



# LIBERTY TREE

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## Back to the STAR CHAMBER!

### Judicial tyranny razes Fifth Amendment

Editorial by Jim Kerr



The prohibition on compelled testimony against oneself was inserted into the Fifth Amendment by James Madison for the purpose of constraining government officials to find *independent* evidence of facts sufficient to prove a crime. Madison intended to banish inquisitorial courts from America, courts like those of the Spanish Inquisition or the Star Chamber.<sup>1</sup> In 1892, Chief Justice John Marshall held that the prohibition covered any question which would provide merely one link in a chain of evidence needed to convict the witness of a crime.<sup>2</sup>

It appears that “Star Chambers” are alive and well today — at least in the United States District Court for the Western District of Texas. Tyrant extraordinaire Judge Fred Biery is becoming well known for his odious acts. In this editorial, I intend to examine an instance of Judge Biery’s perversion of the law. The case at issue is Western District of Texas Case No. 5:090cv-00569, involving Mr. F<sup>3</sup> and the matter of an IRS summons.

An IRS First Party administrative summons requests a person to appear before an IRS official, and provide documents and testimony against himself. The summons typically states:

“You are hereby summoned and required to appear before [REVENUE AGENT or OFFICER], an officer of the internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax

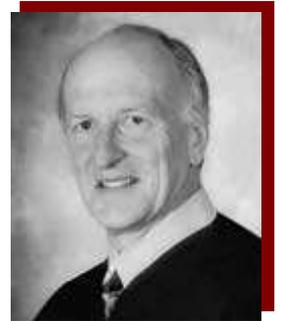
liability or the collection of the tax liability or for the purpose of *inquiring into any offense connected with the administration or enforcement of the internal revenue laws* concerning the person identified above for the periods shown.” [Emphasis added]

Clearly, the summons is meant to investigate criminal offenses as well as determining liability. When Mr. F received this administrative summons, he complied, even though there was no legal compulsion to do so.<sup>4</sup> Nonetheless, IRS Officer Dietz, who issued the summons, was angered when Mr. F invoked his Fifth Amendment right not to be a witness against himself. Dietz thereafter filed a petition to enforce the summons with the local federal district court, to force Mr. F to turn over any and all documents/information she demanded — never mind the law. The District Court sent Mr. F an order to “Show Cause” why the summons should not be enforced, and set a hearing for January 12, 2009.

‘Your arguments are wrong!’

At the hearing, when Mr. F explained why he invoked his right to not be a witness against himself at the voluntarily attended IRS meeting, Judge Biery became angry. He retorted:

“...although frankly [your arguments] are wrong!...Okay? And I’m not going to get into some philosophical/political discussion. Okay? But either you are going to answer these questions and provide the information, or you are going to spend a long time in jail. Do you understand that?”<sup>5</sup>



Seditionist federal judge Fred Biery jails defendants who refuse to testify against themselves.

Moreover, Mr. F never waived his right to counsel, a fact of which Biery was aware. Yet Biery nevertheless immediately arrested Mr. F for contempt, though he had no lawful authority to do so. Consider: how could Mr. F be in con-

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1. The Star Chamber was an English high court exercising jurisdiction in certain cases, mainly criminal, which sat without the intervention of a jury. It consisted of the king’s council, or of the privy council only with the addition of certain judges. It could proceed on mere rumor or examine witnesses; it could apply torture. It was abolished by the Long Parliament in 1641.  
2. *Counselman v. Hitchcock*, 142 U.S. 547 (1892).  
3. All the records in this case, are public, and can be downloaded from Pacer. Mr. F and his family yielded to the tyranny of Judge Biery, so I will refrain from using his name.  
4. See (cite case of WTP and the page number).  
5. All quotes are from the court transcript of the case.

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tempt for violating an enforcement order, even before the judge issued that order? To Judge Biery, this was evidently a minor detail — never mind the law.

Amazingly, at the same hearing, when explaining to the Biery why he did not show up with an attorney, Mr. F stated:

“I’ve really been struggling, Judge, to even pay my home bills as far as —”

... at which point Judge Biery interrupted ...

“Well, here’s the thing, Mr. F: I’m going to give you thirty days. Okay? And if I don’t get — with a lawyer or without a lawyer. I’m going to provide a place for you to live, and you won’t have any bills at all. Are we clear?”

Judge Biery did not waver on his promise of imprisonment if Mr. F persisted on invoking his Fifth Amendment right to not be a witness against himself. Indeed, Judge Biery did not even visit the question or otherwise consider that Mr. F. had fully complied with the IRS summons, even though Revenue Officer Dietz provided no evidence whatsoever that Mr. F. didn’t comply. The only issue, so the record verifies, was that Mr. F. invoked his Fifth Amendment right to not be a witness against himself, on certain (not all) questions, on a question-by-question basis.

