

The Privacy Act, FOIA & the IRS

by Eddie Kahn & Larry Maxwell

Here's a pair of constitutionalists and an extraordinary example of the kinds of challenges and even defeats they can impose on unlimited, unconstitutional government. (Kick 'em where it hurts, guys — right in the taxes).

The Freedom of Information Act (FOIA) and the Privacy Act are federal laws that establish the federal government's duty to provide information to the American people, as well as the proper procedures for requesting that information. The fact that both Acts seemed to accomplish the same purpose seemed unremarkable until Eddie Kahn and Larry Maxwell discovered that FOIA only provides information about "artificial entities" (like partnerships, corporations, and trusts) while the Privacy Act only provides information about real people.

If this discovery is born out, the implications are huge. For example, if a government agency can provide records under FOIA but not under the Privacy Act, it implies that agency only has records and authority to deal with "artificial entities" but not real people.

Preliminary research indicates the IRS cannot provide records under the Privacy Act and therefore may only have authority to tax artificial entities, but not real, flesh-and-blood human beings. If so, the IRS might have little or no authority to lien, levy, or prosecute real people.

This article is an edited transcript of two interviews — one with Eddie Kahn, the other with Larry Maxwell —

conducted by Alfred Adask and Rick Donaldson on the Christian-Patriot Connection radio program (KPBC 770 AM, Dallas, Texas) in August, 1997. Adask, Donaldson, or a telephone caller made the italicized comments; Eddie Kahn, and later, Larry Maxwell made the comments in normal text:

***A**s editor of the AntiShyster, I hear a lot about various "tax-resistor" advocates and their strategies and get a subjective impression of which strategies are good, bad, or even a scam.*

One of the most dangerous strategies is to confront the IRS in court — especially criminal court — as a defendant since the judges are usually members of the IRS prosecution team. Although the IRS only files about 900 criminal cases a year, if you are one of those "chosen 900", the odds are about 100 to 1 that your "constitutional" arguments will be ignored and you'll be convicted and jailed. Therefore, the most sensible strategy for stopping the IRS has been based on administrative procedures used before the IRS files a civil or criminal case against you.

Eddie Kahn developed an administrative strategy. I've known Eddie for three years. He's a former Dallas police officer who was jailed for willful failure to file. Upon release, he continued to dig into the tax code and is probably the only person I know who's confronted the IRS without causing anyone

to complain to me about his strategies. Further, while some people sell "tax-resistor" programs for \$2,000 or more, Eddie's materials have always been priced between \$25 and \$50, but seem to have provided the most effective administrative procedure for thwarting the IRS.

Eddie's strategy involved having a face-to-face meeting with the IRS. This strategy worked well for about 18 or 24 months and then the IRS — in order to combat his strategy — started refusing to hold meetings when they were requested by the alleged "taxpayers".

Eddie Kahn: That's true, Al. At first, they were happy to meet with us. But when they couldn't answer our questions, they changed. Now it's almost impossible to get a meeting with the IRS anywhere in the country.

I've watched various strategies evolve to confront the IRS. They seem to work for 18 to 24 months until the IRS devises a counter-strategy. Then the constitutionalist community has to develop a newer strategy to deal with the IRS's latest defense. So when the IRS stopped meeting with alleged taxpayers, what was your next step, Eddie?

Well, we reminded them that the Privacy Act notice in the 1040 booklet says if we have any questions concerning the rules for filing returns and getting information, we can call or visit any IRS office — but the agents still refused to meet us. Then we'd write a complaint to the district director that this agent is

violating our right to due process. We'd also give them their ten days written notice that we were going to "make our own meeting" by just going down to the IRS office at a particular date and time, with witnesses and tape recorders — and if they had any problem with this meeting, let us know before this date.

Do they show up?

Oh, yes, they're always there. But our strategy evolved to just asking two questions: 1) "What *particular tax* do I owe?" and 2) "What *particular form* am I required to file for that tax?" You know what they're saying now? They say, "That's a legal question, I can't answer."

But if they can't tell you what tax you owe or what form you should use, what can the IRS tell you? Further, if they can't tell you what tax you owe, how can they determine for themselves what tax you owe and therefore what tax to enforce? Does their refusal to answer these basic questions eliminate your liability for "willful failure to file"?

