo was imprisoned, his writings were banned, and eventually he was coerced into saying he was wrong after all. In his recantation he described his own sin as having expressed his theories about the earth and the sun, even "*after having received a notification that the said doctrine is contrary to Holy Writ*." Wow, they gave him "notice," and he had the gall to not change his mind, because that pesky little thing called "evidence" was still on his side. Not much has changed since then.)

After that, Mr. Miller once again tried to make hay of the fact that I didn't sue the IRS for a refund after the IRS denied our claims. Of course, I had no legal obligation to sue the government. Then Mr. Miller opined, "*You never wanted a court to rule on your 861 story, did you?* " A few seconds later, he said that if I thought I didn't owe the tax, "*Wouldn't you want a court of law, rather than just rely on your own interpretation, to tell you whether or not you were right or wrong?* " Translation: it's a sin to believe something unless and until an "authority" says you should believe it. I responded in my usual unrepentant, heretical manner:

"No, because the statutes and regulations are binding on all courts of law.
They outrank the courts of law. If a regulation says something, and a statute says the same thing, I do not particularly need a less authoritative opinion to confirm it."

After that, the *judge* again then made a big deal out of me not suing the IRS. (Perhaps he didn't like me committing the sin of suggesting that "the courts" are fallible.) In doing so, he was acting far more like a prosecutor, which he used to be, rather than an unbiased referee. So Prosecutor Baylson told me to explain to the jury why I didn't "*file the return, and then pay the tax, and then file a suit for refund*." I answered, "*For the same reason I don't file whiskey-distilling tax returns and ask for*

it back: because I don't believe I owed it in the first place." He didn't seem pleased with my answer, but didn't seem to know what to say, so he passed the case back to his fellow prosecutor, Mr. Miller. Considering the profound ignorance he himself had just demonstrated in this case, I found it hilarious for him to suggest that I should ask a "judge" whether my conclusions are correct.

It should also be noted that in the past, those who did try to take the issue to court, rather than getting any ruling on the substance of the issue—even a flawed ruling—just got hit with hefty fines of thousands of dollars for even mentioning a supposedly "frivolous" argument. So that's their little Catch-22: if you sue them, they declare your position to be "frivolous" and fine you lots of money; if you don't sue them, they cite that as proof that you're a criminal. Either way, the substance of the issue is ignored and the heretic gets burned.

Then Mr. Miller again demonstrated his inability to comprehend that anyone could choose anything other than blind obedience to authority, by asking whether, after the IRS had sent me it's stupid form letters, I had "*basically ignored those notices*." I answered, "*No, I did not; I responded to everyone*." He knew that already, having seen my responses (and having kept the jury from seeing them), but in his fascist worldview, a citizen has only two options: blindly believe whatever anyone in government may assert, or be an evil criminal. I, of course, belong in the second category.

He then asked me, "*What organs of government do you believe can issue orders that are legally binding on you?* " (Spleen and left kidney?) In answer, I listed Congress by way of the statutes, the Secretary of the Treasury by way of the regulations, and the Supreme Court by way of its official rulings. But notice how Mr. "Divine-Right-of-Kings" Miller wasn't asking which *documents* constitute the law, but rather which *offices* can "issue orders" that I would blindly believe. I guess he had never heard that this is a nation of rule by laws, not rule by men.

Continuing in his condescending, authoritarian manner, he then asked (with unconcealed disdain), "*And the three Tax Court opinions that your attorney asked you about, which had flatly rejected the so-called 861 source argument, the Tax Court judges got it wrong too, didn't they?* " I replied, "*Yes, they did*," and again pointed out that even the IRS does not consider Tax Court rulings binding.

Miller: "And Cathy Spaulding, and Charles Judge, and Stan Escher, and Don Pearlman, and Gerald Loke, all these IRS employees who told you that your position was wrong, even though they work for the Internal Revenue Service, they've got it wrong too. Is that right?"

Again, Mr. Automaton cannot fathom someone having the gall to disagree with any government official, no matter how uninformed or idiotic those officials may be. The five bureaucrats he listed aren't exactly what I consider a stellar line-up of geniuses, but he wanted the jury to think that it was outrageous of me to not blindly accept the unsupported assertions of these paper-pushers, even though they had *admitted* to being unfamiliar with 861 and to being unable to answer questions about it. Once again, evidence and understanding are foreign concepts to Floyd Miller; only unthinking subservience, in body and mind, is acceptable to such drones. I couldn't resist making the statement, concerning his list of boneheaded bureaucrats, "*I believe that my opinion is more valid than theirs*." Oh, the horror! Thinking that a mere peasant like me might know something that our glorious "public servants" don't? Unforgivable! (Oh yeah, and when people who used to be IRS or DOJ *agree* with me, their opinions no longer deserve any respect. When those people tell me that they think I'm *right*,

that doesn't count for anything.)

And that's how Pinko Floyd's cross-examination of me ended, having firmly established that I believe something contrary to what several IRS bureaucrats and lower-court "judges" believe. But doesn't such a belief make me *not* guilty of "willful failure to file"? Yes, as a matter of fact it does. But it makes me guilty of something worse: heresy. And that is what I was put on trial for, and convicted of, though it's not actually a crime in this country. Yet.

Other Witnesses

I intended to briefly call two other witnesses for the defense: Professor Peter McCandless and Dr. Tom Clayton. I questioned Peter for a bit, but it soon became clear that I wasn't going to be allowed to ask him about anything actually relevant. He was *not* allowed to talk about any of the following:

1) Anything he and I discussed on the phone, or in person.

2) What he thought (and said to me) about my "Taxable Income" report; 3) What we discussed on his radio show (which we had on tape, ready to play for the jury, which we weren't allowed to do);

4) The letter-writing campaign we jointly organized, targeting over six hundred different H&R Block offices;

5) What a former IRS agent and a former federal prosecutor said while on his radio show, *agreeing* with me.

So, for example, the jury was *not* allowed to hear the following statement from a former federal prosecutor (Terry Croghan) on Peter's radio show:

> **"I guess it was about a year and a half or so ago, I came across Larken's website as a result of being told by a friend of mine, who is an accountant by the way, and downloaded the report and read it and, at the end of reading it, I realized nothing that was said in there seemed wrong to me. And I had checked out some other so-called tax protestor arguments before that. So I'm always looking for things that kind of don't feel right to me. And I have to say that when I finished reading Larken's report, it seemed to make a lot of sense. And from that point on, I started to look up some of the cases that were cited in it and also had an ongoing friendly correspondence with the IRS and started to look up some of the cases that they were citing to see what they said about this, and came to the conclusion, as Larken has pointed out many times in the past, that no one really was refuting the point made in the Taxable Income report. And I have yet to hear anyone refute that. So more and more, I guess day by day, I'm coming to the conclusion that there is no refutation of it because it is correct."**

Nope, we weren't allowed to play the recording of that, and Professor McCandless wasn't even allowed to talk about what I, or anyone else, said on his radio show. About all he was allowed to say was that I was a guest on his radio show, that I gave a talk about the issue in Kansas City, and that we had a public showing of my *Theft by Deception* video near where he lives, and that I didn't get paid for any of that.

In pre-trial proceedings, Judge Baylson indicated that he would not allow people who agree with my conclusions to testify about their own beliefs, because "*what other people believe is not relevant as to the defendant's willfulness*." Of course, everything the government presented about the 861 issue—the form letters, the lower-court rulings, the bureaucratic assertions—were all statements of what *other people believe* about the issue. So why was that all allowed at trial? Simple: What Baylson meant is that when people *agree* with me, their beliefs are completely irrelevant, but when they *disagree* with me, their beliefs are relevant and admissible. Apparently Baylson thinks that, when some IRS employees said "You're wrong," I should have accepted it as indisputable, but when some other IRS employees said "Holy smokes, you're right!," I should have ignored them. Yeah, that makes loads of sense.

I called Dr. Clayton to the stand, but after a "sidebar" discussion made it clear that none of Dr. Clayton's extensive first-hand knowledge of relevant information was going to be allowed, he was dismissed as a witness, and I rested my case.

(During my prison stay, Dr. Clayton was tried, before an exceedingly obnoxious, fascist judge and a completely boneheaded jury, and found guilty of "willful failure to file" as well as for supposedly filing "false claims" against the government. That last charge was based on his filing claims for refund—precisely what Judge Baylson said I *should* have done to avoid prosecution. Dr.Clayton was sentenced to 60 months, both because there was more money involved and because the "false claim" charges were felonies.)

Proof of Willfulness

At my trial, the government didn't introduce one speck of evidence showing that I believe I owe federal income taxes. In fact, the prosecution proved the exact opposite. As a matter of law (as if that matters in a federal courtroom), the government must prove each element of a crime beyond a reasonable doubt in order to justify a "guilty" verdict. Two out of three ain't good enough. In my case, that means that they were required to produce evidence proving that I believe my income is taxable. Their own prosecutors' manual laments how difficult a task it is to prove such a belief, even when someone *does* try to break the law.

Yes, it can be a tough job trying to convict someone who hasn't committed a crime (though at the moment I'm somewhat lacking in sympathy for them). So what is a dishonest prosecutor to do? Why, of course, take some "evidence" that proves absolutely nothing, and persuade a jury of morons that they should *infer* guilt from it. (It also helps a lot to have a judge who encourages the jury to make absurd, irrational leaps of logic.) Now that we've seen the government's entire case, let's consider the five categories of "evidence"

introduced, and see how they were passed off (with the help of the judge) as proof of "willfulness."

1) Our finances improved after we stopped filing and paying.

I hesitate to expound on this one, for fear of insulting the reader's intelligence—unless, of course, one of my jurors happens to read this. Up through 1996, my wife and I had been sending about

$10,000 to the IRS every year, out of business profits of around $40,000. When we stopped sending the IRS $10,000 a year, our finances improved to some degree. The government, with the help of the judge, tried to spin that as proof that we believed we owed the tax. The utterly insane implication of the government's spin was that, had we truly believed we didn't owe the tax, our finances would *not* have improved when we stopped giving the IRS $10,000 a year. If that sounds idiotic to you, join the club. Obviously, that "evidence" had nothing to do with proving guilt and everything to do with stirring up resentment among the sheep in the jury box. And it worked.

2) I expressed disdain for the IRS.

The government presented various things I had written in which I expressed disdain, resentment, and animosity toward the IRS. (Had this book existed then, they could have included it as well.) And that proved what? Let's review: I am convinced that the IRS is illegally defrauding over 100 million Americans out of over a trillion dollars ($1,000,000,000,000) every year. And the government finds it suspicious, and treats it as evidence of criminal guilt, that I don't like the IRS?

But my thought crime didn't stop there. In a few private e-mails, I spoke of wanting to see the IRS out of business. I even specified that I wanted them out of the business of unlawfully demanding money from people who don't owe it. Yet the government, with the help of the judge, tried to spin that as proof of "willfulness," which is just plain stupid (even worse than "frivolous").

3) I didn't sue the IRS.

One of the main points stressed by all three prosecutors—the two at the table to my left, and the one up on the bench pretending to be a judge—was that I chose not to sue the IRS. When someone files a claim for refund and the IRS denies it at the administrative level, that person can file suit in district court to try to get the money back. Of course, no one is ever *required* to sue the government (duh). In fact, the IRS and the courts conspire to discourage people from suing based upon the 861 evidence by imposing hefty fines for even mentioning the supposedly "frivolous" issue in court.

As it happened, at the time the IRS denied our claims, I knew next to nothing about court procedures, and I wasn't eager to hire a lawyer to sue the feds, which most likely would have cost more than the refund I was trying to get. ("Yay! I got my $20,000 refund, and it only cost me $37,000 in attorney's fees!" No, thanks.) Furthermore, based upon what I had seen before (including a very thorough, well-documented filing by an experienced attorney—which earned him a big fat fine and no substantive response from the Kangaroo Tax Court), I wasn't exactly expecting that any court would address the matter objectively and fairly. And going through my own trial didn't exactly improve my faith in our judicial system.

"Ah ha! You knew a court would probably disagree with you!" Yeah, no kidding. And Judge Baylson and the (other) prosecutors harped on that as if it were proof that I knew my income was taxable. ("Mr. Galileo, you obviously knew that the sun goes around the earth, because you failed to ask the church's high priests to rule on your claim to the contrary.") Once again, the loony implication is that it is impossible for me to think a court can be wrong. By their logic, if I expected some guy wearing a black dress to say I'm wrong, I can't possibly still think I'm right. That would be heresy! (What's really sad is that the jury apparently accepted that boneheaded argument.)

4) I sold my Theft by Deception video.

At trial and again at my sentencing, I was demonized, by the government and the judge, for having the gall to sell my perfectly legal video (for a whole $20 each). Never mind that the actual charge had nothing to do with the video; never mind that for four years everything I wrote about the issue was publicly available for free; never mind that it took me a year and a half to make that video; never mind that I offered to donate every penny I made from that video to the U.S. Treasury if they would let me ask their lawyers some questions about the law. No, I profited, and therefore, they implied, I couldn't have actually believed what I was saying. How does that logically follow? It doesn't, of course. (Lots of authors will be surprised to learn that by selling their books, they have proven that they don't really believe what they write.)

5) A collection of clueless bureaucrats, legally worthless form letters and nonbinding decrees of lower court judges said that my conclusions were wrong.

That may prove what those people believed, but how on earth could *their* words prove what *I* believe?

That was it. They "proved" willfulness using several examples of absolutely ridiculous, completely backward reasoning. And that was enough to persuade the absolutely ridiculous, completely backward-thinking jury. Keep in mind, the threshold of proof in a criminal case is "beyond a reasonable doubt" to justify a "guilty" verdict. If the jury even thought that *maybe* I believed what I was saying, they were required to acquit. They were required to say "not guilty" unless they had no real doubt that I believed my income to be taxable. The judge even told them that if they weren't sure, they had to find me "not guilty." But despite the fact that there was nothing in the government's evidence which even hinted that I believe I owe the tax, much less proved it beyond a reasonable doubt, the jury declared me guilty anyway.

The Government's Closing

After the mid-afternoon break on the fourth day, all that was left of the trial was closing arguments. The government would do its closing first, then I would do mine, then the government would get the last word, in the form of a "rebuttal."

Mr. Miller began the government's closing by saying that this was a case about "*a man who would not take 'no' for an answer*." That about sums it up. I'm evil because when some brain-dead government bureaucrats said "no," I didn't just blindly agree with them. They "told" me I was wrong —though they couldn't say exactly why, and couldn't answer my questions, and couldn't state the specifics of their own position—and I was so diabolical that I didn't just take their word for it. No, I insisted on citations, answers, explanations, and all sorts of other frivolous stuff, instead of accepting their pronouncements on blind faith, like any good sheep—I mean, citizen—would do.

Mr. Miller then said that I had claimed "*to have made a startling discovery*," which was another bald-faced lie. I testified that I am *not* the one who first unearthed the 861 evidence. He then said I "*defied the law*" by not filing, even "*after being told time and time again*" that I was wrong. Wow, Galileo's sentence all over again: I believed it even after an authoritarian told me I was wrong!

Then Mr. Miller, in his most sarcastic tone, accused me of thinking myself to be "*the supreme interpreter*" of the law, above the courts, above the IRS, etc.—another bald-faced lie. (I had just explained how I consider statutes, regulations, and Supreme Court rulings to be binding on me, whether I like them or not.) But that brings up a pet peeve of mine: the misuse of the term "interpretation."

Interpretation

Time for a sidebar. Lots of people like to avoid talking about evidence and logic by blurting out, "That's just your interpretation." It makes for a nice intellectual cop-out and helps people avoid talking about things they know nothing about. In this case, however, very few of my conclusions have anything to do with "interpretation."

Consider what it means to "interpret" something. Suppose one day a friend of yours said to you, "I ate a big salad with my pet rabbit today." The sentence could literally mean at least two things: 1) "My pet rabbit and I ate a big salad today," or 2) "Today I ate a big salad and my pet rabbit." The statement can be interpreted either way, because the words themselves could literally mean either one. However, the statement could not be interpreted to mean "I like purple fish." Why not? Because the words don't say that, no matter how you read them.

Likewise, what I cite from the law rarely has more than one possible meaning. For example, remember all those decades of regulations saying that some income is to be "*excluded from gross income*" because it is, "*under the Constitution, not taxable by the Federal government*"? How many ways can that be "interpreted"? One. (Actually, it's not an interpretation at all if there's only one meaning it could have.) When judges or IRS employees assert that all income is taxable unless a statute specifically says it isn't, they are not "interpreting" the regulations—they are *ignoring* them. There's a big difference.

You may have noticed how often I tried to get the bureaucrats to state the specifics of their *own* position, rather than just throwing mine at them. Why would an alleged "supreme interpreter" of the tax laws, who didn't care about anyone else's opinion, make such a big effort to try to elicit the opinions of government officials? And isn't it a bit odd how they consistently refused to explain their *own* position? I just about begged for their "interpretation," and they couldn't (or wouldn't) give it. For example, the following are statements I made on two different radio broadcasts with Peter McCandless (which, of course, the jury was not allowed to hear):

> **"Over and over again I've told the IRS, if you want to send me a rebuttal I will post it on the front page of my web site for free right now." (Me, 11/16/01)**
>
> **"I have repeatedly offered to the IRS chief counsel and said, 'If you want to give a rebuttal, I will post it on the front of my web site'." (Me, 4/4/02)**

Does it sound as if I don't care what anyone else has to say? Does it sound as if I don't want the issue discussed, or that I'm ignoring opposing views? (Of course, the jury wasn't allowed to hear or read those statements.) My confidence in my conclusions is not because I consider myself the "supreme interpreter" of anything; it's because my conclusions match what the law says, and theirs

don't. Neither of us is "interpreting" anything: I'm following what the law says; they're ignoring it.

For example, when I cite half a dozen different regulations saying that I should use Section 861 and its regulations to determine my "*taxable income from sources within the United States*," that's not "interpreting" the law; that's *reading* and *understanding* it. The words can mean only one thing. And when IRS paper-pushers say "Don't look there," they also are not interpreting anything; they are ignoring the law and making false assertions. When someone declares that the law means something other than what the words in the law actually *say*, that is denial and hallucination, not interpretation—which, unfortunately, seems to be what drives most federal judges and bureaucrats. And then they insult and complain about those of us who choose to believe our own eyes instead of their baseless assertions.

My Sin

So, what it boils down to is that I'm an evil sinner for choosing evidence over assertions. Mr. Miller even made the point that, while I talked about reading the statutes, regulations, and Supreme Court rulings—in other words, *the law itself*—the jury never heard me say "*that I went to an accountant, or a tax lawyer, or H&R Block for that matter, here in the Eastern District of Pennsylvania, to test the validity of my beliefs. Not once*."

First of all, the reason they did not hear me say that is because Mr. Miller, with the help of the court, *prohibited me from talking about it*. He knew damn well that I had contacted all sorts of tax professionals (including in eastern Pennsylvania), some of whom ended up *agreeing* with me. He also knew that Peter McCandless and I had organized a letter-writing campaign asking *six hundred* H&R Block offices about Section 861. In other words, Mr. Miller lied his butt off to the jury, and he did it twice during his closing. (How slimy do you have to be to forcibly prevent someone from saying something, and then claim that his not saying it proves that he's a criminal?)

But aside from his bald-faced lie, notice his attitude: it was wrong for me to look at the law for myself instead of blindly relying upon the opinions (however uninformed) of people with credentials. How dare I rely on my own research, when I have "*no formal legal training*" (and he kept adding, "*and I mean no disrespect*," which was also a lie), instead of relying on politically appointed hacks who not only had already demonstrated profound ignorance of the law, but all of whom also *benefit* from the "income tax" fraud? (Isn't that kind of like asking Mafia thugs whether they break the law, and taking their word for it when they say "no"?)

In summing up the nature of the charge, Mr. Miller correctly identified "willfulness" as the only thing the jury needed to decide. He then made the asinine claim that the evidence the jury had seen "*overwhelmingly proves beyond all doubt*" that I had set out to violate the law. Then he described two main themes which he intended to focus on to prove guilt: "notice" and "attitude."

Notice

Mr. Miller: "Time and time again, various notices [were] sent to the defendant, telling him, Your story doesn't hold water; you've got to pay; you've got to pay your fair share like everybody else."

I'm not sure which is more disgusting: the prosecutor who thinks that's a decent argument, or the jury that falls for it. What about the law? How about citations and evidence? How about statutes and regulations? How about a discussion of the issue? How about answering questions? How about the damn government at least deciding what its *own* position is? Nope. For eight years the IRS had shown itself to be utterly incapable of that. Instead, in between admitting that they weren't familiar with the law, admitting that they could not and did not answer my questions, and admitting that they couldn't state the specifics of their own position, they throw in an occasional "Um, but we think it's taxable," and I'm a criminal for not taking their word for it.

(The "fair share" rhetoric sickens me. I guess they think that people should ignore what the law says, and pay based on some ethereal and vague bunk about "fairness." I've never seen a tax return with a space for entering one's "fair share"; the number they ask for is "taxable income," which is determined by the law alone, whether anyone thinks it's "fair" or not. But again, Mr. Miller's goal was not to prove guilt, but to elicit envy and resentment from the jurors with the implied message "You pay and he doesn't; you're good and he's bad.")

Attitude

Yes, Mr. Miller really did harp on my "attitude" as if it's proof that I'm a criminal. (Can you say "thought crime"?) Then his demonization approach went into high gear, pointing out that I'm an "anarchist"! And I don't like the IRS! And I wrote a letter to a militia! (Never mind that the purpose of my letter was to *disagree* with them.) While on a dishonest and irrelevant roll, Mr. Miller said that I "*essentially invited*" the militia to help me "*engage in what* [I] *referred to as a bloodless coup. Those types of things you hear about in third world countries. Coups. An overthrow of the government, although no blood is shed. I'm not making this up. Those are his own words*."

Actually, Pinko Floyd absolutely *was* making it up, and those were *not* my words. I talked of public pressure being used to force the government to obey its own laws; I was not talking about any "overthrow" of the government, and I never used the word "coup." A "coup" is an attempt to forcibly seize power, to take over the government. Pardon the obscure reference (again), but Mr. Miller seems to be taking a page out of the playbook of the Wickersham Brothers, from *Horton Hears a Who* (by Dr. Seuss). Here is an excerpt of the "Wickersham" method of prosecution:

> **"You're a dastardly, ghastardly, shnasterdly schnook,**
> **Trying to brainwash our brains with this gobbledy gook.**
> **We know what you're up to, pal.**
> **You're trying to shatter our morale.**
> **You're trying to stir up discontent.**
> **And seize the reins of government."**

Wow, I've been Wickershammed! Come to think of it, it's a little creepy how much my tale resembles Horton's experiences: A guy comes across evidence of something seemingly unbelievable, most people instinctively ridicule him without looking into it, he gets put in a cage in an effort to make him shut up. But I digress.

After again whining about my having the gall to read the law for myself, Mr. Miller then said the following: "*Just think about it for a moment. If the income of most Americans is not taxable, why*

are they making you do this, paying federal income taxes? I mean, that's been the law since we've had a country."

No, Mr. Dumbass (and I mean no disrespect), the country existed for over *eighty years* before the first income tax was imposed, and existed for another 18 years without one prior to the Sixteenth Amendment. (And Mr. Miller, a *Tax* Division attorney, doesn't know this?) I wonder if Mr. Miller even noticed that his statement contradicted Judge Baylson's previous, equally incorrect assertion that there was no federal income tax prior to the Sixteenth Amendment. And these people wonder why I don't accept their uninformed assertions as the gospel truth?

As to why "they" (those in government) are making the jurors pay up, it's because people in government like money and power, no matter how much lying, cheating, extorting, defrauding, and terrorizing it takes to get it. I guess the jurors were upset that, unlike them, I wasn't content to be an obedient victim.

Then Mr. Miller continued his string of lies, claiming that I think I'm the "*only person in the continental* [huh?] *United States who has ever made an accurate determination of what is in the Internal Revenue Code*." Remember, he said this after making sure I was *prohibited* from talking about the dozens of credentialed people—and thousands of "normal" folk—who have *agreed* with my findings. Apparently the preferred method of our wonderful "Justice Department" is to suppress all exculpatory evidence, and then pretend it doesn't exist. I hope you're proud of yourself, Mr. Miller. (Actually, I hope you get run over by a bus, you Nazi piece of crap. And I mean no disrespect.)

Then he did his verbal tap-dance regarding "willfulness." And what did the esteemed Mr. Miller say the jury should rely on in deciding whether or not my belief in this "argument" was sincere? Why, of course: 1) the fact that I used to file (before hearing about 861); 2) the "*total amount of income that was involved*"; 3) the "notices" asserting that my "*position was incorrect*"; 4) my "*attitude towards the Internal Revenue Service*"; and 5) my "*business background*" and my "*sophistication in general*."

Notice anything missing? Like, perhaps, the legal conclusions I had been publicly explaining for eight years? Heck, no, they certainly shouldn't take *that* into consideration! How dense (or evil) does one have to be to consider his list of irrelevancies to be proof of "willfulness"? Only the third is even vaguely relevant to the law at all, and it demonstrates only what *other* people believe, not what I believe. So his entire list of what he thought the jury should consider was 100 percent irrelevant bunk. None of it relates to what I believe the law requires of me. Meanwhile, the government did a great job (with the judge's help) of excluding from the trial piles and piles of evidence that *does* indicate what I believe. Mr. Miller might as well have said: "You can consider his hairdo, his choice of neckties, his dislike of popcorn, and how many fish he owns, in determining willfulness; but please *don't* consider all the times he has explained his conclusions, all the letters he has written, all the questions he has asked, all the lawyers and accountants who have agreed with him, or all of the sections of law he keeps citing which support his conclusions!"

Just in case he wasn't cliché enough up to this point, he then whined again that I don't want to pay my "fair share," and that I don't "*want to have to pay for the clean water, the clean air, the highways—all these things that are paid for by tax dollars*." First of all, since when does the

government *make* the air and water? Second, notice how he conveniently glosses over all the *other* taxes which we *do* pay, implying that all government services, state and federal, are funded by income taxes alone. I'll resist the temptation to point out all the other things wrong with Mr. Miller's government-worshiping rant, but I will point out that it has absolutely nothing to do with whether I believe my income to be taxable, i.e., it has nothing to do with whether or not I committed a crime. It was just more emotion-eliciting garbage to sway an imbecilic jury.

Sure, I read the law, but (Miller asked) did I then "*take any steps to try to test* [my] *belief*? " Wait, did he just call it my "belief" again? Yep. And in doing so, didn't he just acknowledge that I did what I believed the law to require? Yep. Doesn't that make me *not guilty* of the crime alleged? Yep. But setting aside the little detail of the prosecutor *admitting that I was innocent*, how did Mr. Miller think I should have "tested" my beliefs? The meetings with the IRS apparently didn't count, nor did my letters to every government official I could think of, from the President, to the IRS Commissioner, to the Attorney General, to dozens and dozens of other government offices. No, the only proper way for me to have "tested" my beliefs, according to Miller, was to go to a court, or a CPA, or an attorney, or H&R Block, "*to have them say, No, Mr. Rose, your position is incorrect*." That's exactly how he put it.

So apparently the way a good citizen "tests" whether he is reading the law correctly would go something like this: "Um, hey Mr. CPA guy, can you please tell me I'm wrong? No, I don't need any answers, or discussion, or citations, or explanation; I just need you to tell me I'm wrong. Thanks." Yeah, that sounds reasonable. (Once again, Mr. Miller was also lying by implying that I hadn't taken the issue to tax professionals to get their responses, when he knows I repeatedly did exactly that, though he made sure I wasn't allowed to tell the jury about it.)

And when two lower-court judges said my position was "frivolous," I "*just blew it off*," claimed Mr. Miller. That's because I had piles of citations of law directly contradicting the self-serving proclamations of those power-happy judges. Whenever I saw someone trying to address the substance of the issue, however lame his attempts might be, I would post *his* opinions on my web site, along with my step-by-step, thoroughly supported response. (You'd never catch the government doing that.) But of course, none of that matters. To totalitarians like Floyd Miller, anything but unquestioning obedience to the decrees of anyone in government is a sin.

So Mr. Miller claimed that I really knew I was required to file—because unthinking automatons like himself had told me so—but that I "*set out to try to devise a way to make someone think that* [I] *was confused*." What? Sorry, no confusion here. I know exactly what I believe, and I know why, and I had been publicly explaining it for eight years. It is the status quo drones like Mr. Miller, Mr. Baylson, Mr. Noud, Ms. Spaulding, Mr. Judge, Mr. Escher, Mr. Pearlman, Mr. Enz, and a few thousand others who display confusion.

So that was their entire case. "Lame" doesn't begin to describe it.

How Did I Do It?

In a criminal trial, a good prosecutor will paint for the jury a complete picture of the alleged

crime: exactly what the defendant did, how he did it, why he did it, and so on, giving pertinent evidence for each point. In my case, on the other hand, the prosecution's portrayal of me consisted of many unrelated, out-of-context, often contradictory fragments, a few completely baseless assertions and accusations, and a random collection of irrelevancies. Had the jury bothered to think about the case, they might have wondered a few things about how I pulled off my diabolical "scheme." For example:

1) If I don't really believe in my stated conclusions about the law, why is it that nowhere in all of the articles I've written, radio shows I've been on, or the thousands of pieces of private correspondence the IRS confiscated, written over a span of eight *years*, was there any indication of that? If I'm really that good at pretending to believe something, I must be the best actor in the world!

2) If I don't really believe what I say I believe, but just pretended to for personal gain, why did I spend many hundreds of unpaid hours researching the issue, online and at various law libraries, only to turn around and give away all my findings for free? Why did I spend so much time organizing letter-writing campaigns, being on radio shows, and printing and distributing free copies of my "Taxable Income" report? Four years into my research, I released the only 861-related thing I ever made a dime off of: my *Theft by Deception* video. Then I turned around and offered to donate all of the profits from sales of that video to the U.S. Treasury if I would be allowed to ask IRS lawyers some questions on camera. Later, I was also involved in the production of the *861 Evidence* mini-CD, which was a non-profit endeavor from the beginning. In fact, Tessa and I loaned the project $17,000 of our own money, most of which we have yet to get back. Does that sound as if I only pretended to believe in it for my own financial gain?

3) If I don't really believe in what I'm saying, why can I cite decades of income tax regulations directly contradicting conventional wisdom? Had I simply misquoted those regs, that would have been easy for the government to prove. So how did it come about that *their* law books directly contradict *their* assertions, while supporting *my* conclusions—the conclusions I (supposedly) only pretended to believe? It makes no sense. How is it, for example, that I can quote their law books talking about some income being exempt because of the Constitution, even though I supposedly only *pretended* to believe that? "Nope," thinks the braindead jury, "he can't possibly believe that, even though he just showed us the government's own law books saying it."

4) If I don't really believe in the issue, how did I manage to construct a logical, well-supported position which is so persuasive that it has won over dozens of converts among CPAs and attorneys, while baffling judges, congressmen, and IRS lawyers too, to the point where they openly refuse to talk about it? Even Agent Pearlman, more than once, warned people that I am "very persuasive" in my arguments. How did I *make up* an argument that is so good that even after several years the IRS is still unable to answer simple questions about how to determine someone's taxable income? What thought-control abilities must I have in order to make it so that no one in the entire government—including veteran IRS and DOJ lawyers—can explain why their law books say what they say? " *I don't know why there's not more of an obvious, ya know— we must be missing something somewhere here under 861*." So said Charles Judge on September 22, 2000. And apparently they still haven't found whatever they were "missing." Did I brainwash these people? Did I *make* them 307 unfamiliar with the law? What Jedi mind trick did I use to render everyone in government incapable

of substantively responding to my stated position—a position I supposedly don't really believe in?

Trouble is, unless you can answer *all* of those questions, the government's case against me makes no sense. And yet in spite of all of that, in the end the jury proclaimed, based on not a shred of evidence, that they were sure beyond any reasonable doubt that I don't really believe in the position I have been consistently expressing and explaining for eight *years*. Good grief!

Into the Home Stretch

Despite having spent months, if not years, contemplating what I would say if ever put on trial, in the end a lot of the specific planning and preparation came at the last minute. This was the result of many factors, including:

1) The last-minute splitting of my trial from my wife's trial, after planning for a joint trial.

2) Not knowing what the court would and wouldn't allow at trial, even after the pre-trial motions, which are supposed to settle such matters. It's hard to plan a summary of information when you don't know what the information will be.

3) The last-minute involvement of my "assistance of counsel," which resulted in a major change in how the defense case was presented. Though this was stressful, I think it was for the better, despite the ultimate outcome.

4) The government dragging its feet and changing its mind on what evidence it would present.

As a result, when we weren't in the courtroom, we were usually somewhere trying to plan for what would happen next, while not even knowing how long the trial would last, and therefore not knowing how much time we had to plan for different stages. To put it mildly, I was more than a little relieved when I learned that I wouldn't have to give my closing arguments on day four, because I really wasn't ready, since so much had changed since I had put together a possible closing.

As a result, the dozen or so hours following the court adjourning on the fourth day were some of the most nerve-wracking, intense, creative, and stressful hours of my life. Basically, we scrapped all my prior plans and started over from scratch. It didn't exactly help matters that suddenly Tessa was scheduled to go to trial in a few *days*—which Judge Baylson made sound absolutely unchangeable (though it wasn't)—and had no one representing her, since we found out that Mr. Becraft wasn't available for that time period. So with the stress of that, while trying to remake my closing argument from scratch, I got almost no sleep. Normally that wouldn't have mattered, except that I hadn't slept much the previous several nights either. When this goes on too long, I get a really nasty sleep-deprivation syndrome, with symptoms a lot like a severe flu. I was hoping I had one more day before that would kick in. No such luck.

Closing Time

When morning came, and it was almost time for my grand finale—probably the most important

part of the trial—I felt as if I was on the brink of death. The good news was that I really liked what we had come up with for the closing, as did the people I ran it by the night before. The bad news was that I felt as if I was going to barf on the jury if I even stood up. (I wonder if vomiting on the jury is grounds for a mistrial. In retrospect, I think they deserved it.)

With the help of my team, I barely managed to make it to the table in the courtroom and sit down. Although I wasn't entirely sure I would live through the closing, as soon as I got up and started talking, I felt a lot better. Nonetheless, it's hard to be chipper and enthusiastic, to exude confidence and conviction (no pun intended), when you feel half dead. My delivery definitely suffered, though I'm not sure how much difference it would have made anyway.

Coincidentally (maybe), the courtroom's electronic display system—supplied by the prosecution—didn't work during my closing. We had prepared a few display stills the night before, but these technical problems—which the government's tech guy did damn near nothing to fix—made it so I had to do my closing without any monitors to show anything on. Needless to say, the guy who had put our visual aids together was not pleased by this turn of events, and neither was I. But the show must go on.

I started my closing by saying that rather than nitpicking over a lot of individual exhibits, I wanted to talk mainly about "*some basic issues, some basic terms, concepts*." The first term was:

"The Truth"

How (I pondered aloud) do we know what the truth is—not just about tax laws, but in general? "*We see things and we hear things, and we use logic to try to figure out what we can about the world around us*." (In retrospect, the jurors probably had a different answer to my rhetorical question: "We blindly believe whatever authority tells us.") Then I asked the members of the jury to imagine someone coming up to them and asking, "How much is two plus two?" I then asked them to imagine that, after answering the question—which in retrospect I'm not sure my jurors were qualified to do—the guy asking the question pulled out a baseball bat and smacked them in the head with it, which I acted out, complete with a very loud "*Wham!* " designed to get their attention and/or wake them up. After the hypothetical clobbering, I asked the jury to imagine the bat-wielder insisting that the correct answer is *five*. Then he asks the question again: how much is two plus two? "Four." "Wham!" "*The answer is five*," says our hypothetical clobberer.

I then advised the jury, if they ever found themselves in that position, to answer "five," in order to avoid a baseball bat to the head. But, I inquired, what if you knew that answering the question untruthfully, in order to avoid the baseball bat, would hurt someone else? Then it becomes "*a moral matter; a matter of principle*." For example, what if the guy with the baseball bat was telling them to write down a million dollars on a 1040 form, where it says taxable income, when they didn't make that much? Then it's not just about saying words to avoid being hit in the head; then it's about "*allowing injustice to occur to avoid getting hit in the head*." Then that pesky little thing called "principle" shows up: "*At what point do we buckle under threats?* "

"In my own case, I have been experiencing that for several years. I have every reason to believe that my

income is not subject to the federal income tax, that I do not owe the tax. And I understand that's contrary to conventional wisdom, but based on what I see in the law, that is what I believe. Now the government, in various ways, has threatened the proverbial baseball bat. Not literally, obviously. 'We will do this to you if you do not write the amount of your income on the bottom of that return and sign it.' Well, I don't believe my income is taxable. It wouldn't be correct to put that number on the bottom of that return. ... Right on where you sign it, it says I swear under penalty of perjury that everything on this return is correct. Not only would I be lying and allowing myself to be victimized by what I believe to be a fraud, I would be committing a crime by signing that, because I believe the amount of my taxable income for federal income tax purposes is zero."

Then I summed up my situation with a statement which the government (courts included) has been confirming ever since:

Me: "There are only two ways that anyone can get me to ever sign a federal income tax return again. One is to persuade me by showing me in the law that my income is taxable. If they can do that, I will write down the number. I will sign the return. I will send in the check. The only other way is if you hurt me or someone I love, and I decide it's worth lying—to commit perjury and allow myself to be defrauded—to avoid the suffering they'll inflict on me."

Then I explained that this wasn't just about whether I was willing to allow *myself* to be defrauded, in order to avoid trouble.

Me: "If I were to sign the return, I would be financially harming myself. But there is something else the government wants me to do, and it is holding up the proverbial baseball bat: they want me to shut up. Because I've been saying in public, to people like you and many others—many, many, many people like you—that I believe we are being defrauded by our own government. Again, there are two ways to make me stop saying that. One, use the law, the evidence, to demonstrate that I was mistaken and my conclusions are incorrect. Then I will say I am sorry, I was incorrect. The other way is to inflict enough pain and suffering on me or on someone I love that I will stop telling the truth. I'm telling you right now, it will take a lot of pain and suffering to make me stop telling the truth."

Next, I talked about the government's "notices" (form letters), and pointed out that the letters tell people "*you may be fined or prosecuted if you don't do things the way we think you're supposed to do them*," and that amounts to a baseball bat.

"And you know what? The IRS's manual says notices carry no legal weight. So you are not getting any evidence of the law; you're getting a baseball bat. You cannot change my beliefs with a baseball bat. If you hit me hard enough, you might convince me to lie, but you cannot change my beliefs with a baseball bat. You can only change my beliefs with evidence and logic. They're in a tough position. They're saying, 'We keep swinging the bat and you won't shut up!' Mr. Miller says I repeatedly defied the law. That is not true. I obeyed the law; I defied the baseball bat. They can keep swinging. I'm not going to sign a return I believe to be incorrect."

(Actually, I did end up doing exactly that, in order to minimize the harm to my family. I hope the judge and prosecutors are proud of themselves for having terrorized someone into signing returns he knows to be incorrect.)

Me: "This system has become a throwback to medieval times. They'll let us off easy if only we'll confess, inquisition style, that our income is taxable. 'Recant your heresy and we'll stop hurting you!' 'Frivolous' is the modern equivalent of heresy: a belief which the powers that be cannot refute, but will not tolerate."

I then explained that my parents had raised me to stand up for the truth, even when the truth is unpopular and even when standing up for it is dangerous. (Here I paused for a quick, "Hi, Mom" to my mother in the audience.) And this was indeed dangerous; they were using the big "baseball bat" of prosecution, trying to put me in prison. Why would they do that?, I asked aloud. Was it because of the

$50,000 they had lost from my not filing (for all five years combined)? Nope. As I told the jury, the federal government spends that much money in less than *one second*. So no, it wasn't about the money we didn't give them. "*The big baseball bat, prosecution, was because I wouldn't shut up*"—because I wouldn't stop telling every American I could reach that I believed their government was defrauding them. "*And the way I was raised, I believe that if my neighbors are being robbed, I have a duty to tell them so, even if they think I sound wacky when I tell them*."

I then pointed out that while the government harped on what I could have done (such as suing the IRS to try to get refunds), there was plenty *they* could have done, too, if they thought I owed the tax. They could have sent me a "30-day letter," telling me how much they thought I owed. But they didn't. They could have then sent a "Notice of Deficiency," demanding payment. But they didn't. They never even tried to collect money from me at all. They skipped right to prosecution.

Me: "Now, I agree that law enforcement—in law enforcement, sometimes muscle power is appropriate. When somebody is intentionally disobeying the law, you've got to use your muscle power. It's not appropriate here. I told them what I was doing. I explained my position. I asked to sit down with them; I asked them to show me anything in the law which would demonstrate that my conclusions were incorrect. Are those the actions of a tax cheater? Are those the actions that justify what they have been trying to do against me? Wouldn't a 50-cent form letter be a little more cost effective than tens of thousands of dollars spent trying to prosecute me?"

Then I turned to Floyd Miller, and asked him to his face, "*Why didn't you answer my questions?* " I then asked the jury if threats and insults should have made me doubt my conclusions.

Me: "They seem to have the attitude that they don't have to answer questions. They don't have to discuss the law. They don't have to figure out what their own position is, because they have the power to hurt people. They have the baseball bat. Who needs words when you've got a big baseball bat?"

I said that Mr. Miller was correct that I'm not a CPA—I'm not supposed to be a tax expert any more than those on the jury are. So what, I asked, is a non-lawyer to do when faced with such evidence?

Me: "Now, Mr. Miller talks as if I ignored the interpretations of those in the government. I asked for their interpretations, and their interpretation was, 'We're not familiar with that; we can't answer your questions right now; we'll get back to you'."

Since they couldn't answer my questions at the meeting, I asked them to refer the issue to the IRS lawyers via "technical advice." They refused to send it. "*I didn't ignore their interpretations; I did everything I could to try to get them to give me their interpretations*"—not just assertions, "*but specific answers having to do with specific questions on how to comply with the law*."

Me: "I mentioned in opening that I tend to believe my own eyes, and I tend to not give all that much weight to credentials in and of themselves. Presumably, somebody with credentials is more likely to be an expert in a certain field of thought. All right, but that's not always the case, and sometimes they don't have all the evidence; they don't know everything, or they make a mistake. And I've seen many examples where a credentialed CPA or attorney has made some statement where I have seen evidence that directly contradicts the statement. Now, if I'm faced with a choice between an assertion, and evidence which clearly shows the assertion to be wrong, which one should a rational individual believe? For example, a judge down in Tampa asserted that all income is taxable unless it's specifically exempted by the tax code. Only, I have photocopies in my basement of 26 CFR 39.22(b)-1 that showed me the judge was wrong. Do I believe him because he was a judge? Or do I disbelieve him because the evidence proves he's wrong?"

(The night before, I had seriously considered using Judge Baylson's own display of profound ignorance of federal tax law as the example regarding assertion versus evidence. In retrospect, I wish I had: "What should I believe: this guy in a black dress who says Congress couldn't impose income taxes prior to the Sixteenth Amendment, or the copies I have of pre-1913 *federal income tax acts*?" Ah, what might have been. But I decided to pick on a *different* clueless federal judge instead—one who wasn't presiding over my case.) I then talked a bit about "attitude"—one of Mr. Miller's main themes.

"I found it sort of interesting that in a criminal trial in the United States, one of his main points was attitude. I was sort of under the impression that we can believe whatever the heck we want in this country."

I then asked the jury to imagine that someone hid tape-recorders in their houses, and over a year's time collected every occasion where they said something nasty or said a bad word, and put them all together to play for their friends. Wouldn't they sound nasty and hostile? So when the IRS goes through thousands of e-mails, it's pretty easy to come up with some "*that show anger from me, dislike of the IRS, even contempt*."

"And based on those snippets of the one thousand e-mails, I could very easily understand how you'd think, 'Wow, he seems inappropriately hostile.' You didn't read the other thousand e-mails, and you didn't hear the parts of my life that happened before I acquired that attitude. If you'd seen some of the things I've seen, you might have the same attitude."

I also pointed out that "*it's not a crime to dislike the IRS; it's not even a crime to call them nasty names—curse words, even. We're allowed to do that in this country*." But, I asked, "*was there any indication in any of that evidence that I didn't file because of my attitude? Did I write to the IRS and say, 'I am stopping filing because I think you're a bunch of buttheads?' No.* " Instead, the evidence showed "*constant correspondence saying, This is what I found in the law itself*." Whether I like the IRS has nothing to do with why I didn't file. "*So why did the government make such a big deal of it? Because they didn't have any evidence of any crime*." Instead, they found a few tidbits that they hoped would make the jury dislike me.

I then gave a few examples of the IRS treating me like a devious villain, while the facts showed the opposite: 1) When Ms. Spaulding went to the *police* because I was "*coming on strong*" (not blindly accepting her idiotic assertions), did I ever threaten her? Nope. 2) When Mr. Judge secretly (and illegally) taped our meeting at the restaurant because he thought I might try to bribe him, did I? Nope. 3) When the IRS, under the direction of Agent Pearlman, raided my home because they thought I might be hiding something, was I? Nope.

Then I pointed out that they couldn't even be honest about the dollar amounts of our income, trying to make it sound as if we were making twice what we actually made. Why? Because, if you don't mind being dishonest (and obviously they don't), "*it might help to sway a jury against the defendant*."

"They need you to think that I'm a nasty criminal, but they can't find any evidence of that. So they mischaracterize me, which brings me to the word 'anarchist.' That's a pretty scary word. Most people don't really know what it means, but we're pretty sure it's something scary. Where was there any evidence that my political beliefs had anything to do with my stopping filing? There wasn't any. In fact, there was concrete evidence demonstrating that I was still filing and paying when I had these same beliefs. You don't have to like my beliefs. You don't have to like me. But the evidence shows they have nothing to do with why I

stopped filing. I already didn't like the IRS."

I commented that different people have different political beliefs, and that's fine, "*but I think we should all agree on this: our government should not rob us*." I then pointed out that the founders of this country were pretty extreme, "*talking about forcible, unlawful resistance to tyranny*" in the Declaration of Independence. "*I, on the other hand, am fairly moderate, because I'm talking about non-violent, legal resistance—not to the law, but to a fraud*." And Mr. Miller wanted to portray that as a "third world coup."

"What did they prove? That I don't like the IRS. I plead guilty to not liking the IRS. What didn't they prove? They didn't prove that I was trying to break the law, because I wasn't. And that's what this case is about."

I then explained how, on the scale between unquestionably guilty and unquestionably innocent, "guilty beyond a reasonable doubt" is pretty darn close to unquestionably guilty. That's why (I explained) in many criminal trials all the defense tries to do is raise a reasonable doubt. But I wanted more. I wanted the jury to "*know darn well that I've done exactly what I believe the law requires of me*." And since, to justify a guilty verdict, they would have to conclude that I *believe* my income is taxable, they would also have to conclude that I've only been *pretending* to believe what I had been consistently saying for eight years. So where was there any evidence that I was only pretending to believe it?

When I started to talk about the IRS's "*massive search of my house*" and "*massive confiscation of documents*," Mr. Miller objected. I'm not sure why he was objecting, but he was overruled anyway. I pointed out that Agent Pearlman "*testified to the confiscation, the amount of e-mails, all the financial documents he went through*," and yet there was no evidence that I don't believe what I've been saying. So, having no evidence of a crime, "*they tried a little sleight of hand*" by saying I was "disagreeing" with the law. So I talked about "disagreement" a bit. Just who was really disagreeing with the law here?

I touched on the basic points which led me to my legal conclusions:

"One is, I believe that some income not exempt by any statute is excluded by the Constitution itself. Why do I believe that? Because 26 CFR 39.22(b)-1 from 1956 says that there is some income that is to be excluded because it is, 'under the Constitution, not taxable by the Federal government.' Because Article 71, Treasury Decision 3146, which is in evidence, states that 'neither income exempted by statute or fundamental law enter into the computation of net income.' Because 26 CFR 1.312-6 of the current regulations, which is in evidence, states that there are three categories of income: the income exempt by statute, income which is not taxable by the federal government under the Constitution, and finally, income to be included as gross income under Section 61."

