



# LIBERTY TREE

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## Standing up to the INQUISITION

Can we still exercise Fifth Amendment rights in the face of judicial tyranny?

Editorial by Jim Kerr

As SAPF members are aware, the First Amendment's guarantee of free speech has been grossly eroded by judicial "legislation," as with federal judge Nickerson's ban of John Kotmair's book, *Piercing the Illusion*; but not all rights are yet so openly violated in these troubled times. A case in point is the quiet erosion of the Fifth Amendment guarantee that a person not be compelled to provide evidence against himself. As of now, the tyranny of compelling citizens to testify against themselves mostly takes the form of judicial fiat, involving seditious acts of individual judges done quietly, and particularly in cases which advance the unlawful practices of the IRS.

In the August 2009 Liberty Tree, we wrote about the encroachment on the Fifth Amendment by tyrant Fred Biery, federal judge of the western district of Texas, and his crimes against Mr. F., the recipient of a first-party IRS summons. But that was not an isolated incident: another case that shocks the conscience was an enforcement proceeding against Ms. E. in the northern district of California, Judge Sandra Brown Armstrong presiding. The elderly Ms. E. took other elderly people, who were sufficiently ill so as to require constant attention, into her home (including her sister, who died while the enforcement action was proceeding). The IRS tried to determine if Ms. E. accepted payment to defray the expenses of her efforts, for the purpose of making an income tax assessment against her. The IRS wanted all sorts of private records of Ms. E.'s financial affairs, records to which it was not entitled. Ms. E. was interrogated by IRS Agent Teresa Ryan no less than four times. Acting in good faith, Ms. E. did not state at the outset of each interrogation that she would take the



Galileo defending himself before the Inquisition in Rome in 1633, painting by Cristiano Banti, 1857.

protection of the Fifth Amendment in response to the entire proceeding — this would have been deemed a "blanket Fifth." Instead, she responded by invoking the Fifth Amendment, as is her right, to each individual question or request for documents as it was asked. Agent Ryan did not care about Ms. E.'s rights, so she filed an action to compel testimony and production — an abuse of judicial process.

Before a court hearing on the matter, DOJ/IRS attorney Moore isolated and cornered Ms. E. in the hallway outside the courtroom to badger and berate her. Moore reduced Ms. E. to tears,<sup>1</sup> and then went into the courtroom to tell the judge that Ms. E. promised to turn over all the documents he wanted — a lie. As such, Judge Armstrong ruled Ms. E. had waived her Fifth Amendment rights and imposed a penalty of \$500/day for each day she was deemed in contempt of Armstrong's order.

### The right IS the blanket

Although the Fifth Amendment refers only to criminal cases, the Supreme Court has long acknowledged that the right can be asserted in the context of all manner of proceedings, both civil and criminal, including IRS summonses. "Fifth Amendment privilege against compulsory self-incrimination ... can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory....," *Kastigar v. United States*, 406 U.S. 441, 443 (1972) "Accordingly, a taxpayer may invoke this privilege in response to requests

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1. Joe Banister, a former IRS Criminal Investigation Division agent, witnessed this.

*“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.

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for information in an IRS investigation.” *United States v. Argomaniz*, 925 F.2d 1349, 1353 (1991).

In 1996, the Ninth Circuit had this to say about dicta<sup>2</sup> involving the Fifth Amendment and tax cases:

Any language suggesting a broad exemption from the Fifth Amendment in tax cases or that there is a constitutional distinction between tax and non-tax crimes is merely dictum ... The case law in this circuit is clear that the Fifth Amendment may be validly invoked when the taxpayer fears prosecution for tax crimes.<sup>3</sup>

We must not forget that when a non-filer is being investigated by the IRS, there is a reasonable expectation that *any* evidence given can be used against that person. Accordingly, it is not necessary to show that there is a reasonable fear of prosecution for *each and every* question and request made by the IRS inquisitors. The mere fact that a person is a non-filer (as in Ms. E.’s case) is sufficient cause to invoke Fifth Amendment rights, in and of itself.

Since the IRS alleged Ms. E. was a non-filer, it is clear that each question answered, or each and every document produced by her, could have been used *against* her in future prosecution (*e.g.*, for failure to file or tax evasion charges). Therefore, the general (court-made) “rule” applicable in cases where a person is summoned to court as a witness in a matter involving *another* party — that a person must show a reasonable fear of prosecution for each and every question or document requested, and may not simply refuse to testify — is entirely inapplicable in the context of an IRS first-party summons. In spite of this obvious logic, many courts have ruled that in a civil tax enforcement proceeding such as an administrative summons, a person is only allowed a ‘question-by-question’ or ‘document-by-document’ Fifth Amendment assertion.

