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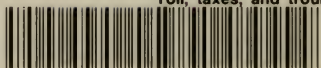


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TOIL, TAXES AND TROUBLE



# Toil, Taxes *and* Trouble

By

Vivien Kellems

*With an Introduction by*

RUPERT HUGHES

*New York*

E. P. DUTTON & CO., INC.

1952

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TO MY MOTHER  
LOUISA FLINT KELLEMS  
A PIONEER WOMAN  
WHO UNDERSTOOD AND LOVED HER  
AMERICAN HERITAGE  
OF FREEDOM

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## *Preface*

VERY OFTEN in making friends with a new book, I dip into it at random, reading bits here and there, or even turning to the last chapter to see how it ends, or what the author concludes and recommends. If this sampling proves sufficiently interesting, I then begin at the beginning and read straight through. Undoubtedly my book will be subjected to the same kind of exploratory treatment by many of its readers.

Literary friends who know a great deal more about writing books than I'll ever know have suggested that this one start with the story of the withholding tax, but try as I would, I just could not make it begin that way.

Throughout history taxation has ever posed the one great question. It has been the goad which has driven oppressed people to free themselves. From taxation have come the longest and bloodiest wars, including our own Revolution. By undermining the rights of private property, the foundation of civilized government, it has destroyed one civilization after another, and bids fair to finish the one in which we find ourselves.

Therefore the history of our country, as of any country, can be written in its tax bills. Everything from the construction of a huge Tennessee Valley Authority to the building of shower baths for Egyptians, is first authorized by our Congress in a revenue bill. Unfortunately, many Americans think that the solution of any problem, national or international, is another appropriation by Congress.

A knowledge and appreciation of our original tax system and an abhorrence of the monstrosity which we call our present federal tax structure, are essential to an understanding of the withholding tax fight. Therefore the only logical starting point is at the beginning of our nation.

## INTRODUCTION BY *Rupert Hughes*

ON LINCOLN'S birthday in 1948, the name of Vivien Kellems was known only to the limited circle of her own friends and acquaintances. On Washington's birthday nearly everybody in the United States was talking about her.

While visiting her brother in Los Angeles, Miss Kellems made a speech at the Rotary Club on February 13th, and announced that, on February 20th, her factory in Westport, Connecticut, would defy the Government and refuse to deduct and pay the Withholding Tax from the pay envelopes of her employees.

She said that the law itself was "illegal, immoral, and unconstitutional." She asked the Government to prosecute her and thus bring a test case before the courts.

Like other martyrs to a high and highly-held principle she offered herself as a sacrifice for a cause she believed sacred.

Though this proclamation by Miss Kellems won nationwide applause and approval, most of the public thought of her as a cantankerous female hunting notoriety and emboldened by a womanly ignorance of the law, and the mysteries of taxation.

The Government refused her February challenge to a test case, but in May it sent four Internal Revenue agents to her factory to demand the payment of the taxes she had not withheld. She replied that the money should be sought from her employees, to whom she had paid it as their earnings agreed upon. Though she knew, and the agents knew, that this tax had been already and promptly paid by her employees, the agents claimed the full amount as a 100 per cent penalty for failure to deduct. When she still refused to pay, the agents, carrying no court order at all, went to her bank and intimidated it into surrendering the full amount, \$1,685.40.

There was great public indignation at this highhanded procedure. Miss Kellems continued her policy; but the agents did not reappear for over a year. Then in August, 1949, they returned, now demanding \$6,100.

Having already paid that amount to her employees, and having positive proof that they had paid it to the Government, Miss Kellems once more refused to knuckle down. Whereupon the agents went to her bank and seized the \$6,100 from her funds there.

When Miss Kellems demanded a refund, it was refused. And, now it was she who sued. She filed her claim with the Federal District Court in New Haven in January, 1950. But it was not until February, 1951, that she succeeded in securing a trial. Even then she was not allowed to test the constitutionality of the law, though she did win a refund of the money the Government had torn from her bank without even the pretense of giving her her day in court.

By this time Miss Kellems' name had become a household word, and she was winning multitudes of ardent supporters by her speeches and writings. In this conquest she was greatly aided by her personal beauty, her magnetism, her wit and her fiery eloquence.

But still, even those of us who cheered her and wished her well, thought of her as a sort of Joan of Arc, who had flashed out of obscurity. We were sure she knew no more about the law than Joan of Arc did.

I myself was so surprised when I learned the truth about her and her profound knowledge of the law that I felt it important to place the facts before the public in a brief sketch of her life—a life that has already had an important effect on our national thinking. And will undoubtedly have more.

It is a striking fact that we Americans, though we boast of our individual independence and equality with

anybody on earth, are peculiarly meek and sheeplike before the authorities that we ourselves have elected and may dismiss.

Riots and rebellions against oppressive laws and police work are left to the subjects of monarchies and tyrannies, while we dauntless Yankees do as we are told.

But there are exceptions; and the spirit that moved Miss Kellems to her one-woman crusade was built up by her remarkable ancestry and education.

Richard Kellam in 1636 settled on the eastern shores of Virginia, having come over from Allington, in Nottinghamshire, England. The spelling of his name, as usual, was later changed. His descendants intermarried with some of the best-known families in Virginia: The Wyatts, Randolphs, Jeffersons, Savages, Garlands, and Custises.

Miss Kellems is directly descended from the Randolphs of Virginia; and collaterally from Thomas Jefferson.

Eleven of her ancestors fought in the Revolutionary War, and members of her family served in every war since then. Her brother, Kenneth Kellems, was the first boy from Oregon to be killed in World War I. Her brother, Homer F. Kellems, came out of World War II a colonel.

As if the glorious traditions of their Virginia heritage were not enough, her people took an early part in the great Westward "On to Oregon" hegira. Her maternal grandfather, John Lewis Flint, drove a covered wagon across the plains.

Miss Kellems' father entered the church. He married a student at the University of Oregon, and then determined to complete his own education. He went to Drake University in Des Moines, Iowa, and not only worked his way through college but supported his wife and a growing family.

Vivien Kellems was born in Des Moines, June 7, 1896, while her father was still a student. She was the only daughter,<sup>e</sup> but in time she had six brothers, to whom she gives the credit for most of her fighting spirit.

After graduating at Drake, her father settled in Eugene, Oregon, where he taught in a small theological college while preaching every Sunday. And he sent all of his children to the State University in Eugene.

His eyesight was so bad that his wife read all his lessons to him while he was going through college. Later, she was of vital help in preparing his sermons. She had given up her own university studies to marry him; but when her daughter, Vivien, reached her junior year at the University, the mother resumed her studies, and mother and daughter graduated together in the class of 1918.

The children of such remarkable people do not always inherit the best traits of their parents. But Vivien Kellems was not content with the degree of Bachelor of Arts. She not only returned to the University and earned the degree of Master of Arts, but went to New York and spent a year at Columbia University studying for a Ph.D.

And she earned it. But she never got it, because of the requirements that a thesis must be not only prepared but published. This would have cost only a thousand dollars in those days, but Vivien could not raise the amount.

It would be no more than justice if this present book, with its scholarly exposition of the history, theory, and practice of taxation, and its thrilling life story, should be accepted as that thesis. For Columbia University to vote the author her belated Ph.D. now, would be both a deed of justice and a handsome gesture.

