IRS Questions
Who should receive what information?
Dan Meador

Over the last several months there has been a core question I've addressed with several people in the constitutional restoration movement. It frequently comes up among researchers and I've had numerous face-to-face and telephone discussions on the subject with people such as attorneys Larry Becraft and Robert Bernhoft, Heritage America and Aegis president Mike Vallone, researchers Pat Patton and Tim Richardson, et al.

Becraft articulates the problem best: "Ill-prepared, desperate people destroy good defenses."

To demonstrate the point, Larry recently accounted for the "wages are not income" argument. The issue was first comprehensively treated in 1979 by Bob Golden and Pete Soehnlen in their book, "Are You Required". Becraft listed sixteen published decisions where the issue was dismantled because defendants did not support it properly. The consequence is a body of case law that for all practical purposes destroys what should be a legitimate defense.

Aside from defenses not being presented properly, what Becraft describes as marketeers latch hold of some issue that may or may not be legitimate, jump to unsupported conclusions, then make fortunes from programs that promise pie in the sky. Some get rich and get by with it but most get taken down. In the meantime, scores of other people suffer financial loss and sometimes prison because they buy into the schemes. When trouble comes the promoter is nowhere around.

There is simultaneously a strong pull on the other side of the question: Tax issues are as much political as they are legal issues. We know that state and federal income taxes are fraudulent, but if information that proves the case is restricted, it will be impossible to mobilize sufficient numbers to end the scam. In the meantime, there are lots of people who need the most current information available for personal defense.

How do people responsible for cutting-edge research come to grips with the dilemma?

For the last year I have kept a reasonably steady stream of information flowing in the open forum while simultaneously limiting access to procedure our group is developing. The rationale is this: If we know who is using the material and can support them, we can pool resources for damage control. We can also control how the material is used.

Here's an example: Not long ago a friend of one of our affiliates called. He wanted to know how to stop a company from withholding federal tax from wages. "Do you have procedure for that?" he asked.

We have a pilot case on the other side of the continent where we've been successful. It's a situation where someone had only worked for the company for a couple of months and his attitude was, "I was looking for a job when I found this one."

The guy didn't have anything invested in the job other than his current paycheck and would be able to survive without it. We constructed a package so he could approach the employer in a non-adversarial fashion, submit an exempt W-4, and do it in a manner where the company wouldn't be caught in the middle. In the last eight or nine months he hasn't had problems with IRS or the company. The company pays him 100% of what he earns.

So far so good. However, we haven't focused on the process so we don‘t have it developed well enough to have confidence in it. Perfecting it is on the list of things to do, but it isn‘t at the head of the list. We are focused on triage situations where people need immediate defense and we simply don‘t have the time, manpower or money to stop what we‘re doing to develop that particular procedure.

The guy who called is ready to jump into several of these kinds of issues with both feet. He can hardly constrain himself. However, I flatly told him, "If you get ahead of the curve, you‘re probably going to screw things up, and I assure you, you‘re on your own."

I refused to send him our files on the exempt W-4 and other undeveloped subjects. And I‘m not going to send them to anyone else other than people I know are capable and will exercise the same caution I do because I don‘t

want some loose cannon screwing things up before we perfect the process. When we have better control of a few other fires, we will introduce the material and rationale behind it to our core group of researchers so we can put together a working model then test it before trotting it out for general use.

In the meantime, there is the paradoxical problem of determining who is and who isn‘t capable.

The DanMeador list now has something in excess of 1,500 subscribers. Whenever I post something on the order of the memorandum we recently put on the Law Research and Registry web page, people who aren‘t in the affiliated research group invariably make significant contributions that strengthen important points. In other words, I don‘t know who is going to find what or who will use what I‘ve developed better than I do.

For example, after I posted a FOIA request for assessment certificates then discussed our experience with evasive disclosure officers, someone else filed a FOIA suit for production of records when IRS‘ allotted time ran out. IRS cancelled a notice of lien lien. Someone else forced the issue into the administrative due process forum and managed to stop a wage garnishment that had been in place most of two years.

I have no way of knowing who is capable of what, who will use his or her capabilities beyond anything I can anticipate, or who has every capability in the world but is too lazy or too distracted to accomplish much of anything. I‘m not God and I don‘t have divine insight when it comes to people. I can‘t even predict what my own kids are going to do.

