

Incarceration for Income Taxes Is Illegal

by Irwin Schiff

Irwin Schiff has fought the income tax “war” for several decades. He is arguably the father of the modern tax resistance movement. He’s published several books on the IRS, appeared on hundreds of radio and TV programs, and also been jailed three times for challenging the IRS’s authority.

His article illustrates some of the contradictions, omissions, and “peculiarities” that populate the Internal Revenue Code (IRC) and also demonstrates Mr. Schiff’s fighting spirit. Yes, he’s lost three cases to the IRS and been jailed for several years. On the basis of his losses and subsequent incarceration, the quality of his recommendations is suspect and can’t be regarded as “legal” advice. After all, if Irwin’s so smart, why’d he get jailed three times?

On the other hand, why hasn’t the IRS jailed him four times? Or five? And having jailed him three times, why’d government ever let him back out? The answer may be this: Based on his years of study and experience, Mr. Schiff knows both “what’s right” (income taxes are “voluntary”) and “what is” (you can be jailed for doing what’s right). Since time began, incarceration (or worse) has been an

occupational hazard for every revolutionary who’s tried to tell truths that contradicted government lies. As a result, governments that were most corrupt also tended to have the highest incarceration rates.

Today, the United States jails a higher percentage of its people than any other nation on the face of this earth. As a result, although we are still wary of “ex-cons”, incarceration is no longer an automatic badge of shame. Yes, there’s a bunch of bad guys in the slammer who absolutely belong there. But increasingly, there’s also a bunch of good guys whose fundamental “crime” was “felonious political incorrectness”. That is, without damaged persons or property, and no constitutional violations, people are still thrown in jail.

More importantly, the reason for incarcerating the constitutionally innocent is not merely to punish them, but to use them as an example to “deter” (terrorize) the public from the same sort of politically incorrect behavior. Therefore, it’s quite possible that government didn’t jail Irwin Schiff merely to punish him so much as scare you and me away from believing what Schiff says or acting on his recommendations. In a

“politically correct” society, the bottom line in incarceration is government’s attempt to terrorize its own citizens into “politically correct” behavior. That is, in some instances, a highly publicized incarceration is not only an assault on the person jailed, it’s also an assault by threat upon the American people. Government jailed Irwin behind bars of iron, but in doing so, also “jailed” large numbers of Americans behind bars of fear.

But make no mistake. Even if Mr. Schiff is 100% correct, challenging the tax man is a risky business. It’s not enough to know the law, you must also avoid the courts where law is irrelevant and convictions presumed.

No matter. Schiff continues to educate and inspire thousands of other tax resisters, and has arguably precipitated more collective grief and expense for the IRS than any other living man -- which is probably why he’s been jailed. But that fact that Schiff hasn’t quit shows government “deterrence” is a weak, unreliable threat as compared to the strength of truth and the spirit of the American people. Schiff got jailed three times. Schiff got out three times. Schiff didn’t quit. That must bug the hey out of government.

There are a number of reasons which make a mandatory income tax unconstitutional:

- The three taxing clauses in the Constitution establish two general classes of taxes: “excise” taxes (which must be imposed on the basis of *uniformity*) and “direct” taxes (which must be imposed on the basis of *apportionment*). All federal taxes, in order to be mandatory, must be imposed on one basis or another. (See *Pollock v. Farmer’s Loan and Trust*, *supra*; and *Brushaber v. Union Pacific RR* 240 U.S.). Since the income tax is imposed on neither basis (though the Court in *Brushaber* [incorrectly] held the tax to be an excise), its payment can not be made mandatory. And, obviously, no one can be legitimately prosecuted with respect to a tax not imposed pursuant to the Constitution.

- The 16th Amendment (which allegedly legalizes the income tax) did not amend the Constitution nor did it give the government any new taxing powers — such as the ability to impose a direct tax on “income” without apportionment (see *Brushaber*, *supra* and *Stanton vs. Baltic Mining Co*, 240 U.S. 103).