It is a striking, significant and important fact that, as a college girl, Vivien Kellems majored in Economics during both her undergraduate and graduate courses. Her teacher in this field was Dean James Gilbert, himself a

Ph.D. from Columbia. She pays high tribute, not only to his knowledge of economics, but also to his aptness in Biblical references, "his rapier-like wit, and his beautiful, flexible English."

Dean Gilbert encouraged Miss Kellems to go on to Columbia, where her brother, the Reverend Doctor Jesse Randolph Kellems of the Westwood Hills Christian Church in California, paid her expenses, for which she was deeply grateful.

In Columbia Miss Kellems specialized in taxation, of all subjects for a girl! Her special teacher was Dr. Edwin R. A. Seligman, a world-authority on public finance. She studied also labor problems under Professor Seager, and Marxian socialism under Professor Simkovitch, but she found strange fascination in the dreadful field of taxation.

When, therefore, the Internal Revenue Department sent four of its roughest and toughest agents to teach this crazy woman in a Connecticut village the rudiments of taxation, they were as startled as the hunter who goes out to inspect his squirrel trap and finds a grizzly bear there.

And thereby hangs another tale. One of Miss Kellems' remarkable brothers was Edgar, who was an inventor among other things. He devised a cable grip that was a great improvement on anything developed up to 1927. A cable grip is not only used for pulling electrical cable cars through underground conduits, but it has countless other important uses.

The poet Tennyson has a Vivien who outwitted the ancient magician Merlin, and Vivien Kellems was well-named. Now that her gifted brother had invented a cable grip, he told his sister, Vivien, all about it. Up to then she had never heard of a cable grip. When Edgar explained it to her she thought it an excellent idea.

So this amazing and unpredictable woman decided to manufacture it! She not only opened a factory, but she



traveled all over the United States, Central and South America and Europe. She even went to Australia.

The factory is comparatively small, employing only seventy-five people; but its cable grips pulled the high-tension cables in the famous English Grid System, the equally important 1808 miles of cables that bring power from the Hoover Dam to Los Angeles, as well as underground cables in Barcelona, Shanghai and other far-off places.

A vivid picture of Miss Kellems in action is given in a letter of hers:

I have been in and out of manholes all over the country, and usually stop traffic when going down or emerging. The hottest manhole was in Honolulu, where cold air had to be blown in all the time we were underground. The coldest was in Chicago, where I wore a mink coat.

During World War II our cable-grip principle was adapted to every war cable. We are doing the same thing now for the new defense program.

During World War II we lifted all the shells, everything from the 76 mm. to the 16" Navy projectile, which was coated with a thick covering of grease. All the cables on battleships were secured permanently with our grips. I enjoyed describing to General MacArthur how they were fastened in the firing turrets of the battleship *Missouri*. Seventy-five women made two million small ones for the Signal Corps during the war.

Many and varied are the uses of the cable grip, but, most of all, the cable-grip business is fun, because something new is always popping up.

What are we going to do with a beautiful, fashionable, and vivacious woman who goes through college delighting in economics, spends two postgraduate years reveling in taxation, and then finds it "fun" to manufacture cable grips and go around the world and down manholes demonstrating them?

You can imagine the dazed consternation of those Government revenue agents, their lawyers and several judges, when they planned to explain taxation in words of one syllable to a silly woman, only to find themselves confronted with this charming monster of information, this joyous yet grim master of lore that they had never even dreamed of.

The crusade she began so modestly, though so fearlessly, has spread until she has become a figure of national and historic importance.

Her first defiance of the Withholding Tax Law was based on a woman's practical common sense. She maintained that she had no right to withhold from her employees the tax the Government dictated. Then she put the Government in the ridiculous position of demanding that she be punished for not paying it every week, other people's taxes, while still other people paid their taxes only twice a year. She jockeyed the Government into trying to punish her for not paying it moneys which it had already received long before.

From such a position, so bravely and unbudgeably upheld, she has gone on to the high position that the whole Income Tax Law is un-American and should be repealed.

And she has organized a movement that is sweeping the nation in demanding that repeal. She calls the crusaders the Liberty Belles and Boys, using as an emblem the famous old Liberty Bell, which proclaimed the Liberty that the Income Tax is stifling.

To many people there is something hopeless about undertaking to repeal the Income Tax Amendment.

But the Prohibition Amendment was repealed in spite of even more determined upholders of it. Conceived as a "noble experiment" to end the infinite evils of alcoholism, the Amendment, by a tragic irony, multiplied the

evils it attacked. It undoubtedly taught the younger generation a new sin, and made drunkenness common among boys and girls. It also built up empires of murder and terrorism, ruled by gangsters who collected millions of dollars while assassinating hundreds, corrupting the courts and the police, and turning the majority of the citizens into lawbreakers and bootleggers.

So the Income Tax, conceived in the charitable view that those who have the highest income should pay the highest taxes, has not only made perjury and subterfuge almost universal, but has, like the Prohibition Amendment, opened a new world for wholesale fraud with billion-dollar profits.

The whole nation is now reeling from the exposures crowding the newspapers with more and more shocking evidences of corruptions in and out of the Internal Revenue Department. As usual in our country, when a scandal grows unbearable we lighten it with laughter.

Miss Kellems tells how she wore a mink coat when she went down a manhole in wintry Chicago to show the value of her cable grip.

But recently this very term "mink coat" has taken on a tragic-farcical connotation from the mink coats that were given to the secretaries and wives of important people with Internal Revenue influence.

To those who still believe that the Income Tax Law serves a good purpose; and to those who dislike it but think its repeal impossible, I commend the reading of this book.

The author is one of the most brilliant and noble of American women, and I am convinced that the reader of this book will not only be sadder and wiser, but will be captivated and thrilled by it. Written by a woman, it should appeal especially to women, as well as to men.

The first chapter in this book gives Miss Kellems'

speech in Los Angeles, which announced her epochal program.

Now that women have the vote and an enormous majority over the votes of the men who put the nefarious amendment into the Constitution, it is the duty of the women to take it out. This will restore the Constitution to its once-majestic dignity, return the American people to sanity, and integrity, and throw back one more example of the progress here of a creeping socialism whose gradual victories are appalling to contemplate.

Before the Income Tax was foisted upon us, it was accepted without question that "a man's home is his castle." Now he and his home and his offices have "the privacy of a goldfish bowl."

## CHAPTER I

# *“That All the World Should Be Taxed”*

MY ACTION in breaking the law forcing employers to collect withholding taxes from their employees was the culmination of long pent-up resentment at Federal usurpation of the taxing power, rebellion against the destruction of the Federal Tax System, so carefully designed and perfected by the brilliant men who wrote our Constitution, and realization that something must be done to make the people understand the ultimate end of the primrose tax path we are treading.

The announcement of my intention to break the law was made in a speech before the Los Angeles Rotary Club, on February 13, 1948, and the first time this tax money was left in our employees' pay envelopes was on the following Friday, February 20, 1948. However, due to the reluctance of the Federal Government to face the issue, it was not until January 23, 1951, three years, eleven months, and seventeen days later that I finally sat on the witness stand in the Federal District Court, in New Haven, Connecticut, and heard my lawyer, Frank McGuire, say:

“Miss Kellems, will you read Exhibit A?”

I picked up the papers with trembling hands, and in a low voice began to read:

“And it came to pass in those days that there went out a decree from Caesar Augustus, that all the world should be taxed. And all went to be taxed, everyone into his own city.”