### Blanket questions?

Although courts have declared that a ‘blanket’ Fifth cannot be asserted in admin-

istrative summons cases, where a ‘blanket’ question or ‘blanket’ re-

quest for documents is made by an IRS interrogator, it is deemed okay to respond with a blanket invocation of the Fifth Amendment.

In Ms. E.’s case, the government complained that some of her responses pertaining to requested documents constituted an improper invocation of a “blanket Fifth.” Agent Ryan framed all the questions directed to Ms. E.; yet with regard to the production of documents, Agent Ryan merely demanded Ms. E. turn over all the documents she had brought with her. Because Agent Ryan did not particularize which documents Ms. E. should turn over, the request was overly broad. Ms. E. could not particularize her invocation of her Fifth Amendment right, so Ms. E. essentially took a “blanket Fifth” to a blanket request. What else could she do?

The Sixth Circuit has not minced words on this point:

In its brief, the government argues that the defendant has made, at most, a ‘blanket assertion’ of privilege rather than the ‘question-by-question’ or ‘document-by-document’ assertion required in civil tax enforcement proceedings. See *United States v. Hatchett*, 862 F.2d 1249, 1251 (6<sup>th</sup> Cir. 1988); *United States v. Allee*, 888 F.2d 208, 212 (1<sup>st</sup> Cir. 1989). The problem is that the defendant has never been asked specific questions about specific documents. The

closest such interrogation occurred on February 7, 1999 — the day before the contempt hearing — when the defendant and an attorney met with Revenue Officer Carpenter at an IRS office. At the beginning of that (apparently short) meeting, the taxpayer did raise what could be characterized as a blanket assertion of privilege. As noted however, the defendant states without contradiction that he then asked Ms. Carpenter whether there were any further questions and that she replied in the negative. ... [T]he February 7 meeting is the only place a ‘question-by-question’ or ‘document-by-document’ ob-

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Seditionist federal judge Sandra Brown Armstrong fines defendants who refuse to testify against themselves.



A modern Star Chamber for a modern Inquisition: the Ronald V. Dellums Federal Building in Oakland. Here, the infamous Sandra Brown Armstrong denied a citizen of the United States her Fifth Amendment protection.

2. That is, “Expressions in court’s opinion which go beyond the facts before court and therefore are individual views of author of opinion and not binding in subsequent cases.” *Black’s Law Dictionary*, 5<sup>th</sup> Ed.  
3. *U.S. v. Troescher*, 99 F.3d 933 (9<sup>th</sup> Cir. 1996).

# Are YOU being served?

Editorial by Dick Greb

Most everyone can now see that the global pandemic of that terrible scourge known as swine flu failed to materialize as so direly predicted by governments around the world and the national health services that front for them. In fact, it seems that it was less of a threat than the regular seasonal flu. Yet such grim scenarios were painted by the mass media, spewing government propaganda as usual, that many were lining up to get double and triple shots of harmful vaccines, even for their infants, heedless of the dangers presented. With the loose classification of any respiratory problem as swine flu, coupled with the possibility of contracting it from the vaccine, we'll probably never know how much of the problem was real, or how much was actually caused by the so-called solution.

One interesting aspect of the swine flu hysteria that most people likely never considered was brought out recently by Jon Rappaport of *nomorefakenews.com*. In a December 30, 2009 column,<sup>1</sup> Rappaport points out a possible link between mandatory efforts at vaccination — like New York's attempt to require vaccines for all health workers — and financial self-interest. That's right! New York actually has a financial interest in the sale of vaccines. Not through bribery, or kickbacks, or other such unseemly methods, but by directly owning stock in corporations that manufacture vaccines. Rappaport refers to the work of Walter Burien, at *cafr1.com*, who has been educating the public for years about this unholy marriage of government and business — in other words, fascism, or corporatism — as revealed by their Comprehensive Annual Financial Reports.

Burien has posted a copy of New York's Retirement Fund asset list,<sup>2</sup> which shows, among many other stocks, 1,619,920 shares of Sanofi-Aventis — one of the vaccine manufacturers — with a value of \$153,887,891. Thus, the more vaccines Sanofi-Aventis sells, the greater the value of the stock held by New York. Or to put it another way, as Sanofi-Aventis gets richer, so does New York. Could a direct financial interest in the sales of vaccines have had any effect on their decision to force everyone to buy those same vaccines? Government would never do that, you may be thinking; they're here to serve us.<sup>3</sup> And yet, it's a matter of public record that they do indeed own stock in not just one, but many different corporations, and in pretty impressive percentages, too.

New York's retirement fund probably doesn't have



controlling interest in any particular corporation, but what happens when you consider that the other 49 states' retirement funds also probably own some of that stock? Not just their retirement funds, either: the states and the feds have literally thousands of different

funds and accounts invested in various ways. That is the real point Burien has been trying to drive home through his research. When you add up all these accounts, you're talking about significant financial interests. And the greater the investment, the greater the *control* over the corporation.