Their refusal to respond pretty much knocks out willful failure since you're trying to resolve the issue and they're avoiding your questions. So far, I don't know anyone that's used this strategy that's been challenged on willful failure to file.

Understand you've hired some professional employees.

We have one attorney and one CPA and we're looking for others.

But you only represent people at the administrative level?

Yes, but the IRS even tries to ignore our attorney and CPA when they write questions of law — because they can't answer them. So we're developing a writ of mandamus for the appellate courts which essentially states, "Your honor, these IRS agents say our client owes money but they won't tell him which tax he's liable for and they won't tell him which form he's required to file — so we want the courts to order them to tell us." I don't see how they'll get around it.

They can't tell you what tax or what form. It seems absurd but is that why the tax is "voluntary"?

Yes, but volunteer for *which tax*? I counted the various kinds of taxes in the Internal Revenue Code (IRC) the other day, and found 53 different taxes and 49 different forms. So a person should naturally want to know *which tax* he's liable for since it could be any one of over 50.

Or research indicates that the IRS lets you *assume* they're trying to collect

"income tax" from you — but they're not. They're collecting employment taxes.

Recently, you and Larry Maxwell discovered that while the IRS provides information under the Freedom of Information Act (FOIA), it refuses to provide the same information under the Privacy Act. Why?

The difference between these Acts is significant because FOIA requests are only for "entities". Privacy Act requests are strictly for *human beings*. An "entity" is a fictitious thing, as in "artificial entity", like a corporation. It's not real. But human beings, of course, are real.

If FOIA only provides information about entities, does using FOIA create the presumption that the person using FOIA is also an "artificial entity"?

You bet.

What happens if I use the Privacy Act to request information from the IRS?

You won't get it. We've made a number of Privacy Act requests since we made this discovery and, while they still send us information, they'll say it was supplied *under FOIA* — as if we asked for it under FOIA.

When Larry Maxwell analyzed the Code of Federal Regulations concerning the IRS, the Privacy Act and FOIA, he found over 200 IRS regulations referencing FOIA but none for Privacy — which tells you what they regulate. They regulate "entities," but not human beings.

If they send me a tax document but spell my name in all capital letters (ALFRED N. ADASK), are they really sending that tax document to an artificial entity?

That's right.

And although they send it to my artificial "alter entity", I — Alfred Norman Adask, the natural human being — somehow get tangled up in that mess and become liable as if I were ALFRED N. ADASK, the artificial entity?

That's what our research indicates.

How's the IRS reacted?

So far, when we ask for information under the Privacy Act, they'll reject our request, saying, "You didn't give

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us the proper system of records.” Well, they have over 100 “systems of records” and if everyone who used the Privacy Act had to know all those systems, the Privacy Act would be impossible to use. As Larry Maxwell discovered, the IRS has no regulations or relating to the Privacy Act, and apparently, has nothing to do with real people.

This implies that a real, flesh and blood person won't usually owe income tax.

All you have to do, Al, is count how many times the word “human being” occurs in the Internal Revenue Code (IRC).

Only a few?

Once. We did a word search on a CD-ROM for Title 26 (IRC). That one occurrence was in “taxable vaccine.” It said, “when a human being is injected with this vaccine” That was the only time the term “human being” occurred in the entire IRC. Otherwise, we are called “individuals” and “persons” — but those terms are ambiguous since they can also describe corporations, partnerships, trusts, etc. which are all “artificial entities”.

The critical word is not “individual” or “person” — it’s “human being.” Government understands that word very well as seen in Title 15 (I believe it’s Section 12) where they declare labor unions are exempt from antitrust laws because, “the labor of a human being is not an article of commerce or a commodity.” That’s why you never see “human being” in the IRC.

A few years ago, anyone who confronted the IRS was generally at a huge disadvantage. IRS attorneys understood the law and procedure so much better than Constitutionalists, that it was very difficult for Constitutionalists to win. But today, folks like you have a greater understanding of tax law than the IRS attorneys.

