PERJURY TRAP

At this stage of my mission, I wish to disclose to each of you why the IRS cannot comply with the Paperwork Reduction Act of 1995. It is simple if you think about it ─ it is a criminal perjury trap.☹

The Paperwork Reduction Act of 1995 requires that in order for a valid OMB control number issued in accordance with the Paperwork Reduction Act to be displayed, 44 U.S.C. § 3506(4)(B)(i)(b) states that the Director is to "evaluate" fairly whether proposed collections of information should be approved under this chapter to:

> "...ensure that each information collection-(1) is inventoried, **displays a control number** and, if appropriate, an **expiration date**; (2) **indicate the collection is in accordance with the clearance requirements of section 3507**; and (3) **informs the person** receiving the collection of information of - (I) the **reasons the information is being collected**; (II) **the way such information is to be used**; (III) **an estimate, to the extent practicable, of the burden of the collection**; (IV) ***whether the responses*** *to the collection of information* ***are voluntary, required to obtain a benefit, or mandatory***; and (V) the fact that an agency may not conduct or sponsor, and **a person is not required to respond to, a collection of information unless it displays a valid control** number.

The Fifth Amendment has always stood between the Citizens of this Great Country and the Government of both the United States and the State to which you and I live - ☺ - those words, in part, say:

> "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const., Amdt. 5.

See *United States v. Hubbell*, 530 U.S. 27, 29 (2000)

In *Gouled v. United States*, 255 U.S. 298, 311 (1921) the Supreme Court was address this question:

> "If such papers so taken are admitted in evidence against the person from whose house or office they were taken, such person being then on trial for the crime of which he was accused in the affidavit for warrant, - is such admission in evidence a violation of the 5th amendment?"

The Supreme Court answered this question "Yes" by saying:

> "The same papers being involved, the answer to this question must be in the affirmative for, they having been seized in an unconstitutional search, to permit them to be used in evidence would be, in effect, as ruled in the Boyd Case, to compel the defendant to become a witness against himself."

While addressing this issue further, the Supreme Court in *United States v. Hubbell*, 530 U.S. 27 (beginning at page 34) (2000) stated that:

> "It is useful to preface our analysis of the constitutional issue with a restatement of certain propositions that are not in dispute. The term "privilege against self-incrimination" is not an entirely accurate description of a person's constitutional protection against being "compelled in any

> criminal case to be a witness against himself."

The word "witness" in the constitutional text limits the relevant category of compelled incriminating communications to those that are "testimonial" in character.[fn8][1] As JUSTICE HOLMES observed, there is a significant difference between the use of compulsion to extort communications from a defendant and compelling a person to engage in conduct that may be incriminating. Thus, even though the act may provide incriminating evidence, a criminal suspect may be compelled to put on a shirt, to provide a blood sample or handwriting exemplar, or to make a recording of his voice. The act of exhibiting such physical characteristics is not the same as a sworn communication by a witness that relates either express or implied assertions of fact or belief. *Pennsylvania v. Muniz*, 496 U.S. 582, 594-598 (1990). Similarly, the fact that incriminating evidence may be the by product of obedience to a regulatory requirement, such as filing an income tax return,[fn14][2] maintaining required records,[fn15][3] or reporting an accident,[fn16][4] does not clothe such required conduct with the testimonial privilege.[fn17][5]

> "More relevant to this case is the settled proposition that a person may be required to produce specific documents even though they contain incriminating assertions of fact or belief because the creation of those documents was not "compelled" within the meaning of the privilege." *Hubbell,* at 35

The Supreme Court's decision in *"Fisher v. United States*, 425 U.S. 391 (1976), dealt with summonses issued by the Internal Revenue Service (IRS) seeking working papers used in the preparation of tax returns. Because the papers had been voluntarily prepared prior to the issuance of the summonses, they could not be 'said to contain compelled testimonial evidence, either of the taxpayers or of anyone else.' Accordingly, the taxpayer could not 'avoid compliance with the subpoena merely by asserting that the item of evidence which he is required to produce contains incriminating writing, whether his own or that of someone else.' *Fisher*, at 409-410; see also *United States v. Doe*, 465 U.S. 605 (1984).