After doing that from memory, I pointed out the obvious: that's not what *disagreeing* with the law looks like—that's what *citing* the law looks like. Then I gave an example of what disagreeing with the law really looks like:

"When Ms. Spaulding was testifying, I had her read the citation of regulations which states as follows: [and this was also recited from memory] 'Sections 861(b) and 863(a) state in general terms how to determine the taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined.' 26 CFR 1.861-8. I had her read that. Then I asked her, 'Did you use 861(b) and 863(a) to determine my taxable income from sources within the United States. She said, 'No, I did not.' That is disagreeing with the law."

Then I moved on to the concept of "interpretation":

"In closing, Mr. Miller made some comment about [me thinking I was the] 'supreme interpreter' of the laws of this country. I find that a little funny because you heard about the letter campaigns we did to all these officials asking for their position on the specifics—asking them to tell us: Should we use these sections? Did they show our income to be taxable? Why is there this list of non-exempt income, and I'm not on it? What is exempt under the Constitution? Asking them, and they wouldn't answer. So don't tell me I won't listen to anyone else's interpretation. I've spent several years trying to get them to give me their interpretation."

I also pointed out that making an assertion about the law without giving any supporting citations (as the government constantly does) is not "interpreting"; it's "fabricating."

I then explained how the IRS's own manual, which I cited at my meetings with the IRS, "*explains that different kinds of legal documents carry different legal weight. I have noticed that the government has been trying to muddy this issue throughout the trial*." (I didn't point out that the judge had helped them to do that, by refusing my request to give the jury an instruction about this issue.)

"Their manual, the IRS's manual, says that statutes are binding, regulations are binding, Supreme Court rulings are binding, and lower court rulings are only binding on the individual that was in the actual case. And publications are not binding. The forms are not binding."

So, I explained, what they had sent me, what they called a "notice," carries no legal weight. Then they sent another which carried no legal weight.

"Now, my father is known for being a rather accomplished mathematician. And I'm not on par with him, but I can tell you this: it doesn't matter how many zeros you add together; you never get any bigger. So if you send me a notice that carries zero legal weight, and then another notice that carries zero legal weight, still you've got zero legal weight. And if I cite one regulation that is binding on the IRS, that's all I need. That is complete legal authority—binding on them, binding on me, binding on you."

Then I again expressed my heretical beliefs concerning evidence versus credentials.

"What am I supposed to believe, my own eyes or someone with credentials? As you may recall, they had a summary witness running down the numbers of income and just the basic financial facts. And at the end, I asked, 'Do you watch for any kinds of income that might be exempt by statute?' I don't remember her exact words, but basically it was, 'Well, we usually do, but we didn't see any of that involved.' And then I said, 'Well, do you then subtract the kinds of income which are excluded by the Constitution?' And you may not remember it—I hope some of you remember the expression on her face, because anybody who was watching her, that expression would have told them she did not have the foggiest idea that anything is excluded because of the Constitution. Now, whose opinion should I go by: a veteran IRS agent who is provably ignorant of the regulations, or the regulations themselves? I chose to follow the law—not the assertion, not the claim, not the baseball bat—the law. If a credentialed individual doesn't have all the evidence, obviously their conclusions will be, at least, incomplete."

To top off the blasphemy, I added, "*If I have the evidence and they don't, why would I believe their opinion over mine?* "

I then reminded the jury how Ms. Spaulding had harped on Section 61, had remembered me showing her the cross-reference at the bottom of 61 which *points* to 861 regarding "*Income from sources within the United States*," and how she openly admitted that they were *not* using 861 in my case. "*That was not an interpretation; that is called willfully disregarding the law. And I didn't do it; the IRS agent did it*." I then responded to Miller's "common sense" tripe:

"Now, Mr. Miller mentioned common sense. I mean, common sense says we owe this tax. I've looked at a lot of income tax statutes and regulations, and I've never seen one that says common sense determines a taxpayer's taxable income. The law is not a guessing game. We have a system of written law, and it is written so that we can understand what is required of us. Common sense does not impose legal requirements on us."

Then I called Miller on one of his bald-faced lies:

"Now, Mr. Miller made the claim along the lines—and I wrote this down verbatim when he was making it—that I was apparently claiming that I was 'the only person who ever made the correct interpretation.' He knows that isn't true. You heard me testify that I didn't even discover this thing. Someone else pointed it out to me. I just looked into it and found more and more evidence confirming that it was, in fact, the case. I'm the only one who thinks this? That's a bald-faced lie. The courtroom is pretty full today, don't you think? [The implication, which I was hoping the jury would catch, was that the courtroom was full of supporters who believe as I do, showing what a crock it was for Miller to allege that I was claiming to be the only one who understands the law.] Why would they lie about that? Why would they say he's the only one who believes it? Because if I'm the only one, it's really easy to believe I'm wrong. Well, I'm not the only one. It gets a little harder, doesn't it?"

After acknowledging that I am not a lawyer, I asked how the government should respond to questions about the law from us non-lawyer types. "*Wouldn't we all hope they'd respond by going out of their way to help explain it to you?* " I reminded them of how I had once sent the Pennsylvania Department of Revenue a letter asking about the Pennsylvania sales tax, and whether it applied to our medical transcription business. "*They sent me back the law showing that I had to do it, and I collected it and paid it every year*."

I then described how, if you ask the government a question about the law, a rude public servant might say that your question is stupid, but one hopes that he would also answer it. "*But I believe it's intolerable when the government responds with 'You're an idiot'—which is really what it means when they say 'frivolous': illogical, ridiculous*." Then I pointed out that the government actually goes one step further than that. "*Their responses amount to 'You're an idiot, and you might be fined or prosecuted; we won't respond to future correspondence'*."

Then I revisited the issue of "interpretation": "*They don't like my interpretation. They really wish I didn't have my interpretation*." But regarding the meetings, the jury "*heard Ms. Spaulding and Mr. Judge admit that they couldn't answer point-by-point my specific questions. They don't want me to have my position. What is their position? Their interpretation was 'We're not familiar with these sections; we can't answer your questions; we'll get back to you.' They want me to abandon my interpretation in favor of 'I don't know'*." On the specifics, they couldn't even say what they wanted me to believe. "*They sure as heck want me to believe my income is taxable, but they don't know how to get to that conclusion. Well, I'm not going to abandon the results of my research into this—thought-out, very thorough analysis—in favor of 'Oh, I don't know; just guess.' That's not good enough.* "

Lastly, I talked about the concept of "obligation," not just in a legal sense, but in a general sense. What is an obligation?

"It's something you have to do, and it might hurt. It might be unpleasant, but you have to do it. I am standing here on trial because of an obligation to tell the truth. And I felt pressure to cave in when the baseball bat

was over me. 'Say your income is taxable!' Why? I read the law. 'Just shut up and say it's taxable!' Was there pressure to cave in? Yeah. It's not really fun being where I am: on trial, with the United States government trying to put me in jail. Sort of scary. It's not fun being insulted by the federal government in their press releases, being called a criminal, a tax cheater. It's not fun being called a tax cheater by the New York Times, either. It's not fun being prosecuted. It's not fun having the federal government trying to put my wife in jail to shut me up."

"I've never been fond of bullies. The IRS is a bully, and most of America knows it. I used to think they were a bully enforcing the law. I didn't like them back then. Then I discovered they were a bully enforcing a fraud. I've watched them harass a lot of people, and after doing my research, I found myself in a position—with the position I was in, with the knowledge I had acquired, I felt it was my obligation, my duty to be the little kid who stands up to the bully. I was not willing to stand by and watch the bully beat up the other kids when I might be able to do something about it. And I'll tell you this: I will not leave a schoolyard for my daughter to grow up in that has a bully in it."

Then I pointed out that the only real question was whether I *believe* my income to be taxable. If not, no crime was committed. So, what should the jury conclude about my beliefs?

"Consider this: Could you spend hours upon hours every week—not being paid, mind you—over a span of several years, researching an issue, only to turn around and share all the information for free on your web site, if it wasn't something you believed in? Could you spend a year and a half—a year and a half!—making a video about something you didn't believe in, something you're just pretending to believe? I couldn't do that."

"Ask yourself, would you put your reputation on the line by publicly saying something that you knew would sound absurd to most people, for something you didn't believe in? Would you put yourself in harm's way—would you do things you knew would bring down the wrath of the United States government on your head for something you didn't believe in? Would you subject yourself to what I'm going through for something you didn't believe in? Would you put everything you have at risk—would you put your possessions, your reputation, your future in jeopardy for something you didn't believe in? Would you put your very freedom in the hands of twelve strangers—would you risk being taken away from your family and friends and put in a cage for something you didn't believe in?!"

"Neither would I. I put myself through this—I invited this—because I felt morally obligated to tell the truth and obey the law, knowing that some people in positions of power would try to destroy my life if I did so. And they want you to believe that I don't really believe in what I'm saying."

At this point the court's recording device died, but from my notes I can recreate, pretty darn close to verbatim, the rest of my closing argument:

- - - - - - - beginning of reconstruction of closing argument - - - - - - -

The government gets the last word here, and perhaps in his rebuttal, Mr. Miller can explain to you why I would put all this at risk for something I didn't believe in.

A week ago, you knew nothing about me. But I'm standing at the end of a path that did not start last week, or last year. It started eight years ago. Not having watched my entire journey, you may find it hard to answer the question: Why am I here? What led me to ask for this? Without knowing the whole story, it would be hard to understand. You heard a bit about the research I did. What I intended to show you from the law represents only a fraction of my research. What I was allowed to show you was even less than that.

You heard the IRS agents testify about the meetings I had with them. I wanted to play the actual recordings of those meetings, but you weren't allowed to hear them. I wanted to show you the letters I sent to the IRS, and what the IRS sent back, but you weren't allowed to see them. I wanted to show you those six questions which I, and thousands of others, had sent to all sorts of government officials, but you weren't allowed to see them.

(At some point Miller objected to me pointing out all the things that they kept the jury from seeing, but Judge Baylson let me keep going. For a while.)

I wrote a sixty-page report [which I waved in the air in front of them] giving an in-depth explanation of my findings and conclusions, but you weren't allowed to see it. I spent a year and a half making an 88-minute video [which I also waved in the air], and after much debate, I was only allowed to show you five minutes of excerpts from it, without the narration. [I put the video down on the prosecution's table.]

(At this point the *judge* chimed in, interrupting me, and tried to justify the fact that he had stopped the jury from seeing all those things.)

Who has something to hide here, and why? In my opening statement, I said that I was confident that if any twelve Americans were allowed to see all of the evidence, they would never vote to convict. But you weren't allowed to see all of the evidence. I find it ironic that the people in this room who are to decide my guilt or innocence are the ones who have seen the least amount of evidence. These people [indicating the audience] have seen all of the evidence, and these people [indicating the prosecutors] stopped you from seeing all of the evidence. Why? Please don't let them get away with this.

All these things I have done over the last eight years have been leading me to this moment. My path led me to this point, but right here is as far as I can go by myself.

The government suggests that I should have gone to one of their own, someone in government, to rule on whether the government has committed fraud. That's a bit of a conflict of interests, don't you think? But I invited this, so this could be decided—not by any public servant—but by the masters of the government—a higher authority: the people. And that's you.

I asked the government to prosecute me. They did, and my life is now in your hands. And I hope you understand the magnitude of the decision you'll be making here. This is not just about whether I'm guilty or not. This is about whether we should settle for a government which responds to open, honest discussions and inquiries with threats, insults, and intimidation.

I asked the government to prosecute me. Now I ask you to acquit me, and let the government know that we the people will not tolerate this abuse any longer. Thank you.

- - - - - - - end of reconstruction of closing argument - - - - - - -

Final Lies

After my closing, the government was allowed to do a short "rebuttal" closing, during which the court's recording system came back to life. Floyd Miller took the opportunity to throw in several new lies (some of which were lost due to the problems in the recording equipment) to make sure the innocent wouldn't go unpunished. One such comment was his stupid claim that we can't each interpret the law for ourselves, because that would be the definition of anarchy. Never mind that our entire system of written, public law was intended to be accessible and understandable to the common folk. Like some medieval, authoritarian high priest, he was condemning me for thinking that the peasantry ought to be able to read the law for themselves.

Miller: "The best evidence that you can have is a person's own words, his own statements. And here's what he says: 'What the law says has no bearing on what I think. To put it bluntly, I'm an anarchist."

One irrelevant slander; one lie. Way to go, Floyd-baby. What I actually said—and he knew it, because he was holding the quote in front of him—was that "*what the law says has no bearing on*

what I think is right and wrong." The statement was about morality and political philosophy, and had nothing to do with the 861 issue. And what happened to my political philosophy being irrelevant and off-limits, as Judge Baylson had said before? The government had too much to lose to be bothered with the rules, the law, or the truth.

Miller then covered the elements of the alleged crime, admitting that the first two were not in question: we had received income, and we hadn't filed. The other element—the only one in question—was the issue of "willfulness." Once again, he listed the things he wanted the jury to consider in deciding whether I committed a "willful" tax crime: the fact that I used to file (before hearing about 861); "*the amount of income that's involved*"; my "*sophistication*," whatever that means; and the legally worthless "notices" they had sent me.

Miller: "Actual notice that was given to the defendant that his story—and I will not dignify it by calling it a claim—his story that his income was constitutionally exempt from taxation—he received innumerable notices from the Internal Revenue Service that his position was wrong."

He went through some of the IRS boneheads who had asserted that I owed the tax, and he mentioned that two lower court judges "*told Mr. Rose that the position was nonsensical—that's right, it was nonsensical; it didn't make sense*." (Actually, only one judge used that word.) Then he pointed out that another person was convicted, in a trial at which I testified, and he wanted the jury to take that into account in determining whether I was guilty. And last but not least, he wanted the jury to consider my anti-IRS "attitude."

Miller: "So again, this is a case about a man who wouldn't take 'no' for an answer. He wouldn't take 'no' for an answer because, not just paying his fair share, he didn't want to pay any taxes, not at all, federal or state."

Chalk up another bald-faced lie for Floyd-baby. I had already testified about paying property taxes, paying sales taxes, and even *collecting* and paying sales taxes from our transcription business, after being shown the law requiring it. He mentioned that I had stopped filing Pennsylvania income taxes for similar reasons, because it shows Pennsylvania income to be taxable only for non-residents, about which he commented, "*How nonsensical can he be?* "

Then he said that my "Taxable Income" report—which the jury wasn't allowed to see—was just like "*the old traveling salesman in the Western movies who was selling a tonic that was designed to cure anything*." Then he explained how there was a link from one web site to another, "*so if a person looked at one web site and they became intrigued by the tonic, they maybe use their computer and click onto the next web site, and of course, buy the videotape*." He didn't mention that all of the info in the video is in the report, which the web sites plainly state, nor did he mention that the report was free online for four *years* before the video even existed. And since he said these things in the "rebuttal," *after* my closing, he knew I would have no opportunity to rebut his lies.

Then he added, about the video, in his most condescending tone of voice, "*it's a slick production—oh yes, it is—but it's nonsensical, just like the judge in Harrisburg and in Tampa and the jury in Texas decided*." So, just as he had done with the report, he kept the jury from seeing it, and then bashed it and mischaracterized it. By the way, the judge in Tampa did not use the word "nonsensical," and the jury in Texas never saw the video or the report. But let's not let facts get in the way of prosecuting the innocent.

Then Miller again said how, if the jury considered the evidence, he was confident that the jury would vote to convict. And so the trial ended.

Jury Instructions

After a twenty-minute break, Judge Baylson gave a dull, mumbled, barely audible set of jury instructions, much of which was just template stuff included in any trial, about evidence, burden of proof, direct and circumstantial evidence, credibility of witnesses, and so on. When it came to instructing the jury on federal tax law, his instructions included the following: "*Federal income taxes are levied upon income derived for services of every kind in whatever form paid ... The term 'gross income' refers to all income from whatever source, unless it is specifically excluded by law*." Then he explained that one gets from "gross income" to "taxable income" by subtracting allowable expenses and other deductions.

There are two options: Judge Baylson intentionally lied about the law, or he is guilty of gross negligence. My motions concerning jury instructions quoted directly from income tax regulations, past and present, saying that in addition to statutory exemptions, some *other* income is also not taxable—it does not legally constitute "gross income"—because of the constitutional limits upon Congress' taxing power. But he refused to tell the jury that, and instead echoed the popular lie that all income is taxable unless the tax code specifically exempts it.

He then got into the three elements of the crime, the last of which—"willfulness"—was really the only one in question. And on that issue, the instructions were, for the most part, accurate and thorough, and included the following:

> **"Willfulness is an essential element of the crime of failure to file an income tax return. The term 'willfully,' used in connection with these offenses, means doing a voluntary, deliberate and intentional act, knowing the conduct was unlawful and intending to do something that the law forbade. That is, to find that Larken Rose acted willfully, you must find that the evidence proved beyond a reasonable doubt that Larken Rose acted or failed to act with a purpose to disobey or disregard the law."**

He went on to explain that there was no willfulness, and no crime, if I "*acted through negligence, even gross negligence, inadvertence, accident or mistake, or due to a good faith misunderstanding of the requirements of the law*." But then he added this, which, though true, was probably misunderstood by the jury: "*However, mere disagreement with the law, in and of itself, does not constitute a good faith misunderstanding of the requirements of the law, because it is the duty of all persons to obey the law whether or not they agree with it*." Remember the two kinds of "disagreement": thinking the law is invalid, unconstitutional, or unfair is *not* a valid defense; having an honestly held legal position which doesn't actually "agree" with the law itself *is* a valid defense. (In this case, I had neither: my "belief" is exactly what the law says, not a "misunderstanding" of it, but since I wasn't allowed to argue that my conclusions are actually correct, I had to focus on the "willfulness" issue.)

But any confusion among the jurors should have been cleared up by this:

> **"If the defendant had a subjective good faith belief, no matter how unreasonable, that the law did not require him to file a tax return, he did not act willfully. A good faith misunderstanding of the requirements of**

the law can be based upon information a person received from other individuals, a person's interpretation of case law—meaning court cases—as well as statutes and regulations, no matter how unreasonable a person's interpretation seems to you."

(Unfortunately, for all of the above instructions regarding "willfulness," Judge Baylson was sitting back from the microphone and mumbling, making it almost impossible to hear. Some theorize that this was on purpose, though I'm willing to chalk it up to good old-fashioned laziness and negligence. I really should have objected at the time, but I was stupid enough to think that, since the jury would have printouts of all these instructions with them during their deliberations, there wouldn't be a problem.)

Then, in explaining how the jury was supposed to determine what I believe—my "state of mind"—Judge Baylson said they could consider things I said, things I did, how I acted, and so on. When it came to specifically listing what things they could consider, however, the judge gave what was basically a list of the government's exhibits, such as court rulings "*rejecting* [my] *interpretation of the tax law*," as well as "*authoritative rulings of the Internal Revenue Service or of any contents of the personal income tax return forms and accompanying instructions that stated that his income was required to be reported to the Internal Revenue Service*."

Once again, the judge was lying to the jury about the law. None of what the government presented via form letters, publications, or letters from paper-pushers carried any legal weight whatsoever. Again, I had asked the court to instruct the jury on the legal weight of different documents, which Baylson refused to do (because it would demolish the government's case). Instead, he implied that those form letters and other garbage constitute "*authoritative rulings*," when he knows damn well that they don't.

When it came to the actual legal issue, Judge Baylson did just what other lower court judges and IRS bureaucrats do: he asserted that my conclusions were incorrect, without giving a shred of legal support for that claim. Then he again harped on how I could have sued the IRS, but didn't, telling the jurors that they could consider that when deciding the issue of "willfulness."

At least he made it clear that the government had the burden of proof, and that it had to be beyond a reasonable doubt: "*You may not find a defendant guilty based on mere speculation, suspicion or probability of guilt; it must be proof beyond a reasonable doubt*." Near the end of his instructions, he also said this:

"This is a quest for truth as to the facts. That's what a trial is. It's not a battle of wits, it's not a contest of salesmanship, it's not a contest of personality. The only triumph in any case is whether or not the truth has triumphed. If it has, then justice has been done. If not, justice would not have been done."

And it wasn't, thanks to the government and the judge suppressing the truth at every turn.

Hurry and Wait

After the instructions, the jury went off to deliberate. There was a brief hearing about Tessa's case, which was being delayed so she could retain counsel. Then my wife and I, and a bunch of supporters, wandered downstairs and hung around in the lobby. My assistance of counsel, Larry

Becraft, actually had to catch a flight out before the verdict came back.

The jury "deliberated" for about 90 minutes, including lunch. (I suspect they spent more time deliberating what to have for lunch than they did deliberating the case.) Then we got the call saying the jury had reached a verdict, and telling us to come back upstairs for the reading of the verdict.

The Verdict

Months and months of preparing for this battle, years of fighting this fight, and it all came down to one second. I will always remember that one second of waiting, after the jury foreman was asked to pronounce the verdict. I must have been standing at the time, but I don't remember that. I had my eyes closed, waiting for the ax to fall. When it did, a flood of thoughts and emotions hit me.

"Guilty."

It didn't feel real. It was like watching a TV show. Then I felt the hit, like being punched in the stomach. Later, at least half a dozen people described to me their reactions, when they heard the verdict, in exactly the same way: "It felt like being punched in the stomach."

Guilty.

Who the hell were these damn sheep to judge me? Where were they while I was driving to law libraries, rummaging through countless law books, and digging out the truth? The jury foreman looked like the quintessential dumbass conformist couch potato. Who were these apathetic sheep to tell me that I'm the bad guy?!

Guilty.

These were the very people I was trying to *defend* from the government fraud and extortion, and the bastards had stabbed me in the back for it. My wife and I had put our necks on the line for *these* people, and this is how the damn American people repaid us.

Guilty.

By any sane measure we had *won*, hands down. It was like scoring a dozen touchdowns in a football game, only to have the referee declare that the other team, which hadn't scored a single point, was the winner. The problem wasn't that we lost; it was that the jury was too stupid to realize that we won.

Guilty.

How on earth could they have concluded—especially "beyond a reasonable doubt"—that I don't believe what I have been saying for eight years? Did they pay *any* attention to the evidence? Did they even try to understand what crime was being alleged? Or did their supposed deliberations consist of "Him not pay, him bad"?

Guilty.

I failed. All of the effort, wasted. All of the stress and trouble for nothing. All I had accomplished was to give the federal tyrants another trophy head to hang on their wall. Eight years of my life, and this was the result: a giant failure.

Guilty.

A combination of fate and effort had given me a unique opportunity to accomplish something good, to actually make a dent in injustice, and in a split second it all evaporated. Five minutes of actual thought out of those twelve damn sheep, followed by a sane verdict, and the "income tax" fraud would have been dealt a stunning blow, from which it might never have recovered. What could have been! But wasn't.

Guilty.

What have I done? What will this do to my family? I would almost certainly go to prison. For how long? My wife wouldn't have her husband, my little girl wouldn't have her daddy. All I had accomplished was to hurt the people I love the most. I had brought pain and suffering on my family. Nothing hurt more than knowing that. No punishment could be worse.

Guilty.

I could have chosen a conformist's life. I could have spent all those years making money. We could have had an easy life, coasting through with the rest of the herd. Instead, we put it all on the line, as a matter of principle. And we lost.

Guilty.

Doing the right thing is pointless. Standing up to injustice is futile. Telling the truth does no good. The righteous cause accomplishes nothing. All the effort, wasted. The bad guys win, with the help of their *victims*. The American people don't want freedom, and they don't want the truth. All they want is their predictable, familiar, comfortable cage. They cheer for nonconformist heroes in the movies, but when it comes to real life, they race to see who can be first to condemn and attack anyone who isn't like them.

Guilty.

To hell with this country. The sorry-ass American public deserves whatever oppression their government can dish out. If being idiotic slaves is good enough for them, then they deserve whatever oppression and suffering is imposed upon them. I'm sorry I ever tried to defend the public from the fraud.

It wasn't worth it.

Guilty.

So now I'm to be a convict—a nasty criminal who needs to pay his "debt to society." I get to spend some of my life in prison, as the price for trying to protect a society of dumb-asses from their own lying, thieving government. Then I get to bear the stigma of having done jail time, along with the gossip and whispered disapproval from holier-than-thou conformists, who are just self-righteous and delusional enough to feel disdain and reproach towards the few people who try to achieve freedom and justice. To hell with this country.

I'd like to say that those emotions wore off in a few hours, but they didn't. I'd like to say they've worn off in the year since my conviction. They haven't. I despise what this country has become, and I despise most of the people in it. They were born to be slaves, they are determined to be slaves, and it's a pity that the freedom won a couple hundred years ago has been wasted on such apathetic sheep. For all I care, they can be sheered, slaughtered, and forgotten forever, for accepting their own enslavement without ever lifting a pinky to resist. Or, as Benjamin Franklin put it, those who would choose security over freedom deserve neither. Amen, Brother Ben.

Incidentally, I don't want to think and feel these things. I don't enjoy being a bitter, resentful doomsayer. I want to believe that the American people still, somewhere in the recesses of their minds, care about freedom. I just see no evidence of that. Oh, there certainly are some people who still believe in all of that "land of the free and home of the brave" stuff, and it's those people—a pathetically small minority of the country—who I sympathize with, and want freedom for. But as for the rest, they can go wallow in their own cluelessness until their pointless lives of enslavement slip away.

"It is difficult to free fools from the chains they revere." [Voltaire]

No kidding.

I was later told that immediately after the verdict, Agent Pearlman turned to the courtroom gallery and said, "*Let that be a lesson to all of you*." (Thankfully, I didn't hear it at the time.)

Yes, indeed. Let that be a lesson to you: IRS agents will commit perjury, federal prosecutors will lie, cheat and steal to convict innocent people, federal judges will give their rubber-stamp approval to the whole charade, and the American people will be too damned stupid to do anything about it. Quite a lesson. Quite a lesson, indeed.

While I missed Pearlman's smug and condescending little dig, I did note, very shortly after the verdict, David Cay "Goebbels" Johnston—the IRS mouthpiece who pretends to be a reporter for the *New York Times*—coming over to me with a big grin on his face, obviously delighting in my suffering. (What a swell guy.) He asked for a comment. The only comment which came to mind, I kept to myself. My wife then chased him away.

The Aftermath

The minutes, and then hours, and then days, and then weeks that followed were largely a surreal blur. And since reporting all of the details would be both anti-climactic and pointless, I'll cover just a few noteworthy things:

After a brief threat that he could order me to be taken into custody immediately, saying he found my anti-authoritarian attitudes displayed in the exhibits "*very, very troublesome*," Judge Baylson ordered me put on home confinement until sentencing, which he set for mid-November. He also said that he believed I had been given a fair trial. Yeah, right. He then took the opportunity to lecture me some more:

> **"Now, I want to say one other thing to you, and I urge you not to respond. Just listen carefully. You've been found guilty by a jury of your peers. I know how strongly you have opinions about this, and you're entitled to have your opinions until the day you die, and I don't want to take that away from you one iota."**

Bullpoop, Mr. Baylson. Showing how much he cares about my opinions, he later made it clear that if I didn't take down my web sites, he would make the sentence worse. (And once again, he basically acknowledged that I believed in what I was doing, which means I committed no crime.)

> **"If you will reconsider your position, and you will file the tax returns for the years you have not done so, and enter into an agreement with the Internal Revenue Service for payment of back taxes due, penalties and interest, I will take that very much in your favor at the time of sentencing. If you refuse to do so, that will also be a factor at the time of sentencing."**

Since signing a return you believe to be inaccurate is a felony, under 26 USC § 7206, the judge was coercing me into committing several *felonies*, by signing returns swearing that I thought I owed the tax, in order to limit the degree of punishment I would receive for the misdemeanor I *hadn't committed*. What a great judicial system.

So the "pre-trial services" guy put an ankle bracelet on me, drove me home, and set up the monitoring gadget. On the way he said he had never before seen one of their courtrooms that full of spectators. I commented on how standing up for the truth in this country isn't worth it.

That night I had to try not to cry while telling my eight-year-old daughter what had happened: that I told the truth, that I tried to stop the IRS from robbing people, but that the jury decided that I was the bad guy. So I'd be going to jail. Seeing me trying not to cry (without much success), her tears started flowing, and she asked, in all sincerity, "*Will I ever see you again?* " I will never forget those words as long as I live. Of course, I immediately assured her that it wasn't forever, that I wasn't going away right away, and that she could come visit me when I was inside. But the injustice of the whole thing never hit me as hard or hurt as much as it did at that moment.

I immediately hired an attorney, and a very good one, Peter Goldberger, to handle sentencing (and eventually to handle my appeal). For a couple of months, I was imprisoned in my house all the time. Then Mr. Goldberger persuaded Baylson to change the conditions so I could come out of my cage during the day, but I still had to be home at night. (What am I, a werewolf?)

The Spin Goes On

The government, of course, loves to publicly display the proverbial corpses of its victims, to instill terror in the hearts of other would-be nonconformists. In the DOJ's "press release" about my conviction, Patrick Meehan, the U.S. Attorney for the Eastern District of Pennsylvania, was quoted as saying this: "*The conduct of Larken Rose is an affront to all taxpayers who voluntarily pay the*

taxes required by law." That from the same jackass who completely ignored my written offer to put myself out of business and voluntarily donate tens of thousands of dollars to the U.S. Treasury, if they would just let me ask their lawyers some questions about how to *comply* with the law.

But that wasn't the only letter I had sent to Mr. Meehan. This might be a good time for a quick flashback, to include another letter I sent, to show what a nasty, low-down, sneaky tax cheater I really am. That letter, which I sent to Mr. Meehan's office long before I was ever indicted, read as follows. (Though it is a bit redundant to do so, and though it's a bit long, I am leaving in the explanation of my legal conclusions, both to accurately show what my letters to those in government were like, and to give the reader a final "refresher course" overview of the issue.)

October 28, 2003

Patrick L. Meehan (U.S. Attorney)
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

Dear Mr. Meehan,

I just learned, via the Freedom Of Information Act, that on 2/24/03 the Tax Division of the DOJ sent you a letter instructing you to initiate a grand jury investigation of me. I am assuming that is now well underway, though I have never received a "target letter."

Helping Your Investigation

As you know (because you authorized it), the IRS executed an armed invasion of my home on May 6th of this year, under the guise of a "search warrant," which I presume is part of your joint

"investigation" of me. I find myself wondering, what exactly does the government feel the need to "investigate" in this case? What do you find secretive or hard to discover about my situation or my actions? For six *years* now I have been making it abundantly clear *exactly* what I am doing, and why. Not only have I sent several letters to the DOJ and the IRS *telling* them what I am doing, and why, but I have also run several newspaper ads explaining my situation. Now I will make my situation known, *yet again*, to help your "investigation":

My wife and I have not filed a federal income tax return for 1997 or any subsequent year, nor have we made any payments to the IRS for those years. We receive enough income that, if such income had been subject to the tax, both returns and payments would have been required by law.

(We also filed claims for refund for 1994, 1995 and 1996, to recover payments previously made based on the *false* assumption that our income in those years was taxable.)

Does any part of that seem so secretive or mysterious to you that it requires "investigating"? (Notice below that I have made this letter into a sworn affidavit.) The reason we stopped filing and paying is not because we are "protesting" any law, or because we refuse to pay what we owe. On the contrary, it is because we have concluded, *based on what the law itself says*, that our income is not subject to the federal income tax (as explained below), and that what we legally owe is therefore *zero*. The income we receive continues to be reported to the IRS (on 1099 forms), and we have not tried to stop that from happening. I have been *pointing out* to the government for several years now that I have income and that I do not file. What other facts could you possibly need? Why the armed invasion of my home? Why the secret "investigation"? Does my behavior give you the impression that I have something to hide?

The issue here is *not* one of facts, but one of *law*: whether my income is subject to the U.S. federal income tax or not. Despite "conventional wisdom" to the contrary, I know it is *not*, and have made my conclusions known to the government for years, going out of my way to *help* the government "investigate" my conclusions. I have sent a couple *hundred* free copies of my *Theft by Deception* video to various government officials, and I am enclosing a copy with this letter as well. I have sent letters to about every relevant government official I can think of, spelling out my conclusions and the citations supporting them, over and over again.

If you were hoping that the IRS' little fishing expedition (a.k.a. unreasonable search and seizure) would dig up some secret assets, or some attempt by myself to hide something, by now you should know that it did not. I have the most boring, traceable, predictable, and straight-forward financial situation you could hope for. I apologize if I do not do anything that you can use to portray me as some nasty, sneaky criminal. The government, on the other hand, *is* constantly sneaking around, lying, cheating and terrorizing the American public. *You* are the one doing everything in secret and behind closed doors. Frankly, your behavior makes you look like a bunch of criminals. I really wonder if you can look at yourself in the mirror and say, with a straight face, that *you* are on the side of "justice."

The federal government has also shown Gestapo-like behavior in dealing with my business partner, Tom Clayton, M.D., down in Texas, whose "sin" was to selflessly donate tens of thousands of dollars of his own money, without any agreement to even be paid back, so that the *Theft by Deception* video could be made, to educate the public about this colossal fraud committed by the federal government. One Department of Justice official *admitted* (off the record, of course) that the DOJ is trying to *prevent distribution* of that perfectly legal video, and another admitted that Dr. Clayton's home was raided *because he funded the video*. That, together with the wholesale theft of videos from both of our homes, shows that the IRS and the DOJ are the *law-breakers* in this situation. (The Supreme Court has made it abundantly clear that confiscating First Amendment materials under the guise of a "search warrant"

is *illegal*. See *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989).)

My situation, my actions, and the reasons for those actions are all an *open book*, which many *thousands* of Americans are now watching with interest. I, my wife, and my six-year-old daughter had to endure an armed invasion of our home, done at *your* request. For *what*? What more could you possibly want to know? What else could I have done to be any more open and public about my actions and my beliefs? From where I stand, you in government do not seem interested in enforcing the law, or conducting any legitimate investigation; you instead seem intent on vilifying, harassing, intimidating, and otherwise punishing anyone who disagrees with you. (Ironically, you therefore fit well within the definition of a "terrorist" organization.)

My Position

Once again, I will state, for the record, the legal basis for my conclusions and my actions:

1) I believe that I should use the rules of 26 USC § 861(b) and 26 CFR § 1.861-8 to determine my taxable domestic income.

I believe this, because the government's own law books *say so*. For example, the regulations at 26 CFR § 1.861-8, entitled "*Computation of taxable income from sources within the United States and from other sources and activities*," begin by stating quite clearly that Sections 861(b) and 863(a) describe in general terms "*how to determine taxable income of a taxpayer from sources within the United States*" after domestic "gross income" has been determined. (It then states that 862(b) and 863(a) tell how to determine taxable *foreign* income.) This is explained in more detail at 26 CFR § 1.861-1, which says that 26 USC § 861(b) and 26 CFR § 1.861-8 (and sometimes 863 and its regulations) are to be used to determine one's "*taxable income from sources within the United States*." In addition, 26 CFR § 1.863-1(c) states that one's taxable income "*from sources within or without the United States*" is to be determined under the rules of 26 CFR § 1.861-8 and following. (See also Treasury Decision 6258.) 333

Those citations are legally binding on me and the IRS. I am not at liberty to disregard them, even if I *wanted* to (and I do not want to). The IRS' own law books *require* me to use those sections to determine my "*taxable income from sources within the United States*," so I do.

2) I believe that my income, as a U.S. citizen living and working exclusively in the 50 states, is not taxable under 26 USC § 861(b) and 26 CFR § 1.861-8.

Again, I believe this because the government's own law books prove it. While the general language of 26 USC § 861 merely describes what types of income are considered *domestic* income ("*income from sources within the United States*"), including domestic wages (which I receive), both the current regulations and over 80 years of predecessor statutes and regulations make it clear that such domestic income is taxable *only* when it derives from the specific types of commerce enumerated in what is now Subchapter N of the Internal Revenue Code. For example, Section 217 of the Revenue Act of 1921 (statutory predecessor of Section 861) obviously meant that those types of domestic income (including domestic wages) were taxable for *nonresident aliens*, and for certain Americans who received most of their income from federal *possessions* (such as Guam or Puerto Rico). Section 217 was obviously *not* saying that such income was taxable for *all* U.S. citizens. After 1928, when Section 217 became Section 119, and no longer mentioned those specific types of commerce, the related *regulations* continued to show that domestic income (including domestic wages) was still only taxable when received by those engaged in certain types of commerce (e.g., *foreigners* doing business in the U.S., or Americans doing business in federal *possessions*). See sections 29.119-1, 29.119-2, 29.119-9, 29.119-10 from "Regulations 111" (1945).

The current regulations, while unnecessarily complex and convoluted (by design), still show that one can only have "*taxable income from sources within the United States*" if he has a "statutory grouping" of gross income, meaning income from one of the specific types of commerce described in the "operative sections" throughout Subchapter N. (See 26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1).) Those "specific sources or activities" which generate taxable "statutory groupings" of gross income include certain *foreign* income of U.S. citizens (1.861-8(f)(1)(i)), U.S.-source income of *nonresident aliens* and *foreign corporations* (1.861-8(f)(1)(iv)), income related to federal *possessions* (1.861-8(f)(1)(vi)), and several other international or foreign matters. However, in keeping with 80 years of predecessor statutes and regulations, the list does *not* include the income that the average U.S. citizen receives from working within the 50 states (e.g., the income my wife and I receive).

If there is a particular portion of the law that describes when domestic income is taxable, and that portion of the law does *not* show *my* domestic income to be taxable, is it not reasonable for me to conclude that my income is not taxable? According to Black's Law Dictionary (6th Edition), the doctrine of "inclusio unius est exclusio alterius" dictates that "*where law expressly describes a particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded*." The Supreme Court also says that when reading tax laws, we are not to *assume* the tax

applies to matters "*not specifically pointed out*" (Gould v. Gould, 245 U.S. 151 (1917)). So, as instructed, I assume that the law specifies what it applies to, and applies to nothing other than what is specified. I therefore must conclude that my income is *not subject* to the federal income tax. (As you know, "conventional wisdom" does not impose legal requirements; only *the law itself* does. If the law itself does not tax my income, "conventional wisdom" is irrelevant.)

In addition to the explanation above, there is yet another, *independent* way, using the government's own law books, of proving that my income is not subject to the tax:

3) It is my belief that the "items" of income listed in the general statutory definition of "gross income" are not always taxable, but are sometimes excluded from tax.

The income tax statutes have always included a very broad general definition of "gross income" (e.g., 26 USC § 61) which lists the more common "items" of income which may be taxable, such as compensation, business income, interest, rents, royalties, etc. However, in addition to some income being specifically exempted by statute, the older *regulations* defining "gross income" made it plain that *other* types of income were also excluded from tax (notwithstanding the broad general definitions) because those types of income were, "*under the Constitution, not taxable by the federal government*" (26 CFR § 39.22(b)-1 (1956)). The older regulations defining "net income" (now "taxable income") also said that income exempted by statute or by "*fundamental law*" (the Constitution) was exempt from tax, and "*should not be included in the return of income*" (Treasury Decision 3640).

Current law proves the same thing. Again, 26 USC § 61 gives a very broad general definition of "gross income," and lists some common "items" of income (compensation, interest, dividends, etc.). The regulations state that those "items" make up "*classes of gross income*" (26 CFR § 1.861-8(a)(3)), and that such "classes of gross income" are *not* always taxable, but are in some cases *excluded* for federal income tax purposes (26 CFR § 1.861-8(b)(1)).

(Many other citations show that it is a *mistake* to rely only on the *general* definitions of "gross income" and "taxable income" (26 USC §§ 61, 63) to determine what is taxable. For example, under "*gross income*," "*deductions*," and "*taxable income*," the indexes of the United States Code contain entries directing the reader to *Section 861* regarding income from sources within the United States. Similarly, in the USCS printing of the Code, and in the USC and USCA printings up until 2001, cross-references under Section 61 refer to Section 861 regarding "*Income from sources within the United States*." This is probably based on Section 22(g) of the 1939 Code, where, under the section generally defining "gross income," the reader was referred to Section 119 (predecessor of the current 861 and following) regarding "*Computation of gross income from sources within and without the United States*.")

4) It is my belief that the income tax laws, past and present, describe the types of commerce from which the "items" of income must derive in order to be taxable, and that the taxable types of commerce all relate in some way to international trade.

In addition to saying that some income was exempt from tax due to the Constitution itself, the older regulations defining "gross income" clearly said that income which U.S. citizens receive from *foreign* commerce "*must be included in their gross income*" (e.g., 26 CFR § 39.22(a)-1 (1956)). (This is in keeping with Peck v. Lowe (247 U.S. 165 (1918)), which stated that Congress could "undoubtedly" impose an income tax on the *foreign* income of Americans.) Those regulations also mentioned income which certain *foreigners* receive from doing business in the U.S., and the income of people doing business in federal *possessions*, but they did *not* mention the domestic income of the average U.S. citizen.

The current regulations agree. After saying that the "items" of income listed in Section 61 are not always taxable, they direct the reader to 26 CFR § 1.861-8T(d)(2), which gives a list of those types of commerce, income from which is *not* exempt (i.e., which *is* taxable). Again, that list includes certain *foreign* income of U.S. citizens, the domestic income of certain *foreigners*, and certain income of international sales corporations and possessions corporations. Again, conspicuously *absent* from the list is the domestic income of the average American. (Interestingly, even the instruction booklet for the Form 1040 says that if you are a U.S. citizen, you *must* report income you receive from *outside* of the United States, but does *not* say the same about a citizen's *domestic* income.)

Again, under the principles mentioned above, if the regulations state that the "items" of income are sometimes *excluded*, and then give a list of the types of commerce, income from which is *not* excluded (i.e., income from which is *taxable*), one should not *assume* that the tax covers matters "*not specifically pointed out*." On the contrary, an "*irrefutable inference must be drawn*" that what is not listed is exempt. Because the regulations (past and present) specifically state that income from certain *international* and *foreign* commerce must be included as taxable "gross income," but do not say the same of purely domestic income, it follows that when income derives from purely domestic commerce, *it is not subject to the tax*.

(Again, points 3 and 4 *independently* prove the same thing that points 1 and 2 prove.)

Numerous additional citations support my conclusions, some of which are addressed in the enclosed video. For brevity I did not include all such citations here, but they can be found in my "Taxable Income" report, which can be downloaded at http://www.taxableincome.net.

Government Response

Many in government, probably including yourself, would like me to change my mind, and decide that my income is taxable after all. So what has the government presented that would give me (or anyone else) any reason at all to doubt the above conclusions?

1) In between insults and veiled threats, several government form letters, which the IRS admits carry no legal weight, briefly touch on Section 861, mainly mischaracterizing the issue, often making accurate but misleading statements (such as saying that the "source rules" in 861 and 862 do not exclude the domestic income of Americans), while carefully *avoiding* addressing the specifics (such as the enclosed questions). Should a legally worthless form letter that evades the issue have convinced me that my conclusions are incorrect?

2) Various IRS and DOJ "press releases" (which also carry no legal authority) have slandered, insulted, and accused anyone who brings up the issue as being a "tax cheater," a "scam artist," or a "tax protestor," and warned of possible civil or criminal penalties (all while avoiding the *substance* of the issue, of course). Should someone calling me names and threatening me have convinced me that my conclusions are incorrect?

3) The IRS and DOJ have celebrated the fact that they have (by grossly misapplying 26 USC § 6700) silenced several groups and individuals via court injunctions from talking about this issue. Again, the substance of the issue was usually evaded, and often in their haste to silence those individuals, both the DOJ and the presiding judges made provably false claims about the law. Should blatant censorship have convinced me that my conclusions are incorrect?

4) The "Tax Court" (a glorified *administrative* board, whose "rulings" are *not* binding on the public, the IRS, or any real court) has repeatedly insulted and fined anyone who brings up the issue there. Such "rulings" always evade the specifics of the issue, and make numerous provably false assertions. Should non-binding assertions, or efforts to fine someone for mentioning a certain section of law, have convinced me that my conclusions are incorrect?

5) When over *one hundred* letters were sent to Barbara Felker, an IRS attorney specializing in Section 861 and its regulations; when over *one hundred* letters were sent to Jim South, one of the IRS employees orchestrating the IRS's nationwide response to those who mention 861; when over *one hundred* letters were sent to Congressmen across the country, with copies to Charles Rossotti, former IRS Commissioner; when over *six hundred* letters were sent to Pam Olson, Assistant Secretary of the Treasury (Tax Policy); when well over ***one thousand*** letters were sent to Mark Everson, IRS Commissioner, and well over ***one thousand*** letters were sent to John Snow, Secretary of the Treasury, *all* asking a few specific questions (much like those enclosed) about *how to properly determine one's taxable income*, ***none of those people answered any of the questions***. Is that why I should doubt my conclusions?

Or maybe it was because the local IRS employees *admitted* to being unfamiliar with the citations I showed them, and *admitted* that they were not sure of their *own position* on the specifics. Or maybe I should have changed my mind after watching (in person) half a dozen other employees at different offices fumbling around, unable to decide what *their own* position was. The entire IRS, top to bottom, for over *five years*, has adamantly *refused* to even decide whether I should be referring to Section 861 and its regulations or not.

Has it never occurred to anyone in government that maybe they should just provide me with *legally-binding citations of law* which disprove my conclusions? The problem is that *they cannot do it*, because my conclusions are correct, and the law agrees with me. That is why, instead of behaving like law administrators and enforcers, they behave like extortionists, constantly resorting to harassment, insults, threats, censorship, persecution, and terrorism of anyone who mentions this issue. If you really wish to change my mind, you will need to use evidence and logic. Terrorism is not going to do it.

Regarding the Grand Jury

In keeping with the government's shady tactics, I suspect that your pitch to any grand jury will omit a lot of "inconvenient" evidence about what I have been doing and saying. You can probably "spin" your way into getting a grand jury indictment, especially if they never hear from me. (I hear it is quite easy to have just about anyone indicted for just about anything.)

I hereby request that the enclosed copy of this letter, and one of the two enclosed copies of my Theft by Deception video, be given to the grand jury (if any) currently investigating this matter. If there is a pending grand jury

investigation, I also hereby request an opportunity to testify in person before that grand jury as soon as possible.

When someone does *exactly* what the government's own law books *require* him to do, and is completely open and public about his actions and the reasons for those actions, do you really think the proper response is to send armed agents to invade his home, and to secretly "investigate" him, as a first step towards possibly trying to put him in prison? You think the way to prove me wrong is not by honestly addressing the issue (which the entire government seems scared to death of doing), but by trying to have me thrown in jail for believing what I see with my own eyes? I simply cannot comprehend a sane person, particularly an *American*, thinking that way. But if being put on trial is what I have to go through to publicly expose this monumental fraud, then that is what I will do. To choose any other path would be to betray my family, my country, and the truth, and that is something I will not do.

As for what other people think, I know several thousand people who would like to know the truth, but who do not want federal storm-troopers terrorizing them. So, just to make sure that they are obeying the law, and doing what Patrick Meehan, U.S. Attorney thinks they should be doing (lest they incur your wrath), I am suggesting to them that they all ask *you* the questions about *how they should determine what they owe*. If you are qualified to "investigate" and prosecute people for *breaking* the law, then surely you must be able to tell people how to *obey* the law (i.e., how to determine their taxable income).

So, Mr. Meehan, are you someone who enforces *the law*, or are you just a hired thug? Your response (or lack of response) will soon answer that. If you do not understand how the tax laws work, you have no business trying to enforce them. With that in mind, **I hereby request that you provide me with direct, written answers to the enclosed six questions concerning the proper way to determine my taxable domestic income.**

Sincerely,

Larken Rose
[home address redacted]

By signing above, I hereby swear, under penalties of perjury, that everything contained herein is true and correct to the best of my knowledge.

cc:
Eileen O'Connor
D.O.J. Tax Division, Room 5824
600 E Street, NW
Washington, DC 20530

cc:
Special Agent Donald Pearlman
IRS / Criminal Investigation Division
600 Arch Street, Room 6224
Philadelphia, PA 19106

Enc: Questions Regarding Determining Taxable Income
Two copies of video, *Theft by Deception (Deciphering the Federal Income Tax)*
Copy of this letter, to be given to the grand jury (if any) looking into this issue

Yes, the letter was a bit long-winded, and I tend to get carried away with italics and underlining, but it shows just how open I was about my beliefs and my actions. In contrast, Mr. Meehan never responded in any way to the letter, and of course never answered the questions about how I *should* have figured my taxes (or how anyone else should), but went ahead with prosecuting me for supposedly doing it incorrectly.