It has frequently been said that history repeats itself, and today, we are witnessing a repetition of the act of Caesar Augustus two thousand years ago. It all began in 1913, when we issued a decree “that all the world should be taxed,” every man in his own city. For in that year we adopted the Sixteenth Amendment to our Constitution:

“The Congress shall have power to lay and collect taxes on income from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

And when we adopted this income tax amendment, we departed from our constitutional method of taxation.

For one hundred and twenty-five years, the Federal Government had levied taxes and they were always apportioned among the several States. Why do you suppose the Constitution is so specific and so explicit that Federal taxes shall be uniform and apportioned among the States? For one reason only. Our forefathers were determined to build a republic, with equal opportunity and equal responsibility for each and every one of us. They knew that the power to tax is the power to destroy, and they did not wish to have one group of citizens, or one part of the country penalized for the unfair advantage of another.

How wise and farsighted they were! For one hundred and twenty-five years this was our traditional, constitutional system of taxation, and under it we built the richest, most powerful nation in the world. We developed and maintained for the majority of our people, a standard of living, undreamed of in any other country, the hope and the envy of all the world.

And then what happened? We chucked our proved system of taxation out the window, and we passed the income tax. Gone was our uniformity, gone was our apportionment among the States. And with uniformity and apportionment went a great deal more—our fundamental American rights.

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At first, we started with a tiny little one per cent on all incomes. That being more or less painless, we raised it to 2 per cent. And then 5 per cent, and then 10 per cent, and then 20 per cent, and then 50 per cent, and up and up and up to 90 per cent and in 1943, due to that clever so-called 75 per cent forgiveness trick, some citizens in this country were taxed more than 100 per cent of their incomes. Is it a tax or is it confiscation?

But that isn't all. Being so intrigued with the income tax, we decided that if one tax is good, two are better and we proceeded to pass the capital gains tax which slapped business right in the face and sent it reeling into the corner. And to salt it down, we added the idiotic capital stock tax. And still not satisfied, we made sure that every dividend should pay two taxes—one by the corporation and another by the stockholder, if and when he got it. And right in the middle of this tax orgy, we elected an Administration that made a wonderful discovery: The world was its little oyster to open.

Up to this point we thought we had done pretty well, but we soon realized we were just pikers. Taxes? We didn't know the meaning of the word, but we soon found out that the New Dealers did. Taxes? A new one every day or two! They rained upon us as the gentle dew from Heaven. “Tax and tax, spend and spend, elect and elect,” quoth the delighted Harry Hopkins. Soak the rich in Illinois, or New York, or Connecticut and buy some votes in Oregon or Nevada or wherever they are needed. The formula worked like magic for political purposes but it threw our country into the deepest and most tragic depression of our history. The depression of the 1930's was a *tax depression*. Business simply could not function. It took a world-wide war, billions of dollars, and the precious lives of thousands of our boys to pull us out of it.

But with the adoption of the income tax, we lost something more precious than uniformity and apportionment among the States. Let us go back to our Fourth and Fifth Amendments: “The right of the people to be secure in their

persons, houses, papers and effects against unreasonable searches and seizures shall not be violated . . ." and ". . . no person shall be compelled to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

These two Amendments insured to the citizens of the United States the right of *privacy*. It was ours in every sense, until the passage of the Sixteenth Amendment, but with the income tax, we lost this precious right. If I say, "No," you cannot come into my house without a search warrant, and before you can secure such a warrant, you must advance good and sufficient cause for searching my house. But the Income Tax Inspector can come into my home or yours. In the name of the Income Tax, the Federal Government can search and seize every paper you own, it can force you into court, to be a witness against yourself, and if you are not able to pay the tax, it can sell you out, lock, stock and barrel. The Income Tax is the strongest weapon ever placed in the hands of an unscrupulous government, and as long as that Amendment is a part of our Constitution, our freedom is in jeopardy. Our right to privacy, so carefully insured to us by the Fourth and Fifth Amendments, has vanished.

But taxes are like strong drink. They grow upon you. If income taxes are good for some of us, they must be good for all of us. If one citizen is to pay an income tax then every person who has an income should also pay his proportionate share. With which conclusion I agree. But I disagree with the premise—I don't think an income tax is good for anyone, the taxpayer or the Government.

But this time we really did a job. Under the hypnosis of war hysteria, with a pusillanimous Congress rubber-stamping every whim of the White House, we passed the withholding tax. We appointed ourselves so many policemen and with this club in our hands, we set out to collect a tax from every hapless individual who received wages from us. We became our "brother's keeper."

From time immemorial the tax collector has been feared



and hated. The baron of old used to farm out his tax collections, paying his agent a percentage of what he was able to wrest from his impoverished subjects. It is not accidental that this job was placed upon the employer. A crafty Administration which thrived upon class hatred "planned it that way." Here was another wedge to drive between the employer and the employee, another opportunity to cause misunderstanding and dissension. The employee did not blame his government, he blamed his employer, and even today thousands of workers in this country still think it is a dirty trick of the wicked capitalists.

But we weren't as clever as the barons' tax collectors. We didn't pay ourselves for collecting taxes, we didn't even reimburse ourselves for our expense in collecting taxes, we made ourselves responsible for other people's taxes and we penalized ourselves for not collecting them. Let us read the law: "Every person required to deduct and withhold the tax . . . from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. However, if the employer . . . fails to deduct and withhold the tax and thereafter the income tax . . . is paid, the *tax shall not* be collected from the employer." In other words, the Government won't collect it twice—isn't that big-hearted? But there is more. "Such payment does not, however, . . . relieve the employer from liability for penalties or for failure to deduct and withhold within the time prescribed by law." So, if your employee does not pay his tax, you have to pay it, and if he does pay it but you do not deduct and withhold it, you can be fined and sent to prison. This in free America!

The most un-American phrase in our modern vocabulary is "take home pay." What do we mean, "take home pay"? When I hire a man to work for me we discuss three things: the job to be done, the hours he shall work, and the wages he shall receive. And on Friday when he receives that pay

envelope, we have both fulfilled our contract for that week. There is no further obligation on either side. The money in that envelope belongs to him. He has worked for it and he has earned it. No one, not even the United States Government, has the right to touch it. Who dares to lay profane hands upon that money, to rudely filch from that free man the fruits of his labor, even before the money is in his own hands. This is a monstrous invasion of the rights of a free people and an outrageous perversion of the spirit of the Constitution. This is the miserable system foisted upon the people of our country by New Deal zealots and arrogant Communists who have wormed themselves into high places in Washington. This system is deliberately designed to make involuntary tax collectors of every employer and to impose involuntary tax servitude upon every employee. We don't need to go to Russia for slavery, we've got it right here.

The employer or professional man, not on a salary, is allowed a bit of time in which to prepare his accounting and pay his tax. But from the salaried worker or wage earner that pay envelope is rudely snatched from the paymaster's hand and those taxes taken in advance out of today's butter or tomorrow's hospital bill. This withholding law has made a greedy, avaricious monster out of the Federal Tax Grabber and an unwilling Simon Legree out of the wretched employer forced to do his dirty work for him.

Many otherwise patriotic citizens have lent themselves to this system because they mistakenly believed that it would create greater tax consciousness and a sentiment for economy in our Federal expenditures. Even if this were true, the system is still wrong. Shall we compromise our fundamental American principles for expediency? The majority of workers today figure their wages by the money in that pay envelope. And so they should. That 20 per cent is disregarded completely—it has been shifted to the shoulders of the employers and is nothing more or less than a 20 per cent payroll tax which is added to the price of every manufactured article. Labor doesn't need a raise. All labor needs is to get what labor earns. Lop off that 20 per cent payroll tax, labor will

have its raise, and the inflationary spiral will take a sharp dip down. It's as simple as that.

