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40.00 *TAX PROTESTORS*

40.00 *TAX PROTESTORS*

40.01 *GENERALLY*

Tax protestors have developed numerous schemes to evade their income taxes and frustrate the Internal Revenue Service under the guise of constitutional and other objections to the tax laws. These schemes range from a simple failure to file to use of warehouse banks to conceal financial transactions and harassment of government officials through Form 1099 schemes. These schemes give rise to charges under all the criminal tax statutes. **1** Thus, this section should be read in conjunction with those sections of the ***Manual*** treating the various substantive offenses in detail. *See* Sections 8.00 through 29.00, *supra.*

40.02 *FAILURE TO FILE -- 26 U.S.C. § 7203*

40.02[1] ***Generally***

The most common method used by tax protestors is to simply not file a return, or to file a return that reports no financial information and may espouse tax protest rhetoric. Generally, withholding of income taxes by employers is also prevented. *See* Section 10.00, *supra.*

40.02[2] ***What Constitutes a Return***

A Form 1040 must contain information relating to the taxpayer's income from which a tax can be computed to satisfy the requirements of the Internal Revenue Code. ***United States v. Porth***, 426 F.2d 519, 523 (10th Cir.), *cert. denied*, 400 U.S. 824 (1970); ***United States v. Daly***, 481 F.2d 28, 29 (8th Cir.), *cert. denied*, 414 U.S. 1064 (1973). The Forms 1040 filed in ***Porth*** and ***Daly*** contained only the taxpayers' names and addresses, and references to various constitutional provisions which assertedly excused them from filing tax returns.

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1 The Tax Division maintains a "Criminal Tax Protest Case Issues List" which tracks recurring issues in these prosecutions. The list is updated annually and contains more than 40 issues. The list is available on Juris in the Protest file within the tax file group. Prosecutors interested in obtaining a copy of the protest list should contact the Criminal Appeals and Tax Enforcement Policy Section of the Tax Division at (202) 514-5396.

Failure to file convictions in both cases were upheld, with the court in ***Porth*** saying:

> The return filed was completely devoid of information concerning his income as required by the regulations of the IRS. A taxpayer's return which does not contain any information relating to the taxpayer's income from which the tax can be computed is not a return within the meaning of the Internal Revenue Code or the regulations adopted by the Commissioner.

Porth, 426 F.2d at 523 (citations omitted). *See also* ***United States v. Schiff***, 612 F.2d 73, 77 (2d Cir. 1979); ***United States v. Edelson***, 604 F.2d 232, 234 (3d Cir. 1979); ***United States v. Reed***, 670 F.2d 622, 623-24 (5th Cir.), *cert. denied*, 457 U.S. 1125 (1982) (Form 1040 reflected only the amount withheld from earnings and no other dollar figure, with refund claimed); ***United States v. Mosel***, 738 F.2d 157, 158 (6th Cir. 1984); ***United States v. Verkuilen***, 690 F.2d 648, 654 (7th Cir. 1982); ***United States v. Green***, 757 F.2d 116, 121 (7th Cir. 1985); ***United States v. Upton***, 799 F.2d 432, 433 (8th Cir. 1986); ***United States v. Grabinski***, 727 F.2d 681, 686 (8th Cir. 1984); ***United States v. Kimball***, 925 F.2d 356, 357 (9th Cir. 1991) (*en banc*) (asterisks and no signature not a return); ***United States v. Crowhurst***, 629 F.2d 1297, 1300 (9th Cir.), *cert. denied*, 449 U.S. 1021 (1980); ***United States v. Stillhammer***, 706 F.2d 1072, 1075 (10th Cir. 1983) ("the test is whether the defendants' returns themselves furnished the required information for the IRS to make the computation and assessment, not whether the information was available elsewhere"); ***United States v. Vance***, 730 F.2d 736, 738 (11th Cir. 1984).

Forms 1040 which report only zeroes are not valid returns. ***United States v. Smith***, 618 F.2d 280, 281 (5th Cir.), *cert. denied*, 449 U.S. 868 (1980); ***Mosel***, 738 F.2d 157; ***United States v. Moore***, 627 F.2d 830, 835 (7th Cir. 1980), *cert. denied*, 450 U.S. 916 (1981) ("when apparent that the defendant is not attempting to file forms accurately disclosing his income, he may be charged with failure to file a return"); ***United States v. Rickman***, 638 F.2d 182, 184 (10th Cir. 1980). *But* ***United States v. Long***, 618 F.2d 74, 75 (9th Cir. 1980) (zeros on Long's tax forms, unlike blanks, constituted information as to income from which a tax could be computed just as if the return had contained other numbers).

Similarly, courts have held that tax forms reporting nothing or small amounts in the blanks provided for income and expenses do not constitute legal returns within the meaning of the

denied, 480 U.S. 950 (1987); ***United States v. DeTar***, 832 F.2d 1110, 1113 (9th Cir. 1987); and cases cited above.

40.05 *SUBSCRIBING TO A FALSE RETURN -- 26 U.S.C. § 7206(1)*

False return charges, unlike evasion charges, do not require proof of a tax deficiency. The government may choose to prosecute a tax protestor under section 7206(1), rather than section 7201, when, for example, the evidence does not establish a substantial tax deficiency beyond a reasonable doubt, but the protestor's actions warrant a felony prosecution. Such a situation may exist in the charitable contribution, fifty percent deduction cases discussed in Section 40.08, *infra*. For a discussion of section 7206(1), *see* Section 12.00, *supra*.

40.06 *FALSE STATEMENT OR DOCUMENT -- 18 U.S.C. § 1001*

A violation of 18 U.S.C. § 1001 can be an appropriate substitute charge for 26 U.S.C. § 7206(1) when the false document in question lacks the required signature or the document is not made under penalties of perjury. A common scenario for such an application of section 1001 is where the protestor files an unsigned income tax return. Section 1001 also can be used when the individual has lied to the agents during the investigation. For a discussion of section 1001, *see* Section 24.00, *supra*.