Also in the DOJ's "press release" about my conviction, Eileen O'Connor, head of the Tax Division of the DOJ, was quoted as saying this: "*People who intentionally fail to file returns or pay taxes as required by law can expect to face criminal prosecution and conviction*." Again, hundreds of people had sent Ms. O'Connor those same six questions about *how to properly determine what we*

owe, and she had completely ignored them all. Below are a few snippets from letters various people sent to Ms. O'Connor, along with the questions:

1) "*It appears that the entire purpose of going after Mr. Rose is to silence honest inquiry. Well, the way to accomplish this end is to answer honest inquiry with honest answers. I don't know how these six straightforward, well-reasoned questions can be so offensive, unless the answers would expose truths that you or others gain from keeping hidden. ... If you have pressure from others to suppress the truth, please consider that the most valuable property a person has is his/her personal integrity and honor, regardless of consequences.* "

2) "*I am forced to conclude that if the DOJ/IRS answers these questions honestly the present actions and the history of these executive agencies must be subject to massive public condemnation and a severe loss of credibility with a concomitant loss of extorted revenue. ... On the other hand, continual stonewalling and criminal acts under color of law, in attempts to quash these issues will lead to the same conclusion, only with more rage and a desire for retribution, which I fear will be very dangerous for the future of the nation under the rule of law.* "

3) "*Speaking as one with a PhD in physics and a paralegal certificate, I consider it totally inappropriate to dismiss this matter as being 'frivolous.' The issues raised are serious ones and on their face appear to have a sound legal basis. Dismissing them out of hand and refusing to point out fallacies or legal inconsistencies or other errors in law or logic gives a clear and convincing picture of simply trying to sweep an embarrassing and potentially difficult matter under the rug. ... The use of illegal tactics by our own government employees in efforts to suppress perfectly legal and proper discussion and questioning is heinous misbehavior.* "

4) "*Isn't it your duty as a public servant to provide legitimate answers to legitimate questions posed to you by the American people, without stooping to the lowest standard of behavior and terrorizing good Americans like the Roses by raiding their home and threatening indictments? ... You, Ms. O'Connor, have the opportunity and position to correct a very egregious wrong here and do the right thing—tell the American people the truth. Now is your chance to be a hero—or will you simply march in lockstep, like so many of your fellow public servants, and continue to perpetuate their jack-booted thuggery and ignorance of the law?* "

Over the years I sent several letters of my own to Ms. O'Connor. I sent one in late October of 2004—almost exactly a year after sending the above-quoted letter to Mr. Meehan—with copies to Mr. Meehan, the Attorney General, and the President. The letter talked about Mr. Miller's impending request for an indictment against me, for which he needed Tax Division approval. In my letter, I again spelled out my position, pointed out that it's only a crime if I did something other than what I believed the law to require, and then listed over a dozen things I "believe" about the tax laws, each one followed by a direct quote from either the Supreme Court, or the income tax statutes and regulations, which unquestionably support each "belief." For example, I stated that I "believe" that every statute, even if broadly worded, must be interpreted in light of the Constitution, and then I quoted the Supreme Court saying exactly that; I stated that I "believe" that some types of income not exempted by any statute are tax-free because of the Constitution itself, and then quoted income tax regulations saying exactly that; I stated that I "believe" I should use Section 861 and its regulations to determine my taxable domestic income, and then quoted official income tax regulations saying exactly that; and so

on. After several pages of that, my letter to Ms. O'Connor concluded as follows:

> **"You can probably see why I consider it odd to say that I 'believe' those things, instead of saying that I know them. And that brings me to my question, a question which will be answered by your response to Mr. Miller's proposed indictment in my case:**
>
> **Should someone be taken away from his family and friends and put in a cage for several years for 'believing' and talking about the things listed above?**
>
> **Please read that question carefully, and read it twice. To be blunt, only a truly despicable tyrant would answer 'yes' to that question. Any honest prosecutor reviewing my case, even if he assumed that my conclusions are incorrect, would see that I have been completely open about my actions and the reasons for them, would see that I am doing exactly what I 'believe' (i.e., what I know) the law requires of me, would therefore conclude that no 'willful' tax crime has occurred, and would not prosecute. While I cannot make people do the right thing, I can publicize it when they do the wrong thing. That is what I have done, and that is what I will continue to do, so that the actions of those who now hold power will forever be on the record so that the public can see the true nature of our 'public servants.' As Stanley Milgram's psychology experiments demonstrated to a horrifying degree, most people do not have the principles or courage to do the right thing when a perceived 'authority' is telling them to do the wrong thing. Thousands of Americans are waiting to see if you are an exception to that unfortunate trait of human nature."**

Well, in the end they saw that Ms. O'Connor—like Mr. Meehan, Mr. Ashcroft, Mr. Miller, Mr. Pearlman, and the rest—is nothing more than an unthinking fascist thug masquerading as a "law enforcer." My letter to her ended with a "P.S.," which said this: "*As those at the IRS and DOJ should know by now, intimidation and demonization tactics will never stop me from telling the truth; nor would imprisonment*." I meant it, as I hope this book demonstrates.

(Also in their "press release" about my conviction, the head of the Criminal Investigation Division of the IRS, Nancy Jardini, also chimed in with this: "*Today's conviction reminds us that fulfilling individual tax obligations is a legal requirement and those who willfully evade that responsibility will be prosecuted*." Yes, she was sent the six questions too. No, she didn't answer them either.)

Sentencing

At the risk of being anti-climactic, I'll mention a few things about my sentencing. The worst part of the whole ordeal occurred a few days before sentencing, when my attorney, Peter Goldberger, called to inform me that Baylson intended to grant an "upward departure" from the usual sentencing level, and intended to have me taken into custody immediately after sentencing, instead of allowing the usual "self-surrender" routine. (As far as I can tell, Baylson had gotten the impression that I wasn't going to file returns for back years, even though all the returns were ready to go by then, and we had already given the IRS lots of money.) So I suddenly thought that I had a couple of days until I would be hauled away for five years. Peter McCandless was at our house when I got the call, so he was the sole witness to just how not fun that day was for me and Tessa, and how well I took it (really badly).

Less than 24 *really stressful* hours later, however, Mr. Goldberger called me again to report that he had magically gotten things back to how they were before: no upward departure, and I'd be allowed to do the self-surrender routine. So a day or two later, we were back in Judge Baylson's

courtroom, waiting to see what was to be done with me.

In case you still think the case was about me not filing, rather than being about me speaking my mind, know that much of the discussion at sentencing had to do with my web sites. Baylson wanted to know if they were still active, and they weren't. He had previously made it quite clear that he would punish me worse if I did not take down the web sites, so I took them down. Persecutor Noud whined that some pages could still be accessed via internet search engines, and added, "*It's my understanding that it would be very simple to completely dismantle all the web sites*." I actually had no direct control over the sites, but per my request they had been disabled. (Mr. Goldberger also pointed out that because of internet archiving sites, it's impossible to erase history.)

By the time of sentencing, I had filed returns for 1997 through 2003, incorrectly reporting my income as taxable. I had also given the IRS around $38,000, which was most of the total principal they were alleging we owed. That, too, I was coerced into doing, which Judge Baylson was pretty open about. These are from his own words at sentencing:

> **"And then I said to him that he should rethink his position in view of his being convicted by a jury of his peers, and if he went ahead and filed his back tax returns and worked out a payment schedule with the IRS, I would consider that as weighing heavily in his favor at the time of sentencing, but if he did not, I would take that against him. Now, as far as I'm concerned from all that I have heard today, including what has actually happened to the web site, I'm satisfied that Mr. Rose has moved towards rehabilitation and is no longer maintaining the position that got him indicted and convicted here."**

Rehabilitation?! Do you think they could possibly get any more Orwellian? I had been terrorized into shutting up and pretending that I owed the tax—and they called it "rehabilitation." (And incidentally, about the worst insult I can imagine is the allegation that those twelve jackasses on my jury are my "peers.") Outrageously, Judge Baylson then said this:

"*The second thing is that I don't intend to impose any sentence that will interfere with Mr. Rose's First Amendment rights*." Well, it's a little late now. He admitted that the sentence he was going to impose would have been worse if I hadn't shut down my perfectly legal web sites. "*I'm not going to get into whether his prior web sites were First Amendment privileges or not. I don't think that's relevant*." Yeah, that darn Constitution certainly isn't relevant to our court system.

Showing that his censorship-via-intimidation would be ongoing, he then said, "*I may have some conditions to impose when we get to supervised release, but I'm not there quite yet*." Then he added: "*But I think that I'm not going to order anything specific, but I would say by the same token that if these web sites were to mysteriously reactivate themselves, whether it be tomorrow or next week or next year, I would once again begin to question Mr. Rose's rehabilitation*."

I fully expect that eventually the information will be back up, and publicly available. And no, I am not "rehabilitated," if by "rehabilitated" you mean intimidated into keeping silent about the tyrannical lawlessness of the federal government and the biggest financial fraud in history. Yes, I will file and pay, even though I know I don't legally owe the stupid tax, because the fascists in our system have shown that they are perfectly willing and able to inflict pain and suffering upon any who don't pay the "protection fee" of the federal extortion racket. But I will not stop telling the truth.

Oddly, Judge Baylson then explained that he didn't intend to give me "*any orders as to what happens to* [my] *web site*," and said that if the government wants a court to issue an order about that, they should file a civil suit asking for an injunction. Wow, this guy is good at talking out of both sides of his mouth. "I won't order you to shut up, but, shut up!" Prior to sentencing, he made it perfectly clear that if I didn't take down my web sites, my sentence would have been a lot worse. I guess if I was trying to see Judge Baylson in the best possible light, I could attribute this to an inner conflict: he feels the need to defend the power machine at all costs, but he doesn't want to be a complete fascist while doing so. (That may not be much of a compliment, but that's the best I can say for someone who threw me in prison for a crime he knew I didn't commit.)

The government then asked for an upward departure for "obstruction," because if I was guilty (as the jury decided), then I must have lied under oath. How convenient for the feds: pleading innocent is now a separate crime—you get punished for being (supposedly) guilty, and you get punished even more for saying you *weren't* guilty. To his credit, Judge Baylson tossed out such lunacy, saying, "*It's never been my practice to penalize a defendant for taking the stand unless the perjury was just wanton and obvious, and I can't say that in this case because Mr. Rose admitted all the operative facts. ... I think it's an unfair penalty on a defendant's assertion of his or her right to testify*."

Then the government brought up my e-mail list (still think this was about me not filing?) and Baylson asked whether things I had recently sent to the list were "*inconsistent with what* [he] *described as* [my] *rehabilitation*." Shawn Noud said he thought they were, because I had not admitted that I was "*wrong about any of the 861, his 861 position*." Wow, forced confession, anyone? Fortunately, Baylson responded that he had never required me to say my legal conclusions were wrong. Noud then complained that I might end up saying that I "*was forced to file tax returns*." Damn right I am, and damn right I was, you Nazi bastard! Amazing. They didn't just want me to be coerced into filing returns; they also wanted me to be coerced into saying I *wasn't* coerced. A false conviction wasn't enough for them; they wanted a false confession, too! (How do these people sleep at night?)

Then Baylson came out with this: "*You and I can't control the defendant's beliefs, okay? He's entitled to believe whatever he wants, all right? We live in a free country. He has unbridled rights to believe whatever he likes*." First of all, what a strange thing to say about someone he just coerced into shutting up (taking down web sites). Second, if they are my "beliefs," as the judge openly conceded that they are, *I didn't commit a crime*!

The government then whined that, at the time of sentencing, I might still have been selling my *Theft by Deception* video and/or the mini-CDs, to which the judge gave the hilarious response, "*He may be, but you know, there's such a thing called evidence; I'd like some evidence if— you can't say he may be doing something*." (By then the web sites were stone dead, and there was no way for anyone to order anything anyway.) The prosecutors then whined that I might have "associates" who would continue to sell the video. Wow, they sure were trying hard to suppress that thing, don't you think? They wanted *me* to be punished for what *other* people *might* do in the future. I guess they ought to burn me at the stake to set an example.

In the government's arguments, Mr. Noud complained that I haven't "*really fully accepted*

responsibility" for my actions, because I hadn't denounced my legal conclusions. He then came right out and said, "*We need to send a message to the public that the government is serious about this and that we're going to enforce the law against people who are shirking their responsibilities*." Don't worry, Mr. Noud, your terroristic fear-mongering is being watched by plenty of people, but stop pretending it has anything to do with "enforcing the law."

He went on to chastise me for being someone who "*does not file tax returns for seven years, who waits for the IRS to investigate him, waits for the government to prosecute him, and then waits for a jury to convict*," and then only files returns after being "advised" to do so by a judge. Waits? *Waits?!* I went out of my way to tell them what I was doing from the beginning. I was the one who brought my case to their attention. I was the one who asked to meet with them. I was the one who asked for their lawyers to make a ruling. I was the one who asked them to explain their position, to answer my questions, to show me any error I might be making. And they said they would get back to me. And this sniveling little twit characterized that as "*seven years of thumbing* [my] *nose at not only the IRS but the government in general*." (If that is the case, I would now like to substitute a different digit for the thumb.) And I was not "advised" to file by Judge Baylson; I was threatened and coerced into filing: I had to pretend my income was taxable or spend a few more years in prison. That's not "advice." That's extortion.

Mr. Weasel Noud continued, saying that "*the government is not trying to punish anybody for their beliefs*" (bullpoop), but that "*citizens should obey the law or they should suffer the consequences, regardless of their beliefs*." He added: "*To act on the belief is different than holding the belief*." Never mind that it's a crime to *not* act on your own beliefs about your tax obligations (see, for example, 26 USC § 7206). Again, he kept talking about my "beliefs," basically conceding that I *believed* I didn't owe the tax, which makes me *not guilty* of what I was being sentenced for. Gack! Nonetheless, Noud asked that the sentence be the most severe within the federal sentencing guidelines: five years.

For the Defense

When it was time for my attorney, Peter Goldberger, to give his argument, he told the story of a case he had been involved in, in which several lower courts had made a ruling about a certain legal issue (involving money laundering) which "*didn't seem right to* [Mr. Goldberger] *under the law*." To make a long story short, he filed a motion about it, and the trial court denied it. By the time the case was appealed, *eight* different circuit courts had ruled in favor of the government's position on the issue. The court he appealed to also ruled in favor of the government and against Mr. Goldberger. His legal team then asked the Supreme Court to hear the case, even though at that point, "*every federal court that had ruled on this issue had said we were wrong*."

But then the Supreme Court *agreed* with Mr. Goldberger and ruled in his favor, overturning *all* of the lower court rulings in one fell swoop. The point of the story? "*It's not immoral to disagree with all the courts. It's not wrong to think that the IRS could be wrong about—*." At that point, leaping into the role of spare prosecutor again, Judge Baylson cut him off, asking why I couldn't have paid the taxes (that I didn't believe I owed) and then sued to get the money back.

Something I missed in Noud's comments at the time (I was a little distracted), but Mr. Goldberger noticed, was that the government complained that if I wasn't properly crushed, in the future I might do more nasty things, like file claims for refund. As Mr. Goldberger pointed out, Noud was worried that I might do the very thing the judge and the DOJ said I *should* have done. Amazingly, Baylson chimed in with, "*He can do it tomorrow morning; I don't consider that in any way inconsistent with anything I'm going to do here today*." How much do you want to bet that if I did what the judge said I should do, they'd prosecute me for it? Remember, they had already investigated my claims for refund, as if filing them was a crime in itself, and they later prosecuted, convicted, and imprisoned Dr. Clayton for filing claims for refund of his own.

Mr. Goldberger then asked, when you leave off all the perfectly legal First Amendment stuff I do (which the government doesn't like), what do you have left? "*You have a low-level nonfiling misdemeanor case, that's what you have: a guy with a big mouth*." (I plead guilty to that last part, and for that I have no remorse.) Then he pointed out that in such cases, more than half of those convicted get straight probation—not a day of prison time—and many others get six or fewer months of prison.

Then I gave my own statement. Apparently some papers reported that I "apologized." If they meant I apologized to my family, you could say that. If they meant I apologized to the government, like hell I did! Giving my statement was one of the least fun things I've ever been through. On one hand I had genuine remorse, about having put my family at risk in order to try to stop the American public from being defrauded. In retrospect, I shouldn't have. I should have let the American public be defrauded. Most of them deserve it, but my family did not deserve what they got. Here is part of what I said:

> **"As a father and a husband it is hard, it is my first duty to protect my family. And as a result of my own recklessness and arrogance I did the exact opposite. My actions brought stress and embarrassment and trouble and pain on the ones that I love the most, and I won't ever forgive myself for that, and I can't ask anyone else to, neither my family or the court."**

I meant it, and if any people who were there wonder, I was as choked up as I looked and sounded. What made it a lot more stressful—what added anger to my already overwhelming grief and anguish—was that I had to address my comments to, and put myself at the mercy of, a power-happy tyrant, while a collection of IRS Criminal Investigation Nazis sat in the audience. Try voicing your deepest regrets, your shortcomings and failures, in front of your worst enemies. It's not fun. Somehow I managed to get the words out, from a prepared statement, and then I shut up. Then all I could do was wait and see.

Earlier at the hearing, Baylson opined that I was nastier than your average nonfiler because I was not merely someone "*who stood by and asserted his beliefs,"* but someone who "*attempted to profit by them by developing this web site and selling the videos*." And again, just before passing sentence, he complained that I didn't just refuse to file returns, but also "*attempted to profit from it by going into the business of making these videotapes and trying to sell them*." Uh, what happened to him not punishing me for speaking my mind? And in case this isn't self-evident, here is a snippet from the Supreme Court:

> **"That the production, distribution and exhibition of motion pictures is a large-scale business conducted for**

private profit does not prevent motion pictures from being a form of expression whose liberty is safeguarded by the First Amendment." [Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)]

Yet there the judge was, openly admitting that he intended to punish me extra for "profiting" from my conclusions and beliefs. (That coming from someone who makes over $150,000 a year for *proclaiming his legal conclusions and opinions*. Hypocrite.) Of course, the government didn't mention that I had offered to donate to them every penny I made from the videos if they would let me ask their lawyers some questions about the law. (I'm not entirely sure whether Judge Baylson knew about that at the time of sentencing.) Anyway, to cut to the punch line, Judge Baylson eventually announced his decision:

"The sentence of the Court is the defendant shall serve imprisonment in the custody of the Bureau of Prisons for a term of fifteen months, scheduled to three months on each of counts one through five, with each count consecutive with each other."

He also sentenced me to a year of "supervised release" to follow my imprisonment, imposed a $10,000 fine, and ordered me to arrange with the IRS to pay the rest of the back taxes that I never legally owed in the first place.

(Some have suggested that I should be more appreciative that Judge Baylson did not impose an even worse sentence, which he could have done. Well, he also could have granted my "Rule 29" motion and thrown out the "guilty" verdict altogether, since he knew damn well that the government hadn't proven me guilty of any crime. If you ask me, the fact that he could have imposed a worse punishment than he did, for the crime he knew I hadn't committed, doesn't make him deserving of much praise.)

To be extra nasty, he also said that I was to surrender myself into custody just six days later, by 9:00 a.m. the following Monday, which is very unusual. (Almost everyone who qualifies for "self-surrender" is given a month or two to prepare.) When Mr. Goldberger began to ask if the judge might consider a longer time to surrender, Baylson interrupted him and said, "*No, I will not*." Mr. Goldberger pointed out that it's impossible to even get a designation, assigning where I'd be imprisoned, that quickly, but Baylson cut him off again, and refused to give me any more time to prepare.

Various motions for "bail pending appeal," which would have allowed me to remain free (relatively speaking) while the appeal was litigated, delayed my self-surrender a bit, but not much. The first time, I was actually within sight of the Federal Detention Center in downtown Philadelphia when Mr. Goldberger called to tell me to go home. We had a few more days. Somehow in no time flat my lawyers managed to get me a designation at the Canaan federal prison camp in Waymart, Pennsylvania, where I am as I write this. (Some "promised land" this is.) Oddly, those few short days with my family prior to self-surrendering were exceedingly enjoyable, and they also seemed to crawl by, contrary to the usual "time flies when you're having fun" rule.

When the day finally came, my wife and I, and a friend of hers, drove up to Waymart and they dropped me off at the front door of the federal penitentiary. And for the next year, this is my home.

So that about sums up the story: dragon terrorizes village; common peasant enters dragon's lair

and kicks dragon; other peasants stab first peasant in the back with their pitchforks. Well, now I know that when a little nobody decides to stand up against government wrongdoing, the American public can be counted on to take the side of the ones *oppressing* them. Gack.

Tessa's Conviction

My wife's trial makes for an equally ludicrous tale, which Tessa will be telling in her own words. I was there to witness it because it occurred in the several months between my conviction and my sentencing. Prior to her trial the DOJ did everything it could to bully her into pleading guilty, to save them the time and expense of prosecuting her for the crime they knew she hadn't committed. For a while she considered entering an "Alford" plea, where she would essentially plead no contest, without actually admitting guilt, in exchange for a lighter sentence. In the end, however, she couldn't in good conscience do even that for a crime she hadn't committed.

The sliminess of the DOJ shone through again when Floyd Miller said that if Tessa did a plea-bargain, he couldn't see her doing any prison time, and wouldn't *ask* the court to impose any prison time. When she refused, however, his response was "*This is war*." So, based on the government's own statements, she didn't go to prison for committing a crime; she went to prison for saying she was innocent. (And people wonder why I use words like "inquisition."

The feds sent my wife to prison because she wouldn't give a false confession.) In the end, after being found guilty of the same bogus charges that I was convicted of, in an even more ridiculous trial, with an equally bogus verdict delivered by an equally idiotic jury, Tessa was sentenced to a month in prison, followed by five months on home detention. Because we had a young daughter, her sentence was scheduled to begin after my release from prison.

Part VII:
Lessons Learned

A Learning Experience

I feel as if I've learned a lot in the past decade, most of it bad, and little or none of it the "lesson" the prosecution and judge hoped I would learn. I'll conclude this gruesome tale by summarizing the various lessons I've learned, concerning: 1) our wonderful government; 2) our wonderful court system; 3) our wonderful American media; 4) the "tax honesty movement"; and 5) the American people in general. None of it is what I was hoping to learn, and it's probably not what you were hoping to hear (it's not good news), but maybe in some way it will help others—if nothing else, by providing them with some amusement as they snicker at the doofus (namely, me) who got himself flung into prison.

Lessons About Our Government

The main things I've learned about "our" system over the past eight years is that it isn't *our* system, by any stretch of the imagination. It is a government of the control freaks, by the control freaks, and for the control freaks. The truth, justice, and the law don't matter a hill of beans to the vast majority of those in government. I don't just mean that sometimes they break the law; I mean that they never care what the law says when it gets in the way of their own power, as long as they can get away with breaking it. There is one reason—and only one reason—they even bother with laws, and courts, and procedures: to give the *illusion* of legitimacy; to put on an act, pretending to be something other than power-happy, god-complex tyrants.

Most (if not all) government lawyers are nothing more than well-trained excuse-makers. Following the law, or doing the right thing, is never their goal, nor is complying with the Constitution. Their job is to come up with some legal excuse after the fact for why it was okay for them to trample individual rights. (In late 1998, the Associated Press ran an exposé on DOJ misconduct, saying that "*Federal agents and prosecutors around the country have repeatedly broken the law over the past decade in pursuit of convictions*," and that prosecutors were caught "*lying, hiding evidence, distorting the facts, engaging in cover-ups, paying for perjury and setting up innocent people to win indictments, guilty pleas and convictions*." The article even quoted a former federal prosecutor as saying, "*It's a result-oriented process today, fairness be damned*." So I've learned.)

And the IRS is considerably worse than the DOJ when it comes to ignoring procedure, law, and truth. Let's consider one example of how the actions of the feds compare with what the law *says* they are supposed to do:

The Fifth Amendment to the Constitution says that the government may not deprive you of your property without first providing you with "due process." That means you have a right to challenge the claims and actions of the government, to make your case and present evidence and argument, and to

have an unbiased referee (judge) issue a fair and reasonable ruling. That constitutional requirement applies to all disputes with any government department or agency, including the IRS.

The IRS's own publications spell out one's due process rights in great detail. If you disagree with the IRS about what you owe, you have the right to sit down with one of their hired idiots—I mean, highly qualified examiners—to discuss the matter. If you cannot resolve the matter at that level, you can demand to speak with the examiner's supervisor. If you still can't reach an agreement, you can have your case referred to the Appeals division of the IRS. If you disagree with the conclusion of the Appeals officer assigned to your case, you can talk to his superior. If after all that administrative due process, the IRS still thinks you owe them something, they issue a "Notice of Deficiency," and you have the right to have your case heard by the U.S. Tax Court. Even if the Tax Court sides with the IRS, a 1998 law entitles you to yet another meeting, at which they are required to prove that they followed all their rules and did everything by the book before they can collect from you.

Wow, that's a lot of due process, checks and balances! What a great system! Well, it would be a nice system if they actually did anything remotely resembling what I just described. But there's a catch: if you commit the sin of heresy by mentioning "861" to the IRS, in person or in writing, *all* of that due process evaporates into thin air. If you so much as ask a *question* about 861, here is the "due process" you will receive: 1) the examiner will refuse to meet with you, insult you, threaten to impose a penalty upon you, and try to swipe your money as fast as possible; 2) if you ask IRS Appeals to hear the case, they will refuse, based on a bogus claim that you are just refusing to obey the law; 3) After all administrative due process is skipped, you can go to the Kangaroo Tax Court, which will fine you thousands of dollars if you even mention 861, will say "frivolous" a lot, and will refuse to discuss the matter further; 4) if you then ask for a "Collections Due Process Hearing," the IRS will refuse to give you one; 5) If you seek "judicial review" from the Tax Court, concerning the IRS's refusal to meet with you, the Kangaroo Tax Court will give its judicial blessing to the whole ridiculous process; 6) If you complain to the office of the "Taxpayer Advocate," you will get insulted and threatened some more.

All of the foregoing is illegal. The IRS regulations and publications show what IRS folk are required to do. If you mention 861, they skip all of it. Oh, and if you complain to your so-called "representatives" in congress, they will do absolutely nothing about it. After all, they're the primary beneficiaries of the fraud carried out by the IRS, so why should they want to help you resist it?

(In early 2003, in an effort to assist the thuggery of the IRS, the supposedly limited-government advocate U.S. Senator Rick Santorum (PA) introduced a bill in Congress which would have raised the "frivolous return" penalty from $500 to $5,000, while allowing the IRS to deem anything it pleases as being "frivolous," and would have extended the penalty beyond just tax returns to also include "frivolous" requests for administrative hearings and "frivolously" asking for help from the Taxpayer Advocate's office. In other words, under that law, *asking* for due process would have won you a $5,000 fine.)

I've seen all of the above happen over and over again, to people who were completely open and honest about their actions, and whose main sin was to ask the government *questions* about how to properly *comply* with the law. These people get coded a special way (which is also illegal under a 1998 law), and all of their due process rights get flushed down the toilet. Despite all the rhetoric

about due process and the rule of law, the reality is this: if you commit the sin of mentioning 861, you get to discuss it with no one, you get to meet with no one, you get to argue nothing, you get no answers, you get insulted, threatened, and fined, and then you get robbed. (If you think I'm exaggerating, try it.) And here is the best part: the IRS *trains* its employees to do that to anyone who mentions 861. They even have special "teams" at the IRS whose job is to make sure that those pesky 861 folk are denied all due process, and are robbed as quickly and thoroughly as possible. They make up numbers, ignore correspondence, clean out bank accounts, file liens, and generally act like Mafia kneecap-smashers.

How do I know this? Not only have I watched it happen to a lot of people in different cases across the country, but I've seen the IRS's own internal memos about it, instructing IRS employees to do this. Those memos were kindly supplied to me by a couple of moles inside the IRS. (Not everyone in the IRS is an extortionist scumbag; it's just the corrupt and malicious 99 percent who give the rest a bad name.)

<u>Last-Minute Addition</u>: Though the IRS had already been doing it illegally for years, in December of 2006, just before my release from prison, Congress finally gave the IRS legislative permission to completely deny due process to anyone who mentions 861, or any other issue the IRS unilaterally declares to be "frivolous." In the ridiculously named "Tax Relief and Health Care Act of 2006," Congress authorized the IRS to, among other things, fine people $5,000 for requesting a "Collections Due Process" hearing, or for filing a claim for refund, based on the 861 evidence.

In my own case, I eventually obtained the IRS memos about my 1994 and 1995 claims for refund, on which Agent Michael Enz had handwritten "*Assess 6702* [frivolous return] *penalty only. Do not process the return*." The IRS has no legal authority to just bypass all due process and choose not to process a claim for refund, but that's exactly what they do. They don't seem to care what is legal. On a copy of my 1996 claim for refund, the IRS had written "*Timely*," and stamped "*AUG 24 2000*," showing it was filed on time. But they never processed it. Why not? At my second meeting with the IRS, Agent Enz openly stated that when the IRS folk receive a claim mentioning 861, they're "*taught not to process it*." Again, the regulations governing the processing of returns (26 CFR § 601.105) give no authority whatsoever for a blanket refusal to process a return at all—to act as if it was never received. (In fact, their manual even says that if an actually "frivolous" return can be processed, it should be.) And just in case ignoring the law in one way wasn't enough, the IRS wrote "*tax protestor*" on my 1996 claim for refund, and used that term repeatedly in their internal memos about my case, which happens to be a violation of Section 3707 of the IRS Restructuring and Reform Act of 1998, which states that IRS personnel "*shall not designate taxpayers as illegal tax protesters (or any similar designation)*." The label was banned because of concerns that the people so labeled would be stigmatized, and treated badly by the IRS. No kidding. Yet even as late as 2006, "TIGTA"—the Treasury Inspector General for Tax Administration—found 287 cases in which the IRS was still using the outlawed labels. And TIGTA's recommendation regarding the IRS ignoring the law? They suggested that IRS management tell them to stop doing it. Again.

Okay, I'd better stop there, because if I start listing every law, regulation, and procedure the IRS violates, this book will end up being longer than *War and Peace*. Suffice it to say, those who have dealt with the IRS after saying "861" know firsthand just how much "due process" is available to them: none.

Congressional Boneheadedness

On at least a couple of occasions, congressional "hearings" were held on what the IRS and the politicians portrayed as "abusive tax schemes." (Hmm, does that mean schemes having to do with abusive taxes?) Of course, the "hearings" were not held in order for Congress to *hear* anything; they were held so that pompous politicians could huff and puff, posture and pontificate, and publicly demonize and threaten people who say things Congress doesn't like.

On April 5, 2001, Charles Grassley, congress-crook from Iowa, ran one hearing which I and various other individuals with unorthodox conclusions about the tax laws attended. When Bob Schulz, head of an organization called "We The People," asked if some of us might be given a brief opportunity to be heard (at the "hearing"), he was told no. Why not? Because it wouldn't fit with the politicians' "agenda"—that's the way their security guards put it. Yeah, no kidding. Having someone

tell the truth in those hallowed halls of horse-hooey would definitely mess up their agenda.

So a few boring speakers, including IRS Commissioner Charles Rossotti, gave their canned speeches to the congressional windbags, lamenting the evils of us nasty nonconformists (without mentioning that we were in the room at the time, having come from all over the country to see our government in action). We were invited to listen quietly as we were demonized, mischaracterized, and then threatened. And that was that. Of note, at the "hearing" I was at, the 861 issue managed to get no mention at all. (I believe CNN was covering the thing, so maybe they didn't want to draw any more attention to 861; it was already a huge thorn in their side.) Somehow the agenda morphed into a bashing of various "tax shelters" and questionable trusts, with some mention—but not much—of the full-page newspaper ad We The People had sponsored, suggesting that the government should be able and willing to answer reasonable questions about the tax laws. The average observer at the hearing would no doubt have been left with the impression that "We The People" was pushing some sneaky tax evasion scheme, when they were doing nothing of the sort.

There was one moment during the hearing when I only barely managed to keep from laughing out loud. Had I done so, I probably would have been charged with "contempt of Congress"—a "crime" to which I would proudly plead guilty. After joining in the nonconformist-bashing for a while, one of the speakers—J.J. MacNab, the same delusional bozo who reported my non-existent "threats" to Pamela Olson—presumably departing from her script, had the audacity to ask (out loud, mind you) why the government didn't just *answer the questions* of the (falsely labeled) "tax protestor" crowd. After an awkward, very quiet pause, followed by a non-responsive response, the agenda was quickly directed elsewhere.

There was a follow-up "hearing" a year later, at which the IRS put on a huff-and-puff show, boasting about its ongoing efforts to crush all dissent and difference of opinion. Oops, I meant to say, "to punish those who violate the tax laws." Yeah, right. The hearing itself was the usual terror campaign propaganda, and not worth describing in detail. What was amusing, however, was that the hearing—no doubt at the suggestion of some PR whiz at the IRS—was titled "The IRS Strikes Back."

Had they been slightly less clueless, it might have occurred to Rossotti and his thugs that in the Star Wars movie *The Empire Strikes Back*, after which their hearings were obviously named, the empire doing the striking back was the *Evil* Empire. Maybe Charles "Darth" Rossotti was making one of those accidental admissions that psychologists like to talk about. For a brief moment, Chuck Vader and his stormtroopers were honest about who they are, though I doubt it was done on purpose.

Fascists with Nothing to Lose

In any dispute between government and us common folk, the government is allowed to use force, and we're not. They take people's money (by force), steal First Amendment materials (by force), silence web sites (by force), and lock people up (by force). And what happens if anyone resists by force? Well, of course, that person is considered a dangerous villain, who will either be put in a cage for a long time or be killed. It makes the game a bit lop-sided, don't you think? All I have is words; all I can do is speak my mind. I can't do armed raids of IRS offices when they say something I don't like. I can't put them in cages for having an opinion that differs from mine. Of course, not being an

evil bastard myself—unlike Floyd Miller, Shawn Noud, Donald Pearlman, etc.—I wouldn't *want* to do such things. The system is about as fair as a boxing match in which only one contender is allowed to hit—the other has to try to verbally persuade his opponent to fall down.

What makes it more ridiculous is that the enormous federal extortion machine is funded by money they take from us. They spend *our* money harassing, robbing, and imprisoning us, and we have to spend even more of our money to defend ourselves from them. What happens if liars like Floyd Miller lose a case? He still gets his paycheck. He has nothing to lose, except maybe advancement to a higher position in the Evil Empire. Not a penny comes out of Floyd Miller's pocket, or Donald Pearlman's pocket, or any pocket of any of the other fascists who got paid to prosecute me—indeed, lots of pennies go *into* their pockets for doing it, regardless of the outcome. Meanwhile, the victims of their persecution—and I am only one among many—have to pay to defend themselves, and pay even more if they lose. To make matters worse, the feds also spend our money to spread their propaganda; all of their terrorizing of the public and demonizing of tax heretics is done at "taxpayer" expense.

In short, there is no deterrent to being a lying, cheating federal fascist. Nothing happens to them for prosecuting innocent people. Heck, they get *paid* to do it. There is no reason for an IRS drone *not* to harass and rob people. The "deterrent" of having morals and a conscience obviously doesn't do it. There are never any adverse consequences for them, even when they blatantly violate their own rules. When everyone above them tolerates and even condones their thuggery, it's no wonder they keep doing it. If you don't believe me, here it is (again) from the mouth of an IRS whistle-blower, as she testified to Congress:

> **"Sadly, some [IRS] employees repeatedly do not follow proper collection policies and procedures and thereby repeatedly abuse taxpayers. There are several reasons why this occurs: … When management condones the abuse, the Revenue Officer believes the mistake is acceptable and is free to repeat the error again. … Revenue Officers capitalize on the taxpayer's inherent fear of the IRS and the intimidation that they can inflict on taxpayers without any consequences for their improper enforcement."**

What happens to Donald Pearlman when he lies under oath? Nothing. What happens to Floyd Miller when he intentionally lies to the jury? Nothing. What happens to IRS agents who steal perfectly legal videos to take them out of circulation? Nothing. What happens to all the IRS agents across the country who break the rules to take money from people? Nothing. (Well, I say "nothing," but the more accurate answer is, they are *commended* and *rewarded*.) What happens to a judge who lies about the law to the jury? Nothing. What happens to a judge who puts someone in a cage who did not commit a crime? Nothing. Even in the unusual case where a higher court decides that a conviction is bogus, what happens to the people who obtained that bogus conviction? Not a thing. In the contest between government and citizen, the citizen puts everything on the line, while the government thugs risk nothing. They get paid either way, and they don't get locked up if they lose. So what is there to deter them from being lawless, terrorist Nazis? Not a damn thing, and you can see the results.

(Speaking of Nazis, while here in prison I came across an interesting passage in *Schindler's List*, about what happened when the Nazis went door to door swiping jewels, furs, and other valuables: "*Some of those whose goods were taken—unaware that the SS were operating outside legal restraint—would tomorrow complain at police stations. Somewhere, history told them, was a senior officer with a little integrity who would be embarrassed and might even discipline some of these unruly fellows*." Well, they soon learned the truth: there was no recourse within the system; the

entire monstrosity, top to bottom, approved of and condoned the lawless thuggery. A lot of Americans are now coming to realize that about the IRS, too: there is no one in public office, in any of the three branches of the federal government, who has any interest whatsoever in making the IRS obey the law. They occasionally feign concern, to get public support, but they let it keep happening. And why should they mind IRS thuggery? Who do you think benefits from the federal extortion racket? They know better than to bite the hand that feeds them.)

People who have never been at odds with the IRS, or any so-called "law enforcement" folk, often tend to assume that the cops are the good guys, and anyone they go after must be bad, and deserving of whatever they get. Those who have come face to face with authoritarian oppression, however, know better. As John Hay put it, "*The evils of tyranny are rarely seen but by him who resists it*." Very true. Until you are the one having to deal with the thieving, lying, cheating, threatening, insulting, terroristic tactics of our wonderful federal government, there's really no way to fully appreciate the gravity of the situation. Sitting here in prison, I'm starting to grasp it.

Lessons About Our Judicial System

The main thing I learned about our court system is that, at least in some cases, it is driven by the exact same principles and attitudes as the oppressive religious empires of olden days. Such principles and attitudes include the following:

1) "To hell with evidence and logic; the truth is whatever we say it is!"

2) "It is a sin to disagree with us, and heretics must be punished!"

3) "Once punished, we expect these darn nonconformists to see the error of their ways, so that they may be enlightened and rehabilitated!"

Having witnessed a large dose of the utter insanity of our court system, I am struck by the many ways in which it is not merely analogous to historical theocracies, but is identical to them. The high priests of the judicial cult wear robes and sit high above everyone else. You must call them "honorable," and it is a *crime* ("contempt of court") to show them disrespect while in their cathedral —I mean courtroom. When speaking from their elevated and glorified positions, their assertions are portrayed as opinions, not of mere mortal individuals, but of "the court." This is very similar to how the high priests of old would characterize their own assertions as the unquestionable decrees of "the church."

In keeping with the comparison, the current equivalents of high priests routinely demonstrate profound ignorance and a complete absence of reason and logic. The ultimate manifestation of the cult-like nature of our judicial system is the fact that at any trial, the high priest—I mean "judge"—will unabashedly declare that he, and he alone, can say what the law is. (They tell this to all juries, not just mine.) The peasants may have a brief moment to beg his royal highness to agree with them, but once he declares "I have ruled on this," no matter how patently incorrect or idiotic such a ruling might be, further debate is not permitted.

Once upon a time, churches wouldn't let the peasants read the doctrines for themselves. Only the high priests were qualified or authorized to interpret the true meaning of the words in those books. Indeed, without the inspired insight of such learned wise men, we might never have known that when Jesus said "turn the other cheek," he really meant "torture and kill any who don't pledge unquestioning faith to the church." (Wow, what a creative "interpretation.") The wisdom of the current proclaimers-of-law isn't much better.

The lunacy of it hit me full force as I sat on the witness stand and listened to one of the anointed mouthpieces of "the court" make a stunning string of colossal blunders while giving a lecture on federal tax law. I'm referring to the time Judge Baylson explained that Congress could not originally tax income (wrong), and that they had not done so until an amendment was passed (wrong)—though he couldn't remember which amendment it was or when it happened, and that that amendment was the source of Congress' ability to tax income (wrong). There I sat, ready and able to quote from memory half a dozen Supreme Court rulings, not to mention acts of Congress and regulations, proving that the judge was dead wrong about everything he had just said. But I was not allowed to do so. I was, after all, merely a peasant.

I want to clarify that I am not criticizing Judge Baylson for not knowing such things off the top of his head. Most judges don't. What I find absurd, however, is that I had to sit there silently and let him mislead the jury—inadvertently, I hope. I try not to bash people for mere ignorance (not knowing things), but when someone declares himself to be the ultimate, final, and sole authority on some subject (such as federal tax law), such a display of cluelessness deserves bashing.

As it happens, I suspect that the judge and the entire prosecution team were in the *bottom* 20 percent of the people in the courtroom when measuring knowledge of tax law. Most of the dozens of people there to support me knew darn well that the Sixteenth Amendment did not create or expand any power to tax. (They also probably knew which amendment it was, and when it was enacted, unlike Judge Baylson.) Nonetheless, because of the way our wonderful cult-like system works, someone who happened to be woefully ignorant of the most fundamental principles of federal taxation was also the one declaring himself to be the *only* one in the room allowed to tell the jury "what the law is." "To hell with sky charts, orbits, facts and figures—the sun goes around the earth because we say it does!" Not much has changed in the last few centuries.

Demonstrating the level of insanity, while proclaiming my conclusions about the law to be incorrect, neither "the court" nor "the government" (code terms for the guy in the black dress and the other guy in the suit) cited *one word* from any statute or regulation disagreeing with my conclusions, but instead focused entirely on the fact that *other* guys in black dresses had previously asserted that conclusions like mine are flawed—or, even better, are "frivolous."

Once someone in a black robe has made an official proclamation about what the law is, other people in black robes will usually give it credence, no matter how obviously contrary it is to the law, the Constitution, or common sense. (One of my favorite examples comes from the Supreme Court's ruling in *Wikard v. Filburn*, wherein the court concluded that a farmer who grows grain on his *own* land, and consumes it on his *own* land, can be regulated under the *interstate* commerce clause.) Not only will "the system" then treat such asinine opinions as gospel from on high—unless and until a higher high priest overrules it—but often the general public will as well. "But if the courts have ruled

that you're wrong, then you must be wrong!" So why bother writing down the law, if it means whatever some judge asserts that it means instead of meaning what it says? Why have a legislature and an executive branch, if the statutes and regulations they spend so much time and effort creating can be single-handedly rendered irrelevant by the "ruling" of a guy in a black dress? Just drop the charade, declare judges to be infallible supreme beings, and be done with it. Forget the tax code, forget the regulations; whether you owe something, and how much, is now determined solely by what the guy with the wooden hammer says. And woe to those heretics who dare to suggest that guys with wooden hammers can be wrong about something.

Lessons About the Media

The main thing I learned about the mainstream media in this country is that it is utterly worthless if you want a reliable, accurate source of information. I base that conclusion upon my own experience with the media misreporting and mischaracterizing my own case, and similar cases with which I am familiar. Whether the media's complete failure to accurately report the facts is due to some big conspiracy, or just laziness, I won't bother to guess. But I would categorize the media irresponsibility I've seen into three groups: spinning, parroting, and lying, each of which deserves a few words.

1) Spinning

There is a big difference between reporting and editorializing. Each is a worthy endeavor, but the media has a nasty habit of disguising opinion pieces as reporting. If you want to publish something that says "I think anyone who disagrees with the conventional wisdom about the income tax is a dumby-face poopoohead," be my guest. Unlike the government and the courts, I fully support freedom of speech. But don't pretend that your personal opinions constitute a neutral recitation of facts, which is what "reporting" is supposed to be. For example, you won't catch me claiming that this book contains only an objective, unbiased account of the facts of my case. But in the press, opiners are constantly pretending to be reporters.

Sometimes editorial spin is blatant, and sometimes it is subtle. I'm not talking about lying (yet); I'm talking about people sneaking their own bias into what they pretend is objective reporting. I'm not against personal opinions (obviously), but if your job is to report the news, then present the facts and then shut up. I'm not sure I could do that myself, but then, I don't call myself a reporter. Compare the following:

a) "A group of people protested the new school curriculum, because they want their children to be taught that the earth is flat."

b) "A group of clueless nut-jobs with no grip on reality protested the new curriculum..."

The first is reporting; the second is giving an opinion. It happens to express an opinion I might agree with, and might voice myself, but it still isn't reporting; it's giving commentary. The effective media spin is usually a lot more subtle, however, and is sometimes hardly even perceptible—the reader feels as if he was just told the facts, but by the end his opinion is leaning in the same direction as that of the author.

David Cay Johnston, spin doctor of tax-related issues for the *New York Times*, is a prime example. In various private e-mails to me and others, Mr. Johnston didn't bother to hide the disdain, contempt, and animosity he feels toward anyone who dares doubt the wisdom of the "tax experts"—especially those in government, who seem to have a pretty cozy relationship with Mr. Johnston. But in his published articles, Mr. Johnston encodes his arrogance and hostility into subtle spin. (In contrast, as you may have noticed, when I think someone is a butt-head, I don't bother trying to hide my opinions.)

The art of persuasive spin lies in constantly using little verbal "nudges" which, taken one at a time, don't seem very significant, but taken altogether push an agenda or opinion quite effectively. Rather than nitpick over a million little examples, I'll mention the most popular spin found in almost every article in the mainstream media having to do with the 861 evidence: the misuse of the term "tax protestor."

A tax protestor is someone who protests a tax (obviously). A lot of people have complaints about a lot of taxes, often with good reason. Some think taxes are unconstitutional, or immoral, or economically destructive, or they object to taxes being used to fund wars, or the welfare state, or anything else they don't like. Those are tax protestors, some of whom go as far as refusing to pay based upon their political, religious, or moral beliefs.

While I respect such people, "protesting" the federal income tax is not at all what I am doing. Yet almost without exception, every mainstream article mentioning me, or anyone else who believes that the law is just fine but is being misapplied, uses the term "tax protestor." If it only happened a few times, it could be explained by mere reporter incompetence. But when it happens constantly, even after it is carefully explained to pseudo-reporters (like Mr. Johnston) that we are not protesting any tax, then it is no accident.

So why do they call us "tax protestors" when they know that it is inaccurate to do so? Because, in the eyes of most people, the term carries a negative connotation. (This is similar to the way government officials and reporters use terms such as "extremist," "compound," and "arsenal" to describe the beliefs, homes, and guns of anyone they don't like.) In the mind of the average reader, the term "tax protestor" evokes an image of some law-breaking malcontent who refuses to pay his "fair share" to support this great country of ours. Why don't reporters talk about "someone with an unusual conclusion about the correct application of the law"? Because it doesn't invoke enough pro-government, anti-us bias in the mind of the reader. And that is the aim of spinners like David Cay Johnston.

(I know of *one* mainstream reporter who actually objectively reported the facts of my case, in March of 2005. I would thank him by name, but he would probably get fired if I did. The article quoted Floyd Miller as saying that "*a jury would ultimately decide the merits of the Roses' position*," which was a silly thing to say, since juries aren't even allowed to decide what the law is. But more amazingly, the article quoted Mr. Miller as saying this: "*Based on the law as I understand it, I think the overwhelming authority is that he's wrong*." What kind of uncertain, floundering prevarication was that? As he *understands* it, he *thinks* that most courts say I'm wrong? He doesn't sound very sure of himself, but that didn't stop him from prosecuting me for it.)