- Despite the claim in its caption, Section 61 of the IRC does not define “Gross Income” (since a word can not be defined with itself). Therefore, “income” is not defined in the Code (see *U.S. v. Ballard* 535 F.2d 400,404). Further, Congress has no power to define the meaning of “income” since by doing so, it would be amending the Constitution by legislation alone (see *Eisner v. Macomber* 252 U.S. 189, 206). However, the Supreme Court defined “income” to mean a “gain or increase arising from corporate activities” (see *Doyle v. Mitchell*, 247 U.S. 179, and *Merchant’s Loan and Trust Co. v. Smietanka*. 255 U.S. 509, 518,519). Therefore, no unincorporated American can

have any “income” subject to an “income” tax, since the word “income,” for tax purposes, means a *corporate* profit. If anything we have a “profits” tax, not an “income” tax.

- If the income tax were mandatory, it would have to be declared “void for vagueness,” by any legitimate court since no one (let alone someone of average intelligence) can understand our income tax “laws”. According to former IRS Commissioner and head of the Justice Department’s Tax Division Shirley Peterson in an April, 1993 speech at Southern Methodist University in Dallas, Texas:

“Eight decades of amendment and accretions to the Code have produced a virtual impenetrable maze. The rules are unintelligible to most citizens — including those holding advanced degrees and including many who specialize in tax law. The rules are equally mysterious to many government employees who are charged with administering and enforcing the law . . . The overall cost of compliance reaches into the hundreds of billions of dollars . . . The key question is: can we define ‘income’ in a fair and reasonably straightforward manner? Unfortunately, we have not yet succeeded in doing so.”

So how can a tax law which even a former IRS Commissioner admits is, “impenetrable . . . unintelligible . . . mysterious,” – and doesn’t even *define* what it pur-

ports to tax – *not* be “void for vagueness”?

- All IRS seizures for income tax are illegal. Unlike the Bureau of Alcohol, Tobacco and Firearms (BATF), the IRS is by statute, only an *administrative* agency without any *enforcement* powers. Although they make almost three million illegal seizures and liens each year, IRS agents have no more legal authority to seize property and impose IRS liens than Department of Education clerks. For proof, read section 7608(a) of the Code. You’ll see that IRS agents have authority to issue summons, make seizures, etc. *only* in connection with *liquor, tobacco and firearms taxes*.

Section 7608(b) authorizes *only* Special Agents to act with respect to *all other taxes* - which supposedly includes income taxes. However, the job description for Special Agents in their own “Organization and Staffing” manual (MT 1100-344, par 113275, 1-6-87) only authorizes them to “enforce the criminal statute applicable to income, estate, gift, employment, and excise taxes ... *involving United States citizens residing in foreign countries* and non-resident aliens subject to Federal income tax filing requirement...”

The combination of Section 7608 and the Special Agents’ job description proves no IRS agent has lawful authority to bother any citizen living within the 50 states with regard to income taxes. Since there’s no income tax with



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respect to any citizen living within the 50 states, how could tax collectors be authorized to bother anyone in connection with such a “tax”?

- All IRS tax liens are filed illegally. All states require that federal tax liens be certified by either the Secretary of the Treasury or someone with the delegated authority to certify such liens. Since federal tax liens are never certified, nor signed by the Secretary of the Treasury, or anyone else with the delegated authority to do so, they are recorded in violation of both federal and state law.

As incredible as it seems, there are no laws making alleged income tax offenses crimes, and no court was ever given jurisdiction to prosecute anyone for committing any such offenses.

To quickly prove that there are no crimes — or civil penalties — involving income taxes, read

the IRC’s table of contents. There you’ll see a number of entries for a variety of federal taxes. For example, if you read under each heading involving Alcohol, Tobacco and Occupational taxes, you’ll see subheadings directing you to Code sections dealing with the “liability”, “payment”, and “penalties”.

Turn to the heading for Income taxes, and see if you can find similar subheadings for liability, payment, and penalties. You won’t find any.