And how about the millions of dollars spent by employers every year in collecting that tax? If it costs my little company as much as it does to deduct, withhold and pay that tax, what must it cost a big company such as General Motors? Why should we bear this additional expense? The Government gets the tax, doesn't it? Well then, how about the Government paying for collecting it? I have searched the Constitution through and can find no power or right granted to the Federal Government for this mass picking of the pockets of the American people.

The very men who shout the loudest against the demands of the Union for the checkoff have connived and conspired with the New Dealers for this vast *Government Checkoff*.

Just how far are we going? Are we going to deduct contributions for the church, dues for the lodge, money for the grocery bill, the electric light and coal bill? Shall we buy clothes for the children and pay tuition for their schooling? Once having started, where do we stop? If this is Russia, then let's say so. Let's just hand the worker an envelope full of coupons at the end of each week and call it a day!

Paying taxes is a duty, a responsibility and a privilege of citizenship. Without taxes we can have no government. However I do not exercise other duties, responsibilities and privileges of citizenship for my employees. I do not vote for them, I do not form political opinions for them, I do not select a church for them, I do not pay real estate taxes for them. They are all free American citizens, thoroughly capable of performing all of the duties and responsibilities of citizenship for themselves. And so, from this day, I am not collecting nor paying their income taxes for them.

It is about four o'clock in Westport. By this time our payroll has been distributed. The income tax of each individual has been deducted and withheld, but it is the last time the Kellems Company will perform this service for the Government. I have more confidence in my employees than has their Government. I believe that every person in my

employ will pay his taxes as long as we have an income tax law, but if he does not, that is a matter between himself and his Government, exactly as his religion is a matter between himself and his God. I have no right to inject myself into either relationship.

If High Tax Harry wants me to get that money for him, then he must appoint me an agent for the Internal Revenue Department, he must pay me a salary for my work, and he must reimburse me for my expenses incurred in collecting that tax. And I want a badge, too. I am not a tax collector and if an American citizen can be fined and thrown into prison for not collecting taxes from his workers, then let's know about it now. Let's see what the court has to say about this law—it's not the first one passed in violation of the Constitution.

The decision to take this step has not been made hastily nor has it been an easy one. There are many sincere people who will censure me for breaking the law. Knowing this and having been through one New Deal smear and persecution, I still break this law, deliberately. Before I reach Westport the income tax inspector will be ensconced in my office, completely surrounded by my private papers, my company books and my canceled checks. He will greet me at the door, righteous indignation all over his face. Well, having gone through it before, I can go through it again. Because you see I made a discovery. Like all bullies and bloodsucking parasites, those mangy little bureaucrats down in Washington are at heart yellow cowards. So no matter what they do I'm standing on my rights until the court hands down its verdict.

As in the life of each individual there occasionally comes a moment of grave decision, so in the life of a free nation comes a significant moment, fraught with fearful consequences. We have reached such a moment in our development. Free people preserve their freedom and rid themselves of tyranny only by resistance and by breaking the law. We have a country because our forefathers defied a tyrant and broke the law. They broke tax laws. Rather than pay a tax

they threw the tea into the harbor. They refused to pay a stamp tax. They poured their whisky down the drain rather than pay a tax on it. An American is aroused indeed, when he will sacrifice his liquor! Every man who signed the Declaration of Independence was a lawbreaker and a rebel. He broke the law, but he founded a nation. Thousands of patriotic American men and women spirited Negro slaves across the Canadian border. They broke the law but they freed a race. Thoreau, one of our most revered and honored philosophers, refused to pay a tax and went to prison. He broke the law but he saved his honor, and while in prison, he wrote that immortal document "Civil Disobedience." It was the reading of "Civil Disobedience" which determined the whole course of Gandhi's life. Brave American women suffered humiliation and imprisonment when they dared to defy the Government. They broke the law but they won the vote and freedom for their sex.

One night in the spring of 1947, a group of courageous women, about one hundred of them, gathered in my shop in Westport and at ten o'clock went to work. We were free American citizens prohibited by law from working after ten o'clock at night and before six in the morning. We broke the law but we gave back to the women of Connecticut their constitutional right to work when they please.

Did you ever break the prohibition law? Ever make any bathtub gin? Ever get a ticket for speeding? What is the difference between breaking the speed law and breaking the income tax law? A lot. For one you get slapped on the wrist with a small fine; for the other you get slapped in the jug with a big fine. The penalties should be reversed. Speeding may mean loss of life but cheating on the income tax means only loss of money. However, the New Deal has always valued American money more than American lives although it has spent both with impunity.

Unjust and tyrannical laws always breed contempt and evasion. Just as millions of Americans made, and sold, and drank liquor under Prohibition, so today millions of Americans are lying, and cheating, and evading the income tax.

It is no more possible to enforce the income tax law than it was to enforce the prohibition law. We couldn't plug those liquor leaks and we can't plug these tax leaks. We are losing billions of dollars in unpaid taxes and the basis of business is rapidly shifting from credit to cash. Everything from apartment houses to fur coats is being sold for cash. We have become a nation of tax collectors, tax evaders and craven cowards. So, he who is without sin, let him cast the first stone.

Our forefathers bequeathed to us a heritage of freedom. Implicit in that bequest was the obligation and the responsibility to pass that freedom on to our posterity, unimpaired. What greater indictment can be made of our generation than that we have permitted that freedom to slip between our fingers; we have allowed despots and tyrants to tax it away from us. We cannot pass it on, in the American tradition, to our children who have every right to receive that freedom, so carefully guarded for us by our ancestors. We have failed in that sacred trust.

The whole country is confused and discouraged, no longer is there incentive and ambition to work, to achieve success, and to set aside savings for the future. Bombarded by ceaseless propaganda, robbed of his just earnings, the average American is like the worm ready to turn. All over this land there is one burning topic of conversation—taxes. A ground swell of seething resentment is growing into a tidal wave that may well engulf the tax planners, the tax grabbers and all their kind. Americans will bear a lot and are slow to anger but as this treasonable plot to sell us out unfolds before their eyes, they realize that this is not the ordinary corruption, mismanagement and bad government we have known in other periods of our history. This is something far more sinister. The destruction of the capitalistic system by increasingly heavy income taxes is the purest Marxian doctrine, and Lenin followed his great teacher, when in 1924, he declared that the United States would spend itself into destruction. We are becoming aware that these ruinous taxes are not accidental, they are not even a result of the war;

## “That All the World Should Be Taxed” 27

they have been deliberately saddled upon our backs as a part of a plot of the Communists to take us over. Bankruptcy and national suicide stare us in the face.

How much longer are we going to take it? Is there no more good, old-fashioned American courage, or have we become a nation of spineless jellyfish? Are we worthy of the sacrifices of our forefathers or are we the silly suckers the rest of the world thinks us? There is no time to lose. We must strike now. *We are the Government*. We, the people, are still the strongest thing in our country and we can still get what we want. We just have to want it hard enough. We have fought and won a global war to free the whole world and have succeeded only in bringing chaos and misery to that world and in making tax slaves of ourselves.