### Did Capone have to squeal to the IRS?

Nevertheless, Biery likened Fritz’s Fifth Amendment invocation to Al Capone, stating:

“Anyway, but another one was a guy named Al Capone who probably had a coterie of pretty good lawyers, but ultimately went to the Atlanta Federal prison not for bootleg whiskey but for Internal Revenue matters. Is there any historical thing of Al Capone trying to take the Fifth Amendment, and the Court saying, ‘doesn’t matter. See you, Mr. Capone?’”

Biery also said:

“But ultimately, those returns are going to have to be filed, either by you... and they’ll file the return for you. Okay? So it’s going to get done. It’s just a matter of how difficult it

*“Nor shall any person ... be compelled in any criminal case to be a witness against himself ...”*

— Fifth Amendment to the Constitution of the United States.

becomes and what you expose yourself to, in terms of going to jail or federal prison, like Mr. Capone.”

It is not unreasonable to question whether Biery is an “impartial referee.” In fact, it is clear he is a seditionist, and should be held accountable for his crimes.

### No relief, just more abuse

To avoid jail, Mr. F. sought relief in the U. S. Court of Appeals for the Fifth Circuit by filing an emergency motion for a writ of mandamus, but that court didn’t care that Mr. F. was being threatened with jail time for refusing to forgo his Fifth Amendment right. They sat on the appeal and refused to make a timely decision, even though Mr. F. paid nearly \$1,000 in filing fees altogether. And in the interim, Biery issued a warrant for Mr. F’s arrest. Ultimately, Mr. F. turned himself in, and to avoid jail time for contempt, turned over all the documents demanded by Biery.

Thus has Biery, the tyrant extraordinaire, compelled Mr. F. to be a witness against himself. Apparently, this doesn’t bother him or the Fifth Circuit.

### Resisting tyranny

Generally, invocation of the Fifth Amendment includes (1) the right to not be a witness against oneself, (2) the “privilege” of not giving testimony which could incriminate you with respect to another person’s crime, and (3) the right to remain silent. It is important to assert these rights properly,

so as to avoid the wrath of tyrants like Judge Biery.

Fortunately, our Fifth Amendment right not to be a witness against ourselves is not altogether lost, but it is under attack. And there are things we can do about it. As far as our personal interests are concerned, while it may not be a simple matter of merely invoking our Fifth Amendment rights anymore (when being questioned by IRS or other federal agents), there are perhaps strategies that can minimize the risks of encountering judicial tyr-



The old Star Chamber, Westminster: This is the building in which the court held its sessions. Source: Larson, Laurence M. *A Short History of England and the British Empire*, p. 337. (1915)

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# But what if I don't WANT health insurance?

**H.R. 3200** “America’s Affordable Health Choices Act of 2009” was introduced in Congress on July 14, 2009. This is the hottest new solution devised by the tax-eaters in Congress to give all Americans health insurance coverage. Isn’t that *nice* of them?

But does the bill intend to *give* health insurance to all? *Au contraire*. It intends to *force* people who don’t have “insurance” to buy it from an insurance company or from the government’s own plan. Don’t want to buy? Then you’ll have to pay 2.5 percent of your “modified adusted gross income” (see Sec. 401 of the bill) as a penalty. More power to the IRS! Sure, they’ll keep your health insurance info *confidential*. Of course, if you don’t file and pay, you might end up in jail.

The bill’s a hoot to read, if you happen to subscribe to quaint notions, like Congress’ authority extends only to the enumerated powers granted by the Constitution. Ever play “Where’s Waldo?” At least he can be found. Now try to find

An IRS-enforced nightmare is on the way if Congress passes the current health bill.

the authority Congress has to enact a health care bill in either the Constitution or the bill itself. Hint: don’t waste your time; even the Supreme Court, in *Railroad Retirement Board V. Alton Railroad Company*, 295 U.S. 330 (1935), conceded that Congress has no power to take the money of one interstate carrier and transfer it to another carrier to pension its employees. To enact this health bill, Congress must violate the takings clause, taking away the money of some persons to provide others with health care. Let’s not get fancy: it’s just theft.

The bill’s stated purpose? “[T]o provide affordable, quality health care for all Americans and reduce the growth in health care spending.” They’re going to provide for everyone, while reducing the growth of spending. Sounds like a math *problem*. Let’s see —anytime Congress gives things away, you and yours pay for it through taxes and fees. And don’t forget the hefty bonus for the paper-shufflers of the insurance “industry.” Not a dime the *industry* (or the government) gets for pushing paper actually pays for health *care*. Maybe the “reduction” of growth in health-care spending is accomplished by diverting money *away* from doctors and *to* the government and insurance industry instead? Sounds like a plan.