40.07 *AIDING AND ASSISTING PREPARATION OF FALSE RETURNS -- 26 U.S.C. § 7206(2)*

Tax protestors who cause third parties to prepare and file false returns may be charged under 26 U.S.C. § 7206(2). *See* ***United States v. Holecek***, 739 F.2d 331 (8th Cir. 1984), *cert. denied*, 469 U.S. 1218 (1985) (return preparation); ***United States v. Kellogg***, 955 F.2d 1244, 1249 (9th Cir. 1992) (defendant assisted in preparation of returns filed by others); ***United States v. Condo***, 741 F.2d 238, 240 (9th Cir. 1984), *cert. denied*, 469 U.S. 1164 (1985) (preparation and mailing of false Forms W-4); ***United States v. Erickson***, 676 F.2d 408 (10th Cir.), *cert. denied*, 459 U.S. 853 (1982).

Providing advice and material to taxpayers, who in turn file false returns, is sufficient to sustain a section 7206(2) conviction. *See* ***United States v. Kelley***, 769 F.2d 215 (4th Cir. 1985).

40.11 *WILLFULNESS*

40.11[1] *Generally*

Willfulness in protestor cases involves the same underlying principles as it does in any criminal tax case. Accordingly, reference should be made to the discussion of willfulness in the Sections of the ***Manual*** pertaining to the other various tax offenses. *See* Section 8.06, *supra.*

Willfulness is the voluntary, intentional violation of a known legal duty. ***Cheek v. United States***, 498 U.S. 192, 201 (1991); ***United States v. Pomponio***, 429 U.S. 10, 12 (1976); ***United States v. Bishop***, 412 U.S. 346, 360 (1973); ***United States v. Johnson***, 893 F.2d 451, 453 (1st Cir. 1990); ***United States v. Schiff***, 801 F.2d 108, 110 (2d Cir. 1986), *cert. denied*, 480 U.S. 272 (1987); ***United States v. Snyder***, 766 F.2d 167, 170-71 (4th Cir. 1985); ***United States v. Masat***, 948 F.2d 923, 931 (5th Cir. 1991); ***United States v. Sassak***, 881 F.2d 276, 280 (6th Cir. 1989); ***United States v. Benson***, 941 F.2d 598, 613 (7th Cir. 1991); ***United States v. Dykstra***, 991 F.2d 450, 453 (8th Cir. 1993); ***United States v. Kellogg***, 955 F.2d 1244, 1248 (9th Cir. 1992); ***United States v. Willie***, 941 F.2d 1384, 1392 (10th Cir. 1991). It has the same meaning in both the felony and misdemeanor statutes of the Internal Revenue Code. *See* Section 8.06[1], *supra.*

Proof of willfulness may be based totally on circumstantial evidence. ***United States v. Schiff***, 612 F.2d 73, 77-78 (2d Cir. 1979); ***Hellman v. United States*** 339 F.2d 36, 38 (5th Cir. 1964); ***United States v. Grumka***, 728 F.2d 794, 797 (6th Cir. 1984); ***United States v. Gleason***, 726 F.2d 385, 388 (8th Cir. 1984); ***United States v. Fingado***, 934 F.2d 1163, 1167 (10th Cir.), *cert. denied*, 112 S. Ct. 320 (1991). Because proof of willfulness usually must be established by circumstantial evidence:

> [T]rial courts should follow a liberal policy in admitting evidence directed towards establishing the defendant's state of mind. No evidence which bears on this issue should be excluded unless it interjects tangential and confusing elements which clearly outweigh its relevance.

United States v. Collorafi, 876 F.2d 303, 305 (2d Cir. 1989).

Circumstantial evidence, in protestor cases, held competent to establish willfulness includes:

1. Tax protest activities and philosophies. ***United States v. Turano***, 802 F.2d 10, 11-12 (lst Cir. 1986); ***United States v. Eargle***, 921 F.2d 56, 58 (5th Cir. 1991); ***United States v. Grosshans***, 821 F.2d 1247, 1252 (6th Cir. 1987);

2. Filing of blatantly false W-4 forms in one year relevant to show willfulness and absence of mistake in filing false Schedule C forms in earlier years. ***United States v. Johnson***, 893 F.2d 451, 453 (1st Cir. 1990);

3. Prior taxpaying history, such as the prior filing of valid tax returns followed by the filing of a protest return and a letter from the Internal Revenue Service telling the defendant that his return "did not comply with tax laws and might subject him to criminal penalties." ***United States v. Shivers***, 788 F.2d 1046, 1048 (5th Cir. 1986); ***United States v. Daniel***, 956 F.2d 540, 543 (6th Cir. 1992); ***United States v. DeClue***, 899 F.2d 1465 (6th Cir. 1990); ***United States v. Green***, 757 F.2d 116, 123-24 (7th Cir. 1985); ***United States v. Upton***, 799 F.2d 432, 433 (8th Cir. 1986); ***United States v. Poschwatta***, 829 F.2d 1477, 1483 (9th Cir. 1987), *cert. denied*, 484 U.S. 1064 (1988);

4. Subsequent taxpaying conduct. ***United States v. Upton***, 799 F.2d 432, 433 (8th Cir. 1986); ***United States v. Richards***, 723 F.2d 646, 649 (8th Cir. 1983);

5. Filing false Forms W-4. ***United States v. Connor***, 898 F.2d 942, 945 (3d Cir. 1990), *cert. denied*, 110 S. Ct. 3284 (1990); ***United States v. Shivers***, 788 F.2d 1046, 1048 (5th Cir. 1986); ***United States v. Carpenter***, 776 F.2d 1291, 1295 (5th Cir. 1985); ***United States v. Ferguson***, 793 F.2d 828, 831 (7th Cir.), *cert. denied*, 479 U.S. 933 (1986); ***United States v. Schmitt***, 794 F.2d 555, 560 (10th Cir. 1986);

6. The amount of a defendant's gross income. ***United States v. Payne***, 800 F.2d 227 (10th Cir. 1986) [*i.e.*, the higher the defendant's gross income, the less

likely the defendant was unaware of the filing requirement and the more likely the defendant's failure was intentional rather than inadvertent];

7. Proof that knowledgeable persons warned the defendant of tax improprieties. ***United States v. Collorafi***, 876 F.2d 303, 305 (2d Cir. 1989); ***United States v. Dack***, 987 F.2d 1282, 1285 (7th Cir. 1993).