So let's repeal the income tax. You think it can't be done? If we left it to you men, it couldn't. But I'll tell you what's going to happen. We women are going to repeal it. We got you out of that prohibition mess, didn't we? Well, we'll dig you out of this one. But I want to remind you that we didn't vote for either one—they were both exclusively your ideas. So we'll get you out once more but for goodness' sake, the next time you get such a brain wave, will you please tell us so we can stop you in time!

You see we women have more to lose in this situation than you men, we own most of the assets of the country. Approximately 70 or 80 per cent of the wealth of the United States is in our little, lily-white hands, and if you dear, sweet men don't start taking care of yourselves, we'll soon own it all. You work yourselves to the bone and along about forty or fifty, you pop off with heart disease. And not content with that, ever so often you have a war and stand up and shoot each other. Just keep this up and it won't be long until we own and run the whole country. And I'll give you three guesses as to how many income taxes we'll have.

Because we women are just about fed up with all this nonsense, so-called socialized medicine, federal aid to education and all the rest of this paternalistic claptrap, designed to make us incompetent dependents upon the Government.

All we want is for the Government to give back to the American people the money which is rightfully theirs, the money for which they work and which they earn, and we'll pay our own doctors' bills, we'll educate our own children, and we'll once more become self-respecting, self-reliant citizens. And, incidentally, we'll stop spending half our time filling out ten thousand silly income tax returns, questionnaires and forms which will give us more time in which to make more money—for ourselves. Of course, this will automatically get rid of thousands of form makers, form readers, form filers and tax collectors but we're not going to shed any tears about them. They can go out into private life and get productive jobs like the rest of us. With them off our backs we'll save thousands of dollars and give ourselves another tax reduction.

We women are simple people. We can't understand why the Government shouldn't first determine its income and then live within it. Why does it pass the budget first and then run out and see where it's going to get the money? Right now the Senate won't act on the tax bill until it sees what the budget is going to be. We believe that instead of passing Mr. Truman's supercolossal budget the Senate should first give us a whopping, big tax cut, right across the board, and then tell Mr. Truman how much money he can spend. That's what we do. We first find out how much money we're going to have and then we decide what we'll spend and if that income doesn't mean fur coats and diamond rings, well then, we just don't have fur coats and diamond rings. And we think it's time the Federal Government cut out fur coats and diamond rings for a spell, and concentrated upon meat and potatoes.

And so may I be very impolite and close this little talk with a few words, not to you, but to another audience, a vast, unseen audience, many not within sound of my voice. I'm speaking to women, millions of American women; to every woman whose husband comes home at the end of the week with 20 per cent of his wages taken out of his pay envelope, to every woman worried and harassed over the



mounting grocery bill, to every mother wondering how to buy a little boy a new pair of shoes, to every mother frantic with fear over a sick child, unable to pay a competent doctor. Women, women of America, let us band together! Let us rise up and say we will take no more of it. Let us write, let us wire, let us telephone our Congressmen, let us march on Washington, if necessary, but let us demand that this monstrous, wholesale robbery of the American people come to an end!

MR. NEULAND: (*Springing to his feet*) If your Honor please, I move it be stricken entirely from the record.

THE COURT: The motion is denied. But I will instruct the jury that they may consider the address as of the date at which it was given, for any bearing that they may deem it to have on the good faith of the plaintiffs' belief that the Withholding Act was invalid. Understand there is no issue here as to whether the Withholding Act is *unconstitutional or desirable*. The desirability of the tax is a question for the Congress elected by the people. Our only question is whether these plaintiffs had good cause for believing that it was invalid.

THE COURT'S CHARGE TO THE JURY: Now, ladies and gentlemen, let me make it plain it is not for the jury in this case to decide a question of law such as the constitutionality of a statute. Neither is it for the jury, or the Court, to take it upon themselves to pass upon the wisdom of statutes enacted by lawful constitutional process. We are here participating as citizens in the judicial branch of the Government. We are not legislators, duly elected to Congress, and we are not executive officers, or, as the plaintiffs seem to call them, "bureaucrats." I repeat, we are acting in the Judicial Department and it is our task here to perform a judicial task. The immediate task is to make a finding of facts on evidence submitted in open court, namely, was the conduct of the plaintiffs willful? Was belief that the Act was unconstitutional reasonable cause for violating the statute? That is our narrow task.

As to this, I charge you there are two main points to consider. First: were these expressed beliefs of the plaintiffs honestly and sincerely held? If on that question, your finding should be no, if the plaintiffs have not convinced you of their sincerity, your verdict should be for the defendants. If, however, you find that the plaintiffs are sincere and honest in their beliefs, then you should pass on to consider the second indispensable element of the plaintiffs' case, an element which they must establish to be entitled to recovery. For to prove a lack of willfulness it is not enough for the plaintiffs to prove merely an honest belief that the Act was invalid. They must also prove that they had *reasonable cause* for their conduct in violating the Act.

These are conclusions which you should determine in the light of the situation as it existed at the time, and in the light of all the evidence. The evidence is of such narrow compass there is no need for me to review it here. And I hesitate to do so lest it be thought that I am trying to stress one point or another at the expense of one or the other of the parties to this controversy. Instead I shall leave the issue to your own, good, common sense. You are the judges of the fact. It is for you, not only to find whether testimony has been truly given, but also to determine what conclusions of fact follow with reasonable certainty from the underlying evidence.

I think that will be sufficient for your guidance. In any event, it is all that I will say to you at this stage.

If in the course of your deliberations you desire any further instructions as to the law, either on points which in my clumsy way, I have attempted to cover or on other points which you think should be covered, it is your privilege to ask me questions which, however, must be done in open court. If you have any questions will you kindly ask your foreman to hand them, in written form, to the Marshal who will attend you. Then after I have done any necessary legal research, I will ask you to come into open court and hear the answer to your questions.

Will you, therefore, now retire and as best you can, do justice under the law.

At 11:41 A.M. the jury retired. And I sat waiting in the courtroom.

## CHAPTER II

### *Our Right to Own Something*

OUR COUNTRY was born in a tax strike. For over a century the English Parliament had fed the flames of rebellion in the American colonies by passing one villainous tax after another. They taxed the West Indies molasses from which Boston made its rum but the Bostonians thumbed their noses at the high duties. These canny New Englanders calmly smuggled in the molasses, made their rum, and jovially drank it with the custom officers who winked at the smuggling.<sup>1</sup> The Townsend taxes on paper, paint, tea and lead caused riots in the streets and resulted in the Nonimportation Agreement, which put a serious crimp in the exporting business of British manufacturers who then joined the colonists in their vociferous demands that the duties be repealed.<sup>2</sup> Then there was a stamp tax. They openly defied it. The Sons of Liberty drove out the Stamp Masters, burned the stamps, then jubilantly

<sup>1</sup> *Sam Adams*,—John C. Miller, Little, Brown & Co., 1936; page 43.

<sup>2</sup> *Ibid.*, page 194.

read unstamped newspapers, sued their neighbors on unstamped legal documents, and married on unstamped licenses.<sup>3</sup> And still there was the tax on tea. Rather than pay it they dumped the tea into the harbor. Finally they fought a war to free themselves from the English tax assessors and tax collectors.