There’s a lot of us out here digging for truth and there’s so much good communication nowadays that we’re finding it and spreading it. The amount of knowledge and wisdom that we’ve gotten over the last couple years is amazing.

Larry Maxwell’s recently showed

his tax research materials to a number of government attorneys. He said in some instances, government attorneys are beginning to shake, or even become visibly sick. For the first time in their lives, they are seeing the LAW, the weakness of their legal arguments, and also the consequences of their ignorance — they’ve ruined innocent lives with “laws” that don’t exist. One lawyer said, “Look, if what you’re telling me is true, I’m looking for another job. I’m not going to stay here.” Have you seen that sort of thing yourself, Eddie?

Yes. My CPA and I went to Tampa to meet a lady in the IRS audit department who’d been there at least ten years. I read IRC Section 6065 (under “verification by oath”) to her. In the Historical Notes it says, “any document that is required to be filed must be filed under penalty of perjury.” But then it says, “The exception to this rule is an income tax return filed by an individual.” She was so shocked, she made copies to show to everyone in that office.

You’re saying an “individual” need not sign under penalty of perjury?

That’s what their book says. That means signing the 1040, for example, is entirely voluntary.

So why are people going to jail for willful failure to file and all that?

Because they didn’t read the IRC. If they don’t know, they perish for lack of knowledge — it’s always been that way.

If you don’t know your rights, you don’t have any.

Nevertheless, I think the pendulum is turning in our favor. For example, there’s a Sheriff Mattis in Wyoming who understands his role and power and that the sheriff is the highest-ranking officer in a county. He won’t even allow IRS officers into his county. It only takes one or two people like that to stand up and all the sudden other sheriffs will start standing up too.

Evidence is mounting that our government and the IRS have intentionally defrauded Americans for several generations. Although most government employees don’t understand what’s happening, we are witnessing an extraordinary example of the “big lie” strategy used by the Nazi’s during World War II.

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People are skeptical of small lies, but tell a big one, and people will believe.

Today, it is incomprehensible to virtually everyone — including me — that the IRS and our entire income tax system could be based on government fraud and deceit. Anyone who first hears this argument has got to dismiss it as preposterous, even crazy. How could our government run a scam like this for over 40 years? How could such monstrous fraud be possible in the Land of the Free?

But then, it doesn’t seem possible that the IRS would refuse to tell you what tax you owe, and what form you use to pay your tax. Impossible things are happening daily.

For further information, call Eddie Kahn at 352-735-5668 for educational materials, or at 352-383-9100 (American Rights Litigators) to hire an attorney or CPA to battle the IRS.

While Eddie Kahn uses the difference between FOIA and the Privacy Act to achieve an administrative solution to IRS problems, Larry Maxwell argues that the only reliable way to stop the IRS is through litigation. Larry’s strategy is to sue the IRS as a plaintiff rather than wait to be sued as a defendant, since only defendants can

be jailed. Good point.

While the administrative procedure strategy is safer, in the end it may also be less effective since it only saves one "taxpayer" at a time. Litigation, on the other hand, sometimes results in those rare victories that lay a case law foundation for freeing hundreds, thousands, even millions of other American from future IRS oppression. If you win administratively, you save yourself. If you win in court, you might save the nation.

Here, Larry Maxwell (a former high school teacher) explains his opinions on litigating with the IRS:

Larry Maxwell: You can play "correspondence ping pong" with the IRS till you fall over dead, but you'll never get anywhere. We don't need to determine what documents they have, or argue various interpretations of the IRC, or even try to fathom the absurdities found in district court opinions – the issue is simply *does the tax law apply to ME?*

The Privacy Act and FOIA are completely different animals. FOIA applies to every federal agency and is codified at 5 USC 552 as the Freedom of Information Under Administrative Procedures Act. Now, there are some stringent burdens that must be met to get documents under FOIA. You have to cite the proper "system of records", the proper "custodian of the records", etc. With regard to the IRS, most people don't know how to do this since the IRS has 124 separate "systems of records". Nevertheless, any document that I can retrieve under FOIA, AlAdask can also retrieve under FOIA because it's a *public* document.