40.11[2] ***Good Faith Belief***

A defendant's conduct is not willful if the jury finds that the defendant's conduct resulted from "ignorance of the law or a claim that because of a misunderstanding of the law, he had a good faith belief that he was not violating any of the provisions of the tax laws." ***Cheek v. United States***, 498 U.S. 192, 202 (1991). Cheek claimed that he did not file tax returns because he believed that he was not a taxpayer within the tax laws, that wages are not income, that the Sixteenth Amendment did not authorize the taxation of individuals and that the Sixteenth Amendment was unenforceable. ***Cheek***, 498 U.S. at 195. The Court explained that:

> In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, *whether or not* the claimed belief is objectively reasonable.

Cheek, 498 U.S. at 202 (emphasis added). The Supreme Court held that the trial court's jury instructions that Cheek's good faith beliefs or misunderstanding of the law would have to be objectively reasonable to negate willfulness were erroneous with reference to Cheek's non-constitutional arguments, stating:

> It was therefore error to instruct the jury to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or pay income taxes and that wages are not taxable income, as incredible as such misunderstandings of and beliefs about the law might be.

Cheek, 498 U.S. at 203.

The trial court did not err, however, in instructing the jury not to consider Cheek's claims that the tax laws are unconstitutional:

> We thus hold that in a case like this, a defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness, need not be heard by the jury, and if they are, an instruction to disregard them would be proper. For this purpose, it makes no difference whether the claims of invalidity are frivolous or have substance.

Cheek, 498 U.S. at 206. *See also* ***United States v. Saussy***, 802 F.2d 849, 853 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987); ***United States v. Kraeger***, 711 F.2d 6, 7 (2d Cir. 1983); ***United States v. Burton***, 737 F.2d 439, 442 (5th Cir. 1984); ***United States v. Latham***, 754 F.2d 747, 751 (7th Cir. 1985); ***United States v. Moore***, 627 F.2d 830, 833 n.l (7th Cir. 1980), *cert. denied*, 450 U.S. 916 (1981); ***United States v. Karsky***, 610 F.2d 548, 550 (8th Cir. 1979), *cert. denied*, 444 U.S. 1092 (1980); ***United States v. Mueller***, 778 F.2d 539, 541 (9th Cir. 1985); ***United States v. Payne***, 800 F.2d 227 (10th Cir. 1986); ***United States v. Pilcher***, 672 F.2d 875, 877 (11th Cir.), *cert. denied*, 459 U.S. 973 (1982).

The ***Cheek*** Court stated that a jury considering a good faith belief claim:

> would be free to consider any admissible evidence from any source showing that . . . [the taxpayer] was aware of his . . . [duties under the tax laws], including evidence showing his awareness of the Code or regulations, of court decisions rejecting his interpretations of the tax law, of authoritative rulings of the Internal Revenue Service, or any contents of the personal income tax return forms and accompanying instructions . . . .

Cheek, 498 U.S. at 202.

In determining whether a subjective good faith belief was held, a jury should not be precluded from considering the reasonableness of the taxpayer's interpretation of the law.

> [T]he more unreasonable the asserted beliefs or misunderstandings are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties imposed by the tax laws and will find that the Government has carried its burden of proving knowledge.

Cheek, 498 U.S. at 203-04. After remand, the Seventh Circuit upheld Cheek's conviction, ***United States v. Cheek***, 3 F.3d 1057 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 1055 (1994), finding that the trial court's instruction that the jury could "consider whether the defendant's stated belief about the tax statutes was reasonable as a factor in deciding whether he held that belief in good-faith" was proper. ***Cheek***, 3 F.3d at 1063. *See also* ***United States v. Becker***, 965 F.2d 383, 388 (7th Cir. 1992), *cert. denied*, 112 S. Ct. 1411 (1993); ***United States v. Powell***, 955 F.2d 1206, 1212 (9th Cir. 1992) (jury may consider "the reasonableness of the interpretation of the law in weighing the credibility" of defendants' subjective belief that they were not required to file tax returns).

Tax protestors often claim that their beliefs that they are not required to file returns or pay taxes are based upon a careful study of legal decisions, statutes, legal treatises, and the like, and seek to have such materials admitted into evidence. *See, e.g.*, ***United States v. Bonneau***, 970 F.2d 929, 931 (1st Cir. 1992); ***United States v. Willie***, 941 F.2d 1384, 1391 (10th Cir. 1991), *cert. denied*, 112 S. Ct. 1200 (1992). However, before such materials may be admitted, the taxpayer must lay a sufficient foundation of reliance. Nevertheless, the laying of such a foundation does not guarantee admissibility. Although legal and tax protestor materials upon which the defendant claims to have relied may be relevant to a good faith defense, there are competing interests which militate against the unrestricted admission of this type of evidence. The admission of such materials may confuse the jury as to the law, *see* ***United States v. Barnett***, 945 F.2d 1296, 1301 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 1487 (1992); ***Willie***, 941 F.2d at 1395-97; ***United States v. Kraeger***, 711 F.2d 6, 7-8 (2d Cir. 1983); ***United States v. Stafford***, 983 F.2d 25, 28 n.14 (5th Cir. 1993); ***United States v. Gleason***, 726 F.2d 385, 388 (8th Cir. 1984); ***United States v. Payne***, 978 F.2d 1177, 1181-82 (10th Cir. 1992), *cert. denied*, 112 S. Ct. 2441 (1993), and may assist a defendant who wishes to undermine the authority of the court and turn his trial into a tax protestor circus, *see* ***Willie***, 941 F.2d at 1395 & n.8. The exclusion of such materials from evidence does not prevent a defendant from conveying the core of his defense to the jury: the defendant may still testify as to his asserted beliefs and how he supposedly arrived at them. *See* ***Barnett***, 945 F.2d at 1301; ***United States v. Hairston***, 819 F.2d

> express beliefs and opinions; it does not give him the right to exclude beliefs and opinions from a jury properly concerned with his motivations for failing to file.

Turano, 802 F.2d at 12.