What does this tell you? It tells you that there are no laws establishing a “liability” for income taxes, or requiring anyone “to pay” such a tax. It also proves, if you are in jail for tax evasion or for willful failure to file (violations of IRC sections 7201 & 7203), you are in jail illegally, since you could not “evade” or “fail to file” a return in connection with a tax that: 1) no statute required you to pay; 2) no statute made you “liable” for; and 3) no statute created a penalty. In addition, if you turn to 7402(f) (the IRC jurisdictional section), you’ll see that section only gives federal courts “civil” jurisdiction in connection with Title 26. There is no mention of “criminal” jurisdiction.

For comparison purposes check 8 U.S.C 1329. That section provides that with regard to Title 8, district courts “shall have jurisdiction of all cases, civil *and criminal*, arising under any of the provisions of this title.” [Emph. add.] However no similar mention of “criminal” jurisdiction appears in IRC 7402(f).

Therefore, if you are incarcerated for failing to file, at the very least, you have: 1) a habeas corpus action charging that the federal judge in your trial lacked subject matter jurisdiction; and 2) since I doubt your attorney raised the issue of criminal jurisdiction in a pretrial motion to quash your indictment or information, or addressed this issue on appeal --

you were denied your Sixth Amendment right to a fair trial because of “ineffective counsel”. And this is only one of many issues that can be raised in a habeas corpus petition charging “ineffective counsel” — or in a malpractice suit against the attorney who “defended” you.

Why there are no laws requiring anyone to pay income taxes? Because if federal income “tax” “laws” were mandatory, they would violate all of the Constitution’s three taxing clauses, as well as the 1st, 4th, 5th, 6th, 13th and 16th Amendments to the Constitution. To avoid being ruled unconstitutional on these and other grounds, the payment of this “tax” was not made mandatory. That’s why the IRS continually refers to the “voluntary compliance” nature of this “tax.”¹

So why do people go to jail for violating income tax laws that don’t exist? They do so because of the rampant corruption that exists on the federal bench and/or because of the general incompetence of the lawyers who defend them.² If the American public really knew what was going on, practically every federal judge — and most Justice Department attorneys — would be behind bars, since most of them have been involved in illegal 26 U.S.C. 7201 and 7203 prosecutions. Thus they have “conspired,” in numerous prosecutions, “to injure (and) oppress (such defendants) . . . in the free exercise (and) enjoyment of (numerous) rights and privileges secured to (them) by the Constitution (and) laws of the United States” in blatant violation of the provisions contained in 18 U.S.C. 241. These illegal prosecutions are designed to intimidate and coerce the public into paying a tax that is not legally required and into accepting collection procedures that are barred by numer-

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ous clauses of the U.S. Constitution.

How does the Constitution bar IRS collection procedures? Let me count the ways. First, since all information on a 1040 can be used against you, there can be no law requiring you to give it; any such law would be in obvious violation of an American's 5th Amendment right against being compelled to be a witness against himself. However, you can waive that right, if you were first given a "Miranda warning" . . . and, sure enough, the 1040 instruction booklet warns you that, with respect to the information you put on a 1040, the IRS:

" . . . may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to the states, the District of Columbia, and U.S. commonwealths or possessions And we may give it to foreign governments."

Obviously, all those governments and governmental agencies who want such information, want it so they can use it against you -- *and government tells you so in the 1040 instruction booklet*. If, despite this warning, you give the IRS the information, you are saying "It's okay with me if all these agencies use this information against me." But is it really "okay" with you? Of course not. That's why government buries its Miranda warning in the gobbledygook of its "Privacy Act and Paperwork Reduction Act Note"; it knows the public won't notice it, or recognize its significance even if they do notice it.

But why don't tax liars -- I mean tax *lawyers* -- explain this warning (and its significance) to their clients? If yours didn't, you have the basis of a malpractice suit — especially if you were convicted on the basis of a tax return your tax liar -- ahh, tax *lawyer* — advised you to file.