However, the Privacy Act talks about voiceprints, fingerprints, psychological evaluations, health history, medical history, and is subtitled "Records Maintained on *Individuals*". The Privacy Act defines "individual" so that it's clear that each record has something to do with a *living, breathing human being* — not an artificial "entity" like corporations, partnerships, trusts or other legal fictions.

Under the Privacy Act, federal agencies must maintain a system of records that 1) include "only such information about an *individual* as is relevant and necessary to accomplish a *purpose* of the agency required to be accomplished by statute or by executive order of the President." What records could the Department of the Treasury have on me – a specific individual that are "relevant and necessary" to a "purpose" that was legally mandated for the U.S. Department of Treasury by Act of Congress or an order of the President?

Are you implying that, under the Privacy Act, government must specify your individual name in the "purpose" for keeping various records? Or can the purpose merely identify a class of people like "citizens" or "taxpayers" that might include Larry Maxwell?

No, I'm not saying Congress must specifically identify "Lawrence Steven Maxwell" in its various laws. However, under the Privacy Act, my fingerprints, voiceprint and medical records comprise part of a record that matches up with the person known as "Lawrence Steven Maxwell" born on my birthday in 1954. Under the Privacy Act, this is not *public* information and so no one can obtain those records except me or my duly appointed legal representative.

Further, there's a second Privacy Act restriction: "To the extent practicable, collect all information from the subject individual such that any adverse termination with regard to rights, benefits or privileges from the individual will not be in question." In other words, if I applied for some Social Security benefits, the Social Security Administration is charged by Congress to collect information on me in a manner so clear and concise that there could be no question about whatever rights, benefits or privileges I might lose or gain. This manner of collection has to be on a form promulgated by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

There are also 17 separate requirements listed in the Federal Register concerning each "system of records". I went through each one of those requirements relative to the IRS to determine what can be in the IRS's 124 "systems of records" that is "relevant or necessary" to accomplish a legally required "purpose" relative to a *human being*. I learned the IRS does not maintain a *single record* on real, human beings that is legally required to satisfy a government-imposed purpose.

Instead, in every one of their records, the IRS refers to "taxpayer entities" rather than individuals. Some IRS manuals refer to taxpayers as "entities". There's a specific "entity transcript" for each tax year, and the Individual Master Files (IMF) is called an "entity module".

In the body of the IMF "entity module" there's a "name line" and they'll put that person's proper Christian name ("Alfred Norman Adask"; upper *and* lower case, just like you normally spell it) with his address. That natural person is the one who, for whatever reason, filed a 1040 form that shows up on the IMF with the Transaction Code "150". This Transaction Code cross-references in their 6209 manual to three phrases: "return filed", "liability assessed", and "entity module *created*."

If the IRS ever comes clean on these Privacy Act requests, they'll have to admit they don't maintain any records on human beings that are required by

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law to accomplish a purpose. It's all done based on *self*-assessment. If an individual files a 1040, government *presumes* he was obligated to do so and also presumes that individual has agreed to pay the particular tax.

If the IRS sends me a letter saying, "Al, you owe us some money," are they trying to trick me (the natural man) into volunteering to pay a tax for some artificial "entity" whose name is similar to my own?

That's exactly what they're doing. Here's how: For Al Adask, the first four letters of your last name spelled all uppercase ("ADAS") in conjunction with your Social Security "tax ID number" create and identify the "entity". That entity's "name" will appear on all IRS liens, levies, and correspondence. Unless rebutted, the IRS will allege that Al Adask is the surety for that artificial entity's tax liability.

In other words, when you file a 1040, you're contracting to pay taxes for an "entity" that's not you and isn't even real?

I prefer to use the term "ratification". Whether you first filed under threat, duress, coercion, or just plain ignorance – by filing, *you* created the "entity module". From that point forward, you're *presumed* to have some taxable liability that's supposed to be reported on a form 1040.

However, there's no such thing as a "1040" tax. We've had an attorney send the IRS letters asking, "On the levy, you put 'Kind Of Tax' as '1040'; please tell me what that '1040 Tax' is." We've tape-recorded phone conversations asking they tell us what kind of tax is the "1040". So far, no answer. That answer is important because there are 106 specifically enumerated taxes in the IRC.