As another fine example of Mr. Johnston's spin technique, when Joseph Banister, former IRS Special Agent, was acquitted of the bogus charges the government threw at him, David Cay Johnston's reporting of it started by saying this: "*The federal government's campaign against income tax protesters suffered a major setback yesterday...* " Aside from his usual misuse of the "tax protestor" label, consider the implied viewpoint of the sentence. The theme was not "man found not guilty." No, that's too pro-Joe. The theme was a "setback" for the United States government, with the term "setback" clearly implying that Joe was guilty of a crime, but "got away with it." An innocent person being acquitted would never be characterized as a "setback"; it's called justice. The article also said: "*The verdict stirred concerns that it would encourage more Americans to refuse to pay taxes...* " Note the vague reference: stirred concerns among whom? The article was written from the perspective of the government. Hell will freeze over before the *New York Times* will ever speak of the federal government's terror campaign against anyone with an honest disagreement "stirring concerns" among the people. Why? Because Mr. Johnston has no connection to the real American people, only to those in government. Like a good psy-ops (psychological operations) fear-monger, in his article Johnston also harped on other people being convicted, to make sure his readers remain scared to death of the IRS, despite Mr. Banister being acquitted.

In e-mail exchanges with me, Mr. Johnston also demonstrated the classic outcome-based belief system, where the conclusion is everything ("Pay your fair share!"), and how you reach that conclusion doesn't matter. In an e-mail on January 12, 2003, he claimed that "*Section 861 itself makes all wages earned in the US subject to tax whether paid by a domestic company or a foreign company*." In other words, he fell for all the cover-ups that have occurred to that part of the law over the years. So I showed him where 861 came from (Section 217 from the 1920s), and its subsequent evolution, and then asked two questions: 1) "*Did Section 217 of the Revenue Act of 1921 show the domestic income of the average American to be taxable?* " (The answer to that is obviously "no.") 2) "*Has the scope of that section significantly changed between 1921 and the current Section 861 and following?* " (Again, the evidence clearly shows the answer to be "no.") After that, on February 1st, 2003, Mr. Johnston claimed that "*Section 861 only applies to 1) Those living in the United States who have income from outside of the United States. 2) Nonresident aliens who have taxable income from inside the United States. For everyone else, notably individuals who work in the United States for any employer, Section 861 is irrelevant*."

So he basically went from "Section 861 means your income is taxable" to "Section 861 isn't about you at all." Hilariously, after I publicly pointed out his obvious flip-flop, he said "*I have never done any about face*." He cut off further discussion by saying that when a *judge* agrees with me, he'll pay attention.

Nice attitude in an investigative reporter: when the *beneficiaries* of a huge fraud admit that a fraud was committed, then he'll pay attention. Not before. ("When a high priest endorses your wacky theory about the earth going around the sun, then I'll pay attention. Until then, I hope they lock all of you astronomy protestors up.")

2) Parroting

Unlike the first, this second type of media irresponsibility can often be attributed to good old-fashioned laziness, rather than some devious agenda. When given the choice between having to go

find out some actual facts, or using a five-minute phone call to get some juicy quote from a government official, most reporters will do the latter: "'These evil tax protestors should be burned alive,' said IRS Commissioner Ima Thugg." This common method of lazy parroting converts the media into a mouthpiece for the government, rendering the First Amendment pointless. It's not always easy to tell whether the reporter was just trying to get out of doing the work of actually investigating the story or intentionally assisting the agenda of the extortion machine. Either way, the result is the same.

On more than one occasion I've personally seen most or all of an IRS or DOJ "press release" (read "demonize-and-threaten piece") converted, with minimal changes, into something that is then passed off as a "news" story. It's hard to get any more biased than that: letting the government write the "news." (Since my trial, the Bush administration has found itself with egg on its face, having been caught doing just that: having government propaganda presented as news items.) I'm still waiting for the day when the non-reporters drop all pretense and just print every article in this format:

Associated Press - Washington, D.C.
"[Complete 400-word government propaganda piece]," said officials yesterday. — by Laze E. Perrut

Often the "news" stories about us "tax protestors" (which we aren't) summarize—and mischaracterize—what we think, but then directly quote the often condescending, threatening statements of IRS Commissioners (e.g., Charles Rossotti, Mark Everson), or my own favorite character assassin, Eileen O'Connor, head of the "Tax Division" of the DOJ, and spewer of some of the most caustic, insulting, and inaccurate anti-861 drivel to come out of government (which is really saying something). Hey Eileen, how about answering them darn questions when ya get a chance?

In late November of 2004, the U.S. Attorney prosecuting Joseph Banister (former IRS Special Agent) and a man named Al Thompson was quoted as saying this: "*The blatant and far-reaching defrauding of honest taxpayers by these two individuals warrants an aggressive federal prosecution. This case should serve as a stark reminder to our citizens that caution should be heeded when approached by those advocating wild theories as to why one does not have to obey federal tax laws*." Mark Everson, IRS Commissioner and master question-evader, piled on, saying "*Joe Banister, a former IRS agent, knew exactly what he was doing. Tax professionals and employers who break the law will be held accountable*." Insult, mischaracterize, slander, demonize, and then attack, with the express purpose of teaching the general public a lesson about what happens to dissenters. And the media gives these terror tactics free publicity all the way, by passing off the parroting of government propaganda as "reporting." (In Joseph Banister's case, however, since the brave and noble Mr. Banister ultimately kicked the government's collective butt, they stopped talking about it.)

3) Lying

David Cay Johnston is a liar. I find it hilarious that he won the Pulitzer Prize for his tax-related distorting—I mean reporting—in the *New York Times*. I guess the *Times* is determined to uphold its reputation as a worthless rag written by chronic liars. Lots of reporters make mistakes, which is bad enough, but that's not the same as lying. When, for example, Mr. Johnston "reported" that I believe that the federal tax laws are "invalid," he was lying. When he "reported" that I think the income tax is unconstitutional, he was lying. In another "story," in April of 2004, Mr. Johnston said that Section 861

"*explicitly states that with minor exceptions, all wages paid in the United States are taxable, a fact that even Larken Rose, the leading promoter of the 861 position, acknowledges*." Another lie: I have never "acknowledged" any such thing, since it's not true. But, as with all his other lies and mischaracterizations, he knew that only the tiniest percentage of his readers would ever think to research the issue for themselves, so his lies would be accepted as fact.

Having personally conversed with him at great length on the phone and by e-mail, I can attest to the fact that Mr. Johnston knows exactly what I believe, but over and over again has chosen to intentionally mischaracterize my conclusions, because telling the truth just didn't fit his agenda. And what a coincidence that in the seven or eight *New York Times* stories in which he has mentioned me by name, he has never seen fit to mention the web addresses of any of my web sites. I guess enabling people to research issues for themselves also doesn't interest those at the *Times*. Oh, but wait: he *did* reference the "Quatloos" website—the one I mentioned before, which calls me a "human cockroach"—as an authoritative site refuting "tax protestor" claims. Nice objective, balanced reporting, Mr. Johnston.

I have concluded that the law shows that my income is not taxable. How hard can it possibly be to report that fact? Whatever they want to say afterward, and whatever spin they choose to pile on, is it really so difficult for reporters to at least get the basic idea right? No. So why don't they? Because if this issue ever finds its way into a rational public debate, the fraud is over, and lots of government bureaucrats, officials, lawyers and judges are in deep doo-doo. The government is utterly incapable of refuting the evidence, so it has to do whatever it can to avoid having people ever look at it. So our noble "public servants" vilify anyone who raises the issue, call it "frivolous," mischaracterize it, tell people that horrible things await them if they bring up the issue, and so on. Luckily, we have the courageous media to expose the truth! Unluckily, the mainstream media, being as courageous as a neurotic rabbit, says pretty much whatever those in government want it to say.

In an e-mail to someone else (in early May of 2004), David Cay Johnston showed that objectively reporting facts is not what he does; he is an advocate for the government extortion machine. First, he said this: "*As someone who is exhorting people to commit felonies, Mr. Rose's conduct is a matter of significant public interest*." How is encouraging people to ask the government questions about how to obey the law the same as encouraging them to commit felonies? But his real agenda was revealed in another comment he made: "*Exposing those who commit crimes and providing the public with information about false claims is a public service*." His goal is not to report both sides: it is to convince people that I'm a nasty criminal, and that my conclusions are incorrect.

Slander the Messenger!

The ultimate lesson I learned regarding the degree to which the media serves as a propaganda arm for the government occurred in June of 2004, when some particularly slimy feds decided to throw a particularly slimy accusation at me, totally unrelated to the tax issue. I will not assist their slander by detailing the nature of it here, but the first I heard of it was when someone informed me of an article in a local newspaper eagerly spreading the defamation. When the government eventually withdrew the bogus accusation, "*because in the opinion of the attorneys for the United States such*

dismissal is in the interests of justice," the paper—surprise, surprise—did not mention it. (As a result, some busybodies, even in my home town, *still* gossip and theorize about the accusation.) I'm not sure which is worse: a government that would try such a transparent and sleazy stunt in an attempt to publicly smear and discredit someone who says things the government doesn't like, or a lazy media that would so eagerly help the government to do so. We're lucky enough to have both. Coincidentally (maybe), three months *before* that stunt, in a message to my e-mail list, I talked about "*what I would do if I was a slimy criminal bent on preserving a trillion-dollar fraud (i.e. the federal income tax)*," and the *first* thing I suggested was to demonize anyone who was pointing out the truth by "*publicly accus*[ing] *him of something heinous enough that most people would cower from wanting to be in any way associated with him*." I guess the feds read my message and took my advice. It worked to a certain degree, though just about all of those who really know us could see right through the feds' transparent stunt, and just got more angry at them.

I am almost certain that the smear campaign was the idea of Floyd Miller, who "leaked" the accusation to the local newspaper before I had heard a word about it—a stunt that shocked even some feds I talked to. I must also note, however, that as far as I can tell, it was someone else at the DOJ—someone with some honesty and integrity (if you can believe it)—who eventually put an end to the bogus accusation, but not before I had coughed up some serious bucks to retain a defense lawyer, not knowing what "evidence" the feds might try to fabricate. Isn't it convenient for them how even accusations that they never follow through on—in that case there was a public accusation, but no trial and no indictment—can still seriously damage the reputations and finances of anyone they don't like? In our lovely system, they don't need someone to actually be guilty of anything in order to destroy him, thanks in large part to the lazy mainstream media and the gullible public.

The "Tax Honesty Movement"

The main thing I learned about the people in "the movement"—which has gone from being called the "tax protestor movement" to the "tax honesty movement"—is that they think pretty much the way everyone else does, which is a good thing *and* a bad thing. (I'll explain further below.)

The government likes to lump various people into the category of "tax protestors," even though often that is an inaccurate description. In addition to the genuine tax protestors, the government works hard to stick that label on people to whom it doesn't apply—people who are not "protesting" the law at all (including me). I have great respect for those who put themselves in harm's way by defying immoral laws through civil disobedience. As such, I consider the label of "tax protestor" to be a badge of honor. However, the label simply doesn't apply to me. I was not objecting to or refusing to comply with an immoral law; I was pointing out what the law actually says, and complying with it. So, by trying to remove the "tax protestor" label from myself, I'm not disparaging those to whom the label accurately applies.

In addition to the true "tax protestors"—those who simply object to the law on moral, political or religious grounds—there are also a lot of people who believe, for various different and sometimes conflicting reasons, that most Americans don't actually owe federal income taxes. Because they have similar-sounding "punchlines" (i.e., "We don't have to pay!"), it's all too easy for the average spectator to become confused about who is saying what, so in many people's minds they all get

lumped together into the category of "tax protestors," and the government goes to great lengths to encourage such stereotyping. Just to give a taste of the theories that are out there—and to distinguish them from what I am saying—here are a few of the more popular theories about the federal income tax:

1) Some claim that the Sixteenth Amendment to the Constitution was never properly ratified by enough of the states to make it valid. As a result, they reason, the income tax itself is invalid, because what (supposedly) authorized it is invalid. Personally, I don't know or care at all whether the Sixteenth Amendment was properly ratified. Why? Because, contrary to what many in government and those who harp on the Sixteenth Amendment believe, that amendment—whether ratified or not—did not give Congress any new taxing power, and is not the source of Congress' power to impose an income tax. The Sixteenth Amendment merely confirmed that federal income taxes are always "indirect" taxes, which need to be uniform but need not be apportioned. It did not create the power to tax incomes—a power "*possessed by Congress from the beginning*" (*Stanton v. Baltic Mining*, 240 U.S. 103 (1916))—nor did it have *any* effect "*on which incomes were subject to federal taxation*" (*South Carolina v. Baker*, 485 U.S. 505 (1988)). So you can probably see why I don't care whether it was ratified or not, and why I don't bother arguing about it.

2) Some claim that the federal income tax is "voluntary," meaning that payment is not legally required. This claim is based mainly upon the propaganda and rhetoric found in the IRS's own publications and statements. But the government's frequent references to "voluntary compliance" with the tax laws is nothing more than Orwellian bullpoop. (Because most people file and pay *before* being specifically threatened with punishment, the feds talk as if that makes it "voluntary.") But the important thing to note here is that the law itself does *not* say that the tax is "voluntary." One could say that someone who has no "taxable income" can nonetheless "volunteer" to pay a tax on what is legally exempt income—which perhaps is why the IRS uses the rhetoric it does—but when it comes to people who actually have taxable income, there is nothing "voluntary" about the tax.

3) There are many variations on another claim, which says that the federal tax laws apply only on federal land, such as Washington, D.C. and the federal territories or possessions. Along the same lines, some argue that the term "United States," as used in the federal tax laws, does not include the 50 states. While I believe such a conclusion is a result of misunderstanding both the statutes and the related court rulings—which I've explained in detail on my web sites—those people are just arguing themselves into a corner anyway, since income from outside the "United States" (whatever the meaning of the term) is taxable for U.S. citizens. (Some then try to escape that corner by arguing that Americans are really "nonresident aliens" and not citizens.)

4) A lot of people over-generalize the issue into a statement like this: "There is no law that makes me liable to pay federal income taxes." I agree, but for a different reason. Despite the IRS's astonishing inability or unwillingness to answer even answerable questions, a fairly simple answer they could give is this: Section 6012 requires anyone who receives significant "gross income" to file a tax return, and Section 6151 requires the one who files the return to pay the tax. Of course, if all of your income is exempt, i.e., if you have no "gross income"—which is what the 861 evidence is all about—then that answer doesn't answer anything.

5) Some argue that the Fifth Amendment makes it illegal for the feds to force people to sign tax

returns, since those returns can be used against them in court, making such returns "forced confessions." To be fair, they have a point. Unfortunately, the black-robed tyranny-justifiers have done all manner of logical tap-dancing to get around that claim, often contradicting each other in the process. In this case, it's not so much that I disagree with the claim, but that I think it is a lot less important than whether we owe the tax to begin with. As a matter of PR, if a person believes that he owes the tax, but refuses to file a return based on Fifth Amendment issues, most people would view him as being a greedy sneak who is trying to get out of paying his fair share. I would much rather be able to demonstrate that I don't actually *owe* the tax, rather than showing that I found some sneaky way to get out of paying what I owe.

6) One of the most common claims out there is that wages—getting paid for doing work—do not constitute "income." There are several variations on that argument, but they usually end by concluding that only corporate profits or payments received from the government constitute "income," while the wages of the average American do not. Note, arguing that one received no "income" is *not* the same as arguing that one's wages are not *taxable* income. Again, I won't bother with the thorough rebuttal to the "wages aren't income" claim here, as I've done on my web sites, but I will mention that over the years, the tax statutes and regulations have used about every term I can think of—including "compensation," "wages," "remuneration," and "salaries"—to describe getting paid for doing work, listing it as a type of "income" that can be taxed (*if* it derives from a taxable "source" or activity). The Supreme Court has repeatedly said that "income" means the gain derived from labor, from capital, or from both.

Those are just a few of the myriad of unorthodox claims out there having to do with federal taxes. Based on my experience, I believe that most of the time (not always), such claims are advanced by well-intentioned people who honestly believe what they are saying. I happen to think they are dead wrong. However, I would never in a million years try to force them to shut up, nor would I prosecute them for doing what they believe the law requires (which is not a crime). You see, unlike our wonderful "public servants," I don't believe that someone having a different opinion from mine gives me the right to try to rob him, harass him, prosecute him, and put him in a cage.

To wit, I believe that what the DOJ has done to Mr. Irwin Schiff, whose legal conclusions I very much disagree with, amounts to murder. I sincerely hope that Mr. Schiff lives to see freedom after his *third* prison sentence, at which point he would be almost ninety years old. Regardless of any academic disagreements I have with him, I have never seen a shred of evidence indicating that Mr. Schiff does not believe what he is saying, and therefore I have no reason to think he has committed a crime. The treatment he has received at the hands of the "Federal Mafia"—Mr. Schiff's own very accurate term for the federal government—is a despicable abomination in a country which still pretends to care about freedom and justice.

So let me be perfectly clear. I don't want anything I write here to be construed as condoning, even in the slightest degree, the abuses and oppressions imposed by the government upon those with views contrary to mine. If someone is mistaken or confused, correct him with answers and evidence, not with the heel of a jackboot.

Understanders Versus Believers

Now for the depressing news. In my experience, the majority of people in "the movement" do what almost everyone else does: they base their beliefs upon what sounds nice, what looks snazzy, and what they *want* to believe. Many of them are no more objective, and put no more effort into understanding the law, than John Q. Public does. As a result, "fad" theories constantly appear, disappear, and reappear within the movement, gaining support one month and losing it the next (often after someone is silenced or convicted). There seem to be a lot of "fair-weather friends" available to anyone who wants to fling a theory out there, whether or not it is backed by any evidence.

I have long believed that a split in the "movement" is both inevitable and necessary. The "believers" (the ones who take things on faith because they sound nice) and the "understanders" (the ones who objectively research things for themselves) just do not function the same way, and despite apparently having common goals, they are fundamentally at odds with each other.

As I have said before, much to the chagrin of many in the "movement," one of the things that has done the most to keep the income tax deception *alive* is the "tax honesty movement." By constantly putting out incorrect, sometimes downright goofy theories about the tax laws, it has only reinforced the impression in the minds of the general public that "tax protestors" are all clueless wackos. In fact, if I were a really slimy politician, I would want to *support* people who make provably incorrect arguments, in order to discredit *all* of those who disagree with conventional wisdom, using guilt-by-association tactics. "Oh, he's just another one of those silly tax protestors who doesn't want to pay his fair share." Even when the nonconformists have the best of intentions, their efforts often end up doing more harm than good, simply because they inadvertently add more confusion and error to the discussion, instead of more truth.

Even in prison, I've received letters from people who mean well, but who insist on praising and promoting the new "silver bullet" theory du jour—which is neither new nor correct—in hopes of slaying the IRS beast. In short, most people just want to save themselves from the federal extortion machine.

Though that's a noble goal in itself, one result is that hardly anyone wants to go to the trouble of finding out what is actually true, before latching on to some supposed cure for the problem. People just want something to believe in, someone to follow. The results are rarely pleasant.

The government has, on occasion, spoken of my "followers" or my "adherents." Though I suppose I may actually have some of them, that is not at all what I want. I want only fellow *understanders*, who insist on seeing and understanding the evidence for themselves. Thankfully, there are quite a few of them out there. And those people cannot be swayed by the outcome of a trial, or an insulting form letter, or a threat from some IRS goon. Yes, they might be scared into obedience, but the truth cannot be wrenched from their minds by any amount of vilification, obfuscation, or terrorization. They know the truth, they pass it on to others like themselves, and so the truth will live on.

Unfortunately, there are also a lot of fad-followers, who flit from one "argument" to the next, never really understanding any of them, and never knowing what is true and what isn't. (Apparently some still believe that if I had relied on their pet theory, or said certain magic words in court, I would have been acquitted. They don't want to hear about those who said just what they suggest and ended up in prison anyway.) Of course, I'm not saying people should ignore everything except the 861

evidence. On the contrary, all sorts of theories and claims should be looked into, as I looked into them long before I ever heard of 861. But all claims should be investigated with an open mind: open to the possibility that they are true *and* open to the possibility that they are false. Not many people seem to want to do that, and the truth suffers for it. I admit, it's a lot of trouble having to find the truth for yourself, especially when highly paid lawyers have spent almost a century trying to make it impossible to find or understand, and when an avalanche of incorrect theories is almost burying it. On the other hand, it's really easy to blindly believe whatever someone asserts to be true, whether it's your CPA saying "Of course you owe it," or some crazy dude like me saying "We don't owe this tax."

History is replete with prolonged, unnecessary injustices and hardships which were the direct result of people not wanting to think. I wish I thought the future looked better. From where I stand right now, it doesn't.

Lessons About the American Public

The main thing that I learned over the past few years about the American public is that it consists mostly of unthinking, authority-worshiping imbeciles. If I seem a tad bitter, it's because I am. (Maybe even more than a tad, whatever a "tad" is.) After twelve randomly selected village idiots, representing the American people, had a front-row seat to the trial described above, they decided to declare me guilty of a crime I didn't commit. So if I can't resist using a few less-than-complimentary terms to describe the jurors in my case—such as morons, twits, dolts, birdbrains, imbeciles, buffoons, numskulls, jackasses, blockheads, idiots, dimbulbs, lamebrains, boneheads, bozos, fools, and so on—please keep in mind that I am currently in prison, instead of at home with my friends and family, due to their profound stupidity and utterly asinine verdict, resulting from their intellectual and legal irresponsibility and negligence.

While pondering the thought process the jurors must have employed in reaching their verdict, I was forced to conclude that actual thought played no part in their decision. Had they actually understood the nature of the crime I was accused of, they would have known that they were required to give a verdict of "not guilty" if they even had a doubt about whether I believed I owed the tax. Conversely, to justify a guilty verdict, every single one of the jurors would have had to conclude that the government had proven, beyond any reasonable doubt, that I believe my income to be taxable. The prosecution introduced exactly no evidence of that, because none exists. In fact, the prosecution never actually got around to *accusing* me of believing my income was taxable. Instead, the prosecution's message to the jury was that I *should* have decided that my conclusions were wrong. And why was that? Because I was aware of several legally worthless, non-binding, unsupported assertions from IRS paper-pushers and lower court judges saying I was wrong. Even if you accept the silly notion that those things should have made me just discard my many-years-long, intense academic study of the issue, what I "should" have believed is entirely irrelevant to the actual crime alleged. And despite the fact that the feds never got around to alleging one of the essential elements of the crime—kind of like charging someone with murder without alleging that someone had been killed—their demonization routine was enough to get a dozen boneheads to proclaim me to be a criminal.

And persuading the twits wasn't very hard. Throughout the trial, some of the jurors were hardly paying attention at all, doing their nails, occasionally dozing off. Several people noticed that one

female juror, who was inexplicably friendly and familiar with the court clerk, would pay rapt attention whenever the prosecutors were speaking, but would never even look at me when I was speaking. I've given a lot of talks to a lot of people, and I've never seen a less attentive audience in my life. Granted, they were there against their will, but when you have someone's freedom in your hands, you ought to *pay attention*!

The fact that twelve out of twelve jurors had to all reach the same wrong conclusion shows that unthinking boneheadedness is common. And the fact that equally boneheaded verdicts were given in other cases, by other juries—in my wife's case, in Dr. Tom Clayton's trial, in Richard Simkanin's trial, and others in which there was no evidence of "willfulness"—again demonstrates that the inability to think is pretty darn widespread in this country.

Sometime after the trial, a person claiming to be one of the jurors in my case posted something online whining about the "*jury-bashing*" and "*unfair criticism and insults*" coming from my supporters, saying he didn't appreciate the "*vicious slander*" against the jurors. (Oh, boohoo. Try sitting in prison for a year for a crime you didn't commit, jackass. Then you can whine to me about unfairness.) As far as I can tell, the messages did come from one of the jurors: a young college twerp whose name I won't divulge. After acknowledging that they were out for only 90 minutes, including lunch, Mr. Juror stated that that was because they "*simply felt that there was not much to deliberate*." The evidence, he said, "*spoke very loudly and clearly*" that I was guilty on all counts. Then he said this: "*As press releases have stated, we found very quickly that Mr. Rose did not possess a 'good-faith' understanding of the law, as was one of the elements required to be proven for a not-guilty verdict*." One of the elements the defense had to prove to get an acquittal?! Of course, as the judge repeatedly instructed (e.g., "*Larken Rose does not have the burden of proving good faith*")—and as most Americans ought to know anyway—the defense doesn't have to prove anything; the defendant is to be assumed innocent unless and until the government proves every element beyond a reasonable doubt. And how had I not demonstrated that I honestly believed my income to be tax-exempt? Did they all sleep through my explanation of the issue? Maybe they were too stupid to grasp my position, so they decided to just ignore it.

Mr. Juror then responded to various messages of disgust concerning how cheerful and carefree the jurors appeared when leaving (two of them arranging a date for later): "*Why shouldn't we be upbeat after the trial? We did what we felt was our civic duty, and we had every intent to continue on with our lives—I think it bears no indication on our deliberation that we were jovial after the trial*." Actually, it bears on the fact that they took no responsibility upon themselves; they rubber-stamped the government's inquisition, and went on their way.

When someone I know started asking Mr. Juror questions about the 861 evidence—in an infinitely more polite and patient manner than I would have—Mr. Juror responded that "*our charge was not to actually look at the substance of the law and decide whether Mr. Rose's arguments or the instructed law were correct*," and that instead their verdict was about "*the concept of a 'good-faith misunderstanding' of vs. a disagreement with the law*." That would be fine, if they knew what they were supposed to be deciding, and if they had bothered to take the evidence into account. The jury, Mr. Juror said, decided that I "*did not in fact possess a good-natured misunderstanding of the law, which was described in the charge as being absent of ill will*." "Good-natured"? Where the

heck did that come from? So I was supposed to be more *cheerful* in my disagreement with the IRS paper-pushers?!

Actually, the jury instructions properly defined "willfulness" to mean "*doing a voluntary, deliberate and intentional act, knowing the conduct was unlawful and intending to do something that the law forbid*." (I don't see anything in there about being cheerful or good-natured, do you?) Funny how the jury saw only those parts of the instructions that the government wanted them to see (and wanted them to misunderstand). The instructions did mention an absence of "ill will," in trying to define what "good faith" means, which was completely inapplicable in this context. Whether I like the IRS, and whether I'm nice to them, has nothing to do with whether I believe I owe the tax.

Twice Mr. Juror stated that I didn't take the "*proper steps*" to test my "argument," which (of course) would be asking a "judge"—a beneficiary of the fraud—to tell me whether I was right. Golly, I wonder where they got the idea that that would be the only "proper step" for me to take. He then said that instead of taking the proper steps of asking a "judge" whether I was right, I "*opted to taunt the IRS for a prosecution, and racked up an impressive history of threatening statements regarded* [sic] *them*." Threatening statements?! Wow, these people's brains are like Silly Putty: squish on the government-approved message, and it sticks. I never threatened anyone, but the federal liars, with their harping on the paranoia of IRS doofi (plural of "doofus"), managed to make these mush-headed sheep hallucinate actual threats being made.

So the jury fell—hook, line and sinker—for the garbage spewed by the government: that they should decide what I believed based upon my attitude toward the IRS (including non-existent threats), and my failure to sue the IRS. Um, what about my legal analysis of the law itself? What about the reason I believe I don't owe the tax? Nope, that doesn't matter. Gack.

We Do What We're Told

While my current locale (a federal "prison camp") is much preferable to a "real" prison, it's not preferable to being at home with my wife and kid. My daughter, who just turned nine, doesn't get to have her daddy at home for a year. My wife has to hold our world together by herself until I get out. Yes, compared with what a lot of other people have been through, this may not seem like much. But to me it's pretty damn serious. So why did it happen? You might say—and now I would agree—that it was my own dang fault for having any hope that a jury, presumably of my peers (yeah, right), might have done anything differently. But why did they decide the way they did? It certainly was not because I was proven guilty of any crime. And though I bash the intelligence (or lack thereof) of the jurors in my case, mere stupidity can't explain it either. After all, stupid juries can say "not guilty," too. So why did they unanimously declare me guilty of a crime which I not only did not commit, but which the government came nowhere near even suggesting that I committed?

Let me answer that question with a little seemingly irrelevant historical perspective. How many people have considered the atrocities of Hitler's Third Reich and wondered aloud, "How could that have happened?" Were Germans especially evil? No. Were they stupid? No. So how did it happen? The most thorough and most disturbing answer I can think of comes from Dr. Stanley Milgram, who conducted very interesting (and controversial) studies having to do with human psychology and

behavior, the results of which are to be found in his book, *Obedience to Authority* (which I highly recommend). Here is the super-condensed, slightly oversimplified overview:

The experiment Dr. Milgram and his cohorts were *pretending* to conduct worked like this: Volunteers would help study whether human memory could be improved by zapping people with electricity when they gave the wrong answers to memory questions. However, the volunteers doing the zapping were the real subjects of the experiment, while the "zappees" were only actors (who weren't really being zapped). In short, the question Dr. Milgram was actually exploring was "*To what extent will average people inflict pain and suffering on others, simply because a perceived 'authority' tells them to?* " (I bet you can guess where this is going.)

The answer to that question, as illustrated all too gruesomely in the results of the experiments, shocked even Dr. Milgram. To skip the gory details, most of the average folk studied were willing to inflict what they believed were excruciatingly painful, possibly *lethal* jolts of electricity upon innocent strangers, simply because a perceived "authority" told them to do so. The zappers would often sweat, tremble, object, or even cry, but when "authority" told them to press that button, *they would do it*, even if the "zappee" loudly objected, screamed in pain, complained of heart problems, or feigned unconsciousness.

And *that* is how I was found "guilty" of my supposed crime. It had nothing to do with evidence or law. "Authority" told twelve people to "zap" me, and they did. Like good little Nazis, they did their civic duty and inflicted harm upon whomever government told them to harm. It's no more complicated than that.

And remember, in Milgram's experiments the "zappees" were pretending to be just normal folk. As you can imagine, even a little dose of demonization of the target will make the common man even more likely to hurt someone when "authority" tells him to. In my case, after the government had finished chanting "A witch! A witch!" the jurors probably had very little go through their (alleged) minds other than "We file, he not file. We obey, he not obey. We good, he bad. Burn witch! Ooga." The same holds true for whichever beanheads on the grand jury voted to indict. Had I been in an electric chair at the time of the verdict, I wouldn't be at all surprised if Floyd Miller could have gotten those twelve jackasses to pull the switch and fry me on the spot.

Forget the law, evidence, proof, logic, reason, or any of that other irrelevant stuff. The "Milgram factor," along with a little vilification and ostracization ("He's not one of us!") was all it took. Guilty of nonconformity! Burn him! Thanks loads for considering things objectively, you bunch of dumbasses.

This also brings to mind the experiments regarding human psychology conducted by Solomon Asch. To summarize, the test subjects were to look at a series of lines and indicate which lines were of equal length. In reality, all but one of the "subjects" were in on the scheme, and would all give the same *wrong* answer, to see how that would affect the answer of the one real test subject (who would give his answer last). Quite commonly, the test subject would give the same wrong answer as the others, even though the truth was staring him in the face, thus demonstrating that people will often believe and/or say whatever they think everyone *else* believes and/or says, whether or not there is any rational basis for it.

Likewise, my jurors, knowing nothing about the law themselves, must have concluded that I couldn't have believed what I was saying, because everyone else (as far as they knew) was saying something else. I am convinced that they were "projecting" onto me their own inability to think independently: they couldn't imagine believing something contrary to what "everyone" thinks, not to mention contrary to what self-proclaimed "authorities" had stated, so they couldn't imagine *me* believing it either. Basically, I was convicted because my jurors didn't have the mental capacity to hold an unorthodox belief.

I've observed this same phenomenon many times. I can't count how many people I know who have confidently and firmly declared, without a doubt, that my conclusions are incorrect, despite those people knowing absolutely nothing about the issue, or about the law. They exhibit an attitude of "I don't know what exactly you're claiming, but you're wrong." Not exactly the sign of open-minded, objective analysis. And some of them are people I've known for years, and who otherwise consider me to be both honest and intelligent. The loyalty to "what everyone knows" is so profound in most people that mere evidence and logic cannot shake it. I am evil, in the eyes of many, because I believe something they don't believe. Never mind *why* I believe it; that doesn't matter. What matters is that I said "B" when everyone else was saying "A," and that is not allowed. Others I know who *did* take the time to examine the issue, and as a result came to agree with me, have also become targets of animosity and disdain from the conformist ignoramus brigade.

I should add that I am very grateful that the punishment I received from our stupid system for the crime I didn't commit is about as bad as a stubbed toe compared to the punishments tens of millions of other nonconformists have received under the stupid systems of Stalin, Mao, Hitler, Pol Pot, etc. I am not at all trying to compare the *severity* of the injustice in my case to what happened under those other regimes. There is no comparison. But the basic problems of authority-worship, blind obedience, pack mentality, and a general inability to actually think are the same the world over and throughout history. Yes, even here, in the good old U.S. of A., where twelve people will put you in prison for trying to save *them* from being defrauded by their own government.

Based upon comments I've heard, first- and second-hand, from lots of other people, I don't think my twelve jurors were an anomaly. Most people seem to fit quite well into the mold of unthinking sheep, eager to condemn anyone who is not like them, judgmental about things they know nothing about, and reluctant to lift a finger to find out for themselves what is true and what is not. After spending many years speaking out about this fraud, and after Tessa and I put our freedom on the line to resist it, even most of the people we know *personally* still have never invested half an hour to find out what it is we're saying (much less bothered to find out if it's true). With friends like these...

In Conclusion

If you were hoping for a happy ending to this book, sorry to disappoint you. The main lesson I have learned, and want to share, is this: the American people don't care if they are being oppressed, controlled, robbed, and generally stomped upon by their government, as long as the tyrants promise to protect and take care of them. And not only is that a far more serious problem than any particular abuse of power, it is what allows abuses of power in the first place. Just like those oppressed by the Soviet empire, or the Third Reich, or the first caveman to declare himself chief, each American is so

afraid of "making waves" that he never moves a muscle, and we all sink together into the sea of tyranny. And if one does try to swim, the others can be counted on to immediately try to drown him. In short, the American people are getting exactly what they asked for, and what most of them deserve: tyranny. And I apologize for trying to deprive them of that.

The ultimate illustration of just how much trouble we're in is the amazingly high percentage of people who, when confronted with the allegation that their own government has been lying to them, robbing them, extorting them, and committing the biggest financial fraud in history, instinctively respond, first and foremost, not with righteous indignation or even curiosity, but with concerns about what might happen if the *government* had less money. "But if you're right, how will the government function?" In a country where the people don't seem to mind being illegally defrauded of a *trillion* dollars a year—which averages out to about $4,000 per man, woman and child in the country, every year—by their own government no less, it's a safe bet that the government will have a long, prosperous life. And freedom will die.

"Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it." [Supreme Court Justice Learned Hand]

If anyone knows a way to prevent that, please let me know. I gave it a shot, but so far it hasn't worked out so well.

Attempting to End on a High Note

People often ask me if I regret what I did. Obviously I regret the inconvenience and suffering my family has had to go through because of my efforts, and I regret having failed to win what would have been a huge victory for the truth and a huge blow to tyranny. But even if I wish I had done some things differently, I do not regret telling the truth, and resisting the fraud, regardless of the outcome.

Since at the moment I'm finding it difficult to come up with something uplifting to say myself, and since I'd like to at least try to end this book on something vaguely resembling an upbeat note, I will end by quoting two brilliant, courageous people: Supreme Court Justice Clarence Thomas—a man who knows first-hand what it's like to be maligned and persecuted by power-happy crooks—and my wife, who also knows what that's like. First, here are some excerpts from a speech given by Clarence Thomas:

You had better not engage in serious debate or discussion unless you are willing to endure attacks that range from mere hostile bluster to libel. ... Today, no one can honestly claim surprise at the venomous attacks against those who take positions that are contrary to the canon laid down by those who claim to shape opinions. Such attacks have been standard fare for some time. ... In my humble opinion, those who come to engage in debates of consequence, and who challenge accepted wisdom, should expect to be treated badly. Nonetheless, they must stand undaunted. That is required. And, that should be expected. For, it is bravery that is required to secure freedom. ... Even if one has a valid position, and is intellectually honest, he has to anticipate nasty responses aimed at the messenger rather than the argument. The objective is to limit the range of the debate, the number of messengers, and the size of the audience. The aim is to pressure dissenters to sanitize their message, so as to avoid being subjected to hurtful ad hominem criticism. Who wants to be calumniated? It's not worth the trouble.

But is it worth it? Just what is worth it, and what is not? If one wants to be popular, it is counterproductive to disagree with the majority. If one just wants to tread water until the next vacation, it isn't worth the agony. If

one just wants to muddle through, it is not worth it. In my office, a little sign reads: "To avoid criticism, say nothing, do nothing, be nothing." ... We all share a reasonable and, in many ways, admirable, reluctance to leave the safety and peacefulness of private life to take up the larger burdens and challenges of active citizenship. ...When one of my friends began feeling the urge to get involved, his spouse glared at him and said, "Don't even think about it. We love our life the way it is." And that is not an unreasonable perspective, not at all. But is reasonableness always our standard of review on this question? I hope not. ... I do believe that we are required to wade into those things that matter to our country and our culture, no matter what the disincentives are, and no matter the personal cost. There is not one among us who wants to be set upon, or obligated to do and say difficult things. Yet, there is not one of us who could in good conscience stand by and watch a loved one or a defenseless person—or a vital national principle—perish alone, undefended, when our intervention could make all the difference.
... If we think that something is dreadfully wrong, then someone has to do something.

And finally, I leave you with these words from my wife, which I forwarded to my e-mail list in early March of 2005, several months before we were put on trial. (Yes, I know how lucky I am to have such a person on my side and by my side.) It's the most positive message I could find with which to end the telling of this tale.

Ten years ago, the prospect of being indicted would have been frightening and stressful to me. But I was a different person ten years ago. The experiences of the last few years have thickened my skin and strengthened my resolve. One of the hardest things about the last few years has been waiting and waiting for things to happen. So this indictment is a relief. Things are finally moving toward our long-held goal of bringing this issue to court.

I would so love to be past all this, living a peaceful life again. But the only way out of this is right through it. From the beginning, there has never been another way out. I have tried, at times, to imagine a way to back up and somehow stop doing this, but I cannot. Once you understand the law, you can't un-understand it. Once you understand that your income isn't taxable, you're committing felonious perjury if you sign a return saying that it is. Once you understand that millions of people are being defrauded, you're killing your own soul if you keep quiet about it.

Every year, people in government grow more lawless, more arrogant, and more numerous. And their victims quietly submit, enjoying their lives in the hope that the thing they enjoy most won't be outlawed next. They see water running through a hole in the dyke, and they get out of the way so they won't get wet. At some point, don't we have to ask ourselves what we want for our children and grandchildren? If we think the government is too big to fight now, how much more powerful will it be in 20 or 40 years? Especially if no one resists it? Do we want our children to drown because we were afraid to plug the hole in the dyke?

Does anyone really think they are creating a better life for their kids by allowing civil rights and the rule of law to perish? Rights don't survive because they're written on a piece of paper somewhere; they survive because people fight for them, as we're fighting for them right now. The government wants Larken to shut up—if their tactics succeed, what does it matter that Americans have freedom of speech on paper? What good are elected representatives and written laws if, in practice, bureaucrats can just tell you what to do regardless of the law?

I've heard people say that you only destroy your own life by taking on a battle like this. The implication is that if you fight and lose, then you were wrong to fight. I guess they're right if a relatively peaceful, oppressed lifetime is their highest value. It's not mine. I value a free society, in which generation after generation can experience peace and prosperity, in which all of our children and grandchildren and great-grandchildren can make their dreams come true. Every action, large and small, must be judged in light of that value. Am I furthering what I value, or am I contributing to its demise? Whatever I choose, I will have to live with having made that choice. We are all on trial in the great court of history, and our great-grandchildren will judge our generation with clear eyes.

Some people think I'm brave. Well, no, not really. I'll never go sky diving or rock climbing. But I have only one life to live, one life with which to make a difference in the world, or not. If I'm afraid of anything, I guess I'm afraid of being a person whose life didn't matter, just one more ordinary person who cowered in safety and

let things get worse.

If we go to trial and lose, that will really suck. But it won't negate the truth we've brought to light, or the resistance we've made to the growth of rampant tyranny. Every act of resistance makes tyranny weaker. Many, many acts of resistance, even small ones, can topple it. I don't wish suffering on myself or anyone else, but I am proud of people who have stood up for truth and justice when it was dangerous to do so. And I'll be proud to BE one of those people, no matter what happens to me.

Tessa David Rose

APPENDIX A

TAXABLE INCOME
The Evolution of a Deception

(Revised 3/8/2008)
by Larken Rose

Introduction

For centuries the phrase "paying your taxes" has been used to express a citizen's duty to his country. But while most feel an obligation to pay their taxes, very few feel personally qualified to figure out just what their taxes are. Instead, they hire tax professionals, whose determinations seem to be one part accounting and two parts witchcraft. An astounding amount of money is spent every year, not just on the taxes themselves, but on paying tax experts to delve into the treacherous jungle of the federal tax code and come out with a solid number representing the client's tax liability.

It's no secret, however, that different tax-law witch doctors will end up with different bottom lines, based upon the *same* set of financial facts—strengthening even more the impression that deciphering the tax laws is more like astrology than mathematics. In fact, it is all but universally conceded now, including by top government officials, that the tax code is indecipherable, and that no one truly understands it all, or has even read it all. None other than Albert Einstein is quoted as saying, "The hardest thing in the world to understand is the income tax." Nonetheless, tens of millions of Americans are expected to comply with it every year, even though no one knows for sure what all it requires.

As it turns out, however, the United States federal tax code contains something far more sinister than its outrageous complexity. And though this "something" is admittedly complex, with a little effort it can be known and understood, even by those unaccustomed to dealing with the legalese voodoo of the tax code. (Ironically, it is those who are arrogant enough to believe that they already understand everything about the tax laws who seem to be the least able to understand and accept the incriminating evidence found in the labyrinth of law books.)

The evidence to be found by those who dare to look does not reveal mere complexity, contradiction, and unfairness in the tax code —none of which would be likely to surprise anyone—but instead shows something far more disturbing and more devious: not a mistake or a loophole, but a premeditated, prolonged, concerted effort to deceive and defraud the American public, to the tune of well over one *trillion* dollars ($1,000,000,000,000) every year.

Some dismiss out of hand anything they view as a "conspiracy theory," and the larger the alleged conspiracy, the less likely they are to believe it. A multitrillion-dollar deception will, therefore, be rejected out of hand as ridiculous by many people, regardless of the evidence. Albert Einstein also said that the highest form of arrogance is "condemnation before investigation." For those who dare to follow the evidence wherever it leads, the facts can speak for themselves. What follows is evidence of the largest financial fraud in history, perpetrated by agents of the United States government.

A New Kind of Country

After the American Revolution, in which the American colonies won their independence from England, there was vigorous debate over the form of government that should be installed. The "federalists" won out, and the result was the Constitution for the United States of America. The essence of the plan was quite simple: the governments of the individual states (formerly colonies) would retain their power, and each would, for the most part, continue as a sovereign entity. At the same time, there would be a union among the states, and a "federal" government which would handle certain specific matters concerning the several states. Issues such as postal routes, military-related matters, regulating commerce crossing state and country borders, and a few others, were thought to be better handled centrally, rather than different states handling such things in different ways. However, it was also agreed that the powers delegated to the federal government were to be strictly limited to specific tasks, and that all other powers would still belong to the people and the state governments. James Madison, often called the "Father of the Constitution," summed this up quite well:

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." [James Madison, Federalist #45]

In fact, the Ninth and Tenth Amendments to the Constitution (part of the Bill of Rights) were written specifically to make it clear

that the federal government was not to do anything other than what the Constitution specifically empowered it to do.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." [Tenth Amendment, U.S. Constitution]

The Power to Tax

Article I, Section 8 of the Constitution lists the powers that the federal government is authorized to exercise within the states. The list begins by saying that Congress was to have the power "*to lay and collect taxes*," which of course was needed to provide the funding necessary for the federal government to carry out its other duties. It was not long, however, before disputes arose about the extent of the taxing powers of the state and federal governments. Some argued that "the power to tax is the power to destroy," thereby concluding that if a government was not at liberty to regulate or forbid something, it also should not be allowed to *tax* it.

"[No] *state has the right to lay a tax on interstate commerce in any form* [because] *such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to congress. This is the result of so many recent cases that citation is hardly necessary."* [*Leloup v. Port of Mobile*, 127 U.S. 640 (1888)]

This raises the question: If Congress can regulate only certain matters inside the states, might it be able to *tax* only these matters as well? The U.S. Constitution does not spell out exactly *what* Congress can tax, but provides two sets of rules for two basic types of taxes, into which all federal taxes can be categorized: "direct" taxes and "indirect" taxes.

Direct Taxes: So-called "direct" taxes include per capita taxes ("head taxes") and property taxes, and under the Constitution all such "direct" taxes are required to be divided up ("apportioned") among the various states in proportion to the population of each state. (So, for example, if Pennsylvania had twice the population of North Carolina, it would pay twice as big a portion of the overall national tax.) Such "direct" taxes have been used only a very few times by the federal government.

Indirect Taxes: The other category of taxes, called "indirect" taxes, includes import/export taxes as well as "excise" taxes. The Supreme Court sums up what belongs in this category: "*customs and excise duties imposed on importation, consumption, manufacture, and sale of* ***certain*** *commodities, privileges,* ***particular*** *business transactions, vocations, occupations, and the like."*[1] *Instead of being apportioned, "indirect" taxes need only be geographically uniform, meaning they are applied the same throughout the entire country. Numerous "excise" taxes have been imposed by the federal government over the years, on everything from oleomargarine to wagering, and from distilling whiskey to manufacturing machine guns. In fact, all current federal taxes are "indirect" taxes.*

Where Does an Income Tax Fit?

At this point an astute observer might notice that a general, all-inclusive income tax does not fit well within either category: it is not a tax on property ownership *per se*, nor is it a tax on particular commodities or activities. So where would a general federal income tax fit in the Constitutional design?

The first federal income taxes were imposed in the 1860s, and it was not long before the "direct" versus "indirect" question made it to the Supreme Court. This eventually led to the ruling in *Pollock v. Farmers Loan & Trust*, (157 U.S. 429 (1895)), in which the Supreme Court threw out the federal income tax as being unconstitutional. The court concluded that a tax on income which comes from owning property (e.g., interest and dividends) is in essence a tax on the property itself, which would belong in the category of "direct" taxes. And because the income tax was not apportioned, as all direct taxes must be, it was deemed invalid. (Of note, the Court explained that its reasoning would not apply to income from things *other* than property ownership, such as wages, but it still threw out the entire tax, saying it was not at liberty to divide a law into pieces and then throw out only some of them.)

Unfortunately, the conclusive answer to the "direct" versus "indirect" debate, which came in the form of the 16th Amendment (in 1913), caused more confusion than clarity. That amendment reads as follows:

"*The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.*" [16th Amendment, U.S. Constitution]

The wording of that amendment quickly convinced a lot of people of two things:

1) Though the income tax is a "direct" tax, it does not need to be apportioned.
2) Congress had acquired the power to tax any income it wanted to.

While both of those conclusions are somewhat understandable based upon the wording of the amendment, both also happen to be *dead wrong*: the amendment did *not* authorize an unapportioned "direct" tax, and it did *not* allow Congress to tax all income from anywhere.

The Supreme Court, on more than one occasion, has made it abundantly clear that the 16th Amendment, rather than authorizing an unapportioned "direct" tax, merely confirmed once and for all that the federal income tax "*inherently belongs*" in the category of "indirect" taxes, which must apply uniformly throughout the country, but which do not need to be apportioned [2]. In reality, therefore, the 16th was more of a clarification than an amendment, as it did not actually alter Congress' taxing powers.

Limits on the Taxing Power

Far more significant than the misunderstanding about academic issues related to "direct" and "indirect" taxes is the false impression which the 16th Amendment created that, after the amendment was enacted, there were no longer any limits upon what Congress could tax, and that Congress could then tax all income, coming from anywhere and received by anyone, as the phrase "*from whatever source derived*" implies.

Once again, the Supreme Court made it clear that this is not the case. The Court has clearly ruled that the 16th Amendment "*conferred no new power of taxation*" upon Congress (which the Secretary of the Treasury officially agreed with in Treasury Decision 2303), in addition to ruling that the amendment "*does not extend the taxing power to new or excepted subjects*" [3], that it did not "*render anything taxable as income that was not so taxable before*"[4], and in fact that the words "*from whatever source derived*" used in the amendment were not intended to have **any effect** "*on which incomes were subject to federal taxation*"[5].