For further clarification, read the IRS's own "Handbook for Special Agents" paragraphs 342.12 and 342.15 (1-18-80), which read:

"(1) An individual taxpayer may refuse to exhibit his/her books and records for examination on the ground that compelling him/her to do so might violate his/her right against self-incrimination under the Fifth Amendment and constitute an illegal search and seizure under the Fourth Amendment. (*Boyd v. U.S.*; *U.S. v. Vadner.*)"

The next paragraph ("Waiver of Constitutional Rights") explains that those who turn over their books and records to the IRS waive constitutional rights in doing so, since an individual *can*, ". . . claim immunity before the Government agent and refuse to produce his books. After the Government has gotten possession of the information *with his consent*, it (is) too late . . . to claim constitutional immunity." [emph. added]

From these entries in the IRS's *own manual*, we can learn a lot about the nature of the income "tax" and the federal courts' supporting duplicity. This handbook *admits* that -- for constitutional reasons -- individuals can't be required to turn over their books and records to the IRS since the information they contain can be used against them. Therefore, can individuals be required to turn over a *summary* of their books and records? Obviously not. But what is a 1040, if not a *summary* of your books and records? Since all information on a 1040 can be used against you (just like information in your books and records) -- if you can't be required to turn over your books and records on constitutional grounds, on the same grounds, you can't be *required* to supply such information on a 1040.

In 1926 a South Carolina bootlegger and automobile dealer decided he couldn't file an

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income tax return because (he correctly concluded) if he filed and reported his illegal income they could prosecute him with for bootlegging, and if he filed but didn't report it, they could prosecute him for tax evasion. Therefore, he did what any logical, intelligent person would do under the circumstances: he filed nothing. He was subsequently prosecuted and convicted for failing to file an income tax return. And in what is one (*Sullivan v. U.S.* 15 F.2d 809, 4th Circuit) of only two³ honest federal court decisions involving income taxes, the Fourth Circuit Court of Appeal reversed his conviction, and ruled:

1. *Requiring Sullivan* to file a tax return would be "in conflict with the Fifth Amendment."

2. The language of the Fifth amendment must "receive a liberal construction by the courts."

3. No one can be *compelled* "in any proceedings to make disclosures or to *give evidence which tends to incriminate him or subject him to fines, penalties or forfeitures.*"

4. The Fifth Amendment "applies alike to criminal and *civil* proceedings.

5. "There can be no question that one who files a return under oath is a witness [against himself] within the meaning of the [Fifth] Amendment." (brackets added)

Thus, the 1927 *Sullivan* decision would have ended the income taxes right then and there — on 5th Amendment grounds alone. However, government appealed to the Supreme Court, which — in a totally fraudulent decision — saved the income tax. In reversing the Appellate Court, Justice Oliver Wendell Holmes, who wrote the decision for the Court, did not contradict any of the above claims made by the Fourth Circuit. Space will not permit me to analyze the fraudulent basis of Holmes' decision; however in that decision, he did hold that Sullivan could "test that or any other point" on his return. In other words he held that Sullivan could have taken the Fifth in connection with *each, individual question* asked on an income tax return.

Subsequently, lower federal courts totally misrepresented what Holmes said, and claimed that he said that Sullivan could only have taken the Fifth in connection with the "sources" of his income, but that he was still required to report the *amount* of his income. Thus, lower courts took a fraudulent Supreme Court decision and compounded its fraud even further, and now maintain "it is not a return unless it contains information from which a tax can

be computed." Not only is this a total perversion of what the Supreme Court actually held in *Sullivan*, but it is an impossible legal conclusion given the obvious, uncontested and irrefutable contentions in the appellate court decision, which was reversed on other grounds. But perversions of law and the Constitution are routine in federal court decisions, and quite in keeping with the character of that bench.⁴

Because federal courts so totally perverted the *Sullivan* decision, they now enforce some totally untenable positions. The fact that they get away with it is a tribute to the ignorance of the American public and the media concerning the Constitution. If, as our "courts" claim, you are required to report illegal income, how can you do so without incriminating yourself? "Well," say our honorable judges, you can do so by reporting it as "miscellaneous" income, and since you are not identifying the "source" you will not be incriminating yourself. This, of course, is pure, unadulterated b.s. since there's no way you can report illegal income without incriminating yourself.