Then if the IRS says "Rick, you owe some tax money," Rick should ask, "Which one of the 106 possible taxes do I owe?"

That's exactly what our first letter to the IRS says. "You say there are 106 taxes? Then *which tax* are you referring to? Please cite the specific code section that is applicable to that tax."

Our next question is, "Once you've told me *which tax* I owe, would

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you please tell me which of several forms I should use to file my return?"

Then, "Please identify the specific regulation that applies to the taxable activity and has been promulgated on the standard Form 83 that was filed with the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 that shows which regulation cross-references with the OMB-numbered form that I'm supposed to use to collect the relevant information and file with you."

Can they understand that? That's a very complex statement.

It really isn't. More importantly, an attorney writes our request, but the IRS agent responding to our request is *not* an attorney. In fact, if we get a letter back from a revenue officer who attempts to cite code sections etc., we immediately reply: "It is clear that you are not an attorney, yet you're making legal arguments in written correspondence in violation of state law, and in essence practicing law without a license. If you believe that our legal arguments are inapplicable or off point, then please have your general counsel respond."

We won't argue law with revenue officers. It's that simple. It's time that we take all the hogwash they'd fed us for years and feed it back to them. But our process is not meant to play "correspondence ping-pong" or argue; it's meant to preserve the entire process for our day in court.

Still, while "correspondence ping-pong" may not achieve a final solution with the IRS, a lot of people would be pleased to play this game if it slowed or stopped the IRS administratively. Administrative arguments can be endless and frustrating, but litigation can be hazardous to your health.

Except the IRS won't play a game where a letter gets sent every 90 days. Today, it's going to be every three weeks. And if an individual's letters are based on various "patriot" publications, the second the IRS sees that "patriot" argument, the individual is coded a "tax protester" on the IMF, and the computer accelerates the administrative enforcement process. We counter by using attorneys and laying a legal foundation to litigate.

Currently, the courts only recognize licensed attorneys. Pro se litigants file suits to stop the IRS collection process, but they're not going to get a federal court to issue an injunction against the IRS. However, an experienced, knowledgeable attorney who properly files for an injunction will be heard and usually prevail.

Are many new attorneys coming over to the "constitutionalist" side?

I don't know. We're working with five right now. I send them a flip chart containing all our information and arguments. Then we go through it page by page – sometimes over the phone. After the presentation, the lawyers just sit there, stunned.

The three lawyers I've talked to last week understood our arguments in just a couple hours and now believe their judges will move for acquittal as soon as they finish cross-examining the government's witness.

The Privacy Act has a hammer in subsection E which specifies the only records the government agencies can maintain. Then subsection 5 says, "Maintain all records used by the

agency in making any determination about any *individual*." Under subsection 5, the IRS should include information on what *tax* and *form* a particular individual should pay and file. We ask for that information.

If they don't produce those records within ten days, they ask for an automatic ten-day extension. We give them the whole 20 days to answer our Privacy Act request. Then the IRS has two options: 1) Produce the records (which we don't believe exist), or 2) respond that there are "no records responsive to your request." If there are no records concerning a particular individual, his attorney should ask the IRS why is there a \$50,000 levy on this individual? If there's no record on the individual, how can the individual be assessed as owing a tax?

Subsection F of the Privacy Act says if they don't produce the records, you file a civil action. 31 USC Section 301 says that the Dept. of the Treasury is attached to the "seat of government" as an agency under the Executive branch of government. 4 USC Section 72 says all offices attached to the "seat of government" shall exercise the authority of their office *in* the District of Columbia and *not elsewhere*.

Therefore, we know the place to sue the Secretary of the Treasury (also specified in 31 USC 301) is in the District of Columbia. So we file suit in a civil action as per subsection F, sue the United States, name the respondent agency (Treasury) and seek an injunction through a civil action to enjoin them from withholding the records.

My only burden is to show the court that 1) I properly requested those records pursuant to the Privacy Act, and 2) the agency refused to produce the records. I state that the refusal was intentional and purposeful, and my attorney is *guaranteed* attorney's fees and costs – it's not optional. I should get an injunction enjoining the IRS from withholding my records and the *minimum* \$1,000 fine.