Their slogan in that war was not a silly "War to End All Wars," or an even sillier "War to Make the World Safe for Democracy." It wasn't a war to force the Four Freedoms upon a more or less unwilling world. Nor was it to establish a highly touted Atlantic Charter, which apparently didn't even exist except as a figment of someone's fertile imagination and every tenet of which was violated in the agreements at Yalta, Teheran and Potsdam. They were not fighting the greatest absurdity of all time, a "limited" or "preventive" war. How can a war be "limited" or "preventive"? War is war, isn't it?

No, our forefathers didn't fight for any of these ridiculous, chimerical objectives. Their slogan in that war was a realistic, down-to-earth NO TAXATION WITHOUT REPRESENTATION.

The founding fathers emerged from that war with a profound knowledge of one eternal truth; the basis of *all* freedom in this world is the right of the individual to keep for himself the fruits of his labor—the right to earn, to accumulate, to administer, and to pass on to his posterity, private property. In other words, the right to *own* something. That right, and that alone, is the line of demarcation between a slave and a free man. For nineteen long years we have been listening to the siren song of "Security," and never have we been more insecure. You can give a man security. You can put him in jail or in a hospital where he is secure—but he isn't free.

The rallying cry of the "Sons of Liberty" led by Sam

<sup>3</sup> *Ibid.*, Chapter III.

Adams in Boston, was "Life, Liberty and Property!" and it was originally so written in the Declaration of Independence by Thomas Jefferson. It was later changed to "Life, Liberty and the Pursuit of Happiness" which did not alter the fact that Liberty cannot exist without the right to own property, and that much of the "Pursuit of Happiness" resolves itself into the pursuit of property.

Journey to Independence Hall in Philadelphia and stand reverently before the Liberty Bell. On its side you will find engraved these words: "Proclaim liberty throughout all the land unto all the inhabitants thereof."<sup>4</sup>

Jesus, the greatest Liberal (in its true sense) of all time, understood the relation of liberty to property and never once in his career as a teacher advocated the abolition of private property. "Render unto Caesar the things that are Caesar's and unto God the things that are God's."<sup>5</sup>

On various occasions some of my so-called "liberal" friends ("liberal" as used today means being liberal with someone else's money—the helpless taxpayer's) have sneeringly said that the Constitution was framed to protect private property. And they are absolutely right except for the sneer which is based upon ignorance or envy. That is exactly what our Constitution did. It protected private property because there is no other way to protect people. The brilliant, scholarly men who hammered out our Constitution upon the anvil of debate, argument and compromise, knew that when a powerful government can arbitrarily seize private property under the guise of taxation, that moment the free man loses his freedom. In other words, there is only one freedom on the planet Earth, freedom from unjust taxation, or as practiced by

<sup>4</sup> Leviticus 25:10.

<sup>5</sup> Mark 12:17.

England in colonial times and by the gangster Truman Administration today, confiscation.

And so a group of wise men came together in Philadelphia to write a Constitution for a new nation, a nation determined to make safe for its lowliest citizen his God-given right to life, liberty and the right to private property, which they had wrested from a tyrant at such great cost. That security was written down for all the world to see. Not only was the common man protected in his right to "Life, Liberty and Property" but the full power of the nation guaranteed his peaceful pursuit and enjoyment of that right.

And the device for securing this liberty and right to own something was unique in recorded history, the most brilliant plan ever conceived for safeguarding the future of a free people. But it was accomplished in the face of almost overwhelming obstacles.

Many of the delegates to the Constitutional Convention had been members of both the Revolutionary Congress and of the Congress that had tried to function under the Articles of Confederation. They were well aware of the problems which confronted them and of the nature and temper of the people. On the one hand was the absolute necessity of the power to levy taxes and raise money if the new nation was to live. On the other hand they were dealing with a people so jealous of their prerogatives as individuals and as sovereign states, and so fearful that a federal government would repeat the tax tyrannies of George III and the English parliament, that they were loath to give the power to tax to any government.<sup>6</sup>

<sup>6</sup> The consideration of the tax collectors for the delicate sensibilities of the tax payers as late as 1795, can be appreciated from the following advertisement which appeared in the *Boston Columbian Centinel*, December 16, of that year.

"The Town Treasurer presents his most respectful compliments to

These were the same people who, locked in a final, desperate struggle, the loss of which meant certain death to many and virtual enslavement of all, had nevertheless refused to permit the full revolutionary powers which properly should have resided in the War Congress. They would neither pass state laws for the summary raising of troops and supplies nor would they allow the Congress to do so. Finally in desperation Congress, though doubtful that it possessed the authority to take such a serious step, conferred upon General Washington the unlimited power of a military dictator, as it seemed that he alone could save the country.

However, even the great respect felt by the people generally for his character, ability and motives failed to convince them of the necessity for raising the needed funds. Repeatedly Washington pleaded in vain for men and money, and a lesser man would have given up the struggle. He could requisition what he needed if the inhabitants would not sell it, allowing a fair price for what he took, but there was no assurance that the money would be forthcoming to pay for what he seized. Congress had been placed in the impossible position of being able to contract debts but of not having the power to raise the money with which to pay them. Consequently the weak, little nation emerged from a victorious war forty million dollars in debt.<sup>7</sup>

No proper system of finance is possible, and no nation can endure, unless a government has the power to tax.

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those citizens who have tax-bills unpaid, and requests the favor of them to pay the same to the collectors immediately, as he has large drafts from the Selectmen and Overseers of the Poor in favor of mechanics, schoolmasters, and others, to whom, especially at the present season, money would be very acceptable." *Paul Revere and the World He Lived In*, Esther Forbes, Houghton, Mifflin Co., 1942; page 479.

<sup>7</sup> *Constitutional History of the United States*, George Tinknor Curtis, Harper & Brothers, 1889; vol. I, page 123.

Even under the Articles of Confederation the people did not perceive that without some central authority with the power to raise money for the legitimate functions of the Federal Government, independent of the States, the clashing rivalries of the States and the lack of money would most certainly destroy the Confederation. Congress had only the power to requisition funds from the several States; the States could supply them or not. The spirit of revolt which had been slowly coming to a boil during a century of oppression and confiscation still lingered, with the memory of the bitter war which had freed them from the attempt of the mother country to "enslave America." They had definitely declared, "That it is inseparably essential to the freedom of a people and the undoubted right of Englishmen that no taxes be imposed on them without their own consent." This consent they refused to the Congress both during and following the war.

Unfortunately the moral feelings of the colonists which prompted them to high and heroic deeds, and impelled them with irresistible force to the final accomplishment of winning the war, did not carry over into the period of peace. They were to learn that the vast concerns of peace are far more complex than the concerns of war and that only a federal government with the power to raise money could solve national problems which were concomitant with winning the war.

With the return of peace they had entered into the Confederation with a written constitution for a precise and well-defined method of operation which succeeded the vague and indefinite powers of the Revolutionary Congress. But the Articles of Confederation were in reality nothing more than a League of Friendship among sovereign states and possessed one fatal defect which distorted the whole system from the true proportions and character of a government.



The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of apportionment, the United States has an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequences of this is, that though in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option.<sup>8</sup>

The Articles of Confederation gave to Congress the power to contract debts but denied it the power to pay them. It created a corporate body, formed by the States, and called the United States, and granted to it the authority to borrow money and incur other obligations. It provided the mode by which its Treasury should be supplied with adequate funds but withheld the power to control the sources of supply of those funds. According to their own convenience or wishes, thirteen independent legislatures granted or withheld the money which would enable their collective government to pay the debts contracted with their consent. Yet the debts were wholly national in character, and by the whole had to be paid.

