LIBERTY TREE

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Even so every good tree bringeth forth good fruit; but a corrupt tree bringeth forth evil fruit. *Matthew 7:17, (KJV)*

FORCING AN EVIL FRUIT

Can compelled testimony backfire against the IRS?

Editorial by J. Goodwin and D. Stalwart

Last month, J. Kerr examined responding to IRS summonses with Fifth Amendment objections. He described a court order forcing one Ms. E. to answer IRS questions about herself. After Ms. E. had attempted to assert her Fifth Amendment rights on a question-by-question basis before the IRS, she was ultimately ordered to turn over personal records by Federal District Court Judge Armstrong or be charged with contempt.

Is it possible, however, that Judge Armstrong did Ms. E. a partial favor by compelling her to turn over her records? Or to ask it another way — now that testimony and information have been compelled from Ms. E., can the IRS or DOJ use it against her in any criminal prosecution?

Poisonous fruit

The constitutional prohibitions against warrantless searches or seizures — or testimony compelled against oneself — are meaningless if government officials can still prosecute in criminal courts using information obtained by violating these provisions. Thus, in order to guard against such illegal or seditious acts of government thugs, the courts apply the "fruit of the poisonous tree" doctrine: any information directly or indirectly obtained illegally is corrupt fruit, and must be excluded from any future criminal prosecution. The Supreme Court described it this way:

> The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed.[1]

Statutory immunity

While Kerr correctly cited *Kastigar v. U.S.,* 406 U.S. 441, 443 (1972) ("Fifth Amendment privilege against compulsory self-incrimination ... can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory...."), he omitted an important aspect of that opinion, and the most important benefit to patriots who find themselves in Ms. E.'s predicament.

Kastigar discusses the limits of 18 USC § 6002, which provides a statutory grant of immunity to any person compelled to testify over their Fifth Amendment objection:

> Sec. 6002. Immunity generally
> Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to -
> (1) a court or grand jury of the United States,
> (2) an agency of the United States, ...
> and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information)

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1. *Silverthorne Lumber Co. v. U.S.* , 251 U.S. 385 (1920).

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> may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Thus, by compelling her testimony over her Fifth Amendment objection, the district judge effectively immunized Ms. E. from criminal indictment upon any evidence gained by her compelled testimony or subsequently derived therefrom. As the decision in *Kastigar* said:

> A person accorded this immunity under 18 U.S.C. §6002, and subsequently prosecuted, is not dependent for the preservation of his rights upon the integrity and good faith of the prosecuting authorities. As stated in Murphy:
>
> 'Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, **the federal authorities have the burden of showing that their evidence is not tainted** by establishing that they had an independent, legitimate source for the disputed evidence.' ...
>
> This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution **the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source** wholly independent of the compelled testimony. [emphases added] 2

Note that the Kastigar court did *not* completely rule out future criminal action against a compelled witness on the matters he or she testified to, but it did *limit the type of evidence* admitted in future actions to evidence that prosecutors must prove isn't "fruity."

More testimony, more taint

The grant of immunity under 18 U.S.C. §6002 and the rule in *Kastigar* may be about as thorough a protection as one could hope for under the current corrupt system. For a patriot to obtain this immunity, however, the judge must compel their testimony over their stated Fifth Amendment objection.

Did federal judge Saundra Brown Armstrong do Ms. E. a favor by compelling her to be a witness against herself?

Once compelled over one's Fifth Amendment objection, it may even be of some advantage to turn over as much documentation and give as much testimony as one possibly can, so as to broaden the scope of subsequent immunity. The broader the scope of testimony given under compulsion, the more difficult for the prosecution in a subsequent criminal action to bear the burden of proof that any evidence it proposes to use is derived from a source "wholly independent" of the compelled testimony. Oliver North, for example, testified extensively before Congress about the Iran Contra affair after being granted immunity. His later convictions were vacated because evidence used at trial appeared derived from or tainted by his Congressional testimony.