40.13 *FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION*

Tax protestors often submit tax returns on which they refuse to provide any financial information, asserting their Fifth Amendment right against self-incrimination. 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. The Court indicated, however, 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.

Sullivan, 274 U.S. at 263. *See also* ***Garner v. United States***, 424 U.S. 648, 650 (1976).

Sullivan is frequently cited for the proposition that a taxpayer may not use the Fifth Amendment to justify the failure to file any return at all. *See, e.g.*, ***United States v. Edelson***, 604 F.2d 232, 234 (3d Cir. 1979); ***United States v. Wunder***, 919 F.2d 34, 37 (6th Cir. 1990); ***United States v. Dack***, 987 F.2d 1282, 1284 (7th Cir. 1993); ***United States v. Poschwatta***, 829 F.2d 1477, 1482 n. 3 (9th Cir. 1987), *cert. denied*, 484 U.S. 1064 (1988); ***United States v. Leidendeker***, 779 F.2d 1417, 1418 (9th Cir. 1986); ***United States v. Stillhammer***, 706 F.2d 1072, 1076-77 (10th Cir. 1983); ***United States v. Lawson***, 670 F.2d 923, 927 (10th Cir. 1982) (cases cited); ***United States v. Pilcher***, 672 F.2d 875, 877 (11th Cir.), *cert. denied*, 459 U.S. 973 (1982).

A taxpayer may refuse to answer specific questions or disclose specific information, if such disclosure would be incriminating. The courts have uniformly held, however, that disclosure of the type of routine financial information required on a tax return does not, in itself, incriminate an individual and does not violate one's Fifth Amendment right against self-incrimination. ***United States v. Schiff***, 612 F.2d 73, 77-83 (2d Cir. 1979); ***United States v. Edelson***, 604 F.2d

232, 234 (3d Cir. 1979); ***United States v. Reed***, 670 F.2d 622, 623-24 (5th Cir.), *cert. denied*, 457 U.S. 1125 (1982); ***United States v. Heise***, 709 F.2d 449, 451 (6th Cir.), *cert. denied*, 464 U.S. 918 (1983); ***United States v. Warner***, 830 F.2d 651, 653-54 (7th Cir. 1987); ***United States v. Drefke***, 707 F.2d 978, 982-83 (8th Cir.), *cert. denied*, 464 U.S. 942 (1983); ***United States v. Neff***, 615 F.2d 1235, 1238-41 (9th Cir.), *cert. denied*, 447 U.S. 925 (1980); ***United States v. Irwin***, 561 F.2d 198, 201 (10th Cir.), *cert. denied*, 434 U.S. 1012 (1977). *See also* ***United States v. Green***, 757 F.2d 116 n.7 (7th Cir. 1985) (affirming use of jury instruction that reporting income from legitimate activities would not fall within the Fifth Amendment privilege); ***United States v. Saussy***, 802 F.2d 849, 854-55 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987); ***United States v. Carlson***, 617 F.2d 518 (9th Cir.), *cert. denied*, 449 U.S. 1010 (1980) (no valid Fifth Amendment privilege excusing failure to file Form 1040 to cover up false Form W-4 previously filed by defendant); ***United States v. Lawson***, 670 F.2d 923, 927 (10th Cir. 1982).

A Fifth Amendment claim, however, may be asserted as to specific line items on tax forms. ***United States v. Sullivan***, 274 U.S. at 263; ***Edelson***, 604 F.2d at 234; ***United States v. Flitcraft***, 863 F.2d 342, 344 (5th Cir. 1988), *cert. denied*, 490 U.S. 1080 (1989); ***United States v. Shivers***, 788 F.2d 1046, 1049 (5th Cir. 1986) (amount of taxpayer's income not privileged though source may be); ***Heise***, 709 F.2d at 450-51; ***United States v. Verkuilen***, 690 F.2d 648, 654 (7th Cir. 1982); ***United States v. Turk***, 722 F.2d 1439, 1441 (9th Cir. 1983), *cert. denied*, 469 U.S. 818 (1984); ***United States v. Harting***, 879 F.2d 765, 770 (10th Cir. 1989).

The determination that the defendant's claim to the Fifth Amendment privilege against self-incrimination was invalid does not, however, prohibit the defendant from offering evidence to the effect that there was a good faith belief that he or she could properly assert the privilege. Such a good faith claim, even if erroneous, is a valid defense to the element of willfulness if believed by the jury. ***Shivers***, 788 F.2d at 1048 n.1; ***United States v. Saussy***, 802 F.2d 849, 854-855 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987); ***Poschwatta***, 829 F.2d at 1482 n. 3; ***United States v. Goetz***, 746 F.2d 705, 710 (11th Cir. 1982).

Whether the defendant has validly exercised the privilege against self-incrimination is a question of law for the court. ***Turk***, 722 F.2d at 1440. Yet, whether the defendant has asserted

the privilege in good faith, which could entitle the defendant to an acquittal on failure to file charges, is a question of fact for the jury to resolve. *Id.*; ***United States v. Smith***, 735 F.2d 1196, 1198 (9th Cir.), *cert. denied*, 469 U.S. 1076 (1984).

Returns containing little or no financial information from which a tax could be computed are sometimes referred to as "Fifth Amendment returns." The filing of a so-called Fifth Amendment return may constitute an affirmative act for the purposes of proving evasion. *See* ***United States v. Waldeck***, 909 F.2d 555, 559 (1st Cir. 1990) ("filing of returns containing only name, a signature, a figure for federal income tax withheld, asterisks at numbered lines in lieu of information and the statement '[t]his means specific exception is made under the Fifth Amendment, U.S. Constitution,'" is an affirmative act of evasion); ***United States v. DeClue***, 899 F.2d 1465, 1471 (6th Cir. 1990) (filing of return with no financial information and on which was typed: "object: self-incrimination" is affirmative act of evasion).

40.14 *MISCELLANEOUS FRIVOLOUS DEFENSES*

40.14[1] *Wages Are Not Income*

A common defense raised by protestors is that salaries and wages are not "income" within the meaning of the Sixteenth Amendment, which grants Congress the power "to lay and collect taxes on incomes, from whatever source derived . . ."