(Interestingly, in a dissenting opinion regarding another issue entirely, one Supreme Court justice explained the point that "*a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored*," and he gave several examples, including this: "'*From whatever source derived,' as it is written in the Sixteenth Amendment,* ***does not mean from whatever source derived***'"[6]. Clearly he was acknowledging that the very broad, apparently all-encompassing terminology of the 16th Amendment is, when taken by itself, misleading.)

Despite all of those clear and unequivocal statements by the Supreme Court, numerous lower court judges and other supposed legal experts, including some who work for the IRS, continue to parrot the popular myth that the 16th Amendment *did* increase or expand Congress' taxing power, when it did no such thing.

Tax Imposed

Since the federal income tax was brought back in 1913, shortly after the 16th Amendment was enacted, the federal tax statutes have imposed a tax upon the "taxable income" of every individual (though the older laws used the term "net income" instead), which is determined by subtracting allowable deductions from one's "gross income." The term "gross income" (in the last 80+ years of statutes) is defined in turn to mean just about every type of income imaginable. For example, Section 61 of the current tax code defines "gross income" to mean "*all income from whatever source derived*," including items such as compensation for services, interest, rents, business income, and so on. While the exact wording of the definition has varied over the years, the apparently all-encompassing scope of the term has not. In fact, the Supreme Court has stated that the very broad wording of the definition of "gross income" used in the statutes was intended by Congress to exert "*the full measure of its taxing power*"[7]. Put another way, the legislature used such sweeping language in order to tax everything it had the power to tax.

But what exactly *is* the "full extent" of Congress' taxing power? Are there any limits to what the federal government can tax? If so, how can that be reconciled with the apparently unlimited, all-inclusive definition of the term "gross income" (which, after subtracting deductions, becomes "taxable income")?

"*It is elementary law that every statute is to be read in the light of the Constitution. However broad and general its language it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach.*"
[*McCullough v. Virginia*, 172 U.S. 102 (1898)]

Under the above-stated principle (which the Supreme Court called "elementary law"), Congress can enact very broadly worded statutes, but they still must be read and understood with the Constitutional limits in mind. In the above-cited case, the Court went on to say that the general language of a particular taxing statute was "*not to be read as reaching to matters in respect to which the legislature had no constitutional power*," but instead, if the broad wording would seem to cover matters beyond the control of the

legislature, "*the statute is to be read as though it in terms excluded them from its operation*." Put into more modern vernacular, that simply means that every law must be read as though it specifically exempts any matters which are beyond the constitutional power of whichever government enacted the law.

This is a crucial point to understand: CPAs, attorneys and IRS agents—even federal judges— *do not know* that such a principle of law even exists, and so *do not take it into account* when determining the correct application of the income tax. Instead, they accept the broadly worded definitions at face value, unaware that Constitutional limits might apply to that law.

But the question remains: *Are* there any limits on what Congress can tax, and if so, what are they? If, as the Supreme Court says, every statute must be interpreted in light of the Constitution, how is the average citizen to know whether or not there are any such limits on an otherwise broadly worded law, and how is he to determine what those limits are? Every citizen cannot be expected to be a Constitutional scholar, nor should individuals have to *guess* at what Constitutional limits might apply to any given law. So whose "interpretation" of the law is a citizen to rely upon?

The laws passed by Congress are coded into the "statutes" of the United States Code, but it is the "Executive" branch of the government—not the Legislative (Congress)—which administers and enforces federal laws. To do this, federal agencies write "regulations" which set down their official interpretation of Congress' laws. (The statutes themselves authorize this process, such as Section 7805 of the tax code, which gives the Secretary of the Treasury the authority to write regulations for the interpretation and administration of the federal tax code.) Not only are Executive Branch agency regulations legally binding on all federal agents and employees, but when published in the Federal Register, those same regulations also constitute the *official notice* to members of the general public regarding what is legally required of them.

Occasionally a regulation is challenged in court as being an improper interpretation or implementation of Congress' statutes. But unless a regulation is ruled to be a clearly unreasonable interpretation of a statute, even the Supreme Court must defer to what the *regulations* say.

"[W]*e do not sit as a committee of revision to perfect the administration of the tax laws. Congress has delegated to the Commissioner* [of the IRS], *not to the courts, the task of prescribing 'all needful rules and regulations for the enforcement' of the Internal Revenue Code. 26 USC § 7805(a)*." [*United States v. Correll*, 389 U.S. 299 (1967)]

So, with the legal significance of regulations in mind, let's look at some of the things the income tax regulations have said over the years. From 1913 until 1954, the income tax statutes imposed a tax on the "net income" of every individual, determined by subtracting certain deductions from his "gross income." And the statutory definition of "gross income" (as mentioned before) was so broadly worded that it seemed to cover just about every type of income imaginable. The *regulations* interpreting those statutes, however, made some very interesting admissions. In defining "net income," the older regulations stated that "*neither income exempted by statute or **fundamental law***" are to be included in the calculation of one's "net income"[8]. (The term "fundamental law" refers to the Constitution itself.)

That regulation was simply doing what the Supreme Court (in the *McCullough* case, above) said should be done: interpreting a broadly worded statute in light of the Constitution. And that regulation showed that there are indeed Constitutional limits on Congress' taxing power, even if that flies in the face of many decades of so-called conventional wisdom about the tax.

That same section of regulations went on to give a very broad definition of "income" (any gain derived from labor or property, or from both), and then explained that "gross income" means all income, except for income "*which is by statutory provision or **otherwise** exempt from the tax*." Then the regulations got even more specific, explaining that some types of income are specifically exempted by the tax code, and adding that "*no **other** items are **exempt from gross income*** *except* for those types of income which are, " ***under the Constitution, not taxable by the Federal Government***"[9].

The point could hardly be made more clearly than that, nor could it more clearly contradict what the vast majority of tax professionals now believe: that *all* income is taxable unless specifically exempted by statute. While at this point we have not yet considered the question of *what* the Constitutional limits might be, we have clearly been told that there *are* Constitutional limits on which income is subject to the income tax—a fact to which current tax professionals are completely oblivious. (Note that the regulations quoted above were written well *after* the 16th Amendment was in place, proving again that that amendment did *not* render all income taxable.) Because the above are quotes from older regulations, however, it is important to determine whether those Constitutional limits still apply today.

Cover-up #1: Hiding the Constitutional Limits

For *forty years* (1916 through 1956) the federal income tax regulations generally defining "gross income" and "net income" made specific reference to the fact that the Constitution itself limits what types of income are subject to the tax. (The 1922 regulations explicitly added that "*Such tax-free income should not be included in the return of income and need not be mentioned in the return*"[10].) However, the *current* regulations generally defining "gross income" and "taxable income" make no reference at all to the Constitution. What happened?

No Constitutional amendments affecting the taxing power have occurred since 1913, nor has there been any significant change in the overall scope of the income tax. Therefore, whatever Constitutional limits existed *prior* to 1956 also must have existed *after* 1956 as well. So why did the wording of the regulations change at that time, removing any mention of such limits? The answer to that question provides the first example of intentional deception committed by the regulation-writers. Rather than removing the literal truth from the law books entirely, the evidence of the Constitutional limits on the taxing power was simply relocated and complicated.

Consider the following:

1) The pre-1956 regulations generally defined "gross income" to mean all kinds of income, "*derived from any source whatever, unless exempt from tax by law*"[11]. Similarly, the current regs define the same term to mean "*all income from whatever source derived, unless excluded by law*"[12]. However, while the pre-1956 regulations went on to say that income could be "exempt from tax" by statute *or* by the Constitution itself (aka "fundamental law"), the current regs defining "gross income" make no such admission—they do not specify exactly *which* "law" can exclude income from taxation. Would not an honest regulation-writer want the reader to know, right up front, to what income the tax does and does not apply? And would he not want the reader to know whether some of his income might be exempt—whether it might be a *mistake* to report it as taxable?

2) In a separate, fairly obscure section of the current regulations— *not* those generally defining "gross income"—it is admitted that income can be exempted from taxation, either by "*any provision of Subtitle A*" (the income tax code), **or** by "*the provisions of* ***any other law***"[13]. But while that statement shows that some "law" other than the tax code itself exempts some income, it still does not specify *which* "other law" (i.e., the Constitution) makes some income tax-exempt.

3) However, in yet another, even more obscure current regulation (having to do with corporate activity), it is still admitted that income can fall into three distinct categories: "*all income exempted by statute*," income which is " ***not taxable by the Federal Government under the Constitution***," and income which is "*includible in gross income under section 61*" (the statute which generally defines "gross income")[14].

4) Note that the above examples of the regs mentioning limits upon what constitutes "gross income" come, not from the regulations under Section 61 of the tax code (which generally defines "gross income"), but from far less frequently referenced sections—even though the second example specifically *mentions* Section 61. The same thing occurs again elsewhere.

An incredibly lengthy and convoluted section of regulations located many *hundreds* of pages away from the general definition of "gross income" says that the "items" of income listed in Section 61 of the statutes (i.e., compensation, interest, rents, business income, etc.) make up what are called "classes of gross income," which in some cases "*may include excluded income*"[15]. Again, would not an honest regulation-writer make such a statement right in the regulations under Section 61 itself, instead of *hundreds* of pages away? Furthermore, if his goal were to explain the law clearly, would he not want to use less twisted, confusing language to express the point? (To say that the "classes of gross income," consisting of the items listed in Section 61, "*may include excluded income*" simply means that those items are not always subject to the tax, but are in some cases exempt or "excluded.")

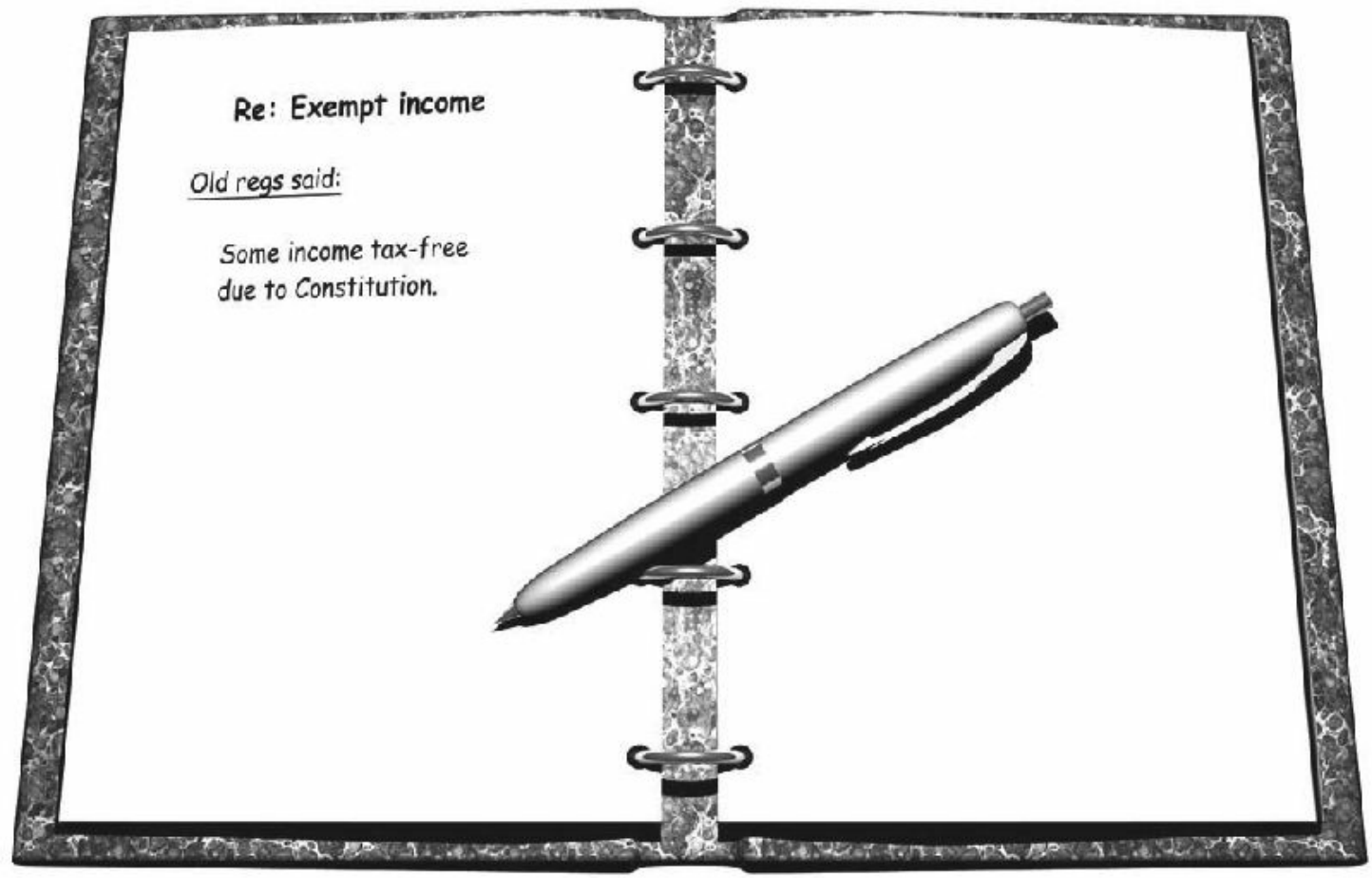
The evidence shows that the Constitutional limits still apply to the federal income tax, unbeknownst to modern tax preparers—whose ignorance is hardly surprising considering the devious changes made to the wording and arrangement of the regulations after 1956. It is also important to emphasize here that today's so-called tax experts do *not* have an alternative explanation for the evidence shown above. On the contrary, they are completely unaware that any such Constitutional limits on the taxability of income even exist, or ever existed, and so have no explanation at all. What the law books actually *show* and what modern tax professionals *assume* simply do not match, as illustrated in the following chart.

Exempt and Taxable Income

	According to Tax Professionals	*According to 90 Years of Regulations*
EXEMPT (not taxable)	Income exempted by statute*	Income exempted by statute* **Income excluded because of the Constitution itself**
TAXABLE	All other income	All other income

(*This would include things such as gifts, life insurance proceeds, and municipal bonds.)

Of course, without knowing what income is *exempt* from tax, one cannot know what income is *taxable*. But before delving any deeper into the issue, we should start making note of the more significant clues we find along the way, so we can keep track of what we've discovered and keep the big picture in mind while navigating through all the legalese. The foregoing is definitely a noteworthy finding: that, unbeknownst to the tax professionals, some income is tax-exempt because of the *Constitution* itself.



Constitutional Theory and Written Law

The obvious question at this point is, *What* income is tax-free (exempt) because of the Constitution itself? That question, however, can be approached from two different angles: by considering what an income tax *could* be applied to without violating the Constitution, and by determining what the law itself shows *is* subject to the tax. The former is more theoretical, the latter more practical. Though in this case both approaches lead to the same answer, it should be emphasized that ultimately what matters (in a practical sense) is what the law shows to be taxable. The academic exercise of understanding *why* the law says what it says is secondary. It is addressed now only to give a complete understanding of the issue. Put another way, a citizen does not need to know *why* his income is or is not taxable, only *whether* it is taxable or not. The former is a matter of Constitutional theorizing, while the latter is determined exclusively by what the written law actually says. In this case, however, starting with a little theorizing will go a long way toward explaining why the law says what it says.

Virtual Limitations

As mentioned before, the Constitution prescribes rules for how "direct" and "indirect" taxes must be applied (using either the rule of apportionment or the rule of uniformity). However, the only specific statement in the Constitution limiting *what* Congress can tax is the prohibition on taxing state exports[16]. Because of this, there is a popular 3, even among attorneys, that aside from state exports, Congress can tax anything it pleases, in any way it pleases. But that is not the case.

The Supreme Court has stated that there are "*certain virtual limitations*" on Congress' taxing power, arising from the principles of the Constitution itself. The reason this is the case is because "*resort*[ing] *to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible*"[17]. On several occasions the Supreme Court has thrown out federal tax laws as unconstitutional on the grounds that those laws were nothing more than attempts to use "tax" laws to control matters which are *not* under federal jurisdiction. For example, when Congress tried to combat "child labor" in the states (which is *not* a federal issue under the Constitution) by trying to *tax* child labor out of existence, the Supreme Court threw out the tax, and gave the following reason:

"*Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to* take over to its control *any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the 10th Amendment, would be to enact a detailed measure of complete regulation of the subject and* enforce it by a so-called tax *upon departures from it.* To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress *and completely wipe out the sovereignty of the states.*" [Child Labor Tax Cases, 259 U.S. 20 (1922)]

In other words, the Constitution does not authorize Congress to control anything via "tax" laws that it could not control via direct legislation. In throwing out such attempts at extra-Constitutional regulation (disguised as "taxes"), the Supreme Court has said that such legislation "*cannot be sustained as an exercise of the taxing power of Congress conferred by Section 8, article 1*" of the Constitution[18].

But how might this principle apply, if at all, to a federal income tax? In one of the first rulings pertaining to the 1913 income tax, the Supreme Court gave a hint about this. After explaining that an income tax need not be apportioned, regardless of the "source" of the income (because all income taxes are "indirect" taxes), the court added this:

"*Mark, of course, in saying this we are not here considering a tax not within the provisions of the 16th Amendment, that is, one in which the regulation of apportionment or the rule of uniformity is wholly negligible because the tax is one entirely* beyond the scope of the taxing power of Congress*, and where consequently no authority to impose a burden, either direct or indirect, exists.*" [Stanton v. Baltic Mining, 240 U.S. 103 (1916)]

So, notwithstanding the 16th Amendment, there are still some things that Congress cannot put a "burden" upon at all, via "direct" *or* "indirect" taxation, because such matters are outside of federal jurisdiction. (That particular ruling did not go on to spell out exactly what the jurisdictional boundaries are.)

Federal Jurisdiction

The term "jurisdiction" means places or activities over which a government (or government agency) has authority. Not only are there the obvious geographical limits on jurisdiction (for example, a Pennsylvania state trooper does not have jurisdiction over someone speeding in Ohio), but there is also the issue of "subject matter jurisdiction." For example, someone who collects taxes for the state of New York does not automatically have the authority to ticket someone for double-parking. That is just not something under a tax collector's jurisdiction.

A crucial concept to understand at this point is that, contrary to what most Americans assume, the United States government does *not* have "subject matter jurisdiction" over everything that happens within the 50 states. On the contrary, the federal government's powers within the states are (in the words of James Madison) "*few and defined*," whereas each *state* government has general jurisdiction over most of what happens within that state's borders.

Most importantly—and again, this is not something most Americans hear very often—the federal government does *not* generally have jurisdiction over someone doing business in one of the fifty states. In one case, after explaining that Congress does have the power to regulate commerce which *crosses* state and country borders, the Supreme Court added this:

"*But very different considerations apply to the internal commerce or* domestic trade *of the states. Over this commerce*

and trade Congress has no power of regulation *nor any direct control. This power belongs exclusively to the states.* No interference by Congress with the business of citizens transacted within a state is warranted by the Constitution*, except such as is strictly incidental to the exercise of powers clearly granted to the legislature.*" [*License Tax Cases*, 72 U.S. 462 (1866)]

On the other hand, the federal government does, for example, have jurisdiction over business which involves foreign countries—or, as the Constitution puts it, Congress has the power "*to regulate commerce with foreign nations*"[19]. Might this fact have some bearing on Congress' *taxing* power?

In Federalist #45, after saying that under the new Constitution the federal government would have only a few, limited powers (as quoted above), James Madison went on to explain that the federal power "*will be exercised principally on* ***external*** *objects, as war, peace, negotiation, and* ***foreign commerce****; with which last* [foreign commerce] ***the power of taxation will, for the most part, be connected***." It is certainly noteworthy that the "Father of the Constitution" said that the federal government will get its funding primarily through taxing *foreign* commerce, but does that have any relevance to an income tax?

The Peck Case

In the first few years after the 1913 income tax was imposed, several related cases reached the Supreme Court. One of those cases had to do with an American company "*engaged in buying goods in the several states, shipping them to* ***foreign*** *countries, and there selling them.*" The company argued that applying an income tax to such a business would amount to a tax on state exports, which is forbidden by the Constitution (as mentioned before).

The Supreme Court rejected the company's argument (an argument unrelated to the topic addressed here), but made some very interesting comments in passing. After saying that the income tax act "*obviously could not impose a tax forbidden by the Constitution*," and that the income tax "*cannot be applied to any income which Congress has no power to tax*," the Court added that because the Constitution grants Congress the general power to tax, *as well as* giving Congress specific jurisdiction over "*commerce with* ***foreign*** *nations*," the federal government could therefore "undoubtedly" apply an income tax to an American business engaged in *international* trade[20]. In other words, the court said that the taxing clause *and* the commerce clause *combined* undoubtedly authorize Congress to tax income from doing business which *crosses country borders*.

It is particularly noteworthy that the Supreme Court brought up the "commerce clause"—which gives Congress jurisdiction over international trade but *not* over trade occurring inside one of the states—when discussing what could be subject to a federal *income tax*. What might that imply about Congress' ability to tax the income of the average American? Unfortunately, in the Peck case the company did not question the taxability of any purely domestic income it might receive, so the Court did not address that issue at all. The Court explained why *foreign* commerce could "undoubtedly" be subject to a federal income tax, but left the question of purely domestic income hanging. Curiously, ever since then the Supreme Court has continued the pattern of not specifically saying one way or the other whether income earned by a U.S. citizen within one of the states is actually subject to the federal income tax.

Putting the Pieces Together

When someone argues that the federal income tax is unconstitutional (a claim *not* made here), the government often cites the Supreme Court's ruling from *Brushaber v. Union Pacific* (240 U.S. 1 (1916)), another case occurring shortly following the advent of the 1913 income tax. In that case, the court did indeed hold that the federal income tax is Constitutional. However, what the government lawyers do not mention when citing that case (probably because they are unaware of it themselves), and what the actual court opinion in the case does not make clear, is that the case was about a *nonresident alien* (a foreigner) receiving income from within the United States. In other words, the case was again about "*commerce with foreign nations*."

"*Under the decision of the Supreme Court of the United States in the case of* Brushaber v. Union Pacific Railway Co.*, decided January 24, 1916, it is hereby held that income accruing to* nonresident aliens *in the form of interest from the bonds and dividends on the stock of domestic corporations* is subject to the income tax *imposed by the act of October 3, 1913.*" [Treasury Decision 2313]

The above official ruling, published by the Secretary of the Treasury, makes it abundantly clear what the case involved, while the Supreme Court's ruling says nothing about nonresident aliens, instead giving the impression that the case involved only a citizen of New York.

So, shortly after the 1913 income tax was enacted, it was twice upheld as valid and Constitutional by the Supreme Court, **as**

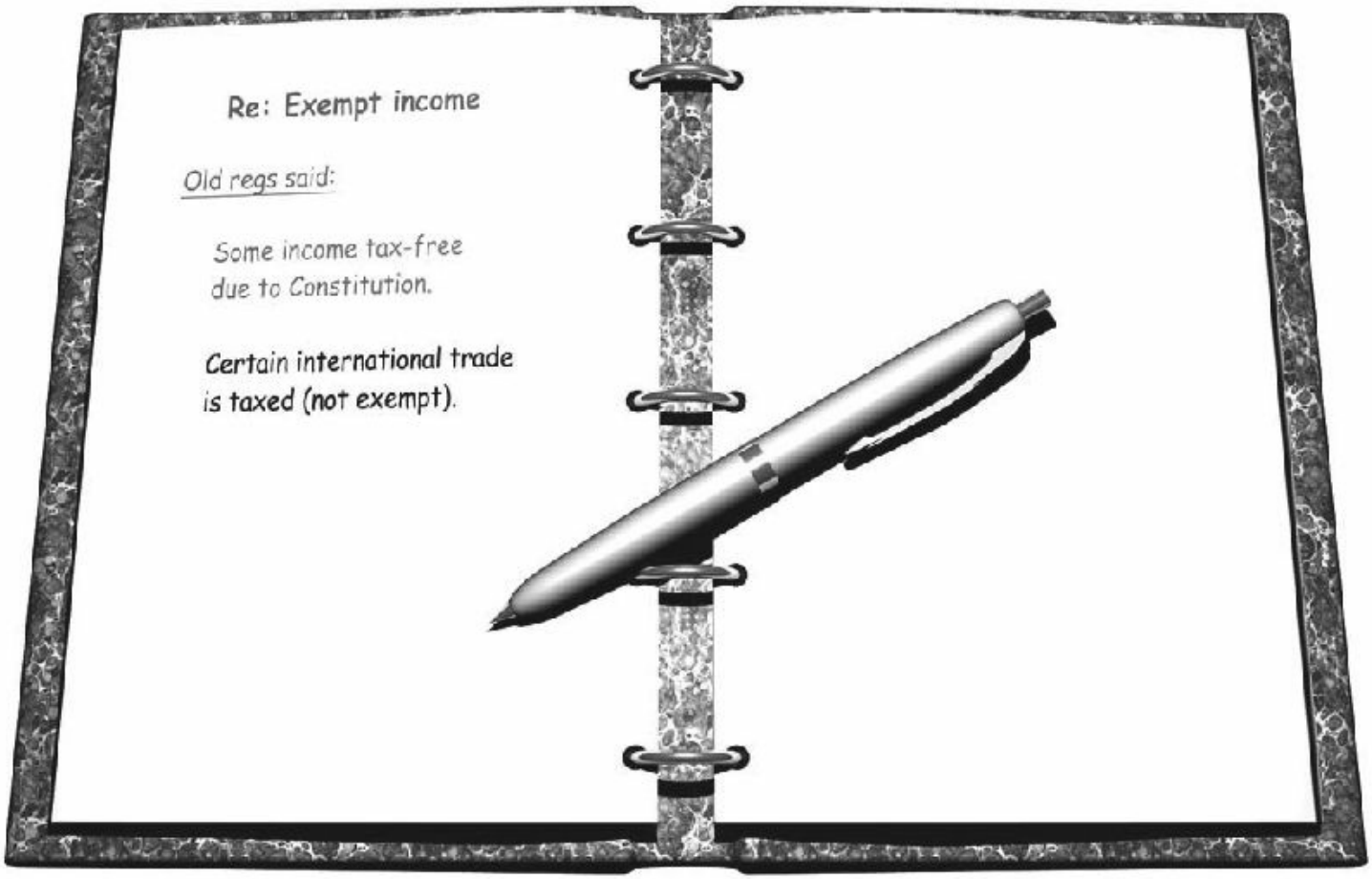
applied to two types of "*commerce with foreign nations*" : income from *outside* the country being received by Americans (as in the *Peck* case), and income from *inside* the country going to nonresident *foreigners* (as in the *Brushaber* case).

Now read carefully what the income tax *regulations* said in the years following those Supreme Court decisions. As shown above, the regs showed that income could be exempt from tax due to the tax code or because of the Constitution itself. But where do the regulations tell the reader just what is taxable and what is exempt?

"*39.22(a)-1 What included in gross income (a) Gross income includes in general* [numerous items of income listed] *derived from any source whatever, unless exempt from tax by law* [i.e., by statute or by the Constitution] *... Profits of citizens, residents, or domestic corporations derived from sales in* foreign *commerce* must be included in their gross income*; but special provisions are made for* nonresident aliens *and* foreign corporations *by sections 211 to 238, inclusive, and, in certain cases, by section 251, for citizens and domestic corporations deriving income from sources within* possessions *of the United States*." [26 CFR § 39.22(a)-1 (1956)]

Note that that regulation does *not* mention the *domestic* income of American individuals and companies; only their *foreign* income. Could the listing of those specific types of *international* commerce (underlined above) constitute the regulation-writers' answer to the question of what is Constitutionally taxable? Would that not match what James Madison said about the federal government being funded mainly via taxes on *foreign* commerce? Is it only coincidence that only certain types of "*commerce with foreign nations*" are listed as being taxable? (The term U.S. "possessions" refers to places such as Guam and Puerto Rico, which Congress *does* have general jurisdiction over, much the way that state governments have jurisdiction over state land[21].):

This gives us our second major "clue" worth noting.



In light of the wording of the regulation shown above (see Exhibit A for the complete section), several points must be stressed here.

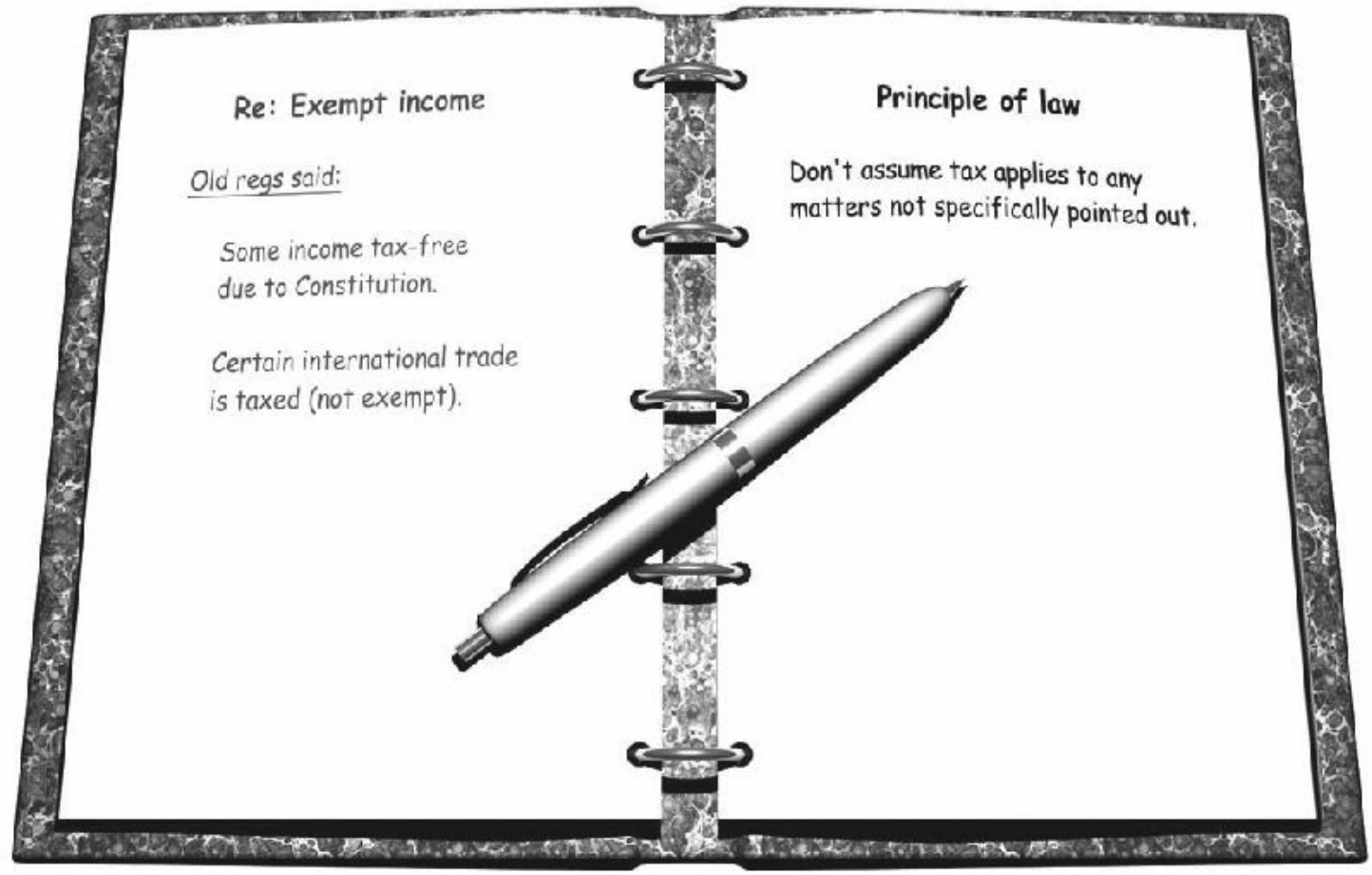
1) The regulation does not mention purely domestic income at all. Would it not have been easy for the regs to say that income Americans receive from foreign *or* domestic commerce must be included as "gross income," if that were in fact the case? Yet the domestic income of the average American is very conspicuously not mentioned at all, in several *decades* of equivalent regulations.

2) The *statute* which the above regulation "interprets" says nothing at all about foreign commerce, nonresident aliens, or federal possessions. So, why are those things mentioned in the *regulation*, unless for the purpose of spelling out the proper, limited Constitutional application of that very broadly worded statute?

3) The regulations themselves raise the point of some income being tax-exempt because of the Constitution itself. If the underlined portions of the regulation above are *not* the answer to the question of what is Constitutionally taxable, where is that answer to be found? (It would obviously be improper, both legally and logically, for the law books to say that something is exempt, without ever saying *what* that something is.)

4) There is an old principle of law, expressed in Latin as "*inclusio unius est exclusio alterius*," which dictates that where the law specifically lists matters to which it applies, an "irrefutable inference" must be drawn that what was *not* listed was *intended to be omitted*[22]. This makes it even more significant that the official tax regulations specifically list certain types of *international* trade as being subject to the tax, without saying the same about the U.S. income of U.S. citizens. Certainly it would have been a simple matter to include that type of income on the list as well, if it were truly taxable. So why was it omitted?

So what the law does *not* say can be as significant as what it *does* say, and that should be included on our list of important points to remember.



It is important to note that the question here is not what Congress *wanted* to tax, but rather what Congress is Constitutionally *allowed* to tax. In answering that question, the regulations referenced above are, in effect, saying that Congress *has no power* to tax the income of most Americans (income derived from purely domestic trade). So this is not about some mistake or "loophole" which Congress could simply "fix" with a new law; it is about the fact that it did not tax most Americans because it *could* not.

Cover-up #2: Hiding the List of Non-Exempt Income

For many years, one needed to look no further than the regulations generally defining "gross income" in order to learn that: 1) income is not subject to the tax if it is exempted by statute, *or* if it is excluded because of the Constitution itself, and; 2) income derived from *commerce with foreign nations* must be included in one's "gross income." If one was also aware of the principle of "*inclusio unius*," he might very well start to wonder whether the domestic income of most Americans is actually taxable.

As shown above, the admission that the Constitution itself exempts some income from tax has been obfuscated and relocated. The second example of intentional deception by the regulation-writers lies in the fact that after 1956 all mention of international trade and foreign commerce was also *removed* from the general regulatory definition of "gross income."

If, as the older regulations imply, income is taxable only when derived from certain types of *international* trade, should that not be

one of the first and most obvious things for the regulations to say? So, what happened? Why the change? Once again, the truth was not removed entirely; it was instead moved many hundreds of pages away, and reworded into a far more complicated, confusing arrangement. Here is the form in which the truth is still told in the *current* regulations (with the first two steps having been mentioned above):

1) An obscure regulation, located *hundreds* of pages away from the general definition of "gross income," says that the "items" of income listed in Section 61 of the tax code make up "*classes of gross income*" (26 CFR § 1. 861-8(a)(3)).

2) Several paragraphs later, the regulations tell the reader to go to yet another section, "*which provides that a* ***class of gross income*** *may include* ***excluded*** *income*" (26 CFR § 1.861-8(b)(1)).

(In other words, those common "items" of income are sometimes tax-exempt.) 3) However, where the reader is directed (26 CFR § 1.861-8(d)(2)) there is no regulation, but only a pointer directing the reader to yet *another* section (26 CFR § 1.861-8T(d)(2)).

4) After giving rules about how deductions can or cannot be applied to taxable income or exempt income, that section defines "exempt income" to mean "*any income that is, in whole or in part,* ***exempt, excluded, or eliminated for federal income tax purposes***" (26 CFR § 1.861-8T(d)(2)(ii)).

5) Several sentences later, the regulation says this:

"(iii) Income that is not considered tax exempt. The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:
(A) In the case of a foreign taxpayer...
(B) In computing the combined taxable income of a DISC [Domestic International Sales Corporation] or FSC [Foreign Sales Corporation]...
(C) …the gross income of a possessions corporation...
(D) Foreign earned income..." (26 CFR § 1.861-8T(d)(2)(iii))

That is the end of the list. (See Exhibit B for the complete regulation.)

So, if you happen to be an American who receives wages, or business income, or interest, or any of the other items listed in Section 61, *and* if you happen to know where to look in the regulations, you are told that your type of income may include *exempt* income, and then you are directed to a list of types of commerce which *are* taxable (i. e., which are *not* exempt), and they all have to do with trade which *crosses country borders* or involves federal possessions.

Though far more spread out and confusing in these current regulations, this is the same general arrangement found in the older regulations: the regs say that some income is tax-exempt, and then list various types of *international* trade as being taxable. Note that both lists, past and present, include the U.S. income of *foreigners*, certain *foreign* income of Americans, and income related to federal *possessions* (e.g., Guam and Puerto Rico). Conspicuously absent from both lists is the domestic income of the average American.

As with the older regulations, if the above-cited section is not a complete list of the types of commerce which are taxable under the Constitution, similar inescapable questions arise:

1) If purely domestic income were taxable, why is such income not mentioned on the list? In light of the principle of "*inclusio unius*," which dictates that one should assume that what the law does not specifically mention was *intended* to be omitted, would it not have been a simple and obvious thing to include domestic income on the list, if it were indeed taxable?

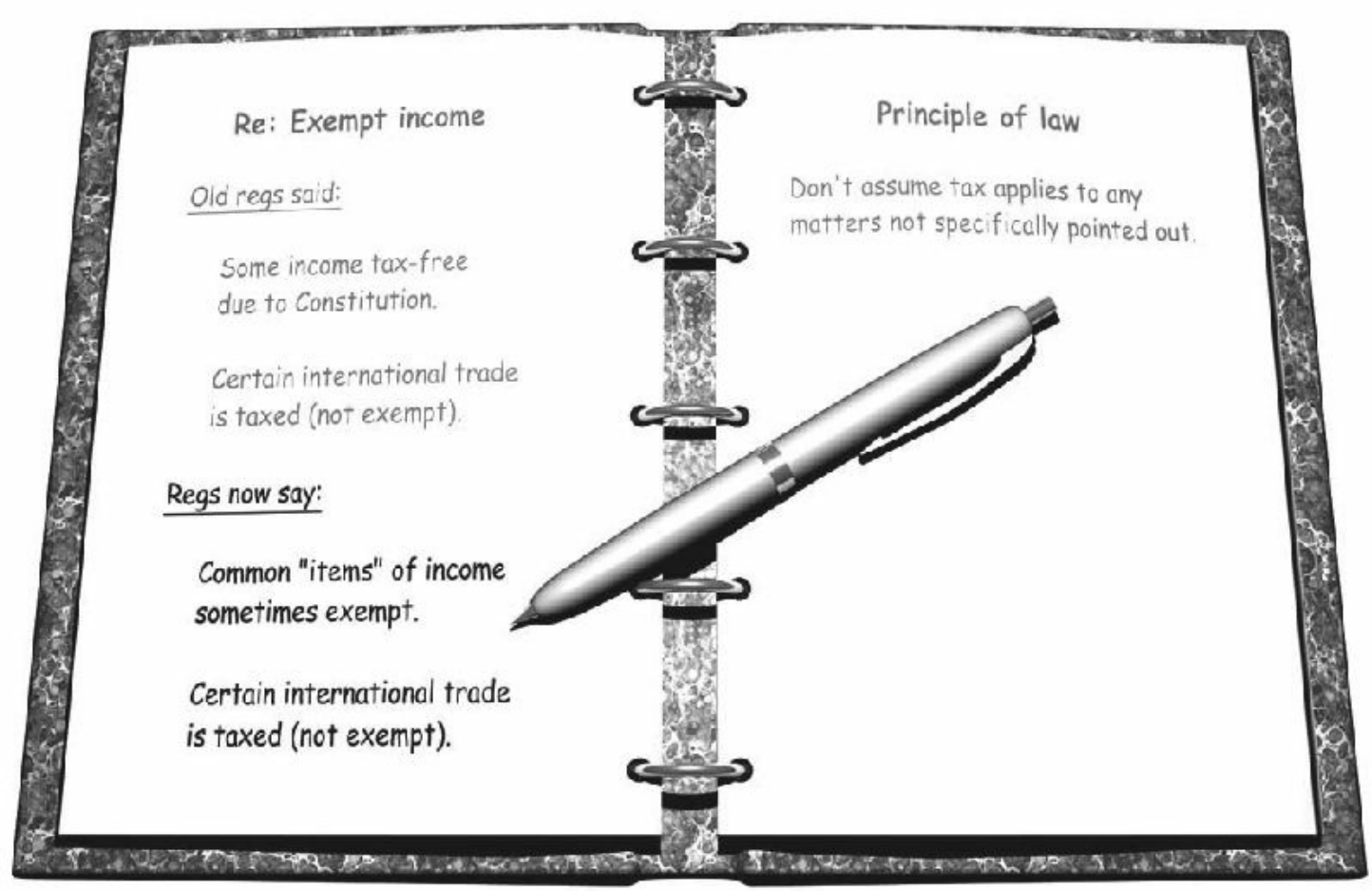
2) On what basis do the regulations say that all of those "items" of income in Section 61 are in some cases *exempt* (which the statute does not say), if not to account for the Constitutional limits on what is taxable?

3) The regulations specifically direct the reader to one small part of one section (26 CFR § 1.861-8T(d)(2)), which provides that the common items of income "*may include* ***excluded*** *income*." If the above list of non-exempt types of commerce, which is located right where the regs lead the reader, is not the answer to the question of when the items are or are not taxable, where in that small section is such an answer to be found? (It does not take long to see that nothing else in that section comes close to answering the question, as can be seen in Exhibit B.)

4) What is the purpose of that list of non-exempt *international* trade, if not to answer the question about which commerce is Constitutionally taxable? The regulation-writers obviously must have had something in mind when including that list. What was it, if not that?

(Consider also how much clearer it would be if the regulation began with "*The following items are taxable*," instead of "*The following items are not considered to be exempt*." Though the literal meaning of the two is identical, using the double negative obfuscates the point.)

It's time to add another clue to our book.



Whether one looks at the regulations from 1926 or those from 2006, he is told that the common "items" of income are subject to tax unless they are exempt (which is really just a truism), and then is told that income from certain trade crossing country borders is *not* exempt.

For the regulations to fail to say specifically whether income from purely domestic commerce is also taxable—which the regs have consistently failed to say for nearly a century—is either the result of the largest typo and/or oversight in history, or the result of dishonest lawmakers not wanting to come right out and plainly admit the truth, which is that ***the income of most Americans is not subject to the federal income tax***. Of course, an almost unimaginable amount of wealth and power now depends upon such an admission *not* being made and the truth being *covered up*. And the evidence demonstrates that that is exactly what has been done, and what continues to be done, by some people inside the federal government.

Taxable Activities

Is the federal "income tax" a tax upon income? If that question seems strange, the answer will no doubt seem even stranger.

"*The income tax is, therefore,* not a tax on income *as such. It is an excise tax with respect to* certain activities and privileges *which is measured by reference to the income which they produce. The income* is not the subject of the tax*: it is the basis for determining the amount of the tax*." [U.S. Congressional Record, March 27, 1943]

Those are the words of F. Morse Hubbard, a former legislative draftsman for the U.S. Treasury Department (one of those whose job it is to *write* tax statutes and regulations). Unfortunately, and somewhat suspiciously, Mr. Hubbard did not go on to describe just what those "*certain activities and privileges*" are. Note that Mr. Hubbard's comments coincide perfectly with the fact that the Supreme Court describes "indirect" taxes—the category in which income taxes inherently belong—as being taxes upon "***certain*** *commodities, privileges,* ***particular*** *business transactions, vocations, occupations, and the like*."[23].

The general statutory definition of "gross income" talks about different kinds of *income*, but says nothing about any particular activities or privileges. So, if the tax is actually a tax on certain activities, rather than a tax on income *per se*, does some *other* part of the law spell out what those activities are? Again, even the most basic principles of both law and logic dictate that the law must say what it applies to. If the law were to specify a certain activity as being taxable, might it look something like this?:

"*A* nonresident alien individual engaged in trade or business within the United States*... shall be taxable as provided in section 1*." [26 USC § 871(b)]

Or like this?:

"*A* foreign corporation engaged in trade or business within the United States*... shall be taxable as provided in section 11*." [26 USC § 882(a)]

(Note: Section 1 of the tax code imposes a tax upon the "taxable income" of every individual, whereas Section 11 imposes the tax on the "taxable income" of every corporation.)

Income Versus Commerce

The single most important distinction to understand here is the difference between types of *income* and types of *commerce*. The two concepts are distinct (although at first easily confused), and each is an essential ingredient in understanding the law. In short, the federal income tax applies only when a taxable item of *income* derives from a taxable type of *commerce*. If either the income *or* the commerce is not taxable, the tax does not apply.

A simple example demonstrates the importance of this point. Suppose there are two Canadians, one of whom lives and works exclusively in Canada, while the other has some investments and business dealings in the U.S. Each person receives various potentially-taxable "items" of income (e.g., wages, interest, business income, dividends), but only the *second* one actually owes any taxes to the U.S. government, because only his income derives from a type of commerce over which the U.S. government has any jurisdiction. As a nonresident alien (under U.S. law), the second person is benefiting from the privilege of doing business in the U.S., and is engaged in a particular activity (or type of commerce) which is specifically shown by the tax code to be taxable, as shown above in the quotation from 26 USC § 871(b).

Were the receipt of income, all by itself, enough to create a tax liability, then over a billion foreigners who have no economic dealings with the U.S. would owe U.S. income taxes—which is not and cannot be the case. While that may be obvious, most people make the mistake of assuming that the federal government *does* have general jurisdiction over all business happening inside the 50 states, when in reality it does *not*, any more than it has general jurisdiction over all business occurring in Canada.

While federal courts have fluctuated somewhat over the years in their opinions about which federal excise taxes are valid and which constitute an unconstitutional attempt to control matters beyond Congress' jurisdiction, consider the following: The income tax code includes extensive behavioral controls in the form of rewards and punishments. For example, while the Code economically penalizes people for being married, or for being self-employed, it also rewards those who give to charity (Section 170 of the tax code), adopt children (Section 23), have a mortgage (Section 25), pay a college tuition (Section 25A), produce alternative fuels (Section 29), use an electric car (Section 30), employ American Indians (Section 45A), and so on. The controls over insurance, savings and investments are also extensive.

When such matters involve someone living and working in one of the states, the federal government has no Constitutional authority to control, reward, or punish such behaviors and economic decisions, whether that control is exerted by direct regulation or tax policy. As the Supreme Court put it, "*If, in lieu of compulsory regulation of subjects within the **states'** reserved jurisdiction, which is prohibited, the Congress could invoke the **taxing and spending power as a means to accomplish the same end**, clause 1, Section 8 of Article I* [of the U.S. Constitution] *would become the instrument for total subversion of the governmental powers reserved to the individual states*." Congress is, on the other hand, allowed to use tax laws to control matters that are *otherwise* under federal jurisdiction, but it may not overstep the limits of its authority by disguising a regulation as a tax. "*The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation **another** power also **expressly granted**, but resort to the taxing power to effectuate an end which is not legitimate, **not within the scope of the Constitution**, is obviously inadmissible*." As a result, if only those who are engaged in *international* trade have taxable income—as the law shows—then only those engaged in international trade are subject to all of the rewards and punishments of the tax code. Therefore, Congress is, via the tax code, merely regulating what the Constitution specifically allows it to regulate: "*commerce with foreign nations*." (As an aside, Congress may not control purely intrastate decisions and behaviors by way of "tax breaks" any more than it may do so via penalties. "*The Congress cannot invade state jurisdiction to compel individual action; no more can it **purchase** such action.*")[24]

Subchapter N

In one way, the limits of Congress' power to tax, and the limits on which income is therefore subject to the federal income tax, are "hidden in plain sight" in the current tax code. The income tax, which is found in "Chapter 1" of the federal tax code, is divided into numerous "subchapters." Subchapter N is titled "*Tax based on income from sources **within or without** the United States*." As the name implies, this is the part of the law that describes the situations in which *domestic* income and *foreign* income are taxable. In other words, this is where the law deals with the issue of *commerce*, while other parts of the law deal only with items of *income*.