I don‘t know how many others realize it, but in the last two years the constitutional restoration movement, particularly on tax issues, has advanced at nearly light speed. The Internal Revenue Code has been unraveled to the point it is almost bare bones. However, in my estimation the most important advances concern procedure. The patriot community is beginning to understand essential elements of a case and how to proceed in administrative and judicial due process forums. People such as Richard Cornforth, Vern Holland and Pat Patton are providing what amount to judicial weapons of war.

It‘s my opinion that information on procedure in particular has to be made generally available. This is where so many people get skinned. They simply don‘t know how to go about constructing then presenting a case because they don‘t understand basic elements of a case to begin with and they have no idea how to shift the burden of proof.

A guy from California recently called to see if I could help with the California Franchise Tax Board. Within a week he had a hearing with the Board.

"Have you done any discovery?" I asked.

He didn‘t know what I meant. "Well, did you ask for the state assessment certificate, did you ask for whatever documents the liability claim is based on, and did you ask for names of people responsible for establishing the supposed liability so you can question them under oath?"

None of that had crossed his mind. He intended to argue that he is not an employee as defined in Chapter 24 of the Internal Revenue Code. Like so many people, his hopes were riding on a toothpick in a sea of woe.

Two or three years ago Pat Patton said something that rings as true: "I‘m tired of telling them how smart I am. I want them to tell me how smart they are."

When put in the context of Richard Cornforth‘s work on void judgments, Pat‘s position boils down to, "What evidence of liability do you have and who is your competent witness with first hand knowledge of facts?"

Whether in administrative or judicial due process forums, the advocate of a position must prove standing, venue and subject matter jurisdiction on the record. If and when the trier of law and/or fact goes outside the record, he or she loses the cloak of immunity.

This kind of information simply must be made generally available. Every case or controversy arising under the constitution and laws of the United States or any of our respective states has three elements: There are material facts and there is law. The advocate must then demonstrate application of law to facts of any given

circumstance or event. All three components must be established in the record of any given case. Where facts are concerned, there must be a competent witness to verify them.

Here is where Becraft makes another valid observation: Government tyranny is routinely accommodated by pandering judges.

Who is under the allusion that he or she is going to get a fair trial in a government court? My analogous question is this: Would you expect a pirate‘s court to bring a pirate to justice for being a pirate?

Put another way, government is at best benignly evil. From the point of inception it goes down hill from benignly to manifestly evil. And judges are invariably in the thick of things. Read the first eight chapters of I Samuel. We‘re confronted with difficulties common to secular governments throughout the ages. Samuel was successor to Eli because Eli‘s sons were corrupt; the elders of Israel insisted on a secular king because Samuel‘s sons, who would supposedly succeed Samuel, were corrupt.

Regardless of safeguards built into our system, judicial offices are patronage positions. If a judicial candidate isn‘t a team player, he or she isn‘t going to get elected or appointed to office.

I‘ve reviewed histories of judges in the Eighth Judicial District here in Oklahoma. Every one of them over the dozen years I‘ve lived in this district has progressed through the chairs, with most coming through the district attorney‘s office. Two were municipal judges before being elevated and one spent years as a public defender. Even attorneys who haven‘t been through the chairs don‘t stand a snowball‘s chance in hell of securing a judicial position because they haven‘t demonstrated that they are team players. If anything, the federal system, where all judges are appointed, is even worse.

If it isn‘t, it should be obvious that we are going to have to develop strategy that circumvents the ritual magic of the judicial system. However, in the meantime we have to deal with administrative and judicial due process and we have to develop and preserve legitimate defenses. And that is where concern for what information can be generally circulated comes into the picture.

Researchers and attorneys who are constitutional advocates are increasingly working together behind the scenes. The scope of what they‘re doing ranges from construction of working models to securing critical documents from government archives. Other aspects of what they‘re doing include making a general survey of logistics and developing strategy for peaceful counter-offensives that will expose underlying fraud and specific abuses. And even this effort presents a problem: When is an issue documented well enough and ripe for general disclosure?

Was the gross income source issue ripe in summer 1999 when Bosset Marketing refund checks were posted on the Taxgate web page? Did David Bosset and other company owners who made public stands against withholding at the source make the right decision when they made shows at We the People events at the National Press Club building in Washington, D.C. and subsequently funded advertisements in U.S.A. Today and other widely circulated publications?

Congress‘ posture was reasonably clear when Commissioner Charles O. Rossotti was recently called on the carpet at Senate hearings. The key question was, "What are you going to do about these public displays?"