The courts have uniformly interpreted the term "income" in its everyday usage to include wages and salaries. ***United States v. Connor***, 898 F.2d 942, 943-44 (3d Cir.), *cert. denied*, 497 U.S. 1029 (1990); ***United States v. Burton,*** 737 F.2d 439, 441 (5th Cir. 1984); ***United States v. Sassak***, 881 F.2d 276, 281 (6th Cir. 1989); ***United States v. Becker***, 965 F.2d 383, 389 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1411 (1993); ***United States v. Sloan***, 939 F.2d 499, 500 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 940 (1992); ***United States v. Richards***, 723 F.2d 646, 648 (8th Cir. 1983); ***United States v. Buras***, 633 F.2d 1356, 1361 (9th Cir. 1980); ***United States v. Tedder***, 787 F.2d 540, 542 n.3 (10th Cir. 1986). *See* ***Jones v. United States***, 551 F. Supp. 578, 580 (N.D.N.Y. 1982), for a list of cases holding that wages are included in gross income.

payment of taxes is "voluntary." *See* ***United States v. Dunkel***, 927 F.2d 955, 956 (7th Cir. 1991).

40.14[4] ***Duty of IRS to Prepare Returns***

Protestors have argued that 26 U.S.C. § 6020(b)(1) [7] obligates the Internal Revenue Service to prepare a tax return for an individual who does not file before or in lieu of criminal prosecution. There is no merit to this claim. This provision merely provides the Internal Revenue Service with a civil mechanism for assessing the tax liability of a taxpayer who has failed to file a return. It does not excuse the taxpayer from criminal liability for that failure. ***United States v. Harrison***, 30 A.F.T.R.2d 72-5367, 5368 (E.D.N.Y.), *aff'd*, 486 F.2d 1397 (2d Cir. 1972), *cert. denied*, 411 U.S. 965 (1973); ***United States v. Barnett***, 945 F.2d 1296, 1300 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 1487 (1992); ***United States v. Millican***, 600 F.2d 273, 278 (5th Cir. 1979), *cert. denied*, 445 U.S. 915 (1980); ***United States v. Cheek***, 3 F.3d 1057 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 1055 (1994); ***United States v. Verkuilen***, 690 F.2d 648, 657 (7th Cir. 1982); ***United States v. Poschwatta***, 829 F.2d 1477, 1483 (9th Cir. 1987), *cert. denied*, 484 U.S. 1064 (1988).

When a defendant raises this argument during trial, the court may properly instruct the jury that while section 6020(b) "authorizes the Secretary to file for a taxpayer, the statute does not require such a filing, nor does it relieve the taxpayer of the duty to file." ***United States v. Stafford***, 983 F.2d 25, 27 (5th Cir. 1993); *accord* ***United States v. Powell***, 955 F.2d 1206, 1213 (9th Cir. 1992). However, an instruction pertaining to section 6020(b) "must not be framed in a way that distracts the jury from its duty to consider a defendant's good-faith defense." ***Powell***, 955 F.2d at 1213.

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7 Section 6020(b)(1) of the Code (Title 26) provides that if a person fails to make a return required by law, then the Internal Revenue Service "shall" make a return based on information available to it.

40.14[7] ***Ratification of Sixteenth Amendment***

The contention that the Sixteenth Amendment was never legally ratified and that the federal government does not, therefore, have the authority to collect an income tax without apportionment has been flatly rejected. ***United States v. Sitka***, 845 F.2d 43, 44-47 (2d Cir.), *cert. denied*, 488 U.S. 827 (1988); ***United States v. Benson***, 941 F.2d 598, 607 (7th Cir. 1991); ***In re Becraft***, 885 F.2d 547, 549 (9th Cir. 1989); ***United States v. Collins***, 920 F.2d 619, 629 (10th Cir. 1990); ***United States v. Ward***, 833 F.2d 1538, 1539 (11th Cir. 1987), *cert. denied*, 485 U.S. 1022 (1988). As stated in ***United States v. House***, 617 F. Supp. 237 (W.D. Mich. 1985):

> The sixteenth amendment and the tax laws passed pursuant to it have been followed by the courts for over half a century. They represent the recognized law of the land.

House, 617 F. Supp. at 240.

40.14[8] ***Violation of the Privacy Act***

Circuit courts also have rejected Privacy Act challenges to the IRS Form 1040 instruction booklet and to Forms W-4. ***United States v. Dack***, 747 F.2d 1172, 1176 n.5 (7th Cir. 1984) (not error to refuse to dismiss for failure to publish, pursuant to Privacy Act, notice of specific criminal penalty which might be imposed); ***United States v. Bressler***, 772 F.2d 287, 292 (7th Cir. 1985), *cert. denied*, 474 U.S. 1082 (1986) ("the IRS notice . . . adequately and clearly informs taxpayers that filing is mandatory"); ***United States v. Wilber***, 696 F.2d 79, 80 (8th Cir. 1982) ("the Privacy Act does not require notice of a specific criminal penalty which might be imposed on the errant taxpayer"); ***United States v. Annunziato***, 643 F.2d 676, 678 (9th Cir.), *cert. denied*, 452 U.S. 966 (1981) (notice in Form W-4 instructions adequate); ***United States v. Rickman,*** 638 F.2d 182, 183 (10th Cir. 1980) (Form 1040 instructions adequate).

40.14[9] ***Defendant Not A "Person" or "Citizen"***

In a section 7203 prosecution, it has been argued that the defendant was not a "person" within the meaning of the statute, which imposes an obligation to file on "any person" meeting

the necessary requirements. This argument has been dismissed as frivolous. ***United States v. Karlin***, 785 F.2d 90, 91 (3d Cir. 1986), *cert. denied*, 480 U.S. 907 (1987). A similar argument has been rejected with respect to the term "individual" in section 7201 cases. *See* ***United States v. Studley***, 783 F.2d 934, 937 (9th Cir. 1986); ***United States v. Collins***, 920 F.2d 619, 629 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 2022 (1991); ***United States v. Ward***, 833 F.2d 1538, 1539 (11th Cir. 1987). "All individuals, natural or unnatural, must pay federal income tax on their wages." ***Lovell v. United States***, 755 F.2d 517, 519 (7th Cir. 1984).