Subchapter N is divided into five "parts," the titles of which are as follows:

SUBCHAPTER N
Tax Based on Income From Sources Within or Without the United State

Part I - Determination of Sources of Income
Part II - Nonresident Aliens and Foreign Corporations
Part III - Income from sources without the United States
Part IV - Domestic International Sales Corporations
Part V - International Boycott Determinations

Even a cursory examination of Parts II through V shows that while certain domestic income of *foreigners*, certain *foreign* income of Americans, and other *international* matters are discussed, there is no mention at all of the domestic income of the average U.S. citizen. In addition to the sections about nonresident aliens and foreign corporations doing business in the U.S. (Sections 871 and 882, shown above), these parts of the law also include sections about foreign tax credits (Section 901 and following), foreign earned income (Section 911 and following), those living and/or doing business in federal possessions (Section 931 and following), and so on. This matches precisely what the regulations, past and present, list as the taxable types of commerce.

In keeping with the principle of "*inclusio unius*," the U.S. Supreme Court has stated, "*In the interpretation of statutes levying taxes it is the established rule **not** to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace **matters not specifically pointed out***"[25]. The same ruling went on to say that, in case of doubt, taxing statutes are to be "*construed most strongly against the government, and in favor of the citizen*." So for the tax code to specifically point out that certain types of *international* trade are taxable, while failing to say one word about purely *domestic* commerce, is very significant. (Again, if the average American's income were taxable, it would certainly be a simple thing to add a section to the law specifically stating that. But for over *ninety years* it has never been done.) But it is in Part I of Subchapter N (" *Determination of Sources of Income*") where all the pieces really come together to form a complete picture, not only of the very limited nature of the tax, but also of the efforts to *cover up* the limited nature of the tax.

Section 861

While one can quote what a certain section of law says, one cannot cite a *lack* of a statement in the law. In other words, it is easy to support a claim that the law says "X," but it is far more difficult to support a claim that *nowhere* does the law say "Y." And it is primarily that fact which has kept the public in the dark about the proper application of the federal income tax: the ease with which one can assume that somewhere in the thousands upon thousands of pages of statutes and regulations, it must say that the income of the average American is taxable. One section (as demonstrated above) might only list certain international trade as being taxable, but who knows what some other sections somewhere else in the law might show?

If the average American approaches the tax code starting with the assumption that he owes the tax (though that is the opposite of the way the Supreme Court says one should read the law), no single statement in the law will directly contradict that assumption. Nor, however, will any statement in the law confirm it. That is proper legally, as the law is required only to specify what is taxable—it need not specify what is exempt. Technically speaking, therefore, if you assume that your income is taxable when the law does not actually say so, that is *your* mistake, not a defect in the law. Morally and ethically, however, it amounts to fraud when government lawyers go so far out of their way to *avoid* specifically telling tens of millions of Americans whether they owe the tax. It is a lie by omission, which in a case such as this is no less despicable than a conventional lie.

But how does one expose such a lie, when the false assumption is so universally accepted as the gospel truth, and when the law is so ridiculously complicated and voluminous? It is practically impossible to go through the thousands of pages of statutes and regulations, one by one, to see if any of them mention the domestic income of the average American. However, it is possible to dramatically narrow down the possible places in the law where such a statement would be found, if it existed.

For example, the question here is, For whom is U.S.-source (domestic) income taxable? In trying to first determine *where* in the law such a question would be answered, one can immediately rule out many portions of the tax code. The answer to our question obviously will not be found in Subchapter D of the tax code, which is all about deferred compensation, or Subchapter H, which deals only with banking institutions, or Subchapter L, which is all about insurance companies. But where in the law *will* it tell us whether a U.S. citizen can have taxable income from inside the U.S.?

"Sections 861(b) and 863(a) *state in general terms how to* determine taxable income of a taxpayer from sources within the United States *after gross income from sources within the United States has been determined. Sections 862(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources without the United States after gross income from sources* without *the United States has been determined*." [26 CFR § 1.861-8]

The above regulation is plainly telling us *where* in the law to look to determine someone's taxable domestic income. The chart below shows where in the tax code the above-referenced sections (861 through 863) are located.

SUBCHAPTER N
Tax based on income from sources within or without the United States

PART I - **Determination of Sources of Income**
- **Section 861** - Income from sources within the United States
  - 861(a) - Gross income from sources within United States
  - 861(b) - Taxable income from sources within United States
- **Section 862** - Income from sources without the United States
  - 862(a) - Gross income from sources without U.S.
  - 862(b) - Taxable income from sources without U.S.
- **Section 863** - Special rules for determining source
- **Section 864** - Definitions and special rules
- **Section 865** - Source rules for personal property sales

PART II - **Nonresident Aliens and Foreign Corporations**
PART III - **Income from Sources Without the United States**
PART IV - **Domestic International Sales Corporations**
PART V - **International Boycott Determinations**

While earlier portions of the law give numerous rules concerning which items of income can be taxable, it is immediately apparent that Subchapter N is the part of the law which addresses the issue of **commerce**: determining when income from *inside* the U.S. is taxable, and when income from *outside* the U.S. is taxable. The regulations make the distinction well, saying that "*Section 61 lists the more common **items** of gross income*," and later saying that "*section 861 and following... and the regulations thereunder determine the **sources** of income for purposes of the income tax*"[26]. In fact, from 1954 to 2001, several major printings of the tax code (USC, USCA and USCS), under Section 61 itself—which generally defines "gross income" and lists various items of income—all contain cross-references such as the following:[26]

"*Income from sources –*
Within *the United States, see* section 861 *of this title*
Without the United States, see section 862 of this title"

Such a cross-reference is still found in the United States Code Service (USCS) printing of the tax code, while all such cross-references in the USC and USCA printings were removed after 2001. Prior to 1954, that cross-reference was part of the actual text of the statute. The section generally defining "gross income" back then (Section 22) said that "*For computation of gross income from sources within and without the United States*," one should refer to the predecessor of the current Section 861 and following (which back then was Section 119). The purpose of Section 861 (and following sections) is also summed up nicely in the Treasury Department's "Cumulative Bulletin," as follows:

"*Rules are prescribed for determination of* gross income and taxable income *derived from sources* within and without the United States*, and for the allocation of income derived partly from sources within the United States and partly without the United States or within United States possessions. §§ 1.861-1 through 1.864. (Secs 861-864; '54 Code.)*" [Treasury Decision 6258]

While the earlier sections of the tax code deal with specific items of income, they say nothing about who is receiving the income or where it is coming from; they do not at all address the *commerce* from which the income derives. The citations above, however, make it

quite clear that commerce is what Subchapter N (starting with Section 861) is all about. There is no need to guess about what every other section of the tax code might say, since this is identified, in no uncertain terms, as *the* place to go to determine taxable *domestic* income and taxable *foreign* income. The following chart shows which sections deal with the different types of commerce.

SUBJECT	STATUTE	REGULATION
Income from **inside** the U.S. Domestic "gross income" Domestic "taxable income"	§ 861 § 861(a) § 861(b)	§ 1.861-1 §§ 1.861-2 through -7 § 1.861-8 and following
Income from **outside** the U.S. Foreign "gross income" Foreign "taxable income"	§ 862 § 862(a) § 862(b)	§ 1.862-1 § 1.862-1(a) §§ 1.862-1(b), 1.861-8
Income from inside **and** outside U.S.	§ 863	§ 1.863-1

Section 863 gives rules for dividing up income which includes both foreign *and* domestic income into "within" and "without" income. While this may come into play when determining the taxable domestic income of international corporations (for example), it is not relevant to whether the income of the average American who lives and works only in the 50 states is taxable. For that person, Section 861 and its regs are the pertinent sections.

In case any doubt remains about the purpose and function of these sections, consider what the very first section of regulations under Section 861 says—and has said for over fifty years:

"§1.861-1 Income from sources within the United States
*(a) Categories of income. Part I (*section 861 and following*), subchapter N, chapter 1 of the Code, and the regulations thereunder* determine the sources of income for purposes of the income tax*. ... The statute provides for the following three categories of income:*
(1) Within the United States *The gross income from sources within the United States, consisting of the items of gross income specified in* section 861(a) *plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See §§ 1.861-2 to 1.861-7, inclusive, and § 1.863-1. The* taxable income *from sources within the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with* sections 861(b) *and 863(a), the* [allowable deductions] *.* See §§ 1.861-8 *and 1.863-1.*
(2) Without the United States ...
(3) Partly within and partly without the United States ...
(b) Taxable income from sources within the United States.
The taxable income from sources within the United States *shall consist of the taxable income described in paragraph (a)(l) of this section plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a)(3) of this section."* [26 CFR § 1.861-1 (see Exhibit C for complete section)]

The Expert Blunder

Based on the above, it may seem patently obvious at this point, even to those not well versed in the law and not accustomed to reading tax laws, that Section 861 and the related regulations are the place to look to determine one's taxable domestic income. Over and over again the law books state, unequivocally and unconditionally, that those are the sections to use to determine one's *taxable income from sources within the United States*.

Here is the surprising part: today's tax professionals *do not* use Section 861 and its regulations to determine the taxable domestic income of their clients. In fact, they do not consider the issue of "commerce" at all (in the vast majority of cases); they simply assume that domestic income is taxable for all Americans, and never stop to see whether the law actually *says* that. After falsely assuming that income from domestic commerce must be taxable, they then apply the various deductions, statutory exemptions, and other special rules—which they *are* familiar with—to come up with a bottom-line figure. But they skip altogether the first and most fundamental step: determining whether, based upon the type of *commerce* it derives from, the income is subject to the tax to begin with. They simply *assume* that it is, and go from there.

This is another instance in which the "conventional wisdom" about the income tax, as believed and repeated by the vast majority of CPAs, attorneys, and other tax professionals (including those who work for the IRS), dramatically clashes with what the law books actually state. Unfortunately, when forced to choose between the assertions of a herd of self-proclaimed tax "experts" and obviously contradictory evidence from the law itself, many people still side with those who profess to being knowledgeable on the subject.

There could hardly be a more dramatic difference between what the law says one should do and what tax preparers actually do. When it comes to the government's own law books, **all roads lead to 861** regarding income from sources within the United States. Yet very rarely (such as when a case does involve international trade) will a tax professional reference those sections at all. Many do not even know those sections exist. With that in mind, below is a list of just some of the things from the actual law books which direct the reader to Section 861 and its regulations regarding domestic "gross income" and domestic "taxable income." (The first five items on the list are quoted from above.)

1) The title of Section 861, and the titles of its subsections.

2) The first section of related regulations (1.861-1).

3) The first sentence of the regs under 861(b) (namely, 1.861-8).

4) The cross-references under Section 61.

5) Treasury Decision 6258.

6) The regulations related to Section 863, which say that "*The taxpayer's taxable income from sources* ***within or without*** *the United States will be determined under the rules of* ***Secs.1.861-8*** *through 1.861-14T.*"[27]

7) The regulations related to Section 862, which say that one's taxable *foreign* income "*shall be determined on the same basis as that used in* ***Sec. 1.861-8*** *for determining* ***taxable income from sources within the United States***."[28]

8) Other regulations under Section 863, which identify 1.861-1 through 1.863-5 of the regs as giving the rules "*for determining the* ***gross and the taxable income*** *from sources* ***within and without*** *the United States*."[29]

9) Numerous other sections of the tax code (such as Sections 79, 105, 410, 414 and 505) which identify Section 861 as the section which determines what constitutes "*income from sources within the United States*."

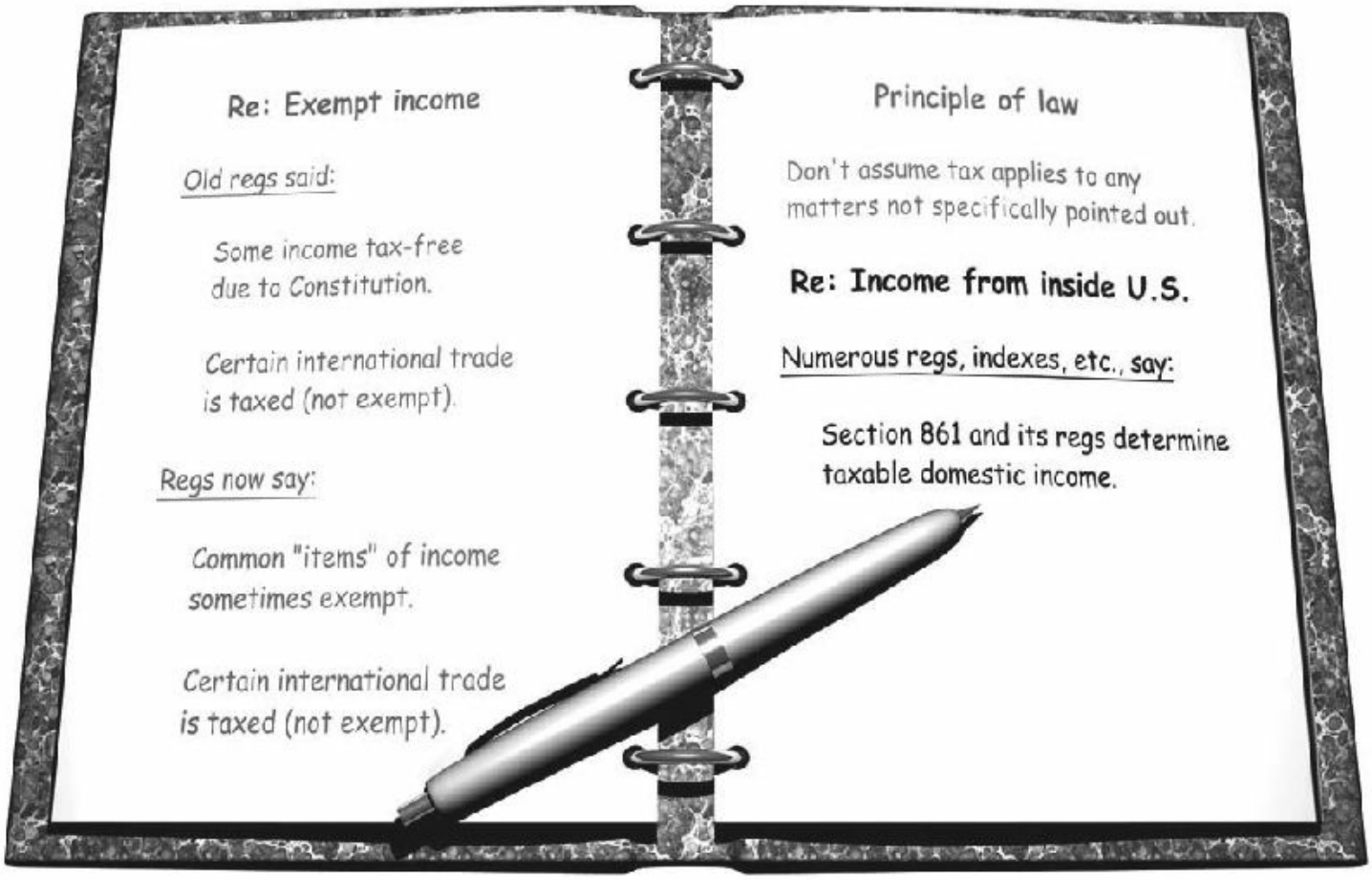
10) The index of the Code of Federal Regulations, which, under "Income Taxes," refers the reader to the regs under 861 and following regarding both "*Determination of sources of income*" and "*Income from sources* ***inside or outside*** *U.S.* "

11) The indexes of the tax code (including the USC, USCA and USCS printings), which contain entries such as the following:

- Under "*Sources of income, Within the U.S.* ," one is referred to Section 861.
- Under "*Gross income, Sources within U.S.* ," one is referred to Section 861.
- Under "*Deductions, Taxable income from within U.S.* ," one is directed to Section 861.
- Under "*Taxable income, Sources within U.S.* ," one is directed to Section 861.

(As a reminder, Section 63 of the tax code explains that, in general, taxable income equals gross income minus deductions; and under all three of those concepts, the indexes of the Code point to Section 861 regarding income from *inside* the U.S. Also of note, there are *no* regulations under Section 63 explaining how to determine taxable income.)

So let us add this point to our clue book.



Pay No Attention to the Section Behind the Curtain!

Since the mid-1990s, when the issue addressed in this report first began to be exposed to a significant number of people, the status quo tax professionals, both inside and outside the government, have responded the way entrenched, highly esteemed and well-paid so-called experts usually respond when conventional wisdom is challenged: with a heavy dose of condescending ridicule (e. g., "That's nonsense!"), a helping of thinly-veiled and not-so-thinly-veiled threats (e.g., "You'll get in trouble if you believe that!"), and very little actual substance.

By far the most popular response from the self-proclaimed tax pros—when the response has consisted of saying anything more than "frivolous!"—can be summed up as "*You* aren't supposed to use Section 861!" The attempted justifications for that assertion have varied widely, often contradicting each other, but the true rationale behind the claim does not amount to anything more scholarly than this: "We've never used those sections, so you shouldn't either!"

Oddly, their claims about who *should* use 861 fluctuate wildly. Various government officials have (at different times) asserted that: 1) only *foreigners* should use those sections; 2) only Americans with *foreign* income should use those sections; 3) only Americans with foreign *and* domestic income should use those sections; 4) only those who need to "apportion" income and/or deductions between foreign and domestic sources should use those sections, and less frequently; 5) *all* Americans should use those sections. If there is a common theme among such claims (excluding the last one), it boils down to this: "Look there only if those sections show your income to be taxable; otherwise, don't look there, and just *assume* your income is taxable anyway." (Oddly, those who claim that 861 and related sections should be used by U.S. citizens only if they have both foreign *and* domestic income fail to explain why, if such people *do* use those sections, their *foreign* income shows up as taxable, while their domestic income does *not*, as will be shown below.)

As for the law itself, nowhere does it say that 861 and its regs should be used only by certain people, or only in certain unusual circumstances. On the contrary, numerous citations (such as those shown above) state quite plainly, without any qualifiers or exceptions, that those sections give the rules for determining one's "*taxable income from sources within the United States*." At this point it is probably not difficult for the reader to guess why both private tax professionals and government employees (especially those working for the IRS) do not want people to use 861 and its regulations to determine their taxable income: because, as will be thoroughly proven below, those sections **do not show the income of the average American to be taxable**.

Getting to the Root

Now that it has been firmly established that Section 861 of the tax code, and the regulations related to that section, are the place to look to determine who can have taxable domestic income, it is time to delve into what those sections actually say. However, the current sections alone in many ways resemble a "crime scene" after the perpetrator has had time to conceal or remove most of the evidence. While in the current law books there are still enough bits and pieces to reconstruct the truth, the whole picture becomes a lot more clear—and a lot more sinister—when considered in chronological order, starting from the very beginning. With that in mind, the following examines how a particular portion of the law—which today is Section 861—has "evolved" over the years.

It is important here for the reader to understand that the tax code is not discarded and rebuilt from scratch every year (or even every decade), like throwing away an old car and getting a new one. On the contrary, the current tax code is really just the original 1913 income tax, but with many, many amendments having been made over the years, much like a very old car that has had a lot of little pieces replaced, various parts tinkered with, and several paint jobs—but is still the same car underneath. Whether with a car or a law, the best way to truly understand the essence of the thing is to see what it looked like before all of the adjustments and tinkerings occurred.

With that in mind, the following is what Section 861 looked like, eighty years and several "paint jobs" ago:

"*Sec. 217. (a) In the case of a* nonresident alien *or of a citizen* entitled to the benefits of section 262*, the following items of gross income shall be treated as income from sources within the United States:*
(1) Interest *on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise;*
(2) The amount received as dividends *from a domestic corporation…;*
(3) Compensation for labor or personal services *performed in the United States;*
(4) Rentals or royalties *from property located in the United States…;*
(5) Gains, profits, and income from the sale of real property *located in the United States;*
(b) From the items of gross income specified in subdivision (a) there shall be deducted [the allowable deductions]. *The remainder, if any, shall be included in full as* net income from sources within the United States." [Revenue Act of 1925, § 217]

While that section mentioned only two types of *individuals*, Section 232 of the same Act added the equivalent corporations, saying that "*in the case of a* ***foreign corporation*** *or of a corporation* ***entitled to the benefits of section 262*** *the computation shall also be made in the manner provided in* ***section 217***." So the section was about: 1) foreigners (individuals and companies), and 2) Americans (individuals and companies) "*entitled to the benefits of section 262*," which meant that they received the majority of their income from inside federal *possessions*, such as Guam and Puerto Rico. The "benefit" was that only their income from within the U.S. (and *not* their income from within the possessions) would be subject to the tax. For the moment, the reader need only understand that only those doing business in federal *possessions* could be "*entitled to the benefits of section 262*." (See Exhibit E.)

With those things in mind, it becomes easy to distill the section down and concisely express its meaning. The section lists various common types of domestic income, including (among other things) payment for labor performed inside the United States and interest on U.S. investments, and says that in the case of *foreigners*, and in the case of Americans with *possessions* income, such income constitutes *domestic* income and, after subtracting the allowable deductions, constitutes *taxable* domestic income.

Consider that carefully and let its legal significance sink in. Why would the law say that those types of U.S.-source income are taxable for foreigners and for *certain* Americans (those with possessions income), instead of saying that such income is taxable for *all* Americans (as "conventional wisdom" says it is)? Why, for example, would the law specifically point out that compensation for services performed in the U.S. is to be included as taxable domestic income in the case of only *some* Americans in unusual circumstances? Are not domestic wages taxable for *all* Americans? Section 217 back then obviously did *not* say so. Why not?

Now recall that that section is what eventually became the current Section 861—the primary section to use (along with its regulations) to determine one's taxable income from sources within the United States. But what would the average American find there, if he attempted to use the old Section 217 to do that? He would find a statute which specifically points out that U.S. wages are taxable for Americans who also have *possessions* income, as well as for foreigners, but which says nothing at all about the wages of the average American worker. So, what is the reader to make of all that?

"*Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. ... This doctrine decrees that* where law expressly describes [a] particular situation to which it shall apply*, an irrefutable inference must be drawn that* what is omitted or excluded was intended to be omitted or excluded." [Black's Law Dictionary, 6th Edition]

"*In the interpretation of statutes levying taxes it is the established rule not to... enlarge their operations so as to embrace matters* not specifically pointed out." [*Gould v. Gould*, 245 U.S. 151 (1917)]

With those principles in mind, if the law points to one section as the place to look to determine when domestic income is taxable, and that section specifically says that domestic income is taxable for certain people *other than you*, there is only one logical conclusion to be

drawn: in your case, domestic income is *not taxable*.

Cover-up #3: Obfuscating Taxable Domestic Income

No one could possibly mistake the old Section 217 (from 1925) to mean that domestic income is taxable for *all* Americans. (See Exhibit D.) At the time, that section was only *four* section numbers away from the general definition of "gross income" (back then Section 213), instead of *eight hundred* numbers away, as it is now (61 versus 861).

Note also how well all the pieces fit together back in the 1920's. Back then, the regulations generally defining "gross income" mentioned the foreign income of Americans, as well as the domestic income of: 1) nonresident aliens and foreign corporations, and 2) Americans (individuals and corporations) with possessions income—precisely the same things mentioned in Section 217, dealing with who could have taxable income from *inside* the U.S. Less than a decade later, however, a rather conspicuous change occurred to the wording of that section of law (what would eventually become Section 861). Compare the following: **Section 217 (1925)**

Section 217 (1925)	Section 119 (1939)
(a) In the case of a **nonresident alien** or of a citizen **entitled to the benefits of section 262**, the following items of gross income shall be treated as income from sources within the United States: (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise; (2) The amount received as dividends from a domestic corporation...; (3) Compensation for labor or personal services performed in the United States; (4) Rentals or royalties from property located in the United States...; (5) Gains, profits, and income from the sale of real property located in the United States; (b) From the items of gross income specified in subdivision (a) there shall be deducted the [allowable deductions]. The remainder, if any, shall be included in full as net income from sources within the United States.	(a) Gross income from sources in United States. – The following items of gross income shall be treated as income from sources within the United States: (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise; (2) The amount received as dividends from a domestic corporation...; (3) Compensation for labor or personal services performed in the United States; (4) Rentals or royalties from property located in the United States...; (5) Sale of Real Property. –Gains, profits, and income from the sale of real property located in the United States. (b) Net income from sources in United States. – From items of gross income specified in subsection (a) of this section there shall be deducted the [allowable deductions]. The remainder, if any, shall be included in full as net income from sources within the United States.

Though most of the section remained essentially the same, in 1932 the phrase about nonresident aliens and citizens with possessions income (those "*entitled to the benefits of section 262*") mysteriously *vanished* from the section. First, let us establish that these really are corresponding sections: the one on the left (above) is what *became* the one on the right. The chart below shows the "genealogy," if you will, of what is now Section 861:

Subject	1921 - 1931	1932 - 1953	1954 - present
Domestic gross income	§ 217(a)	§ 119(a)	§ 861(a)
Domestic taxable income	§ 217(b)	§ 119(b)	§ 861(b)
Foreign gross income	§ 217(c)	§ 119(c)	§ 862(a)
Foreign taxable income	§ 217(d)	§ 119(d)	§ 862(b)
Income from inside and outside U.S.	§ 217(e)	§ 119(e)	§ 863

So, concerning taxable domestic income, for example, section 217(b) from 1921 became section 119(b) of the 1932 code, and later became section 861(b), which is what it still is today. (The Supreme Court case of *Commissioner v. Wodehouse*, 337 U.S. 369 (1949), together with the notes under the tax acts of different years, and the relatively recent Treasury Decision 8687, all confirm the path of "evolution" of these sections shown above.)

Why, then, when Section 217 became Section 119, was there such a significant change in the wording of the beginning of the section? Why did it stop mentioning foreigners and those with possessions income? Was Congress "fixing" the section, to make it say that domestic income was taxable for *everyone*? Or had Congress expanded the law, to make the average American's income taxable,

when it had not been before?

Neither. The correct application of the law did not change at all. The *regulations* under both statutes (217 and 119) were nearly identical, with each talking about foreigners and about citizens with possessions income. So, for example, while Section 119 of the 1939 **statutes** listed various types of domestic income, the related **regulations** stated quite plainly for whom those types of income were taxable.

Statute: "*Net income from sources in United States.—From the items of gross income specified in subsection (a) of this section there shall be deducted the* [allowable deductions] *. The remainder, if any, shall be included in full as net income from sources within the United States*." [Section 119(b) (1939 code)]

Regulation: "*From the items specified in section 119(a) as being derived specifically from sources within the United States there shall, i*n the case of non-resident alien individuals and foreign corporations *engaged in trade or business within the United States, be deducted the* [allowable deductions]. *The remainder shall be included in full as net income from sources within the United States*." [26 CFR § 39.119-10 (1945)]

Several other sections of related regulations (e.g., sections 29.119-1 and 29.119-9) also mentioned foreigners and those with possessions income, and no one else. As another example, while subsection 119(a)(1) of the statutes talked about "interest" on U.S. investments, without specifying for *whom* such income was taxable, the related regulations said this:

"*29.119-2. Interest.*
*There shall be included in the gross income from sources within the United States, of n*onresident alien individuals, foreign corporations*, and citizens of the United States, or domestic corporations which are* entitled to the benefits of section 251*, all interest received or accrued, as the case may be, from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents of the United States, whether corporate or otherwise* [with limited exceptions]."

If domestic "interest" were taxable for anyone who receives it, which is what "conventional wisdom" says, there is no reason whatsoever for these regulations to have said what they said. To specifically point out that such income is taxable for *certain* people, engaged in certain types of *international* commerce, without making any mention of the returns on investments of the average American, is very significant. (As an aside, Congress must approve federal agency regulations before they are finalized, so this was not a disagreement of some kind; Congress was well aware of, and gave its blessing to, the "interpretation" expressed in those regulations.)

If, when Section 217 turned into Section 119, the scope of the law did not change (as the regulations clearly demonstrate), what possible reason could there have been to remove from the statute the phrase specifically saying *who* could have taxable income from within the U.S.? No honest or justifiable reason comes to mind, though a possible deceptive motive is obvious: *to mislead the American people regarding the issue of who actually owes federal income taxes*.

And to a large extent, it worked. The current Section 861 is substantially the same as Section 119 from 1939, and by itself still does not mention for whom the listed types of domestic income are taxable. As a result, some tax professionals today (though they are in the minority) argue that Section 861 *does* mean that U.S. income is taxable for everyone. For example, they cite Section 861(a)(3) to mean that "*compensation for labor or personal services performed in the United States*" is taxable for *everyone*—an understandable mistake if one reads only the current Section 861 by itself—and a mistake which the change in wording of the section seems to have been *intended* to cause.

The general wording of Sections 861 and 862 categorizes *all* income—whether taxable or not—as either "within" income or "without" income. If one reads Section 861, all by itself and out of context, to mean that the listed types of domestic income are taxable for everyone in all situations, he would also have to read the nearly identical wording of Section 862 to mean that the types of *foreign* income listed there are also always taxable for everyone. The conclusion would be that all income from anywhere is taxable for everyone on the planet—which not only is obviously untrue, but also would render all of the within/without rules utterly pointless. Why distinguish between the two, only to then say that both are always taxable no matter who receives them?

The current *regulations* under 861, as will be shown below, still demonstrate that the types of domestic income listed in Section 861 itself are taxable only for *certain* people in certain circumstances, though it explains that fact in an extremely convoluted and confusing manner. But the legislative history of the section makes the truth crystal clear. No one, for example, would misunderstand the following—from the "grandfather" of Section 861—to mean that U.S. wages are taxable for everyone.

"*(a) In the case of a* nonresident alien *individual or of a citizen e*ntitled to the benefits of section 262*, the following items of gross income shall be treated as income from sources within the United States:... (3)* Compensation for labor or personal services performed in the United States*;...*

(b) From the items of gross income specified in subdivision (a) there shall be deducted [the allowable deductions] *. The remainder, if any, shall be included in full as net income from sources within the United States*." [Revenue Act of 1925, § 217]

Some tax professionals today, not eager to address or respond to such evidence, insist that only current sections of statutes or regulations matter, and that everything else is obsolete and should be ignored. But that is not at all the case. As the IRS's own manual explains, the current language of the tax code "*does not solve every tax controversy*," and "*Courts also consider the history of a particular Code section*"[30]. As one illustration of this, the Supreme Court in one case specifically referred back to the old Section 217 to help properly understand the meaning of a later version of the law (Section 119 from 1939).[31] As another example, Treasury Decision 8687 (from 1996), in discussing what *current* regulations should say, refers all the way back to Section 217 from 1921. Both the Judicial and Executive branches of the federal government regularly reference so-called "obsolete" law to determine the correct meaning and application of *current* law. This is because they know that laws do not appear out of thin air every year, but are the result of a sort of statutory evolution.

The Deception of 1954

Not much changed in the relevant sections between 1932 and 1954, with the exception of the disappearance of two sections of regs under Section 119 (Sections 39.119-1 and 39.119-9) which specifically mentioned nonresident aliens, foreign corporations, and American individuals and companies with possessions income. (Two other sections mentioning those things remained.)

Then, in 1954, the entire tax code underwent a major rearranging, renumbering, and in some cases, rewording. The old Section 119 of the statutes became the new Sections 861 through 864, with no significant change in the text of that part of the law. Those sections have remained essentially the same ever since. Of note, both houses of Congress, in their respective reports on the 1954 Code, stated that the application of that part of the law had not significantly changed. Those reports include the following:

SUBCHAPTER N - TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

Part I - Determination of Sources of Income

§ 861. Income from sources within the United States

§ 862. Income from sources without the United States

§ 863. Items not specified in section 861 or 862

§ 864. Definitions

These sections, which are identical with sections 861-864 of the House bill, ***correspond to section 119 of the 1939 Code. No substantive change is made****, except that section 861(a)(3) would extend the existing 90-day $3,000 rule in the case of a nonresident alien employee of a foreign employer to a nonresident alien employee of a foreign branch of a domestic employer.*

But while the correct application of this part of the law did not change, and while the text of the *statute* changed hardly at all, the related *regulations* underwent some dramatic (and very suspicious) changes. For example, compare how the first section of related regulations appeared, before and after 1954:

Before 1954 (§ 29.119-1)	After 1954 (§ 1.861-1)
Income from sources within the United States **Nonresident alien individuals**, **foreign corporations**, and citizens of the United States or domestic corporations **entitled to the benefits of section 251** are taxable only upon income from sources within the United States. ... The Internal Revenue Code divides the income of such taxpayers into three classes: (1) Income which is derived in full from sources within the United States; (2) Income which is derived in full from sources without the United States; (3) Partly within and partly without the United States The taxable income from sources within the United States includes that derived in full from sources within the United States and that portion of the income which is derived partly from sources within and partly from sources without the United States which is allocated or apportioned to sources within the United States.	Income from sources within the United States (a) Categories of income. Part I (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder determine the sources of income for purposes of the income tax. ... The statute provides for the following three categories of income: (1) Within the United States... (2) Without the United States... (3) Partly within and partly without the United States... (b) Taxable income from sources within the United States. The taxable income from sources within the United States shall consist of the taxable income described in paragraph (a)(1) of this section plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a) (3) of this section.

The older version was plainly about people involved in certain types of international trade. After 1954, however, all mention of *who* could have taxable income from within the U.S. was removed from the section. A similar, equally conspicuous change occurred at the same time to the main regulation to be used for determining taxable domestic income. Again, compare the section before and after the change.

Before 1954 (§ 29.119-10)	After 1954 (§ 1.861-8)
From the items specified in sections 29.119-2 through 29.119-6, inclusive, as being derived specifically from sources within the United States there shall, in the case of **nonresident alien individuals** and **foreign corporations** engaged in trade or business within the United States, be deducted [the allowable deductions]. The remainder shall be included in full as net income from sources within the United States.	From the items specified in §§ 1.861-2 to 1.861-7, inclusive, as being income from sources within the United States there shall be deducted [the allowable deductions]. The remainder, if any, shall be included in full as taxable income from sources within the United States.

Keep in mind, Congress specifically said that the application of this part of the law *had not changed*. So why, in one year, did the regulations say that domestic income is (after subtracting deductions) taxable for certain people engaged in certain types of commerce, and in the next year say simply that such income is (after subtracting deductions) taxable? No one would mistake the older section to mean that U.S. income is taxable for everyone, while almost anyone could and would mistake the newer section to mean just that.

Of note, both sections went on to give an example of how the section is to be applied to determine one's taxable domestic income. Note the only significant change:

Before 1954 (§ 29.119-10 example)	After 1954 (§ 1.861-8 example)
Example. A **nonresident alien** individual engaged in trade or business within the United States whose taxable year is the calendar year derived gross income from all sources for 1942 of $180,000, including there-in:...	Example. A **taxpayer** engaged in trade or business for the taxable year gross income from all sources $180,000, one-fifth of which ($36,000) is from sources within the United States, computed as follows:...

The rest of the example, including all the dollar amounts ($9,000 interest from a domestic corporation, $4,000 from dividends, $12,000 in royalties from U.S. patents, and $11,000 from the sale of real property) remained the same. The only real change was that the old section admitted that the example was about a *nonresident alien*, while the new section referred only to "a taxpayer." Why? Why might someone not want the reader to know that the example was about a foreigner? Because, of course, when the average American reads a section titled "*Computation of taxable income from sources within the United States*" (which was the title of the section right after 1954), the government gets a lot more money if the reader can easily *misunderstand* the section to mean that domestically earned income is taxable for everyone, when in reality it is not. In other words, the reason for these changes to the regulations was an intent to deceive and defraud the American public. Another glaring example occurred in the regulation dealing with domestic "interest." Once

again, a side-by-side comparison speaks for itself.

Before 1954 (§ 29.119-2)	After 1954 (§ 1.861-2)
Interest. There shall be included in the gross income from sources within the United States, of **nonresident alien** individuals, **foreign corporations**, and citizens of the United States, or domestic corporations which are **entitled to the benefits of section 251**, all interest received or accrued, as the case may be, from the United States, and Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents of the United States, whether corporate or otherwise, except... [some exceptions].	Interest. (a) General. There shall be included in the gross income from sources within the United States all interest received or accrued, as the case may be, from the United States, and Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents of the United States, whether corporate or otherwise, except... [some exceptions].

Notice that the only change is the removal of the phrase specifying *who* had to include domestic "interest" in their gross income. If the law did not change (as Congress admitted), there is no benign explanation for such changes to the wording of the regulations. The only explanation is that the regulation writers did not want the general public to know that domestic income is *not taxable* for the average U.S. citizen.

(As a reminder, it was at the same point in time, just after 1954, when the changes described above under "Cover-up #1" and "Cover-up #2" occurred, involving the removal of any mention of the Constitution itself exempting some income from taxation and the removal of the list of the non-exempt (taxable) types of income, which all related to *international* trade.)

The Mother of All Obfuscations

So, to review, the "evolution" of the relevant portion of the federal income tax laws (what is now Section 861 and related regs) can be summed up as follows:

• In the 1920s, both the statute (Section 217) *and* the related regulations stated quite plainly that domestic income (e.g., wages earned in the U.S., interest and dividends from U.S. investments, rents from property located in the U.S., etc.) was, after subtracting deductions, to be included in the taxable income of *nonresident aliens*, *foreign corporations*, and Americans (individuals and companies) who have *possessions* income. The sections very obviously were *not* saying that domestic income is taxable for all U.S. citizens.

• After 1932, the *statute* (Section 119) by itself no longer specified exactly for *whom* the listed types of domestic income were taxable, though the related *regulations*, virtually unchanged from before, still unmistakably stated that such income was taxable for *foreigners*, and for Americans with *possessions* income.

• Shortly after 1954, neither the statute *nor* the related regs specifically stated for whom domestic income was taxable. As a result, the average reader would almost certainly misread the sections to mean that U.S.-source income was taxable no matter who received it, unless the reader happened to know the history of the sections, and/or understood how the different parts of Subchapter N work together (as explained below).

• After 1977, one section of the regulations under Section 861 was dramatically altered. (Section 861 itself and the other regulations related to it remained essentially unchanged.) That one section which changed, Section 1.861-8, is related to 861(b) of the statutes (" *Taxable income from sources within United States*") and is repeatedly referred to as the primary section to use to determine one's "*taxable income from sources within the United States*"[32]. The changes which occurred to that section after 1977 were extensive, and very telling.

The most immediately apparent change was that, whereas the prior Section 1.861-8 filled about *one* page, the new version of the same regulation occupies more than *thirty* pages (which, incidentally, is about a dozen times as long as the statute it is supposed to "interpret": Section 861). Also of note, there was no change at all to the *statute* to justify such an explosion in the length of the *regulation*.

The two most important things to note about the new Section 1.861-8 are that: 1) it tells the truth about the fact that U.S. source income is taxable only for certain people engaged in certain types of commerce (*not* most Americans); and 2) it does so in just about the most convoluted and confusing way possible. While trying to navigate your way through the tangled maze of "legalese" discussed below, keep in mind how brief, concise, and easily understandable this part of the law had been before (e.g., Section 217 from 1925).

After 1977, several new legal terms were used in Section 1.861-8, though those terms do not appear and have never appeared anywhere in the statutes, and had never before appeared in any other regulation. In other words, these terms were made up just for use in the new Section 1.861-8. Several of these new terms are defined below, first using language designed to be clear and understandable, and then the way they are explained in the actual regulations.

1) Operative Sections. As mentioned above, throughout Subchapter N of the tax code there are various sections which address specific types of commerce (such as a nonresident alien doing business in the U.S.). These sections, called "operative sections" by Section 1.861-8, include the sections shown in the list below.

SUBCHAPTER N
Tax Based on Income From Sources Within or Without the United States

PART I - Determination of Source of Income
PART II - Nonresident Aliens and Foreign Corporations
Section 871 - Nonresident aliens doing business in the U.S.
Section 882 - Foreign corporations doing business in the U.S.
PART III - Income From Sources Without the United States
Section 904 - Limit on the foreign tax credit
Section 911 - Foreign Earned Income
Section 925 - Foreign sales corporations
Section 931 - Citizens with possessions income
Section 934 - Rules related to the Virgin Islands
Section 936 - U.S. corporations with possessions income
Section 941 - China Trade Act corporations
Section 952 - Controlled foreign corporations
PART IV - Domestic International Sales Corporations
Section 994 - Domestic International Sales Corporations
PART V - International Boycott Determinations
Section 999 - International boycott matters

Note that all of the sections deal with international trade or federal possessions; none relates to a U.S. citizen doing business only in the 50 states.

2) Specific Sources or Activities. Each operative section (listed above) describes a particular activity or type of commerce. For example, the "specific source or activity" described in Section 871 is a nonresident alien doing business inside the United States.

3) Statutory Grouping. The income generated by a particular activity described in an "operative section" makes up a "statutory grouping of gross income." For example, the income a nonresident alien receives from doing business in the U.S. falls into a "statutory grouping."

4) Residual Grouping. The income received from any activity *other* than the activity described in an "operative section" constitutes a "residual grouping of gross income" (which is often exempt from tax). For example, the income which a foreigner receives from doing business in his own country (not from doing business in the U.S.) makes up a residual grouping, which in that case is not taxable.

Keeping the above terms in mind, below are some excerpts from the regulations under 861.

"*(ii) Relationship of sections 861, 862, 863(a), and 863(b). Sections 861, 862, 863(a), and 863(b) are the four provisions applicable in determining taxable income from* specific sources." [26 CFR § 1.861-8(f)(3)(ii)]

The above admission, which is buried in the middle of the section, shows that the general language of Section 861 is about income from "specific sources." This is akin to the older regulations saying that the types of domestic income listed in the statute are taxable for those engaged in *certain* types of commerce (i.e., foreigners doing business in the U.S. and Americans doing business in federal possessions).

The sentence quoted above says nothing about what those "specific sources" might be, or even where to find that out, but a text search for "specific sources" brings up only three other places where that term is ever used—all of them in Section 1.861-8, and all quoted from below. The first paragraph of Section 1.861-8—the primary section for *determining taxable domestic income*—includes

this:

"*The rules contained in this section apply in determining taxable income of the taxpayer from* specific sources and activities *under other sections of the Code, referred to in this section as operative sections. See* paragraph (f)(l) *of this section for a list and description of operative sections*." [26 CFR § 1.861-8(a)(1)]

So the section for determining taxable domestic income applies to income from those activities described in the "operative sections" throughout Subchapter N (shown above), which are all listed in one place in the regulations at 1.861-8(f)(1) ("paragraph (f)(l)"). The same regulation, a little further down, confirms this again:

"[T] *he term 'statutory grouping of gross income' or 'statutory grouping' means the gross income from a* specific source or activity *which must first be determined in order to arrive at 'taxable income' from which specific source or activity under an operative section. (See* paragraph (f)(l) *of this section.)*" [26 CFR § 1.861-8(a)(4)]

This confirms the definitions given above, and again shows that to have "taxable income" under this section, one must be engaged in one or more of those certain types of commerce, or "specific sources and activities," described in the operative sections (listed in 1.861-8(f)(1)). If you have no income from such activities, you have no "taxable income."

Recall here the former legislative draftsman for the U.S. Treasury Department saying that the federal "income tax" is *not* actually a tax on income *per se*, but is an excise tax upon "*certain activities and privileges*." That statement correlates perfectly with the fact that the section for determining one's "*taxable income from sources within the United States*" says that it is about income from "***specific sources or activities***" (all of which relate to international trade).

Below is the final place where "specific sources" are mentioned, in "paragraph (f)(l)" itself.

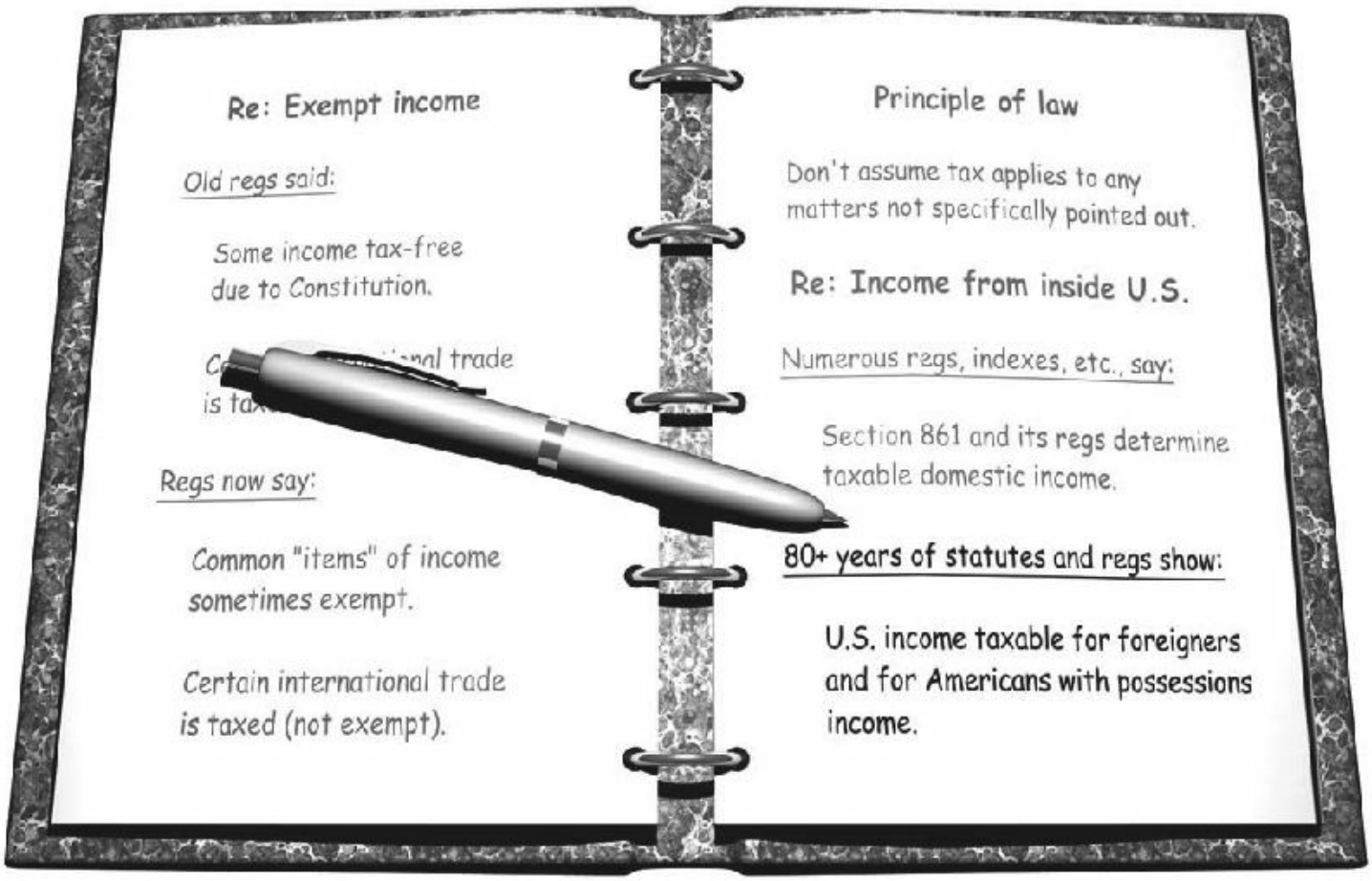
"*(1) Operative sections. The operative sections of the Code which require the determination of taxable income of the taxpayer from* specific sources or activities *and which give rise to* statutory groupings *to which this section is applicable include the sections described below.*
(i) Overall limitation to the foreign *tax credit. Under the overall limitation to the foreign tax credit, as provided in section 904(a)(2)... Accordingly, in this case, the statutory grouping is foreign source income…*
(ii) [Reserved] [This item was most likely intended to refer to section 911, which is about foreign earned income, since 26 CFR § 1.911-6 refers to section 911 as an "operative section," and section 911 is not included anywhere else on the list.]
(iii) DISC and FSC *taxable income. Sections 925 and 994 provide rules for determining the taxable income of a FSC and DISC...*
(iv) Effectively connected taxable income. Nonresident alien individuals and foreign corporations engaged in trade or business within the United States*, under sections 871(b)(1) and 882(a)(1)...*
(v) Foreign *base company income. Section 954 defines the term 'foreign base company income' with respect to controlled* foreign *corporations...*
(vi) Other operative sections. The rules provided in this section also apply in determining—(A) The amount of foreign *source items of tax preference under section 58 (g)... (B) The amount of* foreign *mineral income under section 901(e); (C) [Reserved]; (D) The amount of foreign oil and gas extraction income and the amount of* foreign *oil related income under section 907; (E) The tax base for citizens* entitled to the benefits of section 931 *and the section 936 tax credit of a domestic corporation which has an election in effect under* section 936*; (F) The exclusion for income from* Puerto Rico*... (G) The limitation under section 934 on the maximum reduction in income tax liability incurred to the* Virgin Islands*; (H) The income derived from* Guam*... (I) The special deduction granted to* China Trade Act *corporations under section 941; (J) The amount of certain U.S. source income excluded from the subpart F income of a controlled* foreign *corporation under section 952(b); (K) The amount of income from the insurance of U.S. risks under* section 953(b)(5)*; (L) The* international *boycott factor and the specifically attributable taxes and income under section 999; and (M) The taxable income attributable to the operation of an agreement vessel under section 607 of the* Merchant Marine Act *of 1936... "* [26 CFR § 1.861-8(f)(1)]

Note that the list still includes nonresident aliens, foreign corporations, and citizens "*entitled to the benefits of section 931*"—the exact same activities described in many decades of equivalent statutes and regulations. (See Exhibit E for the sections dealing with federal possessions: Section 262 from 1925, and 26 CFR § 1.931-1 of the 2004 regulations.) (Of note, the regulation as shown above is how it appeared up until 2005. In recent years various sections of the tax code dealing with matters involving federal possessions, including Section 931, have been repealed or amended, and as a result, items (E), (F) and (H) were recently removed from the list.)

