LIBERTY TREE

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An absolute right to remain silent

Off with her head! Where did the Red Queen obtain the right to demand anything from Alice?

Editorial by Dick Greb

In the last couple issues of Liberty Tree, the analyses of compelled testimony, the federal immunity statute (18 U.S.C. § 6002) and their relationship to the exercise of one's Fifth Amendment right centered on the 1972 Supreme Court case *Kastigar v. United States* (406 U.S. 441). The question decided in that case was "whether the United States Government may compel testimony from an unwilling witness, who invokes the Fifth Amendment privilege against compulsory self-incrimination, by conferring on the witness immunity from use of the compelled testimony in subsequent criminal proceedings as well as immunity from use of evidence derived from the testimony." (p. 442)

Notice that, as usual, the court refers to the *privilege* against self-incrimination, rather than the *right* not to be compelled to be a witness against oneself.[1] This is a common occurrence, not only because that is often the phraseology used by the person claiming the protection, but also because many Fifth Amendment cases, like this one, are derived from grand jury proceedings, where the privilege exists, even if the right does not. In a nutshell, while the right prohibits the government from forcing you to take the witness stand in a criminal case against you, the privilege prohibits the government from forcing you to answer questions that might

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THE American Community Survey

A caller on NPR's Diane Rehm show wanted to know why the American Community Survey (ACS) asked what time he leaves home in the morning? With information like that, someone could break into his home. A Census Bureau spokesman helpfully explained that the data was useful for folks like traffic planners. Finding the answer unsatisfactory, the caller agreed to fill out the form anyway. After all, the Census Bureau says it is "required by law" to do so.

The ACS is clearly *not* the census form, however. The Census Bureau describes it as "a nationwide survey." Further, the ACS collects information "every year instead of every ten years ... About three million housing unit addresses are sampled annually." Factually, then, the ACS is a *statistical sampling* of the population, not an enumeration.

Which laws authorize the Bureau to collect information with this form? The Office of Management and Budget, which assigns control numbers to federal information collections, has web entries posted with respect to the ACS form. In 1995, when the Bureau first requested a control number, the "Authorizing Statute(s)" were given as "None," and the OMB office stated that no clearance for this form would be given unless "A Notice of Determination" was published in the Federal Register specifying "that these data will be collected under Section 182 and 225 of Title 13." Through every subsequent approval, it appears the "Authorizing Statute(s)" were still "None," until a June 2007 request listed such statutes as Sections 141, 193, and 221. But if no law authorized the form before — and the law was not changed — how can it be "authorized" now? And who has to fill it out, anyway? We will attempt to get at the bottom of this riddle in future issues.

OMB No. 0607-0810

1. For a more complete treatment of the distinction between the two, see "Compelled Testimony" in issue #245 of Reasonable Action (Winter 2004).

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implicate you in a crime in situations (like a grand jury investigation into crimes of others) when they can force you to be a witness. It is this latter concept that I want to look at a little closer here.

Forced witnesses

Where does our government, one whose every power is derived from the people, get the power to compel *anyone* to be a witness in *any* situation whatsoever? The court in *Kastigar* cites *Blair v. United States*, 250 U.S. 273 (1919) for the proposition that "the power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence." Note the reference to "*Anglo*-American," because the idea of compelled testimony comes from England. You know, land of kings and such. Justice Pitney, for the *Blair* court, said:

> Long before the separation of the American Colonies from the mother country, compulsion of witnesses to appear and testify had become established in England. ... When it was that grand juries first resorted to compulsory process for witnesses is not clear. But as early as 1612, in the Countess of Shrewsbury's Case, Lord Bacon is reported to have declared that - **'All subjects,** without distinction of degrees, **owe to the King tribute and service, not only of their deed and hand, but of their knowledge and discovery.'** (250 U.S., at 279) (emphasis added)

All subjects ... owe to the King tribute ... of their knowledge and discovery.

—Lord Bacon, as quoted by Justice Pitney, 1919.

So there we have it. Our government claims the power to compel the testimony of every person based on the historical claims of the kings of England! Since you *owe* the king your knowledge, what right do you have to welsh on your debt by refusing to give it to him?[2] In other words, being jailed for contempt for refusing to testify is really just another version of debtor's prison. Perhaps to try to soften the concept of a debt owed to the *king*, the rhetoric eventually evolves into a debt to *society*. Justice Pitney continues:

> [I]t is clearly recognized that the giving of testimony and attendance upon court or grand jury in order to testify are **public duties which every person within the jurisdiction of the government is bound to perform** upon being properly summoned, and for performance of which he is entitled to no further compensation than that which the statutes provide. **The personal sacrifice involved is a part of the necessary contribution of the individual to the welfare of the public.** (250 U.S., at 281) (emphasis added)

Further, in *United States v. Bryan* (339 U.S. 323, 331 (1950)), Supreme Court Chief Justice Vinson says, "For more than three centuries it has now been recognized as a fundamental maxim that **the public** (in the words sanctioned by Lord Hardwicke) **has a right to every man's evidence."** Yet where did the public get this "right" to every man's evidence? And by what principle does the public obtain the "right" to the sacrifice of the individual?