Becraft has the notion, "IRS declared war on February 17th!"

IRS subsequently initiated a civil action against Bosset Marketing, Dick Simkanin was notified of a grand jury investigation, Nick Jessen‘s company and home were raided by the California Franchise Tax Board and from what we‘ve seen, it appears that IRS collection personnel have thrown caution to the wind. The U.S.A. Today publisher has refused to run any more We the People advertisements. We‘re told by confidential sources that IRS and Department of Justice officials recently met with key American Bar Association tax attorneys and for all practical purposes told them, "If IRS goes down, you‘ll go down with us."

There is obvious need for confidentiality. Certain things need to be protected until research can be completed, and in some cases the issue should be litigated by capable people. On the other hand, as much information as possible needs to be shared with everyone willing to read it. The difficulty is determining what needs to be held in confidence and what needs to be shared.

At least part of the discernment problem arises from lack of leadership among researchers and advocates in the constitutional restoration movement. Compared to the patriot community, a Chinese fire drill is well organized. However, increased IRS aggression may prove to be a blessing in disguise. We are increasingly going to realize, "We have met the enemy and he is us!"

One of the first beasts we have to slay is the old dragon called pride. So far as I can tell, we're all soldiers in a difficult campaign. Nobody has all the answers. In order to get along so those on the front lines can pool information and develop effective strategy, at least some of us are going to have to forget grievances and disputes of the past.

The Apostle Paul made an observation that is as valid today as it was two thousand years ago: Bridling the tongue is a most difficult task. Harnessing passion is difficult.

In the near future a dozen or so researchers will convene for a conference. The confidentiality issue will probably be among the topics. Hopefully participants will lay the foundation for a continuing forum and can provide a few guidelines for others in the research and advocacy community. However, control of information is extremely difficult as Internet is the information super highway that distinguishes today from just a few years ago when patriots congregated for what Becraft describes as "Xerox swap meets."

Another part of the problem is reducing broader issues to key questions then figuring out how to get answers to the questions. For example, I've developed five questions that I intend to pursue. They are as follows:

1. For purposes of Subtitles A & B and Chapter 78 of the Internal Revenue Code of 1954 and 1986, have internal revenue districts been established in States of the Union under authority of 26 U.S.C. ß 7621 and Executive Order 10289?

2. Is the "United States of America" currently named as plaintiff in tax-related and other federal cases a government foreign to government of the United States and governments of States of the Union?

3. Is the United States District Court in any given State of the Union an Article III court of the United States? If not, is it operating under color of authority of a territorial court of the United States?

4. When a case is appealed to a Circuit Court in the framework of Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, with attending Circuit and Supreme Court rules promulgated under authority of 28 U.S.C. ßß 2801 et seq., is the appeal presumed to originate from a territorial court of the United States?

5. Is the Internal Revenue Service, formerly the Bureau of Internal Revenue, an agency of the government of Puerto Rico? If not, how, when, where and by what authority was the Internal Revenue Service established?

I can constructively prove answers to all five questions. However, until the answers are verified by some recognized authority in some official record, they do not provide sustainable causes of action for redress.

This is where judicial complicity comes into the picture. In summer 1995 when I outlined what I believed was an air tight case against IRS, an attorney friend asked, "What court are you going to get to hear your case?" Within the last couple of months I heard the same question from an Ohio attorney: "What court are you going to get to hear your case?"

Neither attorney faulted my evidence or legal theory. In both cases they saw to the heart of the problem. If a judge will not entertain the issue, a judicial remedy is not available.

In my opinion, this is where the notion of restricting information runs into difficulty. If judicial remedies are not available, there has to be an alternative forum. Alternatives are for the most part political in nature. Political remedies require numbers. If information is restricted, numbers aren't available.

I've been considering strategy that will hopefully provide formal, official answers to the five questions. However, I'm going to consult with people in our research group without generally disclosing how I believe the questions can be answered until the strategy is deployed. For me, that is the line I normally use for open and restricted

communication. It‘s somewhat like chess. All the pieces are on the table but the players develop strategy in their heads. Strategy is manifest as the game is played. At the same time, I recognize the need to complete a piece before it is put in the game. I believe that is where concern for confidentiality lies. If something is put in play prematurely, it can be destroyed before it is useful. If the wrong people get hold of something before it has been in the kiln, it may never be viable.

Dan Meador