In addition to the activities which have been mentioned in over eighty years of statutory and regulatory predecessors, the above list also includes specific rules regarding individual federal possessions, other particular rules about certain foreign income, and the newer rules about DISCs (Domestic International Sales Corporations) and FSCs (Foreign Sales Corporations). But all the matters listed still involve international or foreign trade. Subsection 1.861-8(g) then gives many examples of how to use 1.861-8 to determine one's taxable

income, and says that the "operative section" for each example, except as otherwise provided, is the section about foreign tax credits.

So the actual legal scope and application of this part of the law has not changed for over eighty years. The current regulations still show that U.S.-source income is taxable only for those engaged in certain *international* trade, though the sheer size and complexity of the current Section 1.861-8 seem designed to *prevent* the reader from easily understanding that. A reading of the entire section conveys the impression, not of the authors trying to make things clear and understandable, but of the regulation-writers trying to *confuse* the reader, using unnecessarily involved terminology and indirect and evasive language, while conspicuously failing to state in plain, simple terms the bottom line: an American with only domestic income *does not have taxable income from sources within the United States*, and therefore does not owe the tax.



Relocating the Truth

While the current law books do tell the literal truth about the very limited nature of the federal income tax, the way in which they do so is fundamentally different from the way they did it prior to 1954. Back then, one needed to look no further than the regulations generally defining "gross income" to learn that some income is not subject to the tax because of the Constitution itself, and that income from certain *international* trade (mainly the foreign income of Americans and U.S. income of foreigners) *is* taxable.

Back then one could also find the truth in the statutes and regulations specifically dealing with income from *inside* the U.S., which said that such income is taxable for foreigners, and for certain Americans with possessions income—which exactly matches and reinforces what the regs generally defining "gross income" said at the time. After 1954, however, any hint of the truth was completely removed from the regulations generally defining "gross income." Instead, a "legalese" trick was employed.

It is common for one section of law to use a certain term, while a different section defines the legal meaning of the term, often in a way very different from the way the term is used in common speech. For example, in another part of the Title 26 statutes (in an area unrelated to income taxes), one section says that the Secretary of the Treasury "*shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States*"[33]. Several sections away, however, the term "firearm" is defined (for purposes of that law) in a way which *excludes* the vast majority of shotguns, rifles and handguns, but includes poison gas, silencers and land mines[34]. Obviously that legal definition is drastically different from the common usage of the term "firearm," and as a result, the scope of that law is far more limited than the section read out of context would seem to indicate.

After 1954, a similar scenario existed in the federal income tax laws. Section 61 generally defines "gross income" to mean "*all income from whatever source derived*"—a definition which has often been erroneously cited as proof that all income is taxable. However, the regulations many hundreds of pages away say that Section 861 and following (and related regs) "*determine the sources of income for purposes of the income tax*"[35]. But if the reader is not aware of the fact that certain sections define what is meant by a "source of income," he will most likely misunderstand Section 61 to mean that all income is taxable, regardless of where it comes from.

But what, according to Section 861 and related sections, are the "*sources of income for purposes of the income tax*"?

"*Sections 861, 862, 863(a), and 863(b) are the four provisions applicable in determining taxable income from specific sources*." [26 CFR § 1.861-8(f)(3)(ii)]

And what those "specific sources" are is shown above, in the quote from 1.861-8(f)(1). Suspiciously, those specific sources— *the types of commerce to which the tax applies*—are now listed only in the middle of an enormous, convoluted section of regs, under the unobtrusive heading "*Miscellaneous matters*," instead of in the *first* paragraph in an early, obviously relevant section called "*What included in gross income*," as was the case with the pre-1954 regulations.

Other Cover-ups

Over the years there have been several other changes to the law books which may also have been designed to conceal the truth about the very limited nature of the federal income tax. Such changes include the following:

1) In 1988, in some printings of the tax code (e.g., USC and USCA), the title of Part I of Subchapter N (which begins with Section 861) was changed from "*Determination of Sources of Income*" to "*Source Rules and Other General Rules Relating to Foreign Income*." In the USCS printing of the code, however, which more accurately reflects the underlying law (the "Statutes at Large"), the title did not change. Nor did the title of the related regulations, which still appears as "*Determination of Sources of Income*."

Because tables of contents and titles of sections do not affect the legal meaning of the text of the law[36], and because the *text* of Section 861 did not change, there was no real legal significance to the changing of the title. But it did have a different kind of effect. By changing the title in a way which, read one way, implies that only those with foreign income should be looking at that part of the law, the average American would be deterred from ever looking there. In contrast, note how obviously the table of contents *prior* to the change led the reader straight to Section 861.

Subtitle A - "*Income taxes*"
  Chapter 1 - "*Normal taxes and surtaxes*"
    Subchapter N - "*Tax based on income from sources within or without the United States*"
      Part I - "*Determination of sources of income*"
        Section 861 - "*Income from sources within the United States*"
          861(a) - "*Gross income from sources within United States*"
          861(b) - "*Taxable income from sources within United States*"

In addition, up until 1977, the regulations related to 861(b) of the statutes were entitled "*Computation of taxable income from sources within the United States*"—an obvious place to look to determine one's taxable domestic income. After 1977, however, the title was expanded to read, "*Computation of taxable income from sources within the United States* ***and from other sources and activities.***" Like the new title of Part I (Subchapter N), that title has been interpreted by some to mean that only those who have both domestic *and* foreign income should be referring to that section. The *text* of the statutes and regulations (which is all that legally matters) gives no support for such a claim, but that would hardly matter, if the changes had the effect of dissuading the average reader from looking at those sections at all, thereby making it extremely unlikely that he would discover that purely domestic income is *not subject to the tax*.

2) The Paperwork Reduction Act of 1980 requires that every form used by the federal government to collect information from the public be approved by the Office of Management and Budget (OMB). The regulations at 26 CFR § 602.101 contain a table listing the OMB-approved forms for each section of regulations. Section 1 of the tax code imposes the tax on the "taxable income" of individuals, and the related regulations are found in Section 1.1-1 (titled "*Income tax on individuals*"). Until 1995, the first line in the table in Section 602.101 identified Form 2555, "***Foreign*** *Earned Income*," as the only approved form under Section 1.1-1. In 1995, after various "tax resistance" groups had become aware of that fact, that entry was removed from the list, in order to avoid "confusion" (according to the Treasury Department). At present no forms are listed as being approved for use related to Section 1.1-1. (The process of applying for and receiving OMB approval for a form makes the possibility of an error extremely remote. The Department of the Treasury *requested* that the form relating to *foreign* earned income—and no other form—be approved for Section 1.1-1, and the Office of Management and

Budget approved it. When the entry drew too much attention, however, it was removed.)

3) After 2001, all of the editorially-supplied cross-references, including the one under Section 61 specifically pointing to Section 861 regarding "*Income from sources within the United States*," were removed from the USC and USCA printings of the tax code. (The USCS printing, however, still includes the cross-references.) Because *all* such cross-references were removed from the USC version of the Code, not just the one pointing from 61 to 861, there may have been some motivation for the change other than an intent to deceive. However, for such cross-references to be removed just a few years after thousands of Americans began looking up that particular cross-reference under 61, after those cross-references had been in place for almost *seventy years* (in both the pre- and post-1954 Codes), is more than a little suspicious.

Hints and Clues

In addition to what is shown above, many other miscellaneous bits and pieces of evidence in the law books reinforce the fact that only income from certain *international* trade ("*commerce with foreign nations*") was ever subject to the federal income tax. Taken individually, some would appear as little more than strange curiosities; when taken together, on the other hand, they show that the authors of the federal income tax statutes and regulations were well aware of the very limited nature of the tax. A few such hints and clues are described below.

1) As mentioned above, Form 2555, "***Foreign** Earned Income*," was the only form ever approved under the Paperwork Reduction Act to be filed in relation to Section 1.1-1 of the regulations (which is titled "*Income tax on individuals*"). Similarly, the only approved form related to Sections 1.861-2 and 1.861-3 (which deal with interest and dividends from within the U.S.) is Form 1040NR, "*U.S. **Nonresident** Alien Income Tax Return*," and the only form approved in relation to Section 1.861-8 itself is Form 1120-F, "*U.S. Income Tax Return of a **Foreign** Corporation*."

2) Each federal regulation, when published, cites the legal authority under which it was promulgated. Section 1.861-8 cites the general rule-making authority delegated by 26 USC § 7805, as well as 26 USC § 882—the "operative section" related to *foreign* corporations doing business in the U.S. (This matches the fact that the form approved for use with 1.861-8 is for foreign corporations.) Likewise, the equivalent "temporary" regulations at Section 1.861-8T cite Treasury Decision 8228, which states that the section gives "*foreign tax credit rules and certain other **international** tax provisions*," again showing that the sections for determining taxable domestic income (1.861-8 and 1.861-8T) are all about international trade.

3) Several sections of the tax code, including Section 1 (which imposes the tax on individuals), as well as Sections 59, 66 and 469, refer to Section 911(d)(2) of the Code regarding the definition of the term "earned income." There is nothing unusual about the definition itself, which says that "*The term 'earned income' means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered*" (with a few exceptions). What is curious is the *location* of that definition:

Subchapter N - "*Tax based on income from sources within or without the United States*"
Part III - "*Income from sources **without** the United States*"
Subpart B - "*Earned income of citizens or residents of United States*"
Section 911 - "*Citizens or residents of the United States living abroad*"

Compare this to the fact that the only form approved for use with the regs under Section 1 is about "foreign earned income," meaning income earned *outside* of the United States.

4) Along the same lines, if one looks in the indexes of the United States Code under "Income tax" and finds the entries under "citizens," only things such as "*living abroad*" and "*about to depart from U.S.* " are found—again implying that U.S. citizens are taxed primarily on income they receive for work done *outside* of the country.

5) For many years one particular hint about the true nature of the federal income tax has been hiding right under the noses of many millions of Americans. The infamous Form 1040, the income tax return used by many millions of Americans, has an instruction booklet that accompanies it. The form itself is divided into several parts (e.g., personal information, exemptions, income, etc.), and for each part of the form, the instruction booklet gives some general information, and then gives line-by-line instructions on how to fill out the form. Under the part of the form about "income," the instruction booklet begins by saying this:

"***Foreign**-Source Income*

*You must report unearned income, such as interest, dividends, and pensions, from sources **outside the United States** unless exempt by law or a tax treaty. You must also report earned income, such as wages and tips, from sources **outside the United States**.*

If you worked abroad, you may be able to exclude part or all of your earned income. For details, see Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, and Form 2555, Foreign Earned Income, or Form 2555-EZ, Foreign Earned Income Exclusion.

Community Property States...

Rounding Off to Whole Dollars... "

That is all the booklet says about the general topic of "income." It then gives specific directions explaining which different *items* of income to report on which line. What is shown above is the *only* thing in the booklet mentioning the type of *commerce* from which the income derives; the rest is about "items" of *income*.

Though such forms are not legally binding, this one mirrors the method used in many decades of regulations: telling U.S. citizens that they *must* report any **foreign**-source income they receive, without specifically saying whether the **domestic** income of the average American is also subject to the tax. The effectiveness of such a lie-by-omission is demonstrated by the fact that the many *millions* of Americans who receive that booklet and read it simply assume that what it *means* is that citizens must report their foreign income *in addition to* their domestic income, though that is *not* what the booklet says, nor is that how one is meant to interpret the law. (One should not assume that the law applies to matters "*not specifically pointed out.* ")

6) Something very similar exists in IRS Publication 525, which is entitled "*Taxable and Nontaxable Income*." Right up front the publication says this:

"*Reminders*

***Foreign** Income*

*If you are a U.S. citizen or resident alien, you must report income from **outside** the United States (**foreign** income) unless it is exempt by U.S. law.*"

The publication then goes on to discuss (in its own words) "*many kinds of income and explains whether they are taxable or nontaxable*." Again, the quote above is the only place where the publication addresses the issue of *commerce*; the rest deals with specific items of *income*. And again, most readers would assume that any income they receive from *domestic* commerce must also be taxable, though nowhere does the publication actually say that.

7) There are some places in the tax code where, if the reader assumes that most people owe the tax, he runs into a logical contradiction. For example, one section deals with income from selling certain kinds of stocks. That section says that if such income "*is determined to be derived from sources within the United States*," then such income is to be considered "*fixed or determinable annual or periodical gains, profits, and income **within the meaning of section 871(a) or section 881(a)**, as the case may be*"[37]. But sections 871 and 881, which are located in Part II of Subchapter N, are clearly and exclusively about **nonresident aliens** and **foreign corporations**. If a U.S. citizen with income from that kind of stock sales looks at the law (while assuming that such income is taxable for him) he runs into a logical brick wall, because he is told only that such income shall be considered taxable under the rules about *foreigners*—rules which obviously do not apply to him.

8) A similar conundrum occurs when conventional wisdom comes up against the rules about "community income" (joint income received by married couples). If two married people are living apart, and one or both of them receives such "community income," the tax code says that such income "*shall be treated in accordance with the rules provided by **section 879(a)**.* " Once again, average Americans trying to make sense of the rules (while assuming their income is taxable) hit an impasse. Why? Because Section 879(a) is about "*Tax treatment of certain community income in the case of **nonresident alien** individuals*," and applies only to a couple, one or both of whom are nonresident aliens. Again, the section cannot be used by average Americans, who are left hanging when they read the section. If, on the other hand, the reader is aware that purely domestic income is not taxable for U.S. citizens (but *is* taxable for foreigners), then the law makes perfect sense.

9) In 1991 (before the section was removed), the Internal Revenue Manual—the IRS's own procedural manual—said this:

" The Criminal Investigation Division [of the IRS] enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws... involving United States citizens residing in foreign countries and nonresident aliens subject to Federal income tax filing requirements..." [IRM, § 1132.55 (1991)]

What about citizens working in the 50 states? Why is there no mention of them?

10) The regulations at 26 CFR § 601.101 generally describe the functions of the Internal Revenue Service. In that section, the only specific mention of who or what is subject to taxes administered by the IRS reads as follows:

" The Director, Foreign Operations District, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations..." [26 CFR § 601.101(a)]

11) The official decisions and rulings by the IRS are published regularly in the "Internal Revenue Bulletin." Year after year, all the way from 1913 to the present day, those bulletins reinforce the fact that the federal income tax is (and always has been) a tax upon "commerce with foreign nations." For example, the Cumulative Bulletin covering the years 1957 through 1960 contains *nine* listings of rulings and decisions regarding "citizens," every one of which is about citizens who are *outside* of the United States. Likewise, under the category of "*Income—Source*," that same bulletin contains ***thirty-five*** entries, thirty-four of which are, on their face, obviously about *international* trade. The other is Treasury Decision 6258, which (as shown above) says that Sections 861 and following, and related regs, give the rules for the "*determination of gross income and taxable income derived from sources within and without the United States*." (And those rules show only income from international commerce to be taxed.)

Year after year after year, whenever the issue of **commerce** (or "sources" of income) is addressed in the law books, what is discussed is always certain *foreign* income of Americans, the U.S. income of *foreigners*, and matters involving federal *possessions*. What is *never* specifically discussed is a United States citizen who lives and works exclusively within the 50 states.

As illustrated above, what is *not* stated in legal documents can be just as important as what *is* stated. Consider all the documents referred to above in which the average American earning a living in the U.S. *could* have been mentioned, *but was not*. What are the chances that by sheer coincidence, *over eighty years'* worth of legal documents *accidentally* failed to ever specifically state that the U.S.-source income of all U.S. citizens is taxable? The very idea is preposterous, but the only alternative explanation is something many Americans may not want to consider: that the federal government is collecting well over a *trillion* dollars every year from people who *do not owe it*, and that this is the result of an intentional deception planned and carried out by some in the federal government.

The Other Side

For several years now, some agents of the federal government have continued to loudly declare that most Americans owe federal income taxes, backing that assertion with little more than "because we say so." Rather than giving any substantive response to the evidence shown above, the IRS and various lower-court judges have simply harped on the "*from whatever source derived*" language in the general definition of "gross income" (in Section 61) to the exclusion of just about everything else, asserted (without legal support) that most people should not be looking at Section 861 and its regulations, and proclaimed that any view to the contrary is "frivolous."

General Versus Specific

There are several reasons, including those shown above, why it is a mistake to rely exclusively upon the *general* definitions of terms such as "gross income" and "taxable income" when determining what is subject to the tax, as IRS employees and private sector tax professionals do on a regular basis. First and foremost, if those general definitions were all that mattered, the federal tax code would be three or four pages in length, instead of many thousands of pages in length.

More importantly, the federal tax statutes and regulations themselves show that the general definitions are *not* the "be all and end all" of tax law. For instance, the general definition of "gross income" in Section 61 begins by saying, "*Except as **otherwise** provided*," showing that there are exceptions to the general rule. Likewise, the regulations under Section 61 say that when "*another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, such other provision shall apply **notwithstanding section 61** and the regulations thereunder.*"[38]

That statement in the regulations is really nothing more than an acknowledgment of a very old and well-established maxim of statutory interpretation, which can be generalized as "the specific governs the general." Where any law gives a *general* rule, but also includes a *specific* rule regarding some narrow issue, the specific rule "trumps" the general.

"*General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.* " [D. Ginsberg & Sons v. Popkin, 285 U.S. 204 (1932)]

Section 61 gives a *general* definition, whereas the regulations under Section 861 give the *specific* rules concerning the issue of when *domestic* income (income from within the United States) is taxable. So even if the general definition of "gross income" might by itself seem to include all domestic income, the *specific* rules about such income render the general definition inapplicable.

"*It is a well-settled principle of construction that* specific terms *covering the given subject-matter* will prevail over general

language *of the same or another statute which might otherwise prove controlling*." [*Kepner v. United States*, 195 U.S. 100 (1904)]

Contrary to what IRS employees claim, the general definitions do not make it unnecessary to consult the specific "source" rules.

"*As always, '*[w] *here there is no clear intention otherwise, a* specific statute will not be controlled or nullified by a general one*, regardless of the priority of enactment'*." [Crawford Fitting Co. v. J. T. Gibbons, Inc. , 482 U.S. 437 (1987)]

Quite the opposite: the specific "outranks" the general, and the general will apply only to matters *not* dealt with by more specific rules.

"*It is an old and familiar rule that 'where there is, in the same statute, a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the* particular *enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as* are not within the provisions of the particular enactment.'" [U.S. v. Chase, 135 U.S. 255 (1890)]

So reliance on the *general* definition of "gross income" alone, while ignoring the *specific* rules found in the regulations under Section 861, is completely backward as a matter of law.

Again, it is crucial to understand the difference between the question of whether a particular "item" of income is exempt or not, and the question of whether the income derives from a taxable type of *commerce*. While many sections of the tax code give various rules about various types of income, citation after citation make it abundantly clear that Subchapter N (Section 861 and following) is the place, and the *only* place, where the issue of *commerce* is addressed. There are very specific rules in the tax code, stretching back almost a century, which explain when income from *inside* the United States is taxable. Nowhere else in the tax code is that issue addressed, and nothing else in the code can render that issue moot.

It is not unusual for federal law to follow this pattern: imposing a requirement in very general terms in one section, while other sections limit that requirement to matters involving commerce which the Constitution puts under federal jurisdiction. For example, one section of federal law prohibits any "employer" from discriminating against individuals based upon their race, religion, etc.[39], while another section defines the term "employer," for purposes of that law, to mean an employer doing business related to *interstate or international commerce*, or commerce in federal *possessions*. [40]In this way apparently broad requirements are kept in line with the Constitution by limiting their applicability to commerce which Congress has the authority to regulate. Likewise, while earlier sections of the tax code (e.g., Sections 1, 61 and 63) impose what at first glance appears to be an all-encompassing tax, Subchapter N (Section 861 and following) limits the tax to types of commerce which are Constitutionally under federal jurisdiction: international trade and trade within federal possessions.

Within or Without

Other than the general definition of "gross income," about the only other citation used to try to rebut the issue shown above comes from Section 1.1-1 of the regulations, which says that U.S. citizens are liable to the taxes imposed by the code whether their income is "*from sources* ***within or without*** *the United States*." However, as Section 1.1-1 itself admits, the tax imposed is only upon *taxable* income, not all income. Of course, one statement from the regs could not negate all the rules for determining what constitutes *taxable* income, nor does it claim to. And yes, when those regulations were written, it was possible for citizens to have taxable income from *inside* the United States, *if* they also did business in federal *possessions*. And yes, every person who receives *taxable* income, whether from inside or outside the United States, owes the tax. So, how does a citizen *determine* whether his domestic and/or foreign income is taxable?

Subchapter N of the tax code (Section 861 and following) is about "*Tax based on income from sources* ***within or without*** *the United States*." In addition, the index of the regulations, as cited before, tells one to go to the regs under 861 regarding "*Income from sources inside or outside U.S.* " And, in case any doubt might remain, the regulations also say this:

"*(c) Determination of taxable income. The taxpayer's taxable income from sources* within or without *the United States* will be determined under the rules of Secs. 1.861-8 [and following]." [26 CFR § 1.863-1(c)]

So yes, citizens are taxed on any *taxable* income they receive, whether "*from sources within or without the United States*," and in order to *determine* their taxable income (foreign or domestic) they must refer to Section 861 and following, and related regulations. And, as shown above, those sections show income to be taxable only when it derives from certain types of *international* trade.

Smoke and Mirrors

Ironically, the mantra of most of the status quo tax professionals, inside and outside government, has been, "Those sections [861, etc.] don't apply to you." In one sense, that is quite true: those sections are all about international commerce, not about the income of the average American. But the conventional wisdom adherents then apply backward logic to justify their foregone conclusions. If the sections specifically designated for determining taxable domestic income "don't apply" to your income, the proper conclusion to draw is not that you should ignore those sections, but that your domestic income is not taxable.

As an analogy, consider the example discussed previously, where one section of law imposes requirements applicable to "all firearms," while a nearby section legally defines the term "firearm" (for purposes of that law) in an extremely limited way, *excluding* most handguns, rifles and shotguns. If you own a conventional shotgun, and the legal definition of "firearm" *does not apply* to your gun, that obviously does not mean you should ignore the definition; it means that that entire law *imposes no requirement upon you*. Likewise, if you receive no taxable domestic income and no taxable foreign income—as defined by law—then the federal income tax laws impose no legal obligation upon you whatsoever.

Another popular retort to the issue addressed herein is the claim that it takes something "out of context," yet the status quo proponents can never cite any such "context" which would change the meaning of what the words in the law books say (such as those quoted above). To be blunt, the "out of context" accusation is nothing more than a cheap ploy designed to defend the supposed expertise of "the professionals" in the eyes of the public, by implying that only the "experts" could possibly understand the law or know everything it contains, and that we "common folk" have no business trying to read and understand the law for ourselves.

Still others try to dismiss an opposing view by labeling it as just one person's "interpretation"—as if mere evidence and logic cannot make one opinion more valid than another. In truth, little if any "interpretation" is involved. The only time it is even *possible* to "interpret" something is when one set of words could literally have more than one meaning. (For example, "I saw wood" could mean "I have seen wood" or "I cut wood with a saw.") Otherwise, the words simply mean what they say, and there is nothing to "interpret." A review of the various citations above will show that few if any of them can have more than one meaning, so no "interpretation" is required. (It is the conclusions of the so-called experts that don't match what the law actually says. As a result, their opinions do not even qualify as "interpretations"; they are instead merely baseless assertions.)

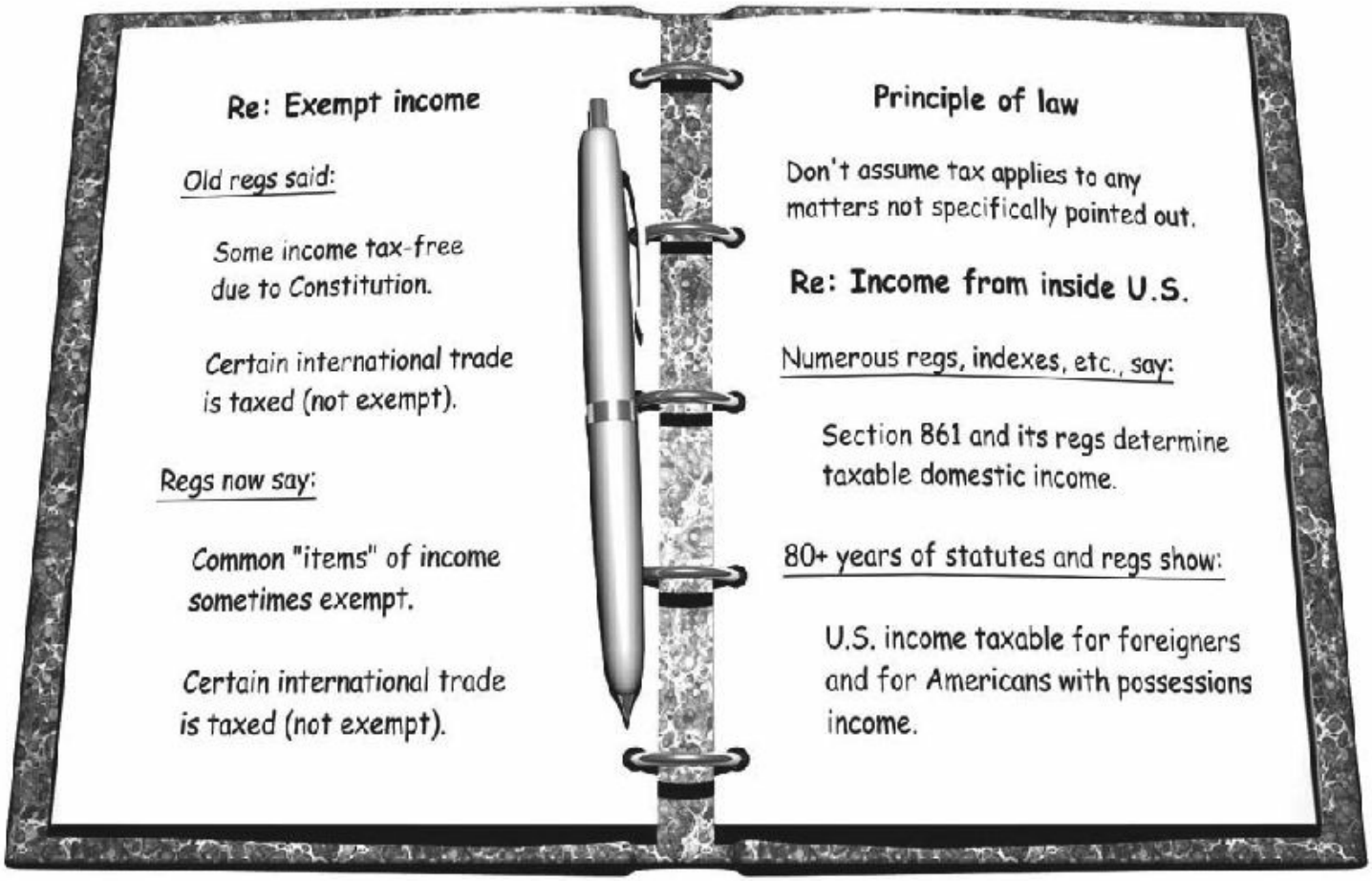
Furthermore, keep in mind that if there are two ways to read a given section of tax law, the Supreme Court has often said (in *Gould v. Gould* and many subsequent cases) that in case of doubt, tax laws are to be construed (interpreted) in favor of the citizen, *not* in favor of the government.

Some particularly unscrupulous naysayers (mostly in government) also routinely mischaracterize the issue as a "tax protestor" issue, when it is nothing of the kind. As can be seen above, the issue is not at all about objecting to the tax. What is being "protested" is not the law itself—which imposes a limited, perfectly Constitutional tax—but the *misrepresentation* and *misapplication* of the law, resulting in the deprivation of well over a trillion dollars a year from people who, by law, did not owe a dime. Put another way, this is not about people not wanting to pay "their taxes"; it is about people not wanting to be forced to pay something that is not, and never was, "their taxes," but which is instead an excise tax upon certain activities relating to *international* trade.

As an aside, any contrary theorizing about what Congress could Constitutionally tax (including such theorizing on the part of federal judges) is obviously far less important than what the law shows they *did* tax (i.e., international trade). In other words, one can argue until he is blue in the face that Congress does have the Constitutional authority to tax the income of all Americans, but if the law shows that Congress *did not do so* (which is exactly what it shows), that debate becomes purely academic.

All the Pieces Fit

Despite the complexity of the tax laws, in the end the issue is pretty simple. Let's review our clue book one last time. Remember, these basic clues were all given to us by the government's own official law books. Go over them one by one, and then ask yourself: How many possible explanations are there which can account for all of these clues?



In short, there is only one way that all the pieces fit. There is only one conclusion, albeit a fairly disturbing one, which logically follows from the evidence. And that conclusion is this:

The federal "income tax" is and has always been a tax only upon certain international trade, and therefore the vast majority of Americans have never legally owed a dime in federal income taxes, but have been deceived into believing otherwise.

Mental Inertia and Censorship

Anytime a large number of people—in this case hundreds of millions—hold a particular belief, it takes a lot to change that belief. There is a sort of "mental inertia" that keeps most people from ever questioning things they have always accepted as obviously true. "Everyone knows" that most Americans owe federal income taxes, but that belief comes, not from all of those people examining the law, but from all of those people hearing *each other* asserting that it is so. All too often the human mind accepts something as the gospel truth based on nothing more than "Everyone says it, so it must be true."

But truth is not a democracy. The popularity of an idea often has no relevance to whether or not it is true. History is full of examples of popular misconceptions lasting for hundreds or even thousands of years, based solely upon the phenomenon of "common knowledge." And throughout history, when the occasional nonconformist has stepped forward to challenge the "conventional wisdom," he has, more often than not, been ridiculed, insulted, and sometimes tortured or even killed. As a result, popular but false beliefs have a tendency to survive a very long time, even when they fly in the face of all evidence and logic.

Furthermore, if a certain misconception is a source of power for some people, those people will often go to great lengths to defend the lie and destroy the truth. Few people want to have unpopular beliefs, and even fewer want to express a belief that will bring down the wrath of a powerful "authority" upon their heads. The concept of the "heretic," who is demonized, ostracized, condemned and punished for disputing the gospel according to the powers that be, is certainly nothing new. Not many people are willing to say something that sounds ridiculous to most people, especially if doing so will put them in harm's way in the process. As a result, ignorance has tremendous staying power.

Since the late 1990s, when the legal issue addressed above first began to draw significant public attention, some in government (particularly those working for the IRS and the U.S. "Justice" Department) have waged an all-out attack on those who have been vocal about the issue—obtaining court orders to forcibly shut down web sites, imposing large fines upon those tax professionals who have

agreed with the issue and told their clients about it, and prosecuting and imprisoning as many "tax heretics" as they can, while demonizing and mischaracterizing as "tax protestors," "tax cheats," and "scam artists" those who dare to openly and publicly question conventional wisdom. In addition, the government has shown only contempt and hostility towards the many thousands of Americans who have merely asked questions about the above issue, in an effort to better understand the law.

The government's ongoing thuggery, and suspicious inability or unwillingness to have a rational discussion about what its own law books say, is almost as damning as the evidence in the law itself. If there were answers, if there was some explanation for all of the citations above which could still preserve the "conventional wisdom" about the tax (i.e., that most Americans owe it), it would obviously have been in the government's best interest to give those answers and to provide that explanation. But it has not done so.

One who is not sure of what is true will often hesitate to voice his opinion. However, no one should feel shame or fear when simply asking reasonable questions. A nation in which the people don't even dare to do that is not "free" by any rational definition. So, for those Americans who still believe that they have the right to ask their government questions about the law, the following list of questions is included. Based upon the answers he receives to such questions, whether from a private tax preparer or a government official, the reader can judge for himself what is true and what is not. What to do about his conclusion is up to him.

EXHIBITS

Questions Regarding Determining Taxable Income

1) Should I use the rules found in 26 USC § 861(b) and 26 CFR § 1.861-8 (in addition to any other pertinent sections) to determine my taxable domestic income?

2) If some people should not use those sections to determine their taxable domestic income, please show where the law says who should or should not use those sections for that.

Reasons for first two questions: The regulations at 26 CFR § 1.861-8 begin by stating that Sections 861(b) and 863(a) state in general terms "*how to determine taxable income of a taxpayer from sources within the United States*" after gross income from the U.S. has been determined. Section 1.861-1(a)(1) confirms that "*taxable income from sources within the United States*" is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8 (see also 26 CFR §§ 1.861-1(b), 1.862-1(b), 1.863-1(c)). Cross-references under 26 USC § 61, as well as entries in the USC Index under the heading "Income Tax," also refer to Section 861 regarding income ("gross" and "taxable") from "sources within U.S."

3) If a U.S. citizen receives all his income from working within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show his income to be taxable?

Reason for question: Section 217 of the Revenue Act of 1921, predecessor of 26 USC § 861 and following, stated that income from the U.S. was taxable for nonresident foreigners, and for U.S. corporations and citizens deriving most of their income from federal possessions, but did not say the same about the domestic income of other Americans. The regulations under the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "*specific sources and activities*," which still relate only to certain types of international trade (see 26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

4) Should one use 26 CFR § 1.861-8T(d)(2) to determine whether his "items" of income (e.g. compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

Reason for question: The regulations (26 CFR § 1.861-8(a)(3)) state that a "class of gross income" consists of the "items" of income listed in 26 USC § 61 (e.g. compensation, interest, rents, dividends, etc.). The regulations (26 CFR § 1.861-8(b)(1)) then direct the reader to 26 CFR § 1.861-8(d)(2) which provides that such "classes of gross income" may include some income which is excluded for federal income tax purposes. (Section 1.861-8(d)(2) merely redirects the reader to 1.861-8T(d)(2).)

5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is the income of the average American not on that list?

Reason for question: After defining "exempt income" to mean income which is excluded for federal income tax purposes, the regulations (26 CFR § 1.861-8T(d)(2)(iii)) list types of income which are not exempt (i.e. which are subject to tax), including the domestic income of nonresident foreigners, certain foreign income of U.S. citizens and residents, income of certain possessions corporations, and income of international and foreign sales corporations; but the list does not include the domestic income of the average American.

6) What types of income (if any) are not exempted from taxation by any statute, but are nonetheless "excluded by law" (i.e. not subject to the income tax) because they are, under the Constitution, not taxable by the federal government?

Reason for question: Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute "*or fundamental law*" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to the types of income exempted by statute, other types of income were excluded because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)). (This is also reflected in the current 26 CFR § 1.312-6.)

Letter to IRS Commissioner

its stockholders, or both, are in control of a transferee corporation, it is not necessary that the stock be acquired on or after January 1, 1951. Thus, if Corporation F on June 1, 1950, owns 70 percent of the voting stock of Corporation G, and, thereafter, on January 2, 1952, Corporation F acquires an additional 10 percent of such stock, control within the meaning of section 15(c) is acquired by Corporation F on January 2, 1952.

(d) **Nature of transfer.** A transfer made by any corporation of all or part of its assets, whether or not such transfer qualifies as a reorganization under section 112(g), is within the scope of section 15(c), except that section 15 (c) does not apply to a transfer of money only. For example, the transfer of cash for the purpose of expanding the business of the transferor corporation through the formation of a new corporation is not a transfer within the scope of section 15(c), irrespective of whether the new corporation uses the cash to purchase from the transferor corporation stock in trade or similar property.

(e) **Purpose of transfer.** In determining, for the purpose of section 15 (c), whether the securing of the exemption from surtax or the minimum excess profits credit constituted "a major purpose" of the transfer, all circumstances relevant to the transfer shall be considered. For disallowance of the surtax exemption and minimum excess profits credit under section 15(c), it is not necessary that the obtaining of either such credit or exemption or both have been the sole or principal purpose of the transfer of the property. It is sufficient if it appears, in the light of all the facts and circumstances, that the obtaining of such exemption or credit, or both, was one of the major considerations that prompted the transfer. Thus, the securing of the surtax exemption or the minimum excess profits credit may constitute a major purpose" of the transfer, notwithstanding that such transfer was effected for a valid business purpose and qualified as a reorganization within the meaning of section 112(g). The taxpayer s burden of establishing by the clear preponderance of the evidence that the securing of either such exemption or credit or both was not a major purpose of the transfer may be met, for example, by a showing that the obtaining of such exemption, or credit, or both, was not a major factor in relationship to the other consideration or considerations which prompted the transfer.

(f) **Taxable years to which applicable.** Section 15(c) and this section do not apply to any taxable year with respect to which the excess profits tax imposed by subchapter ll of chapter 1 of the Internal Revenue Code is not in effect. For treatment of taxable years beginning before April 1, 1954, and ending after March 31, 1954, see § 39.-108—2. For computation of the excess profits tax for certain fiscal years, see § 40.430-2(b) (2) and (c) of Regulations 130 (Part 40 of this chapter).

COMPUTATION OF NET INCOME

§ 39.21 [Comprises Code section 21, see 26 U.S.C.A. § 21] § 39.21—1 Meaning of net income

(a) The tax imposed by chapter 1 is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21. (See section 24 (a) (5).) In the computation of the tax various classes of income must be considered:

(1) Income (in the broad sense), meaning all wealth which flows in to the taxpayer other than as a mere return of capital. It includes the forms of income specifically described as gains and profits, including gains derived

from the sale or other disposition of capital assets. Cash receipts alone do not always accurately reflect income, for the Internal Revenue Code recognizes as income determining factors other items, among which are inventories, accounts receivable, property exhaustion, and accounts payable for expenses incurred. (See sections 22, 23, 24, and 117.)

(2) Gross income, meaning income (in the broad sense) less income which is by statutory provision or otherwise exempt from the tax imposed by chapter 1. (See section 22.)

(3) Net income, meaning gross income less statutory deductions. The statutory deductions are in general, though not exclusively, expenditures, other than capital expenditures, connected with the production of income. (See sections 23 and 24.)

(4) Net income less certain credits. (See sections 25, 26, 27, and 28.)

(b) The normal taxes and surtaxes imposed on individuals and on corporations are computed upon net income less certain credits. Although taxable net income is a statutory conception, it follows, subject to certain modifications as to exemptions and as to deductions for partial losses in some cases, the lines of commercial usage. Subject to these modifications, statutory net in-come is commercial net income. This appears from the fact that ordinarily it is to be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. (See section 41.)

(c) The net income of corporations is determined in general in the same manner as the net income of individuals, but the deductions allowed corporations are not precisely the same as those allowed individuals. (See sections 23, 24, 102, 118, 121, 122, 203, 204, 207, 232, and 336, and sections 500 to 511, inclusive.)

§ 39.22 (a) [Comprises Code section 22 (a), see 26 U.S.C.A. § 22 (a)]

§ 39.22 (a)—1 What included in gross income

(a) Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. See sections 22(b) and 116. In general, income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets. Profits of citizens, residents, or domestic corporations derived from sales in foreign commerce must be included in their gross income; but special provisions are made for nonresident aliens and foreign corporations by sections 211 to 238, inclusive, and, in certain cases, by section 251, for citizens and domestic corporations deriving income from sources within possessions of the United States. Income may be in the form of cash or of property.

(b) If property is transferred by a corporation to a shareholder, for an amount less than its fair market value, regardless of whether the transfer is in the form of a sale or exchange, such shareholder shall include in gross income the difference between the amount paid for the property and the amount of its fair market value to the extent that such difference is in the nature of a distribution of earnings or profits taxable as a dividend. In computing the gain or loss from the subsequent sale of such property its basis shall be the amount paid for the property, increased by the amount of such difference included in gross income. This paragraph does not apply, however, to the issuance by a corporation to its shareholders of the right to subscribe to its stock, as to which see § 39.22 (a)-8.

of which was deductible by the patron under section 23, shall be included in the computation of the gross income of such patron to the following extent:

(i) If the allocation is in cash, in the amount of cash received.

(ii) If the allocation is in merchandise, to the extent of the fair market value of such merchandise at the time of receipt by the patron.

(iii) If the allocation is in the form of capital stock, revolving fund certificates, certificates of indebtedness, letters of advice, retain certificates or similar documents

(a) To the extent of the face amount of such documents, if the allocation was made in fulfillment and satisfaction of a valid obligation of such association to the patron, which obligation was in existence prior to the receipt by the co-operative association of the amount allocated. For this purpose, it is immaterial whether such allocation was made within the time required by § 39.101 (12)–4 (a) (2).

(b) To the extent of the face amount of such documents, if the allocation was made with respect to patronage of a year preceding the taxable year from amounts retained as "reasonable reserves" under § 39.101–4(a).

(c) To the extent of the cash or merchandise received in redemption or satisfaction of such documents (except those which are negotiable instruments) at the time of receipt of such cash or merchandise by the patron, where such allocation was not made in pursuance of the valid obligation referred to in subdivision (a) of this subparagraph, or from amounts retained as "reasonable reserves" under § 39.101 (12)-4 (a), referred to in subdivision (b) of this subparagraph. Where, in such case, the documents allocated are negotiable instruments, such documents shall be includible in the income of the patron to the extent of their fair market value at the time of their receipt.

(2) Amounts which are allocated on a patronage basis by a cooperative association with respect to supplies, equipment, or services the cost of which was not deductible by the patron under section 23, are not includible in the computation of the gross income of such patron; however, in the case of such amounts which are allocated with respect to capital assets (as defined in section 117(a) (1)) or property used in the trade or business within the meaning of section 117(j), shall, to-the extent set forth in subdivisions (i), (ii), and (iii) of subparagraph (1) of this paragraph, be taken into account in determining under section 113 the cost or other basis of the assets or property purchased for the patron.

§ 39.22 (b) [Comprises Code section 22 (b), see 26 U.S.C.A. § 22 (b)]

§ 39.22 (b)—1 Exemptions; exclusions from gross income

Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items may be excluded from gross income except (a) those items of income which are, under the Constitution, not taxable by the Federal Government; (b) those items of income which are exempt from tax on income under the provisions of any act of Congress still in effect; and (c) the income excluded under the provisions of the Internal Revenue Code (see particularly section 116). Since the tax is imposed on net income, the exemption referred to above is not to be confused with the deductions allowed by section 23 and other provisions of the Internal Revenue Code to be made from gross income in computing net income. As to other items not to be included in gross income, see sections 22(k), 112, 119, 127 (c), 165, and 171 and Supplements G, H, I, and J (sections 201 to 252, inclusive). Section 607(h) of the Merchant Marine Act, 1936, as amended, [46 U.S.C.A. § 1177(h)] reads as follows:

(h) The earnings of any contractor receiving an operating-differential subsidy under authority of this act, which are deposited in the contrac-

account in the year such income is ultimately included in gross income.

(ii) *Exempt income and exempt asset defined*—(A) *In general.* For purposes of this section, the term *exempt income* means any income that is, in whole or in part, exempt, excluded, or eliminated for federal income tax purposes. The term *exempt asset* means any asset the income from which is, in whole or in part, exempt, excluded, or eliminated for federal tax purposes.

(B) *Certain stock and dividends.* The term ''exempt income'' includes the portion of the dividends that are deductible under—

(*1*) Section 243(a) (1) or (2) (relating to the dividends received deduction),

(*2*) Section 245(a) (relating to the dividends received deduction for dividends from certain foreign corporations).

Thus, for purposes of apportioning deductions using a gross income method, gross income would not include a dividend to the extent that it gives rise to a dividend received deduction under either section 243(a)(1), section 243(a)(2), or section 245(a). In the case of a life insurance company taxable under section 801, the amount of such stock that is treated as tax exempt shall not be reduced because a portion of the dividends received deduction is disallowed as attributable to the policyholder's share of such dividends. See §1.861–14T(h) for a special rule concerning the allocation of reserve expenses of a life insurance company. In addition, for purposes of apportioning deductions using an asset method, assets would not include that portion of stock equal to the portion of dividends paid thereon that would be deductible under either section 243(a)(1), section 243(a)(2), or section 245(a). In the case of stock which generates, has generated, or can reasonably be expected to generate qualifying dividends deductible under section 243(a)(3), such stock shall not constitute a tax exempt asset. Such stock and the dividends thereon will, however, be eliminated from consideration in the apportionment of interest expense under the consolidation rule set forth in §1.861–10T(c), and in the apportionment of other expenses under the consolidation rules set forth in §1.861–14T.

(iii) *Income that is not considered tax exempt.* The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:

(A) In the case of a foreign taxpayer (including a foreign sales corporation (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business;

(B) In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC or a FSC;

(C) For all purposes under subchapter N of the Code, including the computation of combined taxable income of a possessions corporation and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a); and

(D) Foreign earned income as defined in section 911 and the regulations thereunder (however, the rules of §1.911–6 do not require the allocation and apportionment of certain deductions, including home mortgage interest, to foreign earned income for purposes of determining the deductions disallowed under section 911(d)(6)).

(iv) *Prior years.* For expense allocation and apportionment rules applicable to taxable years beginning before January 1, 1987, and for later years to the extent permitted by §1.861–13T, see §1.861–8(d)(2) (Revised as of April 1, 1986).

(e) *Allocation and apportionment of certain deductions.*

(1) [Reserved]. For further guidance, see §1.861–8(e)(1).

(2) *Interest.* The rules concerning the allocation and apportionment of interest expense and certain interest equivalents are set forth in §§1.861–9T through §1.861–13T.

(3) through (11) [Reserved]. For further guidance, see §1.861–8(e)(3) through (e)(11).

(f) *Miscellaneous matters*—(1) *Operative sections.*

(i) [Reserved]

(ii) *Separate limitations to the foreign tax credit.* Section 904(d)(1) requires

(b) [Reserved]

[T.D. 8458, 57 FR 61313, Dec. 24, 1992]

TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

DETERMINATION OF SOURCES OF INCOME

§1.861–1 Income from sources within the United States.

(a) *Categories of income.* Part I (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder determine the sources of income for purposes of the income tax. These sections explicitly allocate certain important sources of income to the United States or to areas outside the United States, as the case may be; and, with respect to the remaining income (particularly that derived partly from sources within and partly from sources without the United States), authorize the Secretary or his delegate to determine the income derived from sources within the United States, either by rules of separate allocation or by processes or formulas of general apportionment. The statute provides for the following three categories of income:

(1) *Within the United States.* The gross income from sources within the United States, consisting of the items of gross income specified in section 861(a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See §§ 1.861–2 to 1.861–7, inclusive, and § 1.863–1. The taxable income from sources within the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 861(b) and 863(a), the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. See §§ 1.861–8 and 1.863–1.