Federal courts today routinely enforce IRS summonses (often better termed "fishing expeditions") no matter how vague, over-broad, or clearly devoid of any reasonable suspicion of wrongdoing. It seems that 18 U.S.C § 6002, combined with the rule in *Kastigar,* does provide a limited "silver lining" of sorts in the event one is compelled to testify against oneself, due to the immunity from criminal prosecution it provides.

"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.

2. *Kastigar v. U.S.,* 406 U.S. 441, 460 (1972).

United States Census 2010

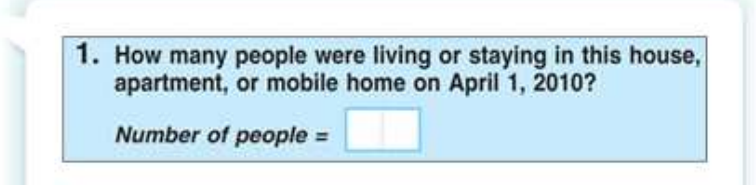
IT'S IN OUR HANDS

The Enumerated Power to Enumerate

How can we peacefully resist unconstitutional census questions?

This February, the inspector general of the Commerce Department released a finding that the Census Bureau has wasted millions of dollars just preparing for the 2010 census, including paying thousands of temporary employees who didn't actually do any work. He warns that wasteful spending could increase greatly as the "headcount" — already slated for $15 billion — begins this month. Naturally, federal investigators still thought spending $133 million on promotional advertising to boost compliance was appropriately spent.[1]

But the real crying shame is that all this money is being wasted to collect information that the Census Bureau — being a creation of Congress — has no constitutional authority to collect. Although the current Census contains 10 questions, only one is plainly Constitutional:



The remainder of the questions — involving names, home ownership, telephone numbers, birth dates and race, are not mentioned anywhere among the enumerated powers given the federal government. Here's that "enumerated power" to enumerate the people:

> Art. I, Sec. 2, Cl. 3: Representatives and direct Taxes shall be apportioned among the several States ... according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons ... The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, **in such Manner as they shall by Law direct**. ... [emphasis added]

We see that the power to "enumerate" the people is granted so that certain taxes and representatives are fairly apportioned among the States — and so direct taxation without representation is prohibited. We also see that Congress has legislative power over the "manner" in which the enumeration is "made," but has no power to conduct enumerations more than once every ten years.

The word "manner" still means — even today — a "way or method in which something is done or happens."[2] Congress, having the power to create the Census Bureau and the rules for *conducting* the census, has not yet been delegated power to *change the substance or subjects* of the census.

Unanswered questions

What happens if a person refuses to answer questions related to subjects other than a literal headcount? Title 13 U.S.C. §221(a) lays a penalty for refusing to answer census questions:

> Sec. 221. Refusal or neglect to answer questions; false answers
> (a) Whoever, being over eighteen years of age refuses or willfully neglects, when requested by the Secretary, or by any other authorized officer or employee of the Department of Commerce or bureau or agency thereof acting under the instructions of the Secretary or authorized officer, to answer, to the best of his knowledge, any of the questions on any schedule submitted to him in connection with any census or survey provided for by subchapters I, II, IV, and V of chapter 5 of this title, applying to himself or to the family to which he belongs or is related, or to the farm or farms of which he or his family is the occupant, shall be fined not more than $100.