Every man a king

In 1793, Supreme Court Justice James Iredell rightly distinguished between the political situations here and in England:

> It will be sufficient to observe briefly, that **the sovereignties in Europe,** and particularly in England, **exist on feudal principles.** ... No such ideas obtain here; **at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects ... and have none to govern but themselves**; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty. *Chisholm v. Georgia*, 2 U.S. 419, 471 (1793) (emphasis added)

Thus, even if a king has a right to the testimony of his subjects, in America, each of us are kings — *but we have no subjects from whom to demand that right*. And if none of us individually have the right to demand the testimony of any other person, then the government — which is merely our agent, possessing only those powers that have been delegated to it from us — can have no such right either. After all, we can't possibly delegate powers that we don't possess ourselves.[3] Likewise, the public — which is merely the collection of all individuals — can possess no greater rights than the equal rights of each individual. Therefore, despite Justice Vinson's declaration to the contrary, the *public* can have no *right* to any man's testimony. Certainly the public might request someone's testimony, but they cannot rightfully demand it; and just as certainly, they cannot rightfully punish anyone who declines such a request.

To speak or not

While the First Amendment guarantees our individual God-given right to freely speak our minds, it just as surely guarantees our right, if we be of that mind, *not* to speak. In that sense, the Fifth Amendment is just a sub-

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2. Surely, it's just a matter of time before they use good old Lord Bacon to justify mandatory government service, such as has been espoused by Obama and his chief of staff Rahm Emanuel.
3. For more on this issue, see "Government? Agents!" in issue #248 of Reasonable Action.

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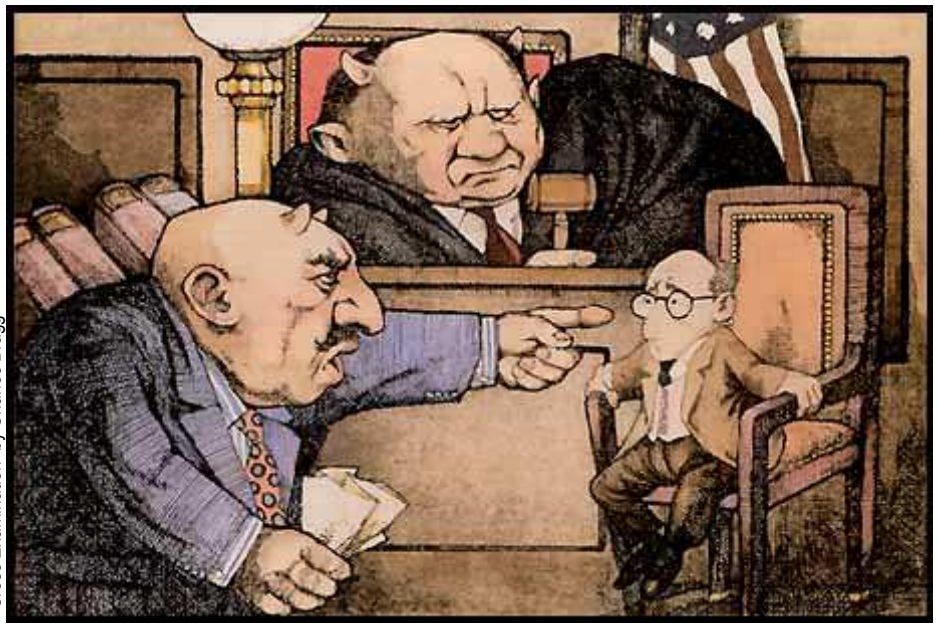
set of the First, explicitly enumerating a particular circumstance where that right not to speak must be honored. Yet, even there, the courts have decided that through legislative action, the right might be "supplanted." (*Kastigar*, at 462.)

Having shown that government's power to compel testimony violates the rights of those so compelled, there is still a purpose to be served by immunity statutes. After all, the discussion so far has been about *unwilling* witnesses, but there may be times that a witness would be willing to testify against others if he is indemnified against his part in the crimes. In such cases, compulsion is not necessary, it is only an additional incentive. The bottom line is that victims would ordinarily be willing to testify against those who commit crimes against them — and if there are no victims, then there is no crime. Meanwhile, the incentive aspect of immunity would encourage the testimony of participants in some crimes which might otherwise go unpunished. What then, should be done in cases of crimes like political bribery or government misdeeds? Perhaps in conjunction with immunity statutes, legislation that makes a person's acceptance of government office a simultaneous waiver of his or her right not to testify concerning actions taken under the auspices of that office would be sufficient to obtain the necessary testimony.



"Cross Examination" by Charles Bragg

"For more than three centuries it has now been recognized as a fundamental maxim that the public ... has a right to every man's evidence." — *Justice Vinson, 1950*

But in the final analysis (that is, this one), we can never be free as long as we let government officials treat us as their subjects.