> It is clear, therefore, that respondent Hubbell could not avoid compliance with the subpoena served on him merely because the demanded documents contained incriminating evidence, whether written by others or voluntarily prepared by himself." *Hubbell*, at 36

Then, the Supreme Court stated "[O]n the other hand, we have also made it clear that the act of producing documents in response to a subpoena may have a compelled testimonial aspect. We have held that "the act of production" itself may implicitly communicate "statements of fact." By "producing documents in compliance with a subpoena, the witness would admit that the papers existed, were in his possession or control, and were authentic."[fn19][6]

> "Moreover, as was true in this case [*Hubbell*], when the custodian of documents responds to a subpoena, he may be compelled to take the witness stand and

answer questions designed to determine whether he has produced everything demanded by the subpoena.[fn20][7] The answers to those questions, as well as the act of production itself, may certainly communicate information about the existence, custody, and authenticity of the documents. Whether the constitutional privilege protects the answers to such questions, or protects the act of production itself, is a question that is distinct from the question whether the unprotected contents of the documents themselves are incriminating." *Hubbell*, at 37

"Finally, the phrase "in any criminal case" in the text of the Fifth Amendment might have been read to limit its coverage to compelled testimony that is used against the defendant in the trial itself. It has, however, long been settled that its protection encompasses compelled statements that lead to the discovery of incriminating evidence even though the statements themselves are not incriminating and are not introduced into evidence." Id.

Thus, a half century ago, the Supreme Court "held that a trial judge had erroneously rejected a defendant's claim of privilege on the ground that his answer to the pending question would not it-self constitute evidence of the charged offense." *Hubbell*, at 38 As the Supreme Court explained:

"The privilege afforded not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime." *Hoffman v. United States*, 341 U.S. 479, 486 (1951).

"Compelled testimony that communicates information that may 'lead to incriminating evidence' is privileged even if the information itself is not inculpatory." *Doe v. United States*, 487 U.S. 201, 208, n. 6 (1988). It is the Fifth Amendment's protection against the prosecutor's use of incriminating information derived directly or indirectly from the compelled testimony of the respondent that is of primary relevance in this case." *Hubbell*, at 38

Remember the statement above in *Hubbell* where the Supreme Court said "Similarly, the fact that incriminating evidence may be the by product of obedience to a regulatory requirement, such as filing an income tax return, maintaining required records, or reporting an accident, does not clothe such required conduct with the testimonial privilege."

The Supreme Court stated in *Garner v. United States*, 424 U.S. 648, 650 (1976) "In *United States v. Sullivan*, 274 U.S. 259 (1927), the Court held that the privilege against compulsory self-incrimination is not a defense to prosecution for failing to file a return at all. But the Court indicated that the privilege could be claimed against specific disclosures sought on a return, saying:

"If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not on that account refuse to make any return at all." Id., at 263.[fn3]

Garner, at 651

"Had Garner invoked the privilege against compulsory self-incrimination on his tax returns in lieu of supplying the information

used against him, the Internal Revenue Service could have proceeded in either or both of two ways. First, the Service could have sought to have Garner criminally prosecuted under § 7203 of the Internal Revenue Code of 1954 (Code), 26 U.S.C. § 7203, which proscribes, among other things, the willful failure to make a return. Second, the Service could have sought to complete Garner's returns administratively 'from own knowledge and from such information as [it could] obtain through testimony or otherwise.' 26 U.S.C. § 6020 (b) (1). Section 7602 (2) of the Code authorizes the Service in such circumstances to summon the taxpayer to appear and to produce records or give testimony. Page 652, 26 U.S.C. § 7602 (2).

If Garner had persisted in his claim when summoned, the Service could have sued for enforcement in district court, subjecting Garner to the threat of the court's contempt power. 26 U.S.C. § 7604." *Garner*, at 652

"Given *Sullivan*, it cannot fairly be said that taxpayers are "volunteers" when they file their tax returns. The Government compels the filing of a return much as it compels, for example, the appearance of a "witness"[8] before a grand jury. The availability to the Service of § 7203 prosecutions and the summons procedure also induces taxpayers to disclose unprivileged information on their returns. The question, however, is whether the Government can be said to have compelled Garner to incriminate himself with regard to specific disclosures made on his return when he could have claimed the Fifth Amendment privilege instead." *Garner*, at 653

Next, the Supreme Court said to "start from the fundamental proposition:

[A] witness protected by the privilege may rightfully refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant *Kastigar v. United States*, 406 U.S. 441 (1972). Absent such protection, if he is nevertheless compelled to answer, his answers are inadmissible against him in a later criminal prosecution. *Bram v. United States*, [168 U.S. 532 (1897)]; *Boyd v. United States*, [116 U.S. 616 (1886)]." *Lefkowitz v. Turley*, 414 U.S. 70, 78 (1973). See *Murphy v. Waterfront Comm'n*, 378 U.S. 52, 57 n. 6 (1964)."