It was soon apparent that this was utterly impossible under the system provided in the Articles of Confederation. The Federal Government could not discharge its obligations when the duty of performance was subjected to whims of the various subordinate corporation of

<sup>8</sup> *The Federalist*, No. 15, Everyman's Library, E. P. Dutton & Co.

states. The Confederation in reality resembled a small empire whose power was at the mercy of its provinces, the governing body controlled by provincial desires and ideas. Hamilton correctly called it a "shadow of a federal government" rendered impotent by the conflicting rivalries and jealousies of the member states.<sup>9</sup> Naturally such a system could not possibly succeed and by 1763 the struggling little nation faced bankruptcy, poverty and disgrace.<sup>10</sup> All over the country men began to abandon hope that the debts would ever be paid and the preservation of the Union was in dire peril. By 1786, just ten short years after the Declaration of Independence, complete failure stared the United States in the face.<sup>11</sup>

Consequently it was a very serious group of delegates who gathered together in Philadelphia. They were impelled by a desperate urgency. Surely nothing more was needed to impress them with the fact that the realization of all the high ideals for which the country had fought so tenaciously through seven long years, the hopes and aspirations for which they had pledged their lives, their fortunes and their sacred honor, rested upon just one thing—money. The nation must either be made solvent or it would cease to exist and the most noble experiment in human self-government ever attempted would wind up in dismal failure. Hamilton expressed the sense of them

<sup>9</sup> "What the consequences of this system have been, is within the knowledge of every man the least conversant in our public affairs, . . . It is this which has chiefly contributed to reduce us to a situation which affords ample cause both of mortification to ourselves, and of triumph to our enemies." *Ibid.*, No. 30.

<sup>10</sup> "We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience." *Ibid.*, No. 15.

<sup>11</sup> "Each State, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins." *Ibid.*, No. 15.

all when he wrote, "Money is one of the essential agencies of the Government. Without it no Government can exist and without the power to raise it, it cannot be had." Without doubt the reason our financial system rested upon the sound and substantial principles of taxation that were finally evolved by the stress and strain of the postwar years, was the bitter experience of trying to make a government function without money.

Some historians have not given proper emphasis to those years of trial and error under the Articles of Confederation. The tragic object lesson presented by this precarious period convinced the brilliant men who wrote our Constitution of the absolute necessity of a sound fiscal system. It was a training period, and the near failure of the first attempt at collective self-government by thirteen separate and independent states undoubtedly was responsible for the perfection of the Constitution which was finally drafted after long, weary months of arduous toil. It provided the greatest system of government ever devised for mankind. Nothing like it had ever been done before and certainly nothing has ever surpassed, or even equaled it since, although it has been copied in whole or in part many times.

Therefore, it is not accidental that the very first power delegated to Congress is the power to tax. Notice that the power was *delegated*. The power belonged to the people. They had won it by sacrifice and blood. They were fiercely jealous of this basic power to tax, and they were determined that never again in this country, should a citizen have his rightful property wrested from him by the ruthless hands of the tax collector.

*They* possessed the power, and they *delegated* it to Congress. But although driven by sheer necessity to delegate this precious power, they limited and hedged it about with ironclad safeguards.

As proof that taxes were of primary concern, they appear right in the beginning of the Constitution. First is the declaration:

“WE THE PEOPLE of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

Then, after providing that all legislative powers shall be vested in a Congress of a Senate and a House of Representatives, and giving the qualifications of a Representative,<sup>12</sup> it says:

“Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers.”<sup>13</sup>

This is followed by a provision for a Census, to be taken every ten years.

WE THE PEOPLE give to Congress twenty specific powers, and the power to tax heads the list:

“The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.”<sup>14</sup>

But to make sure that Congress shall not abuse this potent power to tax, conferred upon it by the people, it is limited specifically:

“No capitation, or other direct tax shall be laid, unless in proportion to the Census or Enumeration hereinbefore directed to be taken.”<sup>15</sup>

<sup>12</sup> ARTICLE I, Section 1.

<sup>13</sup> ARTICLE I, Section 2.

<sup>14</sup> ARTICLE I, Section 8.

<sup>15</sup> ARTICLE I, Section 9.

*Since a capitation means a tax of the same amount for every person, this provision makes doubly sure that all federal taxes must be at the same uniform rate for everybody. This limitation that direct taxes levied by the Federal Government must be in proportion to a census and apportioned among the States in accordance with numbers, is the only provision in the Constitution that is stated twice.*

The only reason that our Constitution required a census to be taken every ten years, *the only reason* was to count the people to determine how many Representatives should go to Congress,<sup>16</sup> and how direct taxes should be levied. I wonder how many Americans thought of this in 1950, when those little busybodies came knocking on their doors, asking ten thousand impudent, silly questions which were none of their, or Washington's, business. There is absolutely no power granted in the Constitution which enables a top-heavy bureaucracy of empty-headed simpletons, and worse, to invade the privacy of the American people in such a monstrous manner.

This census is just a preview of what is really in store for us if they actually take over, which they most certainly will do unless we uproot and vote them out.

The census was to *count* the people—that was all. The number of people determined the number of Representatives in Congress and the apportionment of direct taxes among the states.

The word census comes from the Latin verb "censere" meaning to value or tax, and throughout history people have been counted so that their officials could levy taxes upon them. The reason that Jesus was born in Bethlehem was because Caesar Augustus had issued a decree that "All the world should be taxed. . . . And all went to be

<sup>16</sup> Originally one for every 30,000 people, but not less than one for each state.

taxed, everyone into his own city.”<sup>17</sup> Joseph and Mary had gone to their city, Bethlehem, to be counted and to pay their tax. Since many other people had gone there for the same purpose they could find no room in the Inn and had to stay in the stable. In Rome the magistrate who registered the number and the property of the people was called the “Censor” and the original meaning of this title was one who counted. In ancient Egypt the Treasury was called the White House<sup>18</sup> and here were kept the tax registers in which were recorded all lands, all houses or estates and the “numbers belonging thereto.” On the basis of these records taxes were assessed. It would seem that we have reverted to ancient Egyptian practice since, while the actual money is kept in the Treasury and the Federal Reserve Bank, the power to decide how much shall be spent, and where and how, actually resides in the White House. A spineless Congress has abdicated its priceless power to tax and spend to the Executive.

The Egyptians were very realistic people. Taxes were collected in kind: cattle, grain, wine, oil, honey, textiles and the like. They were stored in cattle yards and granaries, the chief subdepartment of the White House, and all this produce, which under the administration of Joseph comprised one-fifth of the yield of the land,<sup>19</sup> was called “labor” the word they used as we use “taxes.” Who was it that said, “Taxes are paid in the sweat of every man’s brow”? The Egyptians understood this perfectly and so would we if we paid in such manner or if we were even aware of a tax when we pay it. Naturally such a vast tax-gathering required hosts of petty officials and it was impossible to keep a close check on them by the central gov-

<sup>17</sup> Luke 2:1-3.

<sup>18</sup> *History of Egypt*,—James H. Breasted, Charles Scribner’s Sons, 1905.

<sup>19</sup> Genesis 47:23-27.

ernment. Lacking such supervision and inspection it wasn't too long until all these tax grabbers simply reveled in extortion practiced upon the long-suffering masses and the fiscal and administrative system became honeycombed with bribery and corruption. An incipient revolt threatened, just as it does today, and finally severe laws were passed to clean up the situation. A tax collector found guilty of extortion had his nose cut off and was banished to a desolate little frontier town far out in the sands of the Arabian desert.<sup>20</sup> Surely we are as ingenious as the ancient Egyptians.