(2) *Without the United States.* The gross income from sources without the United States, consisting of the items of gross income specified in section 862(a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See §§ 1.862–1 and 1.863–1. The taxable income from sources without the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 862(b) and 863(a), the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. See §§ 1.862–1 and 1.863–1.

(3) *Partly within and partly without the United States.* The gross income derived from sources partly within and partly without the United States, consisting of the items specified in section 863(b)(1), (2), and (3). The taxable income allocated or apportioned to sources within the United States, in the case of such income, shall be determined in accordance with section 863 (a) or (b). See §§ 1.863–2 to 1.863–5, inclusive.

(4) *Exceptions.* An owner of certain aircraft or vessels first leased on or before December 28, 1980, may elect to treat income in respect of these aircraft or vessels as income from sources within the United States for purposes of sections 861(a) and 862(a). See § 1.861–9. An owner of certain aircraft, vessels, or spacecraft first leased after December 28, 1980, must treat income in respect of these craft as income from sources within the United States for purposes of sections 861(a) and 862(a). See § 1.861–9A.

(b) *Taxable income from sources within the United States.* The taxable income from sources within the United States shall consist of the taxable income described in paragraph (a)(1) of this section plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a)(3) of this section.

(c) *Computation of income.* If a taxpayer has gross income from sources within or without the United States, together with gross income derived partly from sources within and partly from sources without the United States, the amounts thereof, together with the expenses and investment applicable thereto, shall be segregated; and the taxable income from sources

within the United States shall be separately computed therefrom.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 7928, 48 FR 55845, Dec. 16, 1983]

§ 1.861–2 Interest.

(a) *In general.* (1) Gross income consisting of interest from the United States or any agency or instrumentality thereof (other than a possession of the United States or an agency or instrumentality of a possession), a State or any political subdivision thereof, or the District of Columbia, and interest from a resident of the United States on a bond, note, or other interest-bearing obligation issued, assumed or incurred by such person shall be treated as income from sources within the United States. Thus, for example, income from sources within the United States includes interest received on any refund of income tax imposed by the United States, a State or any political subdivision thereof, or the District of Columbia. Interest other than that described in this paragraph is not to be treated as income from sources within the United States. See paragraph (a)(7) of this section for special rules concerning substitute interest paid or accrued pursuant to a securities lending transaction.

(2) The term ''resident of the United States'', as used in this paragraph, includes (i) an individual who at the time of payment of the interest is a resident of the United States, (ii) a domestic corporation, (iii) a domestic partnership which at any time during its taxable year is engaged in trade or business in the United States, or (iv) a foreign corporation or a foreign partnership, which at any time during its taxable year is engaged in trade or business in the United States.

(3) The method by which, or the place where, payment of the interest is made is immaterial in determining whether interest is derived from sources within the United States.

(4) For purposes of this section, the term ''interest'' includes all amounts treated as interest under section 483, and the regulations thereunder. It also includes original issue discount, as defined in section 1232(b)(1), whether or not the underlying bond, debenture, note, certificate, or other evidence of indebtedness is a capital asset in the hands of the taxpayer within the meaning of section 1221.

(5) If interest is paid on an obligation of a resident of the United States by a nonresident of the United States acting in the nonresident's capacity as a guarantor of the obligation of the resident, the interest will be treated as income from sources within the United States.

(6) In the case of interest received by a nonresident alien individual or foreign corporation this paragraph (a) applies whether or not the interest is effectively connected for the taxable year with the conduct of a trade or business in the United States by such individual or corporation.

(7) A substitute interest payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to an interest payment which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive a substantially identical securities from the transferee in the future in exchange for cash. A substitute interest payment shall be sourced in the same manner as the interest accruing on the transferred security for purposes of this section and § 1.862–1. See also §§ 1.864–5(b)(2)(iii), 1.871–7(b)(2), 1.881–2(b)(2) and for the character of such payments and § 1.894–1(c) for the application tax treaties to these transactions.

(b) *Interest not derived from U.S. sources.* Notwithstanding paragraph (a) of this section, interest shall be treated as income from sources without the United States to the extent provided by subparagraphs (A) through (H), of section 861(a)(1) and by the following subparagraphs of this paragraph.

(1) *Interest on bank deposits and on similar amounts.* (i) Interest paid or credited before January 1, 1977, to a

(3) In the case of an individual who dies during the taxable year, the credits allowed by subdivisions (c), (d), and (e) shall be determined by his status at the time of his death, and in such case full credits shall be allowed to the surviving spouse, if any, according to his or her status at the close of the taxable year.

NET INCOME OF NONRESIDENT ALIEN INDIVIDUALS

SEC. 217. (a) In the case of a nonresident alien individual or of a citizen entitled to the benefits of section 262, the following items of gross income shall be treated as income from sources within the United States:

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

(2) The amount received as dividends (A) from a domestic corporation other than a corporation entitled to the benefits of section 262, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or (B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section;

(3) Compensation for labor or personal services performed in the United States;

(4) Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property; and

(5) Gains, profits, and income from the sale of real property located in the United States.

(b) From the items of gross income specified in subdivision (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a);

(2) Dividends other than those derived from sources within the United States as provided in paragraph (2) of subdivision (a);

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

(d) From the items of gross income specified in subdivision (c) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) Items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c), shall be allocated or apportioned to sources within or without the United States under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses or other deductions which can not definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(f) As used in this section the words "sale" or "sold" include "exchange" or "exchanged"; and the word "produced" includes "created," "fabricated," "manufactured," "extracted," "processed," "cured" or "aged."

(g) (1) Except as provided in paragraph (2) a nonresident alien individual or a citizen entitled to the benefits of section 262 shall receive the benefit of the deductions and credits allowed in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in this title; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(2) The benefit of the credits allowed in subdivisions (d) and (e) of section 216, and of the reduced rate of tax provided for in subdivision (b) of section 210, may, in the discretion of the Commissioner and under regulations prescribed by him with the approval of the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

PARTNERSHIPS

SEC. 218. (a) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed.

(b) The partner shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the partnership.

(c) The net income of the partnership shall be computed in the same manner and on the same basis as provided in section 212 except that the deduction provided in paragraph (10) of subdivision (a) of section 214 shall not be allowed.

ESTATES AND TRUSTS

SEC. 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust,

INCOME FROM SOURCES WITHIN THE POSSESSIONS OF THE UNITED STATES

SEC. 262. (a) In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in the case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) Notwithstanding the provisions of subdivision (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) As used in this section the term "possession of the United States" does not include the Virgin Islands of the United States.

CHINA TRADE ACT CORPORATIONS

SEC. 263. (a) For the purpose only of the tax imposed by section 230 there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922, a credit of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 217) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided,* That in no case shall the amount by which the tax imposed by section 230 is diminished by reason of such credit exceed the amount of the special dividend certified under subdivision (b) of this section.

(b) Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner—

(1) The amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation;

(2) That such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) That such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation

consecutive taxable years, as provided in Q&A 16 of this section.

Q–16. Under what circumstances is the FSC or small FSC election terminated for continued failure to be a FSC?

A–16. If a corporation that has elected to be treated as a FSC or a small FSC does not qualify under section 922 to be treated as a FSC or small FSC for each of 5 consecutive taxable years, such election terminates and will not be effective for any taxable year after such fifth taxable year. Such termination will be effective automatically without notice to such corporation or to the Internal Revenue Service.

[T.D. 8127, 52 FR 6475, Mar. 3, 1987]

POSSESSIONS OF THE UNITED STATES

§ 1.931–1 Citizens of the United States and domestic corporations deriving income from sources within a certain possession of the United States.

(a) *Definitions.* (1) As used in section 931 and this section, the term ''possession of the United States'' includes American Samoa, Guam, Johnston Island, Midway Islands, the Panama Canal Zone, Puerto Rico, and Wake Island. However, the term does not include (i) the Virgin Islands and (ii), when used with respect to citizens of the United States, the term does not include Puerto Rico or, in the case of taxable years beginning after December 31, 1972, Guam.

(2) As used in section 931 and this section, the term ''United States'' includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) *General rule*—(1) *Qualifications.* In the case of a citizen of the United States or a domestic corporation satisfying the following conditions, gross income means only gross income from sources within the United States—

(i) If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of section 931) for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States, and

(ii) If 50 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of section 931) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States. In the case of a citizen, the trade or business may be conducted on his own account or as an employee or agent of another. The salary or other compensation paid by the United States to the members of its civil, military, or naval personnel for services rendered within a possession of the United States represents income derived from the active conduct of a trade or business within a possession of the United States. The salary or other compensation paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall, for the purposes of section 931 and this section, be deemed to be derived from sources within the United States. Dividends received by a citizen from a corporation whose income was derived from the active conduct of a business within a possession of the United States, does not represent income derived from the active conduct of a trade or business within the possession of the United States even though such citizen was actively engaged in the management of such corporation. For a determination of income from sources within the United States, see part I (section 861 and following), subchapter N, chapter 1 of the Code, and section 931(i), and the regulations thereunder.

(2) *Relationship of sections 931 and 911.* A citizen of the United States who cannot meet the 80-percent and the 50-percent requirements of section 931 but who receives earned income from sources within a possession of the United States, is not deprived of the benefits of the provisions of section 911 (relating to the exemption of earned income from sources outside the United States), provided he meets the requirements thereof. In such a case none of the provisions of section 931 is applicable in determining the citizen's tax liability. For what constitutes earned income, see section 911(b).

(3) *Meaning of ''gross income'' on joint return.* In the case of a husband and

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA, PENNSYLVANIA

MOTION TO SUPPRESS

COMES NOW, Larken D. Rose and his wife, Tessa David (Rose), "Defendants" herein, pursuant to Rules 12(b)(3)(C) and 41(h) of the Federal Rules of Criminal Procedure file the above-captioned Motion (pro se) and move this honorable court for an order compelling the suppression at trial of all materials seized during the May 6, 2003 search of Defendants' residence.

BACKGROUND:

On May 5, 2003, at the request of IRS Special Agent Donald Pearlman, a warrant was issued authorizing a search of the Defendants' residence. The following day, at about 10:00 a.m., a dozen or so agents of the Internal Revenue Service (accompanied by local law officers) forcibly entered Defendants' residence, delivered the search warrant, and spent approximately eight hours searching the premises and seizing numerous documents and other items belonging to Defendants.

On March 22, 2005, an indictment was issued against Defendants, charging five counts of "willful failure to file" federal income tax returns (26 USC § 7203). (Though the search warrant itself mentions six separate statutory offenses, as shown below, the indictment includes only the misdemeanor charge of "willful failure to file.")

ARGUMENT

OVERVIEW

The search warrant in question was constitutionally invalid under both the First and Fourth Amendments to the United States Constitution.

1) The search was neither reasonable nor necessary because all pertinent information was already in the government's possession (having been made public and/or directly given to the government by the Defendants), and because the Affidavit of Probable Cause upon which the search was based (herein the "APC") did not even *suggest* the existence of any additional evidence, the discovery or acquisition of which would require a search and seizure.

2) The overly broad scope of the warrant makes it indistinguishable from the "general warrants" prohibited by the Fourth Amendment.

3) The search was motivated, not by a valid investigative need for particular evidence, but by a desire to retaliate against Defendants for exercising their First Amendment rights.

4) The government's seizure of various articles of protected speech was unquestionably contrary to established law.

BASIS FOR SUPPRESSION

Use of the exclusionary rule to suppress evidence obtained unlawfully is meant to act as a deterrent, not to "*objectively reasonable law enforcement activity*" which is later determined to be technically improper, but only to government agents who have "*engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right*"; and despite various exceptions to the rule, "[a] *pplication of the exclusionary rule should continue where a Fourth Amendment violation has been substantial and deliberate*" (United States v. Leon, 468 U.S. 897 (1984)). Such is the case here.

The main purpose of the exclusionary rule "*is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures*" (United States v. Calandra, 414 U.S. 338 (1974)), and to serve that purpose, "*evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment*" (United States v. Peltier, 422 U.S. 531 (1975)).

(Though the courts give "*great deference*" to a magistrate's judgment on an affidavit of probable cause, "*a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances*" (United States v. Leon, 468 U.S. 897 (1984)).)

For reasons shown below, Defendants believe that a failure to apply the exclusionary rule in this case would constitute a "judicial blessing" upon intentional and blatant disregard of the requirements of the Fourth Amendment.

FOURTH AMENDMENT ISSUES

For a search warrant to be valid, it must meet certain criteria, including the following:

1) A search must be both reasonable and necessary.
2) Only evidence related to criminal activity may be seized.
3) A search for evidence must be specific and limited.

In this case the search warrant and the APC show that *none* of those criteria were met. While the APC asserts that there is "probable cause" to suspect criminal activity and to suspect the existence of seizable evidence, a warrant cannot be based "*upon mere affirmance of suspicion or belief without disclosure of supporting facts or circumstances*" (*Nathanson v. U.S.* , 290 U.S. 41 (1933)). Setting aside conclusory comments, therefore, we must turn to the specific facts cited in the APC.

1) A search must be both reasonable and necessary

"*The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion*." [*Silverman v. United States*, 365 U.S. 505 (1961)]

The Fourth Amendment "*forbids every search that is unreasonable*" (*Go-Bart Importing Co. v. U.S.* (282 U.S. 344 (1931))), and "*any intrusion in the way of search or seizure is an evil, so that no intrusion at all is justified without a careful prior determination of necessity*" (*Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (emphasis added)). The Internal Revenue Manual provides that "*Prior to utilizing a search warrant, consideration should be given to the use of less intrusive means for obtaining the evidence (i.e., administrative summons)*" (IRM, Section 31.7.2.1(2)(B)), and provides that "[i] *n addressing intrusiveness, the special agent will explain why other investigative methods cannot produce the evidence being sought, and why the search warrant represents the best and least intrusive method to secure the evidence*" (IRM, Section 9.4.9.3(3)).

The APC, however, mentions *nothing* concerning the necessity of the search, but instead thoroughly documents that the government was already in possession of all relevant evidence, rendering the entire search completely unnecessary. Even with the use of a summons (a far less intrusive measure than a search warrant), the IRS "*must show that the investigation will be conducted pursuant to a legitimate purpose...* [and] *that the information sought is not already within the Commissioner's possession*" (*United States v. Powell*, 379 U.S. 48 (1964) (emphasis added)). The APC in this case shows the opposite.

A brief examination of the violations alleged in the search warrant, and the types of evidence relevant to each, illustrates that the search was *neither reasonable nor necessary*:

26 USC § 7203 (Willful Failure to File)

The Criminal Tax Manual (1994 edition) published by the Tax Division of the U.S. Department of Justice (herein the "Criminal Tax Manual") states the elements of a willful failure to file charge:

"*To establish the offense of failure to make (file) a return, the government must prove three essential elements beyond a reasonable doubt:*
1. Defendant was a person required to file a return;
2. Defendant failed to file at the time required by law; and,
3. The failure to file was willful. " [Section 10.04[1], Criminal Tax Manual]

Regarding the first element, the APC (in paragraph 8) shows that the IRS already possessed documentation showing substantial income received by the Defendants for 1997 through 2001, and includes (in paragraph 10) several examples of the Defendants *freely acknowledging* the receipt of such income. Because "*the government need prove only that a person's gross income equals or exceeds the statutory minimum"*

(Criminal Tax Manual, Section 10.04[2], citing *United States v. Wade*, 585 F.2d 573, 574 (5th Cir. 1978)),” and because the government alleges that the reported income of Defendants legally constitutes “gross income” (a position with which Defendants disagree), there was no need to search for evidence of additional income.

For the second element, the APC (paragraphs 5, 10.5) documents the Defendants’ *open admissions* that Defendants did not file tax returns for 1997 or any subsequent year (as supported by transcripts of the meetings mentioned in paragraphs 10.2 and 10.4). Concerning Defendants’ decision not to file or pay, the government has acknowledged, in a motion filed with this court in late May of 2004, that the Defendants “*have not attempted to conceal their conduct.* ”

The final element hinges on the Defendants’ *beliefs* about their legal obligations, which are well known to the government, as documented in paragraphs 5, 6, 10.5, 13, 16.3, 16.5, 16.6, and 18 of the APC. In short, the APC shows that there was *no pertinent evidence* (regarding income, lack of returns, or Defendants’ beliefs) that was not already in the possession of the government, rendering a “search” for such information pointless.

26 USC § 7201 (Willful Tax Evasion)

The elements for tax evasion are similar to those above: the government must prove that a tax was owed, that the individual attempted to avoid payment, and that such action constituted an intentional violation of a known legal duty. However, for such a charge the government must show, not just a willful “omission” or failure to act, but a “commission” or affirmative act constituting “*a willful and positive attempt to evade tax in any manner or to defeat it by any means*” (*Spies v. United States*, 317 U.S. 492 (1943)), consisting of acts designed to *conceal* or *mislead*. Defendants’ situation and actions are well known to the government, and no relevant evidence of such could have required a search.

(Of note, while the warrant (in paragraph 12 of “Attachment A”) seeks to seize any records related to any “*straw parties or fictitious names*” used to conceal income or assets, the APC alleges no such conduct, and gives no “probable cause” to search for such records.)

Regarding Willfulness

In the description of the two above-mentioned offenses, the APC (in paragraph 2) fails even to *mention* the issue of “willfulness,” though that issue is fundamental to such allegations.

“*A good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Statutory willfulness... is the voluntary, intentional violation of a known legal duty*.” [*Cheek v. United States*, 498 U.S. 192 (1991) (emphasis added)]

The purpose of the criminal tax statutes is *not* “*to penalize frank difference of opinion*” about the tax laws (*Spies v. United States*, 317 U.S. 492 (1943)), and therefore without “probable cause” showing that Defendants’ *believe* their income to be taxable (which is not found in the APC), a search related to such “willful” offenses cannot be justified.

The APC states (in paragraphs 5 and 6) that Defendants are aware of a lower court ruling disagreeing with Mr. Rose’s position (or a similar position), and alleges that the opinions of various IRS employees (contrary to Mr. Rose’s) constitute “*clear and unequivocal notice that* [Defendants’] *position is incorrect*” (paragraph 14). The insinuation that it is impossible or illegal for Mr. Rose to have an honest disagreement with an IRS administrator, or a federal judge, is absurd. The Supreme Court states that “willfulness” depends *entirely* upon the belief of the individual, “*however unreasonable a court might deem such a belief*” (*Cheek v. United States*, 498 U.S. 192 (1991)). (Ironically, the APC in paragraph 14 cites the opinions of several IRS employees as proof that Mr. Rose’s conclusions are incorrect, yet in paragraphs 17.10, 35, and 45, acknowledges that two former IRS employees and one former federal prosecutor *agree* with Mr. Rose’s conclusions.)

(In paragraph 21.5, the APC alleges that Mr. Rose “*conceded that his argument might be wrong*” based upon two sentence fragments from a conversation between Mr. Rose and an IRS manager at a restaurant on 6/19/02, which was audio-recorded without Mr. Rose’s knowledge or consent (in violation of Pennsylvania law). Defendants are confident that the complete transcripts of that meeting, which Defendants have requested through the Freedom Of Information Act, will reveal that the selective quoting of those sentence fragments in the APC was intentionally misleading.) Appendix B, Page 3

26 USC § 7206(1) and 18 USC § 287 (Filing False Returns and False Claims) The APC (in paragraphs 12 and 13) shows that the allegations concerning false claims and false returns stem from three claims for refund (each made on a Form 1040X) filed by the Defendants for the tax years 1994 through 1996. Since the returns themselves are in the government’s possession, and the reason for the claims is shown on the returns themselves, such a charge could not justify a “search” for anything.

26 USC § 7212(a) (Corrupt Interference with Administration of Tax Laws) The word “corruptly,” as used in 26 USC § 7212(a),

"*means to act with the intent to secure an unlawful advantage or benefit either for oneself or another*" (United States v. Reeves, 752 F.2d 995, 998 (5th Cir.)). While the APC (in paragraph 2) asserts that Defendant Larken Rose "*has attempted to corruptly interfere with, and impede*" the administration of the tax laws, none of the specific facts in the APC support such an accusation. (The Criminal Tax Manual (Section 17.04) quotes from *Reeves I*, 752 F.2d at 999, in which it was stated that "*there is no reason to presume that every annoyance or impeding of an IRS agent is done per se 'corruptly.'*") The specific points in the APC presumed to be examples of such a "corrupt" endeavor are each addressed below under the related "conspiracy" allegation.

18 USC § 371 (Conspiracy to Commit an Offense or Defraud the United States) Under the heading of "*Rose's Attempts to Defraud the United States*," the APC states that Mr. Rose "*advocates his claims*" on web sites (paragraph 15), on his e-mail update list (paragraph 16.3), in his *Taxable Income* report (paragraph 16.6), and (in cooperation with Tom Clayton, M.D.) in the *Theft By Deception* video and on the Theft-By-Deception.com web site, where orders are taken for the video (paragraphs 16.2, 17, 18, 19 and 20), which are then shipped via the U.S. postal system (paragraphs 22, 23 and 24). Mr. Rose also invites people to print and distribute a flier in which Mr. Rose invites the government to prosecute him, and states that if anyone is to be prosecuted for his legal conclusions, he wants it to be himself (paragraph 16.4). Mr. Rose also openly disagrees with Tax Court rulings (paragraph 16.5), gives his opinion on the legal weight of lower court rulings (paragraph 16.8), and describes his desire to see so many Americans sharing his conclusions that "*the IRS would be unable to continue extorting money from those who do not legally owe it*" (paragraph 16.9). In short, rather than alleging conduct designed to conceal or mislead, the APC instead seeks to characterize the mere *expression of opinions* as criminal fraud and conspiracy. (This attempt to criminalize protected speech is further addressed below.)

(While Mr. Rose here verbally hopes for change via widespread *compliance* with the law, as he understands it, the First Amendment even makes it unlawful for government to "*forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action*" (*Brandenburg v. Ohio*, 395 U.S. 444 (1969)).)

The APC states that Mr. Rose lists on a web site the names of government employees who have been sent copies of his *Theft By Deception* video (paragraph 21), and on the taxableincome.net web site talks about sending letters to IRS employees in an effort to persuade the agents to take "*personal responsibility*" for their actions (paragraph 16.7). In the APC, Agent Pearlman opines that he believes those letters to be "*a direct attempt to have IRS employees stop enforcing the internal revenue laws*," thereby constituting an attempt to "corruptly" interfere with the administration of the tax laws (paragraph 16.7), and alleges that there is "*potential of personal harm*" to those government officials whose names have been listed on the internet (paragraph 21). However, the APC makes clear that Mr. Rose is not suggesting that anyone "stop enforcing" the laws, but is merely seeking to change the beliefs of government employees, and to publicly expose the conduct of those government officials who Mr. Rose believes are knowingly disregarding the law.

The attempt to criminalize such speech (which plainly constitutes a "redress of grievances") under the guise that it may pose a personal risk to the government officials named on the web site (though Mr. Rose suggests no action against the named individuals) lacks any legal basis. The Supreme Court has even stated that the importance of freedom of the press lies "*in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated,* Appendix B, Page 4 *into more honourable and just modes of conducting affairs*" (*Near v. State of Minnesota Ex Rel. Olson*, 283 U.S. 697 (1931) (emphasis added)). The mere publicizing of the fact that certain government officials have been supplied with certain information does not even approach speech which can be forbidden, criminalized or punished.

"'*To prohibit the intent to excite those unfavorable sentiments against those who administer the Government... is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct.'* [footnote omitted] *There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship and restraint upon publication.* " [*Near v. State of Minnesota Ex Rel. Olson*, 283 U.S. 697 (1931) (emphasis added)]

In paragraphs 27 and 28, the APC discusses how Mr. Rose was present for and involved in meetings between two other individuals and the IRS, which the APC characterizes as a "corrupt" endeavor to interfere with the administration of the tax laws, though Mr. Rose's actions consisted entirely of helping two individuals attempt to discover exactly how the IRS had determined their "taxable income." As the APC admits, Mr. Rose made no secret of this, posting the transcripts of the meetings on the internet.

It is absurd to allege that asking questions about the law could be a *crime*. The APC itself illustrates the ridiculousness of the charge when Agent Pearlman states (in paragraph 28) that he believes that Mr. Rose used one meeting "*as an opportunity to get IRS reactions to his own views 'on the record,' thereby corruptly interfering with, and impeding, the administration of the internal revenue laws.* " Attempting to get the government to state its *own* position on the record is not a crime, nor is it "corrupt" by any sane definition, regardless of who is doing the asking, or in what context.

(As an aside, Section 23.07 of the Criminal Tax Manual shows that the "corrupt" endeavor phraseology used repeatedly in the APC applies to so-called "Klein conspiracies" (United States v. Klein, 247 F.2d 908, 915 (2d Cir. 1957)). The Manual makes it plain (in *fifty-nine* different examples) that such conspiracies involve the use of *misleading* records, transactions or financial arrangements, not the open asking of questions about the law.)

The APC also mentions (paragraphs 25, 26) that at two meetings with the IRS, Mr. Rose did not give the IRS everything they asked for, and stated that the material requested was irrelevant and beyond the IRS' legal authority to demand. (The IRS did not issue subsequent requests or a summons for the information.) Characterizing these actions as criminal behavior is absurd.

Equally absurd is the attempt to criminalize Mr. Rose's "*non-violent threats*" to take *legal* action, including the filing of formal complaints, against IRS employee who intentionally disregarded IRS regulations and procedures (APC, paragraph 32). Section 17.05 of the Criminal Tax Manual, citing United States v. Hylton, 710 F.2d 1106 (5th Cir. 1983), even acknowledges that a "corrupt interference" charge under Section 7212(a) "*can not be based on nonfraudulent complaint against IRS agents*," and the APC does not even allege that such complaints were, or would have been, fraudulent.

The APC (in paragraphs 29, 30 and 31) also discusses three other individuals (two of whom Mr. Rose does not know) citing Mr. Rose's *publicly-available* materials in their own correspondence with the IRS. It is neither illegal for Mr. Rose to share his opinions and correspondence, nor illegal for others to quote from such documents, with or without Mr. Rose's knowledge or consent.

The APC also discusses the background and actions of Sherry Peel Jackson (paragraphs 33 to 37) and Dr. Tom Clayton (paragraphs 38 to 47), and their efforts to help spread their own beliefs, which coincide with the beliefs of Mr. Rose.

In brief, the APC tries to support allegations of corrupt endeavors, fraud and criminal conspiracy, based on a laundry list of Defendants' comments, activities, and documents, *none* of which are in any way deceptive, fraudulent, or "corrupt." The courts have cautioned against such tactics, warning that the "conspiracy" statute (18 USC § 371) is so broad that "*there is a danger that prosecutors may use it arbitrarily to punish activity not properly within the ambit of the federal criminal sanction*" (United States v. Shoup, 608 F.2d 950 (3d Cir. 1979)).

Similarly, the Supreme Court speaks of trying to "defraud" the United States by interfering with lawful government functions "*by deceit, craft or trickery, or at least by means that are dishonest*," adding that the words "to defraud" "*usually signify the deprivation of something of value by trick, deceit, chicane, or overreaching*" (*Hammerschmidt v. United States*, 265 U.S. 182 (1924) (emphasis added)). The government's own Criminal Tax Manual (Section 23.07[1][b]) agrees, stating that "*deceit or trickery in the scheme is essential to satisfying the defrauding requirement in the statute.* "

The APC does not even *allege* any acts of deception or concealment, but instead makes it plain that Defendants have been exceedingly open and public about their actions. Rather than illustrating a pattern of deceit, fraud, or any actual criminal behavior, the APC manifests instead the government's resentment and hatred of the Defendants for having had the gall to voice opinions that are contrary to the opinions of government employees.

2) Evidence Sought must be Related to Criminal Activity

According to Rule 41(c) of the Federal Rules of Criminal Procedure, search warrants can be used to seize only documents or items that: 1) are evidence of a crime; 2) are possessed illegally; or 3) were used or were designed or intended to be used in committing a crime. In the landmark case of *Warden v. Hayden*, 387 U.S. 294 (1967), the Supreme Court ruled that search warrants could be used to seize "mere evidence" of a crime, but added that "[t] *here must, of course, be a nexus... between the item to be seized and criminal behavior*." Obviously a warrant which "particularly describes" items to be seized which are unrelated to any criminal activity is impermissible under the Fourth Amendment, and the failure to provide any factual basis showing why the items sought are believed to be evidence of some crime renders a warrant invalid (*United States v. Kow*, 58 F. 3d 423 (9th Cir. 1995)).

According to the Internal Revenue Manual, IRS District Counsel is required to assure that all evidence sought via warrant "*is seizable by virtue of being connected with the crime*" (IRM, Section 31.7.2.1(3)(C)), and the affidavit of probable cause must explain "*the relationship of any items described to the alleged violations*" (IRM, Section 31.7.2.1(3)(D)(2)). The APC in this case fails to relate *any* of the items sought to *any* crime, and "Attachment A" refers to many things which could not possibly be evidence of any crime, including (but not limited to):

1) All "*documents relating to the formation/creation*" of web sites (item 10).
2) All documents relating to the formation of business entities by Defendants (item 11).
3) Documents showing ownership of "*automobiles, boats, and/or airplanes*" (item 13).
4) All "*copies of Internal Revenue Service Publications and documents*" (item 19).

5) All *Theft By Deception* videotapes (item 27).

In addition, items 1 through 9 in "Attachment A" sought to seize virtually every financial document imaginable. Neither running a business, nor receiving income, is a crime. Absent any allegation that Defendants' income was either earned illegally, or was being hidden or misreported (neither of which is alleged in the APC), such a seizure is not relevant to or necessary for a criminal investigation. (Again, while item 12 refers to "*straw parties or fictitious names*" used to conceal income or assets, the APC itself alleges no such conduct.) In addition, the broad scope of items 1 through 9 would apply to many items not even related to Defendants' income.

The search for all documents (by any author) related to "*any tax-related issues*" (item 18), and the search for any and all computers and computer disks, *regardless of content* (item 21), would obviously yield enormous amounts of information which could not possibly be related to any criminal activity.

The inventory list left with the Defendants after the search showed the confiscation of other items not specifically mentioned in "Attachment A," which also could not possibly be evidence of criminal activity (and should therefore not have been seized), including, among other things: scans of older tax statutes (items A-3 and A-7); Theft-By-Deception.com bumper-stickers (item A-4); a court transcript (item A-7); videos about taxes by *other* individuals (item A-10); list of incoming calls from Caller ID on phone (item A-29); *Taxable Income* reports (item A-32); city tax documents (item A-32); hospital bills (item A-33); printed out court cases (item A-33); a phone book (item C-1); deed to Defendants' house (item C-2); current bills and mail (items C-2 and C-7); two newspapers (item C-3); records of estate of Tessa David's father (item C-4); *To Harass Our People* book (item C-9); insurance documents (items C-10 and E-1); two blank checks (item E-3); and an old calendar (item E-4). The IRS obviously did *not* limit the search and seizure to items which are "*seizable by virtue of being connected with* [any] *crime*" (IRM, Section 31.7.2.1(3)(C)), and Defendants fail to see how any of the items seized constitute evidence of a crime.

(Also, though items 24 through 26 on "Attachment A" seek records concerning "tax advice," the APC does not even *allege* any such conduct by Defendants.)

3) Evidence Sought Must be Specific and Limited

Even "*those searches deemed necessary should be as limited as possible*" (*Coolidge v. New Hampshire*, 403 U.S. 443 (1971)). In *Coolidge*, while condemning "*the 'general warrant' abhorred by the colonists*," the Supreme Court expressed a concern, not just about the use of a search warrant per se, but about the use of warrants as a means of carrying out "*general, exploratory rummaging in a person's belongings*."

"*It is familiar history that indiscriminate searches and seizures conducted under the authority of 'general warrant' were the immediate evils that motivated the framing and adoption of the Fourth Amendment.* " [*Payton v. New York*, 445 U.S. 573 (1980)]

Even where there *is* "probable cause" to justify a search, a warrant can nonetheless be rendered invalid by its overly broad scope.

"*Search warrants... are fundamentally offensive to the underlying principles of the Fourth Amendment when they are so bountiful and expansive in their language that they constitute a virtual, all-encompassing dragnet of personal papers and property to be seized at the discretion of the State. See Stanford, 379 U.S. at 481 (the Fourth Amendment "reflect[s] the determination of those who wrote the Bill of Rights that the people of this new Nation should forever `be secure in their persons, houses, papers, and effects' from intrusion and seizure by officers acting under the unbridled authority of a general warrant."(internal quotation marks omitted)); see also Boyd, 116 U.S. at 630-31... Although the list of items and categories of property set forth in Attachment B is detailed, the list is so expansive that its language authorizes the Government to seize almost all of ATC's property, papers, and office equipment in Billings*." [*U.S. v. Bridges*, No. 01-30316 (9th Cir. 2003) (emphasis added)]

The defendants in the *Bridges* case were voicing unorthodox beliefs concerning the tax laws, but were also directly involved in advising and assisting clients in their tax dealings (types of actions not even alleged in the present case). Even so, the court threw out the search as being overly broad. The fact that a list of things to be seized is "specific" is, by itself, not enough. By specifically "*listing every type of record that could conceivably be found in an office*," a warrant may effectively authorize agents "*to cart away anything that they could find on the premises*" (*Roberts v. United States*, 656 F.Supp. 929, 934 (S.D.N.Y. 1987)), which is precisely what occurred in this case, in violation of the Fourth Amendment.

The Internal Revenue Manual even informs IRS Special Agents that when "*preparing the list of items to be seized, the agent should be specific as to the nature, type, and time frame of items and records to be seized*," adding that the "[u] *se of the phrases like 'any and all records' should be avoided as they imply an overly broad and nonspecific search methodology*" (IRM, Section 9.4.9.5.1.3(2) (emphasis added)). Numerous examples of such phraseology are found throughout "Attachment A." For example, item 18 on the list sought to seize "*any and all copies of any publications, research material or other documents relating to the IRS,*

federal income taxes, and any tax-related issues. " The insinuation that every document related to "*any tax-related issue*" possessed by the Defendants must be evidence of a crime is absurd.

Item 21 on "Attachment A" seeks the seizure of any and all computers, hard drives, floppy disks, laser disks, etc., *regardless of content*. Conducting such a search and seizure in this day and age is the equivalent of conducting a search of someone's home thirty years ago seeking "any and all pieces of paper." The requirement that computer searches be limited is explained in Part II.C. of a document from the Criminal Division of the U.S. Department of Justice entitled "*Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*," which includes the following (emphasis has been added):

"*The Fourth Amendment requires that every warrant must 'particularly describ[e] . . . the . . . things to be seized.' U.S. Const. Amend. IV. The particularity requirement prevents law enforcement from executing 'general warrants' that permit 'exploratory rummaging' through a person's belongings in search of evidence of a crime. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). The particularity requirement has two distinct elements. See United States v. Upham, 168 F.3d 532, 535 (1st Cir. 1999). First, the warrant* Appendix B, Page 7 *must describe the things to be seized with sufficiently precise language so that it tells the officers how to separate the items properly subject to seizure from irrelevant items. See Marron v. United States, 275 U.S. 192, 296 (1925) ('As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.'); Davis v. Gracey, 111 F.3d 1472, 1478 (10th Cir. 1997). Second, the description of the things to be seized must not be so broad that it encompasses items that should not be seized. See Upham, 168 F.3d at 535... Considered together, the elements forbid agents from obtaining "general warrants" and instead require agents to conduct narrow seizures that attempt to 'minimize[] unwarranted intrusions upon privacy.' Andresen v. Maryland, 427 U.S. 463, 482 n.11 (1976)... Agents should be particularly careful when seeking authority to seize a broad class of information. This often occurs when agents plan to search computers at a business. See, e.g., United States v. Leary, 846 F.2d 592, 600-04 (10th Cir. 1988). Agents cannot simply request permission to seize 'all records' from an operating business unless agents have probable cause to believe that the criminal activity under investigation pervades the entire business.* [citations omitted] *Instead, the description of the files to be seized should include limiting phrases that can modify and limit the 'all records' search... United States v. Hunter, 13 F. Supp. 2d 574, 584 (D. Vt. 1998) (concluding that warrant to seize '[a]ll computers' not sufficiently particular where description 'did not indicate the specific crimes for which the equipment was sought, nor were the supporting affidavits or the limits contained in the searching instructions incorporated by reference.')*"

Similarly, the Internal Revenue Manual instructs Special Agents, when doing searches involving computers, to "[d] *etermine the role of the computer in the offense*," to "[d] *evelop probable cause for each component of the computer*," and also states that the Special Agent "*must articulate a factual basis to believe that the computer was used for the creation and/or storage of evidentiary records*" (IRM, Section 9.4.10.7). There was no indication in the APC that any such procedures were followed in this case.

FIRST AMENDMENT ISSUES

"[W]*hile the general rule under the Fourth Amendment is that any and all contraband, instrumentalities, and evidence of crimes may be seized on probable cause... it is otherwise when materials presumptively protected by the First Amendment are involved. Lo-Ji Sales, Inc. v. New York, 442 U.S. 319, 326, n. 5 (1979).* " [*Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989) (emphasis added)]

"*The use by government of the power of search and seizure as an adjunct to a system for the suppression of objectionable publications is not new... The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression*." [*Marcus v. Search Warrant*, 367 U.S. 717 (1961) (emphasis added)]

The APC in this case shows not only a complete disregard for the above-expressed principles, but exhibits a *motive* of censorship, both through overt confiscation of First Amendment materials and through retaliation (under "color of law") against Defendants for exercising their free speech rights.

"[T]*he constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain*." [*Stanford v. Texas*, 379 U.S. 476 (1965) (emphasis added)]

Nonetheless, the IRS seized multiple copies of Defendant Larken Rose's *Taxable Income* report, and approximately two hundred copies of Mr. Rose's *Theft By Deception* videotape. The APC (in paragraphs 16.6, 18, 19 and 20) shows that the IRS already *had* copies of the video and the report (and was well aware of their contents), and was well aware that they constitute two of the primary means by which Mr. Rose publicly shares his opinions and beliefs, as is his right under the First Amendment.

Neither the written report nor the video gives any advice, or instructs anyone to do anything, and the government has never even *alleged* that either is illegal. Such intentional confiscation of articles of clearly protected speech amounts to a modern-day "book burning," and has been *specifically condemned* by the Supreme Court.

"*While a single copy of a book or film may be seized and retained for evidentiary purposes based on a finding of probable cause, books or films may not be taken out of circulation completely until there has been a determination of* [illegality] *after an adversary hearing... Mere probable cause to believe a violation has transpired is not adequate to remove books or film from circulation*." [*Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989) (emphasis added)].

"[S]*eizing films to destroy them or to block their distribution or exhibition is a very different matter from seizing a single copy of a film for the bona fide purpose of preserving it as evidence in a criminal proceeding.* " [*Heller v. New York*, 413 U.S. 483 (1973) (emphasis added)].

The issuance of a warrant that specifically sought to confiscate all copies of the *Theft By Deception* video (item 27 on "Attachment A"), as well as any documents concerning "*any tax-related issues*" (item 18), from an individual well known for publicly expressing his views concerning federal taxes, is precisely the type of censorship-via-"search" which the Fourth Amendment prohibits. Furthermore, any possibility that the seizure of videos and written reports was an honest mistake resulting from the searching agents' ignorance of the law (which by itself would constitute gross negligence) is ruled out by the following facts (see the attached affidavit of Mr. Rose):

1) The IRS was well aware of the contents of the video (APC, paragraphs 18 to 20), yet seized every copy they could find, including individual copies still in the "shrink wrap," as well as sealed cartons containing 50 videos each.

2) When, *during the search*, Mr. Rose asked when the videotapes would be returned, the IRS agent in charge, Donald Pearlman, openly stated that they would *never* be returned, even at the conclusion of the investigation.

3) Shortly after the raid, Mr. Rose sent a letter to Agent Pearlman (via certified mail), specifically citing a Supreme Court ruling (see above) saying that while a *single* video could be seized if necessary, a wholesale confiscation is illegal. Nonetheless, in a subsequent phone call, Agent Pearlman *again* stated that the videos would *never* be returned, even at the conclusion of the investigation.

4) Though the same Supreme Court citations shown above, specifically condemning such confiscation of films, were included in Defendants' initial motion to quash the warrant in question, the government still has not returned any of the videos, and the court has not ordered their return.

These facts clearly manifest not only a premeditated agenda of censorship before the raid even occurred, but an ongoing and intentional violation of the First Amendment rights of the Defendants. It seems that the IRS does not share in the "*profound national commitment to the free exchange of ideas*" (*Harte-Hanks v. Connaughton*, 491 U.S. 657 (1989)), or the "*profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open*" (*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). (Even the eventual return of the First Amendment materials cannot undo the wrong done, as the "*loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury*" (*Elrod v. Burns*, 427 U.S. 347 (1976)).)

Neither the warrant nor the APC mentions the First Amendment at all, or shows any efforts or precautions taken to avoid violating the Defendants' freedom of speech rights. The author of the APC seems completely unaware that the Defendants have *any* right to voice their opinions, and instead manifests an attitude more akin to the "Thought Police" in George Orwell's "1984." To wit, under the heading of "*Rose's Attempts to Defraud the United States*," the APC mentions that: Mr. Rose "*advocates his claims*" on web sites (paragraph 15); Mr. Rose expresses his views in his *Theft By Deception* video (paragraphs 16.2, 18, 19 and 20) and in his *Taxable Income* report (paragraph 16.6); Mr. Rose invites people to subscribe to his free e-mail list (paragraph 16.3) on which he expresses his opinions; Mr. Rose openly disagrees with Tax Court rulings (paragraph 16.5); Mr. Rose voices his opinions concerning the legal weight of lower court rulings (paragraph 16.8); Mr. Rose expresses his desire to see many others reaching the conclusion he reached (paragraph 16.9); Mr. Rose and Dr. Clayton cooperated to make the Theft-By-Deception.com web site, on which both individuals express their opinions (paragraph 17).

More than a dozen pages of the APC (pages 11 to 24, etc.) deal with the ways in which Mr. Rose *voices his opinions*. After documenting in detail the contents of the video and the web sites, the APC (in paragraph 20) comes to the remarkable conclusion that Mr. Rose and Dr. Clayton *expressing their beliefs* using two web sites and a video constitutes "*efforts to reach a mass audience in an effort to gain support for ROSE's agreement, with others, to attempt to defraud the United States and to corruptly interfere with, and impede, the administration of the Internal Revenue Code*." Again, the APC does not allege that Mr. Rose has tax clients, gives advice, or is involved with the preparation of tax returns; the basis for the allegation is that Mr. Rose *speaks his mind*. (Of note, none of the web sites in question has a "members" area or any other restricted content, and they are freely accessible by the general

public and the government.) The government is clearly seeking to punish Mr. Rose, not for actual criminal acts, but for his ideas and opinions.

The claim in the APC (paragraph 14) that Mr. Rose has been given "notice" that his beliefs are incorrect has no effect upon Defendants' First Amendment rights. Mr. Rose has no obligation to agree with anyone in government, nor do First Amendment protections even depend upon "*the truth, popularity, or social utility of the ideas and beliefs which are offered*" (*N.A.A.C.P. v. Button*, 371 U.S. 415 (1963)).

"*Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.* " [*Gertz v. Robert Welch, Inc.* , 418 U.S. 323 (1974)]

It is a gross understatement to say that armed invasions of private residences by government agents, in response to individuals *stating their opinions*, has a "chilling effect" on freedom of speech. As shown above, the raid in this case went far beyond a mere "callous disregard" for the Defendants' First Amendment rights, and instead constituted an *intentional violation* of such rights, in the form of retaliation and intimidation via armed invasion and forcible confiscation of articles of protected speech. The true motive for the raid was clearly expressed by one IRS agent who, during the search of Defendants' residence, made the following statement (or a statement of very similar wording and identical meaning): "*When people hear you've been raided, no one's going to listen to you any more*" (see attached affidavit).

SUMMARY

In the 44 pages of the APC, nowhere does it even *suggest* that the Defendants were concealing their actions or any evidence, or that Defendants had done anything misleading. The government even acknowledges that the Defendants "*have not attempted to conceal their conduct*." While the APC refers to extensive information which the Defendants have either made publicly available and/or have *voluntarily given* to the government, the APC **does not allege the existence of any additional or concealed evidence** which might necessitate or justify the intrusion and invasion of privacy involved with the execution of a search warrant.

One has to wonder what additional information the Defendants could have given to the government, or how the Defendants could have been any more open about their actions and beliefs, in order to avoid an armed invasion of their home by federal agents. To have the government committing such acts of forcible intimidation and retaliation, and to have the courts condoning such actions, based on nothing more than an open, honest disagreement about the law, obviously goes against the core purpose of the Fourth Amendment, which is to allow anyone "*to retreat into his own home and there be free from unreasonable governmental intrusion*" (*Silverman v. United States*, 365 U.S. 505 (1961)).

Not only was the search entirely unnecessary, but the warrant was ridiculously overly broad, seeking to seize numerous items which could not possibly be related to any crime, as well as many items that constitute articles of protected speech. The APC proves that the IRS was already well aware of the information contained in those materials, and was well aware of the fact that those articles were meant for public distribution. Again, the APC, warrant and search show a premeditated and intentional violation of Defendants' First and Fourth Amendment rights (in violation of 18 USC §§ 242, 2235). As such, the search should be declared unconstitutional, and nothing obtained in the search should be admissible in any criminal trial.

REQUEST FOR EVIDENTIARY HEARING

Defendants hereby request a suppression hearing pursuant to Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure, in order to further explore the issues addressed herein.

PRAYER FOR RELIEF

For the above stated reasons, Defendants hereby respectfully move this Honorable Court to grant this Motion and to order the suppression of all seized materials.

March 14, 2005

Endnotes

[1] *Flint v. Stone Tracy*, 220 U.S. 107 (1911)

[2] *Stanton v. Baltic Mining*, 240 U.S. 103 (1916)

[3] *Peck v. Lowe*, 247 U.S. 165 (1918)

[4] *Evans v. Gore*, 253 U.S. 245 (1920)

[5] *South Carolina v. Baker*, 485 U.S. 505 (1988)

[6] *Wright v. United States*, 302 U.S. 583 (1938) (dissenting opinion)

[7] *Commissioner v. Glenshaw Glass*, 348 U.S. 426 (1955)

[8] 26 CFR § 39.21-1 (1956), see Exhibit A

[9] 26 CFR § 39.22(b)-1 (1956), see Exhibit A

[10] Article 71, Treasury Decision 3640

[11] 26 CFR § 39.22(a)-1 (1956), see Exhibit A

[12] 26 CFR § 1.61-1

[13] 26 CFR § 1.265-1

[14] 26 CFR § 1.312-6

[15] 26 CFR § 1.861-8, subsections (a)(3) and (b)(1)

[16] U.S. Constitution; Article I, Section 9, Clause 5

[17] *United States v. Butler*, 297 U.S. 1 (1936)

[18] *Hill v. Wallace*, 259 U.S. 44 (1922)

[19] U.S. Constitution; Article I, Section 8, Clause 3

[20] *Peck v. Lowe*, 247 U.S. 165 (1918)

[21] U.S. Constitution, Article IV, Section 3

[22] Black's Law Dictionary (Fifth Edition)

[23] *Flint v. Stone Tracy*, 220 U.S. 107 (1911)

[24] All quotations in paragraph from *United States v. Butler*, 299, U.S. 1 (1936)

[25] *Gould v. Gould*, 245 U.S. 151 (1917)

[26] 26 CFR §§ 1.161-1, 1.861-1

[27] 26 CFR § 1.863-1(c)

[28] 26 CFR § 1.862-1(b)

[29] 26 CFR § 1.863-6

[30] Internal Revenue Manual, § 4.10.7.2.1.1

[31] *Commissioner v. Wodehouse*, 337 U.S. 369 (1949)

[32] e.g., 26 CFR §§ 1.861-1(a)(1), 1.862-1(b), 1.863-1(c)

[33] 26 USC § 5841

[34] 26 USC § 5845

[35] 26 CFR § 1.861-1

[36] 26 USC § 7806(b)

[37] 26 USC § 306(f)

[38] 26 CFR § 1.61-1(b)

[39] 42 USC § 2000e-2

[40] 42 USC § 2000e(g)