"Because the privilege protects against the use of compelled statements as well as guarantees the right to remain silent absent immunity, the inquiry in a Fifth Amendment case is not ended when an incriminating statement is made in lieu of a claim of privilege. Nor, however, is failure to claim the privilege irrelevant." *Garner,* at 653

The Supreme Court has held that an "individual under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege lost the benefit of the privilege. *United States v. Kordel*, 397 U.S. 1, 7-10 (1970). Although Kordel appears to be the only square holding to this effect, the Court frequently has recognized the principle in dictum.[9] *Maness v. Meyers*, 419 U.S. 449, 466 (1975); *Rogers v. United States*, 340 U.S. 367, 370-371 (1951); *Smith v. United States*, 337 U.S. 137, 150 (1949); *United States v. Monia*, 317 U.S. 424, 427 (1943); *Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 112-113 (1927). These decisions stand for the proposition that, in the ordinary case, if a witness under compulsion to testify makes disclosures instead of claiming the privilege, the government has not "compelled" him to incriminate himself." *Garner,* at 654

"'The [fifth] Amendment speaks of compulsion. It does not preclude a witness from testifying voluntarily in matters which may incriminate him. If, therefore, he desires the protection of the privilege, he must claim it[10] or he will not be considered to have been `compelled' within the meaning of the Amendment.' *United States v. Monia*, supra, at 427 (footnote omitted)." *Garner*, at 655

"In their insistence upon a claim of privilege, *Kordel* and the older witness cases reflect an appropriate accommodation of the Fifth Amendment privilege and the generally applicable principle that governments have the right to everyone's testimony. *Mason v. United States*, 244 U.S. 362, 364-365 (1917); see, e. g., *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972); *Kastigar v. United States,*406 U.S. 441, 443-445 (1972). Despite its cherished position, the Fifth Amendment addresses only a relatively narrow scope of inquiries. Unless the government seeks testimony that will subject its giver to criminal liability, the constitutional right to remain silent absent immunity does not arise. An individual therefore properly may be compelled to give testimony, for example, in a noncriminal investigation of himself. See, e. g., *Gardner v. Broderick*, 392 U.S. 273, 278 (1968). Unless a witness objects, a government ordinarily may assume that its compulsory processes are not eliciting testimony that he deems to be incriminating. Only the witness knows whether the apparently innocent disclosure sought may incriminate him, and the burden appropriately lies with him to make a timely assertion of the privilege. If, instead, he discloses the information sought, any incriminations properly are viewed as not compelled." *Garner*, at 655

"In addition, the rule that a witness must claim the privilege is consistent with the fundamental purpose of the Fifth Amendment - the preservation of an adversary system of criminal justice. See *Tehan v. United States ex rel. Shott*, 382 U.S. 406, 415 (1966).That system is undermined when a government deliberately seeks to avoid the burdens of independent investigation by compelling self-incriminating disclosures. In areas where a government cannot be said to be compelling such information, however, there is no such circumvention of the constitutionally mandated policy of adversary criminal proceedings. Cf. *Counselman v. Hitchcock*, 142 U.S. 547, 562-565 (1892); *California v. Byers*, 402 U.S. 424, 456-458 (1971) (Harlan, J., concurring in judgment). *Garner*, at 656

"The information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a "witness," as that term is used herein. Since Garner disclosed information on his returns instead of objecting, his Fifth Amendment claim would be defeated by an application of the general requirement that witnesses must claim the privilege." *Garner*, at 656

"Garner, however, resists the application of that requirement, arguing that incriminating disclosures made in lieu of objection are "compelled" in the tax-return context. He relies specifically on three situations in which incriminatory disclosures have been considered compelled despite a failure to claim the privilege. But in each of these narrowly defined situations, some factor not present here made inappropriate the general rule that the privilege must be claimed. In each situation the relevant factor was held to deny the individual a 'free choice to admit, to deny, or to refuse to answer.' *Lisenba v. California*, 314 U.S. 219, 241 (1941). For the reasons stated below, we conclude that no such factor deprived Garner of that free choice." *Garner*, at 657