For a long time I asked myself, "Why were Representatives and direct taxes linked together and apportioned among the States in accordance with population?" It was understandable that Representatives should be chosen in accordance with numbers but why should taxes be apportioned the same way? And then one day, out of the blue, it came to me, crystal clear. All at once I understood the plan to safeguard the future freedom of the nation, conceived and executed by those scholarly men. I read again: "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers. . . ." "No capitation, or other direct tax shall be laid, unless in proportion to the Census of Enumeration hereinbefore directed to be taken."

*And in those two sentences our forefathers bound fast the hands of Congress and secured the liberty and freedom of the American people. How? By making it utterly impossible to levy an income tax.*

An income tax is certainly a direct tax, probably the most direct tax of all since it cannot be shifted but must be paid by the person receiving the income. By specifying

<sup>20</sup> *History of Egypt*,—James H. Breasted, Charles Scribner's Sons, 1905.

that direct taxes must be levied in accordance with the number of people, not upon what they produced, as in the days of ancient Egypt, an income tax was simply out of the question. It cannot be levied upon a man but must be levied upon what he receives.

Our forefathers designed and incorporated in the Constitution a new system of government. It was built upon a revolutionary idea; the conviction that the government belonged to the people and existed only by their consent. Its genius lay in the careful system of checks and balances among the three departments, the Legislative, the Executive, and the Judicial. And it went further and maintained a balance between the powers of the individual States and the Federal Government. In addition it carefully reserved to the States and to the people all rights and powers not specifically delegated, or prohibited to the Federal Government and further stated that because certain rights *were enumerated* in the Constitution it did not mean that others *not mentioned* were still not the property of the people.<sup>21</sup>

However everything in the Constitution was arrived at by compromise. The interests and concerns of the thirteen states varied widely and each delegate was sent to Philadelphia to protect the commerce, industry and agriculture of his particular state. It required months of patient discussion, argument and forbearance to finally produce the finished document, which when completed, comprised a system of government to protect the people in the rights and liberties set down in flaming words in the Declaration of Independence. It is a wonderful document, the best system of government ever devised for human beings, but it could have varied in some respects and still have worked satisfactorily. For example we might have had three houses of Congress instead of two, a cumber-

<sup>21</sup> Ninth and Tenth Amendments.



some arrangement but in some ways a better one. The duties and powers of the Executive might have been more circumscribed (and a good thing too) and the Judiciary might have been set up a little differently. As I have said everything in the Constitution was a compromise and the result of the collective ideas and thoughts of the men who wrote it. With the exception of Sections 1 and 9 in Article I, a number of changes could have been made and the system would have worked. The supreme achievement of the combined brains of all those men were written into those *two* sentences and the freedom and liberty of the American people were secured in them. For in those two sentences the right of the free man to *own* something was made inviolate. This was his distinguishing mark, the only criterion of freedom in all the world, the right of the common man to retain for himself the fruit of his labor.

Now this is how it worked. Every man was given a vote with which he could vote for his Representative. Originally only Representatives were elected, Senators were appointed by the State Legislatures and it's too bad we changed that provision. That Representative having to stand for election every two years was close to the people and responsive to their wishes. That is why he was given the power to tax; all bills of revenue arise in the House. And that is why he must come home every two years and give an accounting to the people. But his power to levy direct taxes was limited by an ironbound restriction: *that tax must be apportioned among the States in accordance with population*. Since all taxes were to be at a uniform rate, Congress simply could not penalize one section of the country, or one group of citizens for the unfair advantage of another. When Congress levied a tax, everybody had to pay and at the same rate. The amount would vary with the wealth of an area, as it does today

with the different values of real estate, but the *rate* was the same for all and the tax was distributed among the States according to population.

The men who wrote our Constitution did not found a democracy. They feared the so-called "Democrats" of their day as much as we fear the Communists today. They did not believe in mob rule, or government by the unintelligent, irresponsible mass. They founded a republic and they made certain that the right to vote should be curbed and controlled by the necessity of paying taxes. Scheming politicians could not take taxes from a helpless minority and buy themselves back into office with the votes of the tax exempt majority. When a Representative voted a tax, he voted to tax everybody because the tax was based upon numbers, not upon dollars.<sup>22</sup>

This was the most brilliant plan ever conceived for guaranteeing the freedom of a nation. It protected every person in his right to private property, rich and poor alike, and under this protection we built the richest, most powerful nation on earth. We achieved and maintained for the majority of our people a standard of living undreamed of before, the hope and the envy of the whole world. And we accomplished something even more important: we developed a vigorous, self-reliant, self-respecting race of people. An American citizen would have been

<sup>22</sup> "In one respect, the establishment of a common measure for representation and taxation will have a very salutary effect. As the accuracy of the census to be obtained by the Congress will necessarily depend, in a considerable degree, on the disposition, if not on the cooperation, of the States, it is of great importance that the States should feel as little bias as possible, to swell or to reduce the amount of their numbers. Were their share of representation alone to be governed by this rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide their share of taxation alone, a contrary temptation would prevail. By extending the rule to both objects, the States will have opposite interests, which will control and balance each other, and produce the requisite impartiality." *The Federalist*, Everyman's Library, E. P. Dutton & Co., No. 54.

*ashamed* to ask for a handout from his Government. The Government belonged to him, he did not belong to the Government.

And then what happened? We chucked our carefully safeguarded right to own something out the window, and we passed the income tax amendment. Gone was our apportionment among the States in accordance with population, and also gone was our principle of uniformity. Income "from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration" could be taxed and without limit. And when we passed this income tax amendment the slow, distilled poison of tax slavery dripped into our veins. We sowed the seeds of our national decay which is rapidly coming to maturity before our eyes today. The heritage of freedom so carefully insured for us by our forefathers is gone; it has been taxed away.

### CHAPTER III

## *We Lose It*

WE HAD HAD income tax laws twice before. The first one was a "war measure" and was passed to collect revenue for the Civil War. Although financially successful, the law was so unpopular it ended automatically in accordance with a terminating provision contained in the

law itself, that income taxes should be collected through 1871 "and no longer." However, this initial income tax experience was important in other respects besides the money raised for the prosecution of the war. During its administration the office of Commissioner of Internal Revenue was established; it gave the Federal Government the opportunity to collect nonshiftable personal taxes directly from a large number of people, and it permitted for the first time partial adoption of the stoppage-at-source method of collecting the tax. While more or less limited to government salaries and certain corporation dividends and interest, it constituted our first "withholding tax." The taste of this first, little nibble was sweet and lingering to the Federal Government but bitter indeed to the people. Twenty-two years elapsed before their memory dulled and not until 1894 could enough backing be secured to jam another income tax bill through a reluctant Congress. But this law was even shorter lived than the Civil War income tax. Within one year a test case was brought before the Supreme Court which very properly declared the income tax unconstitutional because it was "not apportioned among the several States in accordance with population."

After this failure the ardor for an income tax waned perceptibly but never entirely disappeared. Many of its proponents loudly proclaimed that they had been "robbed" of their victory by the Supreme Court and during the next few years they occasionally introduced income tax measures in Congress. In 1898 an income tax was proposed as a means of financing the Spanish-American War but the idea was discