

The Latest Move In the Tax Game: Pleading the Fifth

A Commentary

By Nicholas von Hoffman

There is much bravado talk about following the example set by Nixon and Agnew in paying, or not paying, their income tax. Nothing that has been revealed about these two worthies has so damaged them and embittered them as their tax chiseling.

Ohio's Rep. Charlie Vanik was on the tube recently saying it was possible that millions of people might even take Nixon-style deductions for themselves next April. Here and there across the country more tax resistance organizations are being formed. Nevertheless, Shay's Rebellion (1786-87) was the last time Americans matched thought with deed on such a subject.

No arm of our government is as hated and feared, not the CIA or the FBI or The Plumbers, as is the Internal Revenue Service. Open defiance of the IRS's power and snotty, capricious arrogance is almost unheard of. People who will resist the draft, throw themselves in front of school buses and lead mobs against national guard bayonets are scrupulous about paying their taxes.

One of the few who wouldn't knuckle under is a Minneapolis lawyer named Jerome Daly. Some years ago Mr. Daly sent in his copy of the infamous 1040 form with nothing on it but his name and address. All the other questions he refused to answer on the respectable Fifth Amendment grounds that they might tend to incriminate him.

The IRS took him to court, but Daly won on appeal. When Daly did it again, the IRS, sensitive to the fact that this precedent could destroy their power to terrorize the citizenry, shifted ground. This time it proceeded against our rebel by claiming that failure to fill out the form was the same as failing to file, which is a criminal offense.

Again, Mr. Daly was brought to trial and this time he was found guilty. The judge thereupon ordered Mr. Daly to the Springfield, Mo., Medical Center for Federal Prisoners for psychiatric examination. We, like the Russians, assume that any principled action in defiance of the state is prima facie evidence of madness.

See COMMENTARY, B2, Col. 1

COMMENTARY, From B1

For 57 days the shrinks had at Mr. Daly whereupon the federal marshals took him on a strange string of one-night stands in cow-town jails in Tallahassee, Fla., Gulfport, Miss., Bossier, La., and finally Texarkana, Tex., where he was kept for two weeks and then told to report back to the Federal Court in Minneapolis for imposition for sentence.

The judge, according to our culprit-hero, really didn't want to mess with a case like this, so he suspended sentence and put Daly on probation on condition that he file his tax returns in the accepted manner. Since the judge failed to say when the tax returns must be filed, Daly still hasn't done it but instead has gone into court asking for a declaratory judgment on his Fifth Amendment position.

Jerome Daly is one of those types we like to think are American originals, a completely undaunted man. He says, for instance, that he was disbarred back in 1969 for filing too many frivolous law suits against the Federal Reserve System. (Mr. Daly has an even lower opinion of their paper money than the rest of us.)

This hasn't prevented him from continuing the practice of law: "I haven't changed my operation one iota. My practice is better now than when I was licensed." But in addition to practicing law without a license, he is also teaching people how to procure divorces and probate wills without benefit of counsel, a trust busting activity that might result not in mere double disbarment but in the first all-lawyer lynching.

If Mr. Daly appears a bit queer in some people's eyes, he is also right when he says, "I'm against the income tax, and especially the way it's administered because it is a gross invasion of privacy. They use it to suppress political dissent."

Nor is there any need for criminal penalties to collect the taxes. Sears, Roebuck—as well as our cities and states—collect their bills without having the power to throw people in jail.

Watergate has underlined the fact that every time we fill out old 1040 we are forced to abandon our Fifth Amendment rights and put ourselves in a position where we risk jail if somebody in the White House or the IRS wants to give us the business. The tax laws, from the days of Al Capone on, have been used to get, or to use the Nixon vernacular, to screw people when they can't get 'em on anything else.

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