Protestors' "rejection" of citizenship in the United States in favor of state citizenship also does not relieve them of income tax requirements. *See* ***United States v. Masat***, 948 F.2d 923, 934 (5th Cir. 1991); ***United States v. Price***, 798 F.2d 111, 113 (5th Cir. 1986) (citizens of the State of Texas are subject to the provisions of the Internal Revenue Code); ***United States v. Sloan***, 939 F.2d 499, 500-01 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 940 (1992) ("strange argument" rejected); ***United States v. Silevan***, 985 F.2d 962, 970 (8th Cir. 1993) (rejecting as "plainly frivolous" defendant's argument that he is not a "federal citizen").

40.14[10] *Federal Reserve Notes are Not Legal Tender*

Some protestors have argued that because their wages were paid in Federal Reserve Notes, they need not pay any taxes on those wages. Their argument, which has been uniformly rejected, is that the notes are not valid "currency" or legal tender, and thus, those who possess them cannot be subject to a tax on them. *See* ***United States v. Martin***, 790 F.2d 1215, 1217 (5th Cir.), *cert. denied*, 479 U.S. 868 (1986); ***United States v. Buckner***, 830 F.2d 102, 103 (7th Cir. 1987); ***United States v. Brodie***, 858 F.2d 492, 498 (9th Cir. 1988); ***United States v. Condo***, 741 F.2d 238, 239 (9th Cir. 1984).

40.14[11] *Tax Protest Against Government Spending*

A protestor who contends that his refusal to pay taxes or file returns is justified by his disagreement with government policies or spending plans is not entitled to a jury instruction on his theories. In fact, arguments challenging "the constitutionality of or validity of the tax laws are precluded because they are necessarily premised on a defendant's full knowledge of the law

> attorney of all material facts which the defendant knew, (5) and acted strictly in accordance with the advice of his attorney who had been given a full report."

Cheek, 3 F.3d at 1061 (citing ***Liss v. United States***, 915 F.2d 287, 291 (7th Cir. 1990)). The Seventh Circuit held that Cheek was not entitled to the instruction because he did not seek advice on possible future conduct, but "merely continued on a course of illegal conduct begun prior to contacting counsel". ***Cheek***, 3 F.3d at 1062. Cheek did not make a full disclosure to his attorney nor follow his attorney's advice that he should obey the tax laws until told by a court that the laws were not valid. ***Cheek***, 3 F.3d at 1062.

40.14[13] ***Rule 404(b) Evidence: Proof of Willfulness***

Prior or subsequent bad acts of the defendant are often admissible to prove willfulness. Such evidence will be relevant to the issue of willfulness where, for instance, the defendant claims that he relied on the advice of others, in good faith, in filing false returns and did not know his conduct was improper. ***United States v. Johnson***, 893 F.2d 451, 453-54 (1st Cir. 1990) (evidence that defendant submitted Form W-4 in 1987 claiming more allowances than he was entitled to and did not file a return in 1987, relevant to show willfulness and absence of mistake in filing false Schedule C forms from 1982 to 1986). A defendant's attendance at protestor meetings has been held admissible to show that she knew what she was doing and knew she had an obligation to pay taxes. ***United States v. Grosshans***, 821 F.2d 1247, 1253 (6th Cir.), *cert. denied*, 484 U.S. 987 (1987).

When willfulness is an issue in a section 7203 case, prior filings may be relevant not just to show defendant's knowledge of filing requirements, but also to demonstrate a single scheme or common pattern of illegal conduct. ***United States v. Birkenstock***, 838 F.2d 1026, 1028 (7th Cir. 1987); *see also* ***United States v. Fingado***, 934 F.2d 1163, 1165 (10th Cir.), *cert. denied*, 112 S. Ct. 320 (1991). A pattern is relevant because it shows that the failure to file was not due to inadvertence, mistake, or confusion. ***Birkenstock***, 838 F.2d at 1028. Therefore, evidence of a defendant's prior and subsequent acts is probative of willfulness and should be admitted as long as it is not unduly prejudicial. *See* ***United States v. McKee***, 942 F.2d 477, 480 (8th Cir. 1990)

(citing cases); ***United States v. Upton***, 799 F.2d 432, 433 (8th Cir.), *cert. denied*, 112 S. Ct. 58 (1991) (evidence that defendant had sent tax protestor materials to the IRS and had failed to comply with tax laws in prior and subsequent years probative of willfulness). Prior tax offense convictions of the defendant may also be admissible. ***United States v. Poschwatta***, 829 F.2d 1477, 1484 (9th Cir. 1987), *cert. denied*, 484 U.S. 1064 (1988).

40.14[14] ***Probable Cause Hearings***

The government has the option, in misdemeanor cases, to charge the defendant by filing a criminal information, and issuing the defendant a summons instead of arresting him via a warrant. Protestors have argued, based on Fed. R. Crim. P. 9 and 4(a) requiring that a warrant shall not issue without probable cause, that use of a criminal summons violates their rights. The courts, however, have held to the contrary. *See* ***United States v. Saussy***, 802 F.2d 849, 851-52 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987); ***United States v. Birkenstock***, 823 F.2d 1026, 1030-31 (7th Cir. 1987); ***United States v. Dawes***, 874 F.2d 746, 750 (10th Cir. 1989); ***United States v. Bohrer***, 807 F.2d 159, 161 (10th Cir. 1986).

40.14[15] ***Costs of Prosecution***

The imposition of the costs of prosecution is mandated by most of the Title 26 tax offenses. *See* United States Attorneys' Manual (USAM) 6-4.350. The imposition of costs, as authorized, does not constitute cruel and unusual punishment. ***United States v. Dawes***, 874 F.2d 746, 751 (10th Cir. 1989). The judgment of conviction can be amended to include the costs of prosecution even after the defendant has filed a notice of appeal. ***United States v. Dennis***, 902 F.2d 591, 592-93 (7th Cir.), *cert. denied*, 498 U.S. 876 (1990).