Finally, this doesn't include the extensive investments made to launder proceeds from illegal drug sales, as exposed by Michael Ruppert in his book, *Crossing the Rubicon*.<sup>4</sup> Government involved in drug trafficking too unbelievable, you say? Here's what 2004 Presidential candidate Senator John Kerry said in 1988 as Chairman of the Subcommittee on Terrorism, Narcotics and International Operations: "The logic of having drug money pay for the pressing needs of the Contras appealed to a number of people who became involved in the covert war. Indeed, **senior U.S. policy makers were not immune to the idea that drug money was a perfect solution to the Contra's funding problems.** As DEA officials testified last July before the House Judiciary Subcommittee on Crime, Lt. Col. Oliver North suggested to the DEA in June 1985 that \$1.5 million in drug money carried aboard a plane piloted by DEA informant Barry

Seal and generated in a sting of the Medellin Cartel and Sandinista

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## But does ...



1. [www.nomorefakenews.com/archives/archiveview.php?key=3694](http://www.nomorefakenews.com/archives/archiveview.php?key=3694)

2. [cafr1.com/STATES/NEWYORK/RETIREMENT/NYRINV2006.PDF](http://cafr1.com/STATES/NEWYORK/RETIREMENT/NYRINV2006.PDF)

3. Like the Martian cookbook, *How to Serve Man*, perhaps.

4. See [www.fromthewilderness.com/index.html](http://www.fromthewilderness.com/index.html).

The heart symbol (R) is the logo of Sanofi-Aventis, a large pharmaceutical corporation in which the retirement fund of New York state is invested.

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officials, be provided to the Contras. **While the suggestion was rejected by the DEA, the fact that it was made highlights the potential appeal of drug profits for persons engaged in covert activity.** (emphases added)<sup>5</sup>

This money issue is one that we all need to consider as we see legislatures enacting laws that We the People neither need nor want. Whose interests are Congressmen serving — those of their constituents, those of the corporations, or those of the government itself? Christ himself tells us that: *No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other.* (Matthew 6:24.) And this doesn't even take into account the financial interests of the individual legislators, whether through their own investments or as *quid pro quo* for campaign bribes — uh, I mean *contributions*.<sup>6</sup> That puts us in a distant third position, influence-wise. It's no wonder then that governments disregard the wishes of those they are *supposed* to be serving and continue to press forward on debacles-in-waiting like health care reform and global warming mitigation schemes. This situation needs desperately to be changed, but I don't think that's the kind of change the Obama administration has in mind for us.



5. Page 41, December 1988 Senate Report of the Subcommittee. See [www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB113/north06.pdf](http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB113/north06.pdf).
6. Even if public officials go along with such transparent schemes as divesting into "blind trusts," I doubt they forget where their personal interests lie.

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jection might have been made, and the government asked no questions of the kind that would elicit such objections.<sup>4</sup>

A vague question does not allow for anything more than a vague answer. As such, to the extent that Agent Ryan alleged that Ms. E. provided any "blanket Fifth" answers to their inquiries, the official transcript shows otherwise.

As we can see, case law allows that one can assert the Fifth Amendment's protection in an expansive, blanket-like fashion to the extent that the request is also blanket-like. In Ms. E.'s case, the IRS

merely asked for her paper bag full of documents, and she asserted the Fifth in response. Perhaps then, to avoid the *accusation* of having taken a "blanket Fifth," Ms. E. ought to have asked the agent to particularize her request, to wit:

AGENT: "Hand me that bag of documents, please."

CITIZEN: "Well now, wait a minute; just what documents are you asking for?"

AGENT: "All of them."

CITIZEN: "Well, let's just take a look at what this summons asks for. Let's see ... bank records for 1996 and 1997; are those among what you are asking for?"

AGENT: "Yeah."

CITIZEN: "Okay, then with respect to those documents, I invoke my Fifth Amendment right. Now, the next item on the summons is credit card records for ... 1996 and 1997. Right?"

AGENT: "Yeah."

CITIZEN: "Okay, then with respect to those documents, I invoke my Fifth Amendment right. ..."

And so it goes.

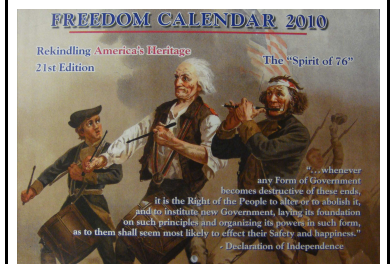


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4. *U.S. v. Grable*, 98 F.3d 251 (6th Cir. 1996)