For example, how can any criminal (including drug dealers and corrupt judges) report illegal income without incriminating himself? Can he report his *gross* income without listing his "business" deductions? Can a dealer report and deduct what he paid

for the drugs he sold? Can a judge report how he split his bribes with the court clerk? Can the dealer show and deduct whatever he paid to pilots, hit men and cops he had on his payroll, overlooking the many other business deductions involved in distributing drugs? Are criminals therefore allowed to merely report their *net* (after deductions) income and not their gross? But if they can, why can't legitimate business men do the same thing?

Clearly, for a taxpayer to report only a composite "net" income, he must claim that his income was earned illegally. Wouldn't that incriminate him? Aimes, the Russian mole in the CIA, was convicted of espionage and also tax evasion, because he didn't pay income taxes on the millions he received from the USSR. According to our "courts" and Justice Department, had he reported the money he received from the USSR as "miscellaneous" income, that would not have incriminated him. If so, picture this: assume that Aimes' CIA salary was \$75,000 and in the same year he received \$1,000,000 from the Soviet Union. He could report "\$75,000 in wages and \$1,000,000 "miscellaneous" on his 1040 without incriminating himself? Had he done so, counterintelligence officers would have been all over him the next day.

And Pollard, who worked in the navy code room, was convicted of spying for Israel and was also convicted of tax evasion, because he did not report and pay taxes on the money he received from Israel, which, I believe, for one year was \$100,000. So, suppose in that year he reported his salary from the navy as \$18,000 and also reported on his 1040 "\$100,000 miscellaneous income." If Naval Intelligence didn't get on his case the next day, how intelligent could be our Navy be?

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While incarcerated, I met many inmates whose lawyers got them to plead guilty to both committing some crime and also for evading the tax on the illegal income generated by those crimes. Invariably all such inmates admitted that they would have loved to report their illegal income and pay the tax on it, so they could spend the proceeds openly. But they didn't report it, not to evade the tax but to avoid incriminating themselves. Obviously, if an individual earns \$100,000 legitimately and only reports \$50,000, he fails to report \$50,000 in order to evade the tax. But if a man earns \$50,000 legally and \$50,000 illegally, does he fail to report the \$50,000 he earned illegally in order to evade the tax? No, he doesn't report it because he doesn't want to incriminate himself. Obviously, these people did not seek to "evade" the tax on their illegal income. So all those people who — on *advice of counsel* — pled guilty to tax evasion for failure to report illegal income were sold down the river by their lawyers. At most, they could only have been subject to civil -- not criminal -- penalties (though the law, as shown in the IRC's Table of Contents does not even provide for *civil* penalties).

Since there is no way anyone can report illegal income without incriminating themselves, the claim by the courts that one must report illegal income is specious on its face, and amounts to Congress having passed a law requiring all those who commit crimes to confess to committing them; and if they don't confess, and are caught, they then can be charged with committing two crimes, the crime they committed and the crime of not reporting the crime they committed. Would any such law, if passed by Congress, be held constitutional? Of course not. It would be like issuing a ticket for not wearing a seatbelt


while driving, and issuing a second ticket for failing to report the fact that you didn't fasten your seatbelt. By enforcing their own fraudulent and lawless decisions (instead of enforcing the statutes as written) our lawless federal *judges* have, by themselves, succeeded in creating and enforcing a "law" that Congress could never have passed. Can there be any doubt that the greatest collection of criminals in America sit on the federal bench?

If you are "required" to give any information to the government on a tax return, then that information is *compelled*. But government can't use *compelled* testimony against you in a criminal trial. For example, suppose you're passing a jewelry store (which had just been robbed), three cops grab you and claim you were the robber. You deny it, but one starts twisting your arm behind your back, while the other two hold you, and he says, "Unless you sign this confession admitting you broke in and robbed this store, I'll break your arm off, right here and now." So what do you do? You sign the form. Why? Because you don't want your arm ripped off. Is your "confession" worth anything (assuming it could be easily proven that your arm was being twisted at the time you signed it)?

