TRIALS AND TAXES

By Claire Kelley

"All the measures of the law should protect property from plunder." (The Law by Frederic Bastiat, 1801-1850).

The U. S. Constitution provides for trials by jury in both civil and criminal matters. It would behoove us then, as Americans, to understand more fully, this right.

The protection of property was one of the primary reasons for the establishment of our government and the guarantee of civil and criminal trials BY JURY, are a vital part of that protection generally referred to as 'due process' of law.

Civil Trials

Whenever property is taken from someone with the assistance of government officers, there is deprivation.

The 5th Amendment of the Constitution *prohibits* this deprivation, without due process of law, i.e. jury trial.

In 1830, the U.S. Supreme Court held, in reference to the 7th Amendment, that:

> "By common law (the framers of the Amendment meant) what the Constitution denominated in the Third Article 'law'; not merely suits, which common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies were administered." Parsons v. Bedford, (1830) 3 Pet. 433; 7 L.Ed. 732, 737.

Never forget that the Tax 'court' is held in an equity proceeding.

In 1918, the U.S. Supreme Court re-affirmed that an improper transfer of a suit, from the law side of the court (with jury trial), to the equity side (without jury trial), was held to violate the constitutional right to a jury trial set forth in the 7th Amendment. Ex Parte Simons (1918) 247 U.S. 231.

In 1950, U.S. District Court held that:

> "When a federal statute embraces a common-law form of action, that action does not lose its identity, merely because it finds itself enmeshed in a statute. The right of trial by jury in an action for debt (including taxes - CK) still prevails, whatever modern name may be applied to the action. To hold otherwise, would be to open the way for Congress to nullify the Constitutional right of trial by jury, by mere statutory enactments. It is by such methods that courts lose their power to enforce the Bill of Rights." U.S. v. Jepson, (1950) 90 F. Supp. 983, 986.

More currently, a U.S. Appellate Court (10th Cir.) held that the 7th Amendment did indeed allow for jury trial in tax collections. The IRS has always denied this, but their denials were finally laid to rest in U.S. v. Anderson, (1978) 584 F.2d 369 when the court said, flat out:

> "This action for collection of taxes comes within the Seventh Amendment,..." Anderson, supra, at p. 373

Any statute (Act of Congress) declaring otherwise *must* be challenged, for it is patently unconstitutional. The present IRS 'custom' of seizing property of anyone who refuses to go to Tax 'Court', comes under this unconstitutionality. But complaining alone won't change it. Legal challenges must be made and the Congress *must* be lobbied and pounded unceasingly on this matter.

Both the state and federal governments hold that an incorrect tax must first be paid and then - you may sue for refund, thereby shifting the burden of proof to the taxpayer, who must become the 'plaintiff' in such an action.

However, the Federalist Papers, which are regarded by the courts as an authentic source of the original framers 'intent' of the Constitution, prove conclusively that this was *not* their intent. They wrote that:

> "The dilatory course of a trial at law to recover the taxes imposed on individuals, would neither suit the exigencies of the public nor promote the convenience of the citizens. It would often occasion an accumulation of costs, more burdensome than the original sum of the tax to be levied." Hamilton - Federalist Paper No. 83

The *purpose* of the 7th Amendment was to *keep* the burden of proof on the government. It is one of the chains of the Constitution that we, through our lawyers, have allowed the government to break. Re-forging this chain, is *vital* to our liberty.

Criminal Trial

Also in the Federalist Papers, there is advanced a major purpose for jury trials, that we seem to have forgotten.

> "It has been observed that trial by jury is a safeguard against an oppressive exercise of the power of taxation." Hamilton - Federalist Paper No. 83

The authors of the Constitution believed this principle of jury trial, would no doubt be the main influence,

> "...upon the mode of collection and the *conduct* of the officers entrusted with the execution of the revenue laws." Federalist Papers No. 83, supra

In short, IRS agents were to have *no immunity* from criminal prosecution, where there was probable cause. The Federalist Papers No. 83 continues:

> "And as to the conduct of the officers of the revenue, the provision in favor of trial by jury in criminal cases will afford the security aimed at. *Willful abuses of a public authority, to the oppession of the subject and every species of official extortion, are offenses against the government, for which the persons who commit them may be indicted and punished according to the circumstances of the case.*"

When the agents of the IRS purposely overstates a tax and pull figures out of thin air, trying to collect a tax clearly not owed, this is extortion. The IRS Code (Title 26) has something to say about that.

> "(a) Unlawful Acts of Revenue Officers or Agents - Any officer or employee of the United States acting in connection with any revenue law of the United States -
>
> 1. who is guilty of any extortion or willful oppression under color of law; or
> 2. who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or *reward*, except as by law prescribed, for the performance of any duty; ...
>
> shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both." 26 U.S.C. 7214 (a)(1)(2)

Furthermore, it has been openly admitted in testimony before the Congress, by the officers of the IRS employees union, that promotions (reward) are based upon how many seizures are made. There is no law this writer knows of, prescribing seizures as a basis of promotion. It is a clear violation of the law, encouraging oppressive deprivation.

What is needed here, is a whole lot more citizen's complaints to grand juries on 'willful oppression' and extortion by IRS agents and employees and other such violations of the law. U.S. Attorneys must not be allowed to interfere with the lodging of complaints and those who do so, should be charged with obstruction of justice (18 U.S.C. 15030), with the help of your Senators and Congressmen and, if necessary, by filing an action in the nature of Mandamus in U.S. District Courts asking that the Justice Department be ordered to arrest any U.S. Attorney found to be interfering with citizens who wish to lodge complaints before federal grand juries. Such citizens are 'witnesses' and 18 USC 1503 clearly applies here.

This writer certainly believes in a tough law enforcement policy, but it should be applied to the government, since this is one of the most serious crime areas in our present society.

No greater evil can befall a nation than to allow its officials to turn the law into an instrument of plunder.

NOTE: Writs of Mandamus have been abolished in U.S. District Court and substituted by actions in the nature of Mandamus, See: 28 USC 1361. ★

THE JUROR'S CREED

I will not allow myself to be a juror unless I am certain that I can protect the rights of the innocent as well as proclaim the guilt of the criminal.

I will remember that when I take my oath I become a judge and the judge becomes a referee.

I will honor my obligation to be a judge and to judge both the law and the facts s is my right and duty.

I will not allow the referee, the prosecutor or the other jurors to talk me out of doing what I know to be right.

I will be always mindful that the accused is innocent until I vote otherwise.

I will claim my right to interrogate the witnesses to eliminate doubt because I will not vote against the accused if I have any doubts.

If I become aware that the Constitutional or other rights of the accused are not being honored, I will automatically vote in favor of the accused, unless I am completely satisfied that harm has truly been done to others by the accused. I will vote in favor of any defendant who is prevented from presenting to me all of the evidence and testimony he relies on.

I will vote in favor of any defendant who is prevented from telling my why he believes I should find him not guilty.

I will vote in favor of any defendant who has not hurt others.

I will vote in favor of any defendant who has not been a clear threat to the lives, liberty, physical safety or property of others.

I will cast only one (secret) vote.

I will not break the law by deliberating in secret.

May I never be an instrument of harm to anyone who does no harm.