

Statutes?!

We Don' Nee' No Stinkin' Statutes!

by Alfred Adask

If you study income tax law, you might remember Larry Maxwell (from Houston, Texas) who, in 1997, tried to take about two dozen tax cases to a court in Washington D.C. with a very innovative strategy for attacking the IRS. Before the cases were finished, the government dug up a six-year old charge for helping someone file a commercial lien and indicted Mr. Maxwell for practicing law without a license. He was convicted and sentenced to two years in prison. The six-year old charge was contrived to keep Mr. Maxwell from prosecuting his two dozen income tax cases. That strategy worked; while Mr. Maxwell was in prison, the court dismissed his tax cases for “failure to prosecute”.

Larry is out of jail, battling the IRS again, and has circulated an e-mail in which he alleges that the IRS sometimes prosecutes defendants without ever specifying the *statute* on which the prosecution is based. The allegation seems irrational. Surely, the IRS wouldn't prosecute if there wasn't an underlying statute, right?

Maybe not.

Some of you may also remember the 1998 case in Illinois in which a jury refused to convict Mr. Whitey Harrel for income tax violations. The jury asked the judge to provide the *statute* under which Mr. Harrel had been charged. The judge refused and told the jury “You've got all the evidence you're gonna get”. Because the judge wouldn't provide the statute, the jury refused to convict, and Mr. Harrel was freed.

At the time, Mr. Harrel's victory was widely celebrated by the patriot community. But really, Mr. Harrel didn't win his case—the judge lost it. If the obstinate judge had simply provided the statute under which Mr. Harrel was being prosecuted, Mr. Harrel would've been convicted. As a result of the judge's obstinacy, Mr. Harrel's “tax pro-

testor victory” was dismissed as an aberration—the result of a cantankerous old judge who simply refused to do his job and accommodate the jury.

But some suspect the judge wasn’t cantankerous. Some believe the judge couldn’t provide the statute because no such statute exists.

A handful of you might recall Dr. Peter Rivera—a Dallas doctor who was selectively prosecuted by the IRS in 1997 for income tax violations. I know Dr. Rivera, and he’s one of the most decent, God-fearing men I’ve met. As a result of his 1997 prosecution, he was convicted, jailed for almost three years, and forced to surrender his medical license while his wife and children endured considerable hardship. He’s out, and recently appeared in two more hearings before Judge Joe Kendall in the U.S. District Court in Dallas.

Ever since the first trial in 1998, Dr. Rivera has tried to force the court to specify the statute under which he was prosecuted, convicted and incarcerated. But Judge Kendall still refuses to specify. Instead, in a recent hearing, Judge Kendall simply waved his hand and said, “Ahh, it’s in the Constitution . . . everyone knows you have to pay income tax.”

Well, yeah . . . I suppose everyone else “knows”. But for the sake of argument, wouldn’t it be nice if the judge specified the statute so even the defendant “knows”?

After all, why wouldn’t a judge want to specify whatever statute caused a decent man—a doctor—to be tried, convicted and *incarcerated*? Isn’t it obvious that a man with sufficient intelligence to become a doctor might have brains enough to sue whatever government agents or agencies were responsible for causing his incarceration? Wouldn’t it be common sense to simply tell the poor, misguided doctor that he was jailed under some specific statute rather than let him imagine there was no statute and then launch an endless series of vexatious lawsuits?

But, no—despite repeated requests to specify the statute under which he’d been convicted *and jailed*—the court won’t say.

If I’d only heard one of these stories about courts refusing to tell defendants what statute they’re being tried under, I’d’ve dismissed the story as an interesting but aberrant anecdote. But when I see *three* stories in which the courts refuse to specify the statutes under which defendants are being prosecuted, I can’t help but wonder if maybe—just maybe—what “everyone knows” about paying income tax is so mistaken that some of us are being jailed for imaginary laws.

That doesn’t seem possible does it? Surely, our government wouldn’t stoop so low as to jail people for *imaginary laws* . . .right? Probably not.

But what about the *parens patriae*? It doesn’t need any law. Doesn’t need any injury. It only needs an “interest”. And it’s not the least bit bound or inhibited by the Constitution. So if the IRS and government prosecutors were acting in the capacity of *parens patriae*, could they prosecute a defendant in a “civil” trial without any underlying statute?

Could they?