Suppose you were later charged with robbing that jewelry store (which you subsequently denied) but at trial the prosecutor introduces your signed "confession." Suppose your lawyer knew that at the time you signed it, three cops were holding you and threatening to "twist your arm off, if you didn't sign it," but he doesn't point this out to the court, doesn't raise any objection, and *allows* your "confession" to be admitted and used against you — as if it were given voluntarily.

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victed based on that “confession”. Could your lawyer be held to be “ineffective” in a subsequent habeas corpus petition? You bet he could. Could you prevail against him — on this basis alone — in a civil, malpractice suit? You bet you could.

So if you were convicted of any alleged income tax violation in which the government used your own tax returns against you — and your lawyer did not vigorously object to their being admitted — then your lawyer might be guilty of the same omission as the lawyer in my example. Since government claims that unless you file a return and provide “information from which a tax can be determined,” you will go to jail for “failure to file” — the information on that return is *compelled* as surely as if the IRS twisted your arm to get it. The only difference is the nature of the compulsion. But compulsion is compulsion. Information that government compels you to give under threat of imprisonment can’t be used against you — if the proper objection is raised.

I’ve only exposed the tip of the iceberg in the income tax scam, but this exposure should still provide enough material to get you started on a habeas corpus action and a malprac-

tice suit against the lawyer who helped put you in jail. All things considered the federal income tax represents the most extensive program of organized deceit and extortion ever conceived by man, and proves that, in America, organized crime begins with the federal government.

¹ I put quotes around “tax,” in connection with income “taxes,” since there is really no such “tax”. First, a “tax” is defined as “a *mandatory* exaction for the support of government.” Since the payment of income taxes is not *mandatory*, it does not fall within the definition of a “tax.” In essence, the government merely invites voluntary contributions in payment of this alleged tax. Secondly, the word “income” is not even defined in the IRC, and the Supreme Court defined the word as meaning a corporate “profit”. So, if anything, the so-called income tax is, in reality, a “profits” tax on corporations, not an “income” tax for individuals.

² Another common reason is the lack of understanding of tax law issues by many who are tried for these offenses due to misinformation they pick up from unreliable sources.

³ The other case being the 1895 *Pollack v. Farmer’s Loan &*

Trust Co, 158 U.S. 601, wherein the Supreme Court declared the Income Tax Act of 1894 unconstitutional. Between *Pollack* in 1895 and *Sullivan* in 1927 there might be a handful of “borderline honest” decisions. But since the 1927 *Sullivan* decision, there were, at most, another handful of possibly “borderline honest” decisions, while hundreds, if not thousands, of federal court decisions are simply fraudulent from beginning to end. For proof, see three other of this writer’s books, *The Great Income Hoax* (1985); *The Social Security Swindle: How Anyone Can Drop Out* (1984), and *The Federal Mafia: How It Illegally Imposes and Unlawfully Collects Income Taxes* (1992).

⁴ Lower courts pretend that the constitutional issue involved in filing a 1040 is the issue of “self-incrimination,” when the correct issue is that of being *compelled* to witness against oneself. The Fifth Amendment does not even mention “self-incrimination,” but states that “No person . . . shall be compelled . . . to be a witness against himself.” In other words, while its quite lawful for me to voluntarily confess (self-incriminate) to a crime, it is absolutely forbidden for government to beat (compel) that same confession out of me. In *Sullivan*, Justice Holmes, deceitfully addressed the wrong issue (“self-incrimination”) in order to reverse the appellate court which addressed the right issue -- whether government could *compel* *Sullivan* to witness against himself by *requiring* him to file a 1040. For a fuller understanding of how Justice Holmes artfully managed to send a person to jail by knowingly addressing a wrong issue (proving that he is not entitled to the saintly reputation he enjoys), see *How Anyone Can Stop Paying Income Taxes*: (pages 15-22 & 143-153) Freedom Books, Las Vegas NV. ■