But here’s a real fun tidbit: do you believe that “gross income” under Subtitle A of the Internal Revenue Code refers to the income of non-resident aliens and income received from Virgin Island sources? You’ll be interested to know that the health bill specifically *exempts* non-resident aliens from paying any penalty for not buying health insurance, and says residents of U.S. possessions will be automatically treated as if they have acceptable coverage — *i.e.*, they will be exempt from any reporting of health care coverage or paying of any penalty (See section 401 of the bill). If you’re following along, you’re probably asking — then who will owe the penalty? Good question.

Curiouser and curiouser, as Alice once said.



## “Affordable” Health Care



## Why isn't this man in jail?

Edward Dufresne, Jr. is Chief Justice of the Fifth Circuit of Louisiana. For 13 years (at least), his court totally ignored all *pro se* appeals, particularly from prisoners who languish in Louisiana's prisons, of whom 90 percent are indigent. It is estimated that some 2,400 appeals were never reviewed, and in essence, thrown in the trash.

In May 2007, his contempt for justice, where *pro se* litigants are concerned, was exposed when court clerk Jerrold Peterson committed suicide at the courthouse with a gun to his head. Peterson left a suicide note expressing guilt for his complicity in denying due process to prisoners. He told how he was instructed to prepare denials for all *pro se* appeals and give them to Dufresne who signed off "without so much as a glance." Then he explained that he had also obstructed justice for all the judges:

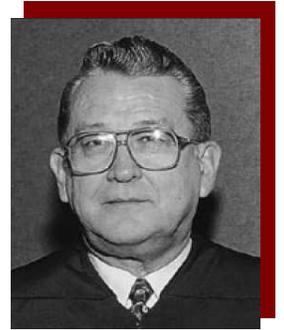
"How many of you [judges] have called and asked me to 'handle' traffic tickets or to get someone out of jail without bond or to clear up contempt charges pending against friends? Never once have I declined to help

someone you sent to me or refused to solve some problem you had."

It is hard to believe that none of the other judges on the Fifth Circuit, including two whose names also appeared on the denials, were never aware of this practice. Nevertheless, the Supreme Court of Louisiana, after receiving petitions from hundreds of appellants who had been denied due process by the circuit, decided they could safely entrust belated review of all appeals to the same Fifth Circuit court judges.

And Dufresne is still Chief Justice. Why hasn't he been impeached? Why isn't he in jail? It is left to patriots to put the pressure on. Liberty Works Radio Network can boil the pot. If more people join LWRN, we have a chance to put men like this in jail.

Story source: [www.tulanelink.com](http://www.tulanelink.com)



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any. I hope to further explore the wisest strategies, in my opinion, in encountering tyranny related to IRS summonses, in future editorials.

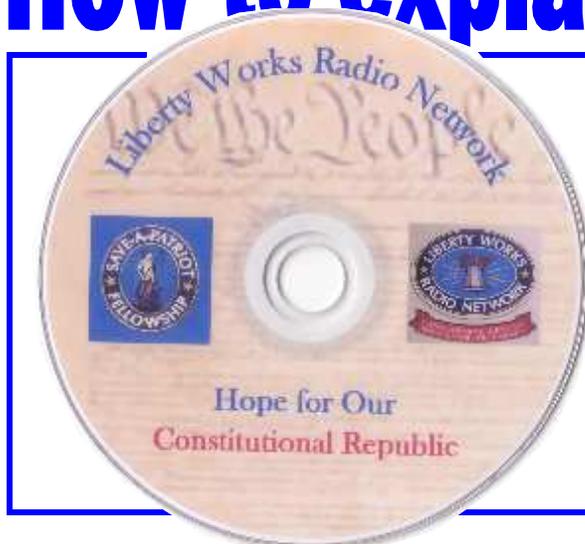
My point in relaying Mr. F's horror story is not merely to point out that Judge Biery is a crook. Because such judicial tyranny is becoming commonplace in these sorry times, it is more important than ever to hold such black-robed tyrants accountable, for their crimes (see [www.jail4judges.org](http://www.jail4judges.org)). And we need to take prudent steps to avoid this tyranny, until such a time

this comes to pass. Indeed, our country is not 100 percent ruined — maybe only 50 percent ruined — and it is salvageable, if we make the effort before it is too late.

We need also to reemphasize the importance of resisting tyranny efficiently on a collective scale, by supporting the valiant efforts of patriotic groups such as Save-A-Patriot Fellowship, Jail4Judges, Liberty Works Radio Network, and the patriot umbrella group, Truth Attack. For indeed, "Together we shall stand — or — separately you will be stood on!" Or, as I like to remind people: "Resistance to tyranny is obedience to God!"



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