The criminal tax statutes do not define "costs" so courts regularly look to 28 U.S.C. § 1920 for guidance on what expenses should be included. ***United States v. Dunkel***, 900 F.2d 105, 108 (7th Cir. 1990), *vacated on other grounds*, 111 S. Ct. 747 (1991). The expenses of transportation and subsistence for witnesses employed by the United States, including the case agent, may be included as part of "costs." ***Dunkel***, 900 F.2d at 108.

40.14[18] ***Conditions of Probation***

Protestors frequently challenge the conditions of probation set by the court. The imposition of those conditions is reviewable for abuse of discretion. ***United States v. Schiff***, 876 F.2d 272, 275 (2d Cir. 1989). Tax offenders are generally required to file any delinquent returns and keep current with their taxes as a condition of probation. ***Schiff***, 876 F.2d at 275; ***United States v. Warner***, 830 F.2d 651, 653 (7th Cir. 1987); ***United States v. Ramsey***, 992 F.2d 831, 833 (8th Cir. 1993); ***United States v. Shields***, 751 F.2d 247, 248 (8th Cir. 1984); ***United States v. Wolters***, 656 F.2d 523, 524-25 (9th Cir. 1981).

Discretionary conditions of probation must, however, be "reasonably related" to the goals of sentencing and involve only those deprivations of liberty and property that are reasonably necessary for such purposes. ***United States v. Stafford***, 983 F.2d 25, 28 (5th Cir. 1993) (citing 18 U.S.C. § 3563(b)). In ***Stafford***, the Fifth Circuit invalidated the requirement that the defendant give his probation officer access to "any financial information." ***Stafford***, 983 F.2d at 28. The court stated that:

> To the extent the conditions apply to tax years other than those which are the subject of this litigation, and for which Stafford may be held accountable during the period of probation, the broad obligation to provide access to *any* requested financial information interferes with Stafford's fourth and fifth amendment rights.

Stafford, 983 F.2d at 28.

The Fifth Amendment's privilege against self-incrimination will not shield a defendant from being required to file returns unless the defendant claims that the filing's contents would incriminate him by disclosing illegal income sources. ***Warner***, 830 F.2d at 655. "A taxpayer's fear of prosecution must arise from the return disclosing criminal activities independent of the return filing process itself." ***Warner***, 830 F.2d at 656; *see also* ***Schiff***, 876 F.2d at 275-76.

40.14[19] ***26 U.S.C. § 6103(h)(5) Juror Audit Information***

Under 26 U.S.C. § 6103(h)(5), an attorney from the Department of Justice involved in "any judicial proceeding" and "any person (or his legal representative) who is a party to such proceeding" may obtain from the Secretary of the Treasury information as to whether any

Tax Division policy is to oppose defense motions for early release of the jury list and continuance of trial. Instead, the government should propose *voir dire* questions to determine whether any of the prospective jurors have been the subject of an IRS audit or investigation. ***Peterson Memorandum to United States Attorneys dated September 14, 1989***, pp. 3-4. *See* Section 3.00, *supra*. However, prosecutors in the Ninth Circuit must be mindful of the case law in their circuit.

Section 6103(h)(5) requests are governed by the Internal Revenue Manual Disclosure of Official Information Handbook section 1272(22)70 *et seq*. and handled by the IRS disclosure officer in each district in coordination with the Clerk of Court. Each judicial district has established its own procedures for responding to these burdensome requests. In general, the government, in opposing defendants' motions for early disclosure or continuance, will attach an affidavit of the IRS disclosure officer estimating the time required to obtain tax information regarding each member of the jury panel. **8**

As a practical matter, the government should try to convince the defendant to stipulate to only requiring the IRS to search records for the current and five preceding years, otherwise the government will have to search microfilm records. In some districts, the court will order the Clerk of Court to mail a list of potential jurors, their social security numbers, and addresses, to the IRS disclosure officer to conduct a 6103(h)(5) search. The Court will order the Disclosure Officer to mail the response (yes or no) to the clerk (omitting the social security numbers and addresses), copies of which will be provided to the defendant and United States on the morning of trial. In the likely event that the IRS has been unable to obtain information as to every potential venireperson, the prosecutor should make a record of substantial compliance by having the Disclosure Officer prepare an affidavit describing the government's search and likelihood of

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8 A search of tax information regarding the current and five preceding years for 100 prospective jurors will generally take 5-10 business days, if the jurors' social security numbers and addresses are provided. However, information regarding some of the jurors may take longer to obtain if the juror has moved or remarried. A microfilm search of records from 1964 to the five years preceding the current year could take up to three months to perform.

obtaining any additional information, or have the Disclosure Officer available for a hearing on the IRS's compliance, and by proposing relevant voir dire questions.

40.14[20] ***Paperwork Reduction Act Defense***

The ***Paperwork Reduction Act of 1980***, 44 U.S.C. § 3501 *et seq.* ("PRA"), was enacted to limit federal agencies' information requests that burden the public. The "Public Protection" provision of the PRA states that no person "shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget [OMB] Director." 44 U.S.C. § 3512.

Protestors claim that they cannot be penalized for failing to file Form 1040 because the instructions and regulations associated with the Form 1040 do not display any OMB control number. This argument has been uniformly rejected on different theories. Some courts have simply noted that the PRA applies to the forms themselves, not to the instruction booklets, and since the Form 1040 does have a control number, there is no PRA violation. *See* ***United States v. Wunder***, 919 F.2d 34, 38 (6th Cir. 1990); ***Salberg v. United States***, 969 F.2d 379, 383-84 (7th Cir. 1992); ***United States v. Holden***, 963 F.2d 1114, 1116 (8th Cir.), *cert. denied*, 113 S. Ct. 419 (1992); ***United States v. Dawes***, 951 F.2d 1189, 1191-93 (10th Cir. 1991). Other courts have held that Congress created the duty to file returns in 26 U.S.C. § 6012(a) and "Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress." ***United States v. Neff***, 954 F.2d 698, 699 (11th Cir. 1992). *See also* ***United States v. Kerwin***, 945 F.2d 92 (5th Cir. 1991) (*per curiam*) (defendant was convicted under statutory requirement that he file return and since statute is not an information request, there is no violation of the PRA); ***United States v. Bentson***, 947 F.2d 1353, 1355 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 2310 (1992) (defendant convicted of violating a statute requiring him to file, not a regulation lacking OMB number).