At that point, the U.S. attorney assigned to defend this case will probably tell the IRS agent, "Heck, why not just give him the silly records? Look, the judge already issued the Temporary In-

junction and a Show Cause order. In ten days we'll have a hearing and he'll upgrade the preliminary injunction. You'll have to take the stand and tell him there's good cause why you don't produce these records. So why not give him the records?"

The IRS guy might reply, "We have a problem — there aren't any records."

In court, my attorney says, "If there aren't any records, what is this \$50,000 levy?" If the IRS agent admits the records don't exist, he also admits to an Unlawful Collection Activity — a *felony* for which he and the U.S. government are liable for compensatory and punitive damages. Any IRS agents involved in that Unlawful Collection Activity may face a felony conviction, five years in jail, and a \$10,000 fine per act. It's a heavy penalty. And you can prosecute it both civilly and criminally.

OK, how can they get out of this? My understanding of the legal system is if you can really corner these guys, you'll still have to give them an escape hatch or else the courts won't rule in your favor.

The only "out" you ever have to leave is for the judge — not the defendants. The judge is the one that wants the out, and it's there. The law is patently clear. We want an injunction against the collection activity so your attorney might say something like:

"Judge, we request that you immediately issue a preliminary injunction pending final adjudication of this case and a permanent injunction enjoining the IRS from ever again contacting my client, having anything to do with him, and from maintaining any liens and levies against him. The injunction should order the expungement of all relevant liens and levies filed by the IRS in any county whatsoever.

"Alternatively, we will amend our suit to include an Unlawful Collection Activity for all actual damages. These damages include everything the IRS has ever taken, all the compensatory damages for emotional distress and mental anguish, and punitive damages to send them a message that what they did was wrong. We'll also amend our complaint

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to prosecute the IRS agents under Title 18 to obtain a felony conviction.”

Faced with the alternative, the judge should grant our injunction.

Caller: *Have you successfully prosecuted a Privacy Act suit against the IRS?*

We haven't yet filed our first Privacy Act suit. We just started this process in June and watched their reactions. We learned to alter our initial Privacy Act requests so when we went to court, we didn't have to argue all the unimportant details — we hone in on whether they did or did not produce the records. Several of what we believe are perfected Privacy Act requests went out about two weeks ago. We got our first responses today and believe that we will file the suits within the next week to ten days. Injunctive actions move quickly. Once we file suit we expect the court to issue an injunction within 48 hours.

Caller: *Do you have any problem with the Anti-injunction Act?*

No. The Anti-Injunction Act only applies when there is no authorization for suit or injunctions. The Privacy Act itself authorizes the requester to file a civil action in U.S. district court seek-

ing an injunction to enjoin withholding of the records whenever an agency fails to produce the records,

Caller: *So the purpose of your suit would be to get a record or admission by the IRS.*

The purpose is to get them to admit that the records don't exist. Without records, what basis can there be for a levy?

Caller: *You seem to believe the IRS can't assess a tax unless you file a return.*

Lawfully, they cannot. If you read the code carefully, it specifically says the Secretary can assess the tax assessed by the taxpayer. In other words, the assessment is made by you and if you file it, the secretary can confirm or deny your assessment. If you go to the regulation on that section, it says the Secretary has the authority to assess “penalties, additions to tax and interest”. What's missing from that definition? There's no authority to assess the tax itself.

Caller: *I think you're misreading that statute. Why can't the IRS do a deficiency assessment and let you challenge it if it's incorrect?*

There's no authority for it.

Caller: *I believe there is; I think*

this is your fatal flaw.

I won't argue with you. We've researched it. If there was authority, why won't the IRS tell us what that authority is? But let me clarify one point: The IRS does have authority to issue deficiency notices for a legal purpose to entities which are subject to a particular tax that the IRS has authority to collect. So we never argue that the IRC is unconstitutional — it certainly is constitutional and it is law. However, they don't have authority to assess a tax against a real human being who lives in Texas and is not subject to the U.S. Department of Treasury.

Caller: *Maybe we'll find the truth in your suits.*

Exactly. Time will tell. Every theory, argument and court case exposes a little more truth. It's like going through a maze. Even when we're wrong, we can learn and become more nearly right.

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