Truth Attack Operation Stop Thief III — April 15!

For the last two years on April 15, Truth Troopers, joined by patriots from every corner of the Freedom Movement, gathered at post offices across the country. Holding up "What Income Tax?" signs, they handed out flyers letting last-minute tax filers know that there is a genuine issue over whether the IRS is telling them the truth about the tax laws.

Last year, over 1,200 post offices were "operated" on, and many tea party events were visited by T-Troopers as well, resulting in some local news coverage.

"Although we all have our favorite issue, and every one is as important as any other, Truth Attack's strategy is to approach the problem one issue at a time, beginning with the IRS's fraudulent application of the income tax to working Americans and their families," says Tom Cryer. "All patriots, no matter what their particular issues, are needed in this once-a-year opportunity to awaken Americans to the IRS's illicit theft of American labor."

Join in the fun by registering yourself or your group at TruthAttack.org by April 5th. A "group" does not have to be a formal organization. Two people can easily carry out an OST event, although the more people involved the more effective (and more fun) the event will be. A single family can be a group, and what better way to teach your children how Americans react to the loss of their freedom.

Truth Attack will email you a free materials packet with instructions for making your OST fun and effective (including how to deal with postal employees, police, the press and the public), a sample press release, and a flyer to distribute.

We only get this opportunity once a year. Please join in the fun and do something that will make a difference in saving our country from our government and our government from itself.

Upholding his oath to the Constitution

Sheriff Mack shares a message on the duty of the sheriff to protect the county from tyranny

Westminster, MD — On March 29, Richard Mack, former sheriff of Graham County, Ariz., spoke to a packed house at the American Legion post. Roughly 230 people attended, including Maryland sheriffs from Carroll and Frederick Counties and the sheriff of Mineral County, West Virginia.

Mack's appearance was organized by members of Liberty Works Radio Network and publicized through local members of the tea party movement, Campaign for Liberty, the Maryland Constitution Party, and the Maryland Republican Liberty Caucus. Through LWRN members' efforts, the local newspaper, Carroll County Times, carried the story.

Mack is best known for his involvement in a 1990s Supreme Court case which resulted from his and six other sheriffs' challenge of the constitutionality of portions of the gun control law known as the Brady Bill. That case was decided 5-4 in favor of the sheriffs, and the decision effectively halted several similar bills which were then wending their way through Congress.

Mack's message of strict adherence to the U.S. Constitution stressed the importance of interposition, which involves the willingness of a sheriff to stand between the federal or state governments' unconstitutional laws and the people of his county. The sheriff, he said, is the real protector of the people against tyranny. Sheriffs must know the federal and state constitutions, so that they can uphold their oaths and protect the county against encroachment.

George Otto, who lives near Westminster, said the event is timely because of the ongoing debate as to whether Carroll County should establish a county police force and have it take over as the primary law enforcement agency.

"It's a big issue in the county," he said.

Another organizer, Mike Hargadon of Emmitsburg, said Mack speaks to people who are concerned the country is drifting from its roots.

"Basically, people are concerned they are losing their constitutional base," Hargadon said.

Mack's goal is to spread his message to every sheriff across these united States, and LWRN stands ready to publicize his message and win over the sheriffs to the concept of protecting and safeguarding the people instead of cooperating with or passively allowing out-of-control federal officials to encroach on their liberties.

As the federal government attempts to implement 'ObamaCare,' the words of the Supreme Court decision in Mack's case should be brought to the attention of every sheriff:

"We held in *New York [v. U.S.]* that **Congress cannot compel the States to enact or enforce a federal regulatory program.** Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, **nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program**. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty."[1]

Again, "**the Federal Government may not compel the States to enact or administer a federal regulatory program.**"[2]

Let's let our sheriffs know how they can protect us. If you are an LWRN member, and you want to further the goals of Sheriff Mack and LWRN, please call the Fellowship and talk with us about organizing an event like this in your town.

A packed house at the American Legion, right: Sheriff Richard Mack was the featured speaker. Below: John B. Kotmair, Jr., founder of LWRN, encouraged people to join and spread the message of Liberty.

Gun law challenger to share message

Former sheriff to speak on conservative values

By Adam Bednar
Times Staff Writer

There's a former sheriff in town.

Richard Mack, the controversial former sheriff of Graham County, Ariz., will speak at the American Legion Carroll Post No. 31 in Westminster tonight at 6:30.

Mack has become prominent among conservative groups, including those associated with the tea party movement, because of his message of strict adherence to the U.S. Constitution.

His appearance was organized by several area residents and the Liberty Works Radio Network, said one of the organizers, George

MACK

Carroll County Times

The local newspaper helped to publicize the event.

1. *Printz v. United States*, 521 U.S. 898, 933 (1997)
2. *New York v. United States*, 505 U.S. 144, 188 (1992)