40.14[21] ***Admissibility of IRS Computer Records***

Computer data evidence is often introduced in tax cases to prove that the defendant did not file returns as required. Protestors often challenge such evidence and courts routinely reject such challenges. These records may be admitted under Federal Rule of Evidence 803(10) as certificates of lack of official records. *See* ***United States v. Bowers***, 920 F.2d 220, 223 (4th Cir. 1990); ***United States v. Spine***, 945 F.2d 143, 149 (6th Cir. 1991); ***United States v. Ryan***, 969 F.2d 238, 240 (7th Cir. 1992). Such records may be self-authenticating under Rule 902 if under seal or they may be authenticated by an IRS employee. No showing of the accuracy of the computer system needs to be made to introduce the documents. ***Ryan***, 969 F.2d at 240.

The introduction of the actual transcript of account through a witness can open the witness to cross-examination by the defense about every code and piece of information contained in the transcript. In order to avoid this problem, it may be wiser to simply offer the testimony of the IRS employee that a records search was conducted and it was revealed that no return was filed.

Some courts have admitted the records under Rule 803(8) notwithstanding the fact that since it is being offered in a criminal trial and is a matter "observed by law enforcement personnel," Rule 803(8)(C) would seem to forbid its introduction under that rule. These courts have distinguished between law enforcement reports prepared in routine, non-adversarial settings and those resulting from the more subjective endeavor or on-the-scene type investigations of a crime. *See* ***United States v. Wiley***, 979 F.2d 365, 369 (5th Cir. 1992); ***United States v. Wilmer***, 799 F.2d 495, 500-01 (9th Cir.), *cert. denied*, 481 U.S. 1004 (1987). In ***United States v. Hayes***, 861 F.2d 1225, 1230 (10th Cir. 1988), the Tenth Circuit agreed with the Fifth and Ninth Circuits that Rule 803(8)(C) does not compel the exclusion of documents which could properly be admitted under Rule 803(6) if the authoring officer or investigator testifies at trial, thus protecting the defendant's confrontation rights, which is the rationale underlying Rule 803(8).

40.14[22] ***Lack of Publication in the Federal Register***

Protestors have occasionally argued that Form 1040 and its instructions constitute a "rule" for purposes of the Administrative Procedure Act (APA) and therefore must be published in the

Federal Register. This defense has been deemed "meritless." ***United States v. Bentson***, 947 F.2d 1353, 1360 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 2310 (1992). It is the tax code itself, which is statutory, not regulatory, that imposes the duty to file a return. *See also* ***United States v. Bowers***, 920 F.2d 220, 221-23 (4th Cir. 1990) (APA protects only those with no notice; to reverse conviction court would need to find that the statutes provided no notice of obligation to pay taxes, the IRS forms and offices were secret although 2 million Americans know about them, and the defendants, who had previously filed returns, had forgotten about the required forms and the IRS offices).

40.14[23] ***IRS Agent's Testimony and Sequestration***

IRS agents usually testify during the course of a tax trial. Often such testimony will consist of summarizing the government's documentary evidence and providing tax requirements and calculations based on that testimony. Provided the agent has been properly qualified as an expert witness, would be helpful to the jury, and does not offer any opinion on the ultimate issue of guilt, such testimony is fully admissible. *See* ***United States v. DeClue***, 899 F.2d 1465, 1473 (6th Cir. 1990); ***United States v. Beall***, 970 F.2d 343, 347 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1291 (1993); ***United States v. Mann***, 884 F.2d 532, 539 (10th Cir. 1989). An IRS agent who does testify as an expert/summary witness should be allowed to remain in the courtroom during the trial, in addition to the case agent under Fed. R. Evid. 615. *See* ***United States v. Lussier***, 929 F.2d 25, 30 (1st Cir. 1991).

40.14[24] ***Attorney Sanctions***

Attorneys representing protestors will sometimes engage in "inappropriate and disruptive behavior." Such behavior is sanctionable. *See* ***United States v. Dickstein***, 971 F.2d 446, 447 (10th Cir. 1992) (revoking defense counsel's *pro hac vice* status); ***United States v. Summet***, 862 F.2d 784, 786-87 (9th Cir. 1988); ***United States v. Collins***, 920 F.2d 619, 633-34 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 2022 (1991); ***In re Becraft***, 885 F.2d 547, 550 (9th Cir. 1990) (imposing $2500 sanction for filing frivolous petition for rehearing).

until the defendant completes the required forms. ***United States v. Krzyske***, 836 F.2d 1013, 1018-19 (6th Cir.), *cert. denied*, 488 U.S. 832 (1988).

40.15[2] ***Jury Nullification***

"Jury nullification" is the concept that a jury has the right to ignore a judge's instructions on the law in a trial if they feel the law is unjust and acquit the defendant even if the government has proven guilt beyond a reasonable doubt. Protestors often argue that the authors of the Bill of Rights intended the Sixth Amendment to incorporate such a right. There is no constitutional right to a jury nullification instruction. ***United States v. Krzyske***, 836 F.2d 1013, 1021 (6th Cir. 1988) (upholding court's response to jury's inquiry about meaning of "jury nullification" that "[t]here is no such thing as valid jury nullification. Your obligation is to follow the instructions of the court as to the law given to you."); ***United States v. Drefke***, 707 F.2d 978, 982 (8th Cir.), *cert. denied*, 464 U.S. 942 (1983); ***United States v. Buttorff***, 572 F.2d 619, 627 (8th Cir.), *cert. denied*, 437 U.S. 906 (1978); ***United States v. Powell***, 955 F.2d 1206, 1213 (9th Cir. 1992); ***United States v. Irwin***, 561 F.2d 198, 201 (10th Cir. 1977), *cert. denied*, 434 U.S. 1012 (1978). *See also* ***United States v. Dougherty***, 473 F.2d 1113, 1130-1137 (D.C. Cir. 1972) for a thorough discussion of the issue of jury nullification and its historical origins.