Garner relied on *Mackey v. United States*, 401 U.S. 667 (1971), the relevance of which can be understood only in light of *Marchetti v. United States*, 390 U.S. 39 (1968), and *Grosso v. United States*, 390 U.S. 62 (1968). In the latter cases the Court considered whether the Fifth Amendment was a defense in prosecutions for failure to file the returns required of gamblers in connection with the federal occupational and excise taxes on gambling. The Court found that any disclosures made in connection with the payment of those taxes tended to incriminate because of the pervasive criminal regulation of gambling activities. Marchetti, supra, at 48-49; Grosso, supra, at 66-67. Since submitting a claim of privilege in lieu of the returns also would incriminate, **the Court held that the privilege could be exercised by simply failing to file.**

As noted above, the Paperwork Reduction Act of 1995 requires the Government to inform the person answering the government's questions "...say that when we ask you for information we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit or mandatory under the law." *See*, 1040 Instructions for any year[11]; *see also*, 44 U.S.C. § 3506 and 3512.

Since 1995, Congress requires the person subject to the request to be given notice that they are not required to provide and cannot be penalized for failure to comply with any information collection request unless the form of request displays a valid OMB control number issued in accordance with the Paperwork Reduction Act chapter.

The Commissioner tells you in the Instruction for Form 1040 that "...we ask for the information to carry out the tax laws" and even tells you that we "may give it to the Department of Justice and to other federal agencies, as provided by law." (They also give it to other cities and states to carry out their tax laws.)

If you do not provide the information or provide information the IRS is not satisfied with, they tell you in the instruction booklet that they may "charge" you with "penalties" and in certain cases, "you may be subject to criminal penalties."

The W-4 says routinely the IRS shares the information you provide on that form with the civil and criminal division of the Department of Justice. And do not forget that civil division can share your information with the in-house criminal division of the IRS.

Remember the quote from the Supreme Court's decision in *Marchetti*:

"...tended to incriminate because of the pervasive criminal regulation of gambling activities."

Hello! The IRS, on their collection of information forms, tells you that they are going to use the information provided by you to have a civil and criminal analysis done of your answers. That is more reason

to remain silent than what was afforded *Marchetti*!

Next is the fact the IRS does not comply with the Paperwork Reduction Act of 1995 and tell you whether your response is voluntary or mandatory because if they tell you "mandatory" on the request it raises the Fifth Amendment to a new level and if they say "voluntary" who would do it? In 1992, the IRS told America in their instruction booklet that they "...were among the millions of Americans who comply with the tax law voluntarily." In 1993, the IRS said we had the "most effective system of voluntary compliance in the world."

I have said all this to say this – **The IRS collection of information form 1040 is a "perjury trap" and the Fifth Amendment provides you with the right to remain silent in lieu of answering the questions that subject the witness to threats of perjury and other criminal sanctions at the State and Federal level.**

There is no statutory origin theory regarding an exemption for the IRS as given by some Courts regarding answering income questions or providing answers to income questions on any income tax form, not just Form 1040. The Supreme Court said in *Hubbell*, it was a "regulatory requirement" that required you to "file an income tax return."

The same reason the IRS tries to evade the PRA protection is the same reason the judges try to evade the Fifth Amendment protections. That is that before you have to answer the questions asked of you they are required to tell you what they can do with your answers. If they tell you they can use your answers against you, and you provide the answers anyway, they say you waived your Fifth Amendment rights. If they do not tell you what they can do with the information you provide and you provide it anyway, it would appear you have volunteered and absent some horrific revelation not disclosed, your voluntary compliance will sustain the use of those answers freely given against you.

If you remain silent then you cannot be seen to have waived your rights to the Fifth Amendment or any privilege extended therefrom.

I share this with you only to understand why the IRS cannot comply with the Paperwork Reduction Act of 1995 and why they cannot compel you to provide answers to them if they have not informed you as to what they are authorized to do with the answers once you provide those answers to their questions to the IRS. What the IRS is doing is putting you into a "perjury trap."

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