Americans have been prosecuted and fined under § 221(a) when they refused to answer questions on constitutional grounds. Reviewing the case of one such peaceful rebel, the Second Circuit explained the government's rationale for requesting information not otherwise authorized by the Constitution:

> In *McCullough v. Maryland,* 17 U.S. 316 (1819), the Supreme Court held that Congress had the authority to establish a national bank in the absence of a constitutional provision specifically setting one forth because the Constitution "empower[ed] congress to pass **all necessary and proper laws for carrying its powers into execution**." *Id.* at 324. The government argues that the Necessary and Proper Clause of the Constitution, together with the clear language of Article I, Section 2, Clause 3, which gives to Congress the power to conduct the decennial census "**in such Manner** as they shall by Law direct," gives to Congress the authority to collect demographic information about the nation's population in order to enable Congress **to exercise its delegated powers to govern that population intelligently.**" *United States v. Rickenbacker*, 309 F.2d 462 (2nd Cir. 1962). [emphases added]

So for the federal government and its court parasites, the simple word "manner" — meaning the *way* to make a headcount — has miraculously transformed it-

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1. www.foxnews.com/politics/2010/02/16/census-bureau-wasted-millions-headcount-preparations-audit-finds/
2. Webster's New World Dictionary, 2nd ed.

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self into meaning permission to collect whatever information Congress thinks it needs to "govern ... intelligently."

Indeed, Congress desperately needs to "govern intelligently." A good 'manner' of doing that ***is to start by reading and understanding the limits of the Constitution.***

If the courts aren't for you ...

The *Rickenbacker* court also cited a district court case, *United States v. Moriarity,* 106 F. 886 (S.D.N.Y. 1901) as having long ago rejected the argument that the power of Congress conferred by Article I, Section 2, Clause 3 "is limited to a headcount of the population."

It appears, then, from the relatively few cases that have addressed the matter, that the courts are unlikely to find any *constitutional* reason why they shouldn't punish a person for "refusing" or "willfully neglecting" to answer all the Census questions.

So the question then becomes: what type of evidence is necessary, at minimum, for the government to charge a person over 18 with "refusing or willfully neglecting" to answer questions? 13 U.S.C. § 241 states:

> Sec. 241. Evidence
> When any request for information, made by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, **is made by registered or certified mail or telegram**, the return receipt therefor or other written receipt thereof shall be prima facie evidence of an official request in any prosecution under such section. [emphasis added]

Thus, in order to charge a person under § 221(a), the government must first show that said person received an official request. From all accounts, however, the Census is not being mailed to Americans by registered or certified mail, nor by telegram, but — if mailed at all — by regular mail. Without proof of delivery, mere claims by the Census Bureau that it mailed a form would not be sufficient evidence to establish the form had been *received*. Unless, of course, you sent it back. With only some of it filled in. As the Census Bureau itself says: "We can't move forward *until you mail it back*."[3]

Then again, thousands of Census workers will be going door to door, leaving forms on doors,[4] or giving them to whomever opens the door, or asking the questions in person. In the latter two instances, a census worker might be able to testify that they hand-delivered the form to a person who received it from them, or that a person refused to answer their questions, in the event of a prosecution for not answering. Not in the habit of answering the door when strangers call? Then it's likely you'll miss out on that kind of fun.

In conclusion, it seems an out-of-control Congress has created a dilemma for the person who wishes to obey the letter of the Constitution:

Option one: shall I respond by answering only those questions authorized by the Constitution, and thereby open myself to the potential of prosecution and ultimately a fine?

Option two: should I 'forget' about the Census, 'forget' to open the door or receive mail, and 'forget' to give a head count, so as to avoid the creation of 'evidence' and the potential of prosecution?

However you solve this dilemma, don't 'forget' Congress created it by usurpation in the first place. Next month, we will explore more of the statutory language of the Census title. Stay tuned, there are some surprises to come.

3. Actually, this is an official slogan of the Census Bureau for the 2010 Census. See www.census.gov for context.
4. They will not hand-deliver to mailboxes, since only the post office can legally do that.

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The socialists are united and well-funded. If Patriots are serious about recovering our Constitutional Republic, education is the main element in doing so, and it can only be accomplished by every member making an honest, concerted effort to recruit at least one new member per month. Doing so will eradicate the need for the constant effort to raise enough revenue to pay LWRN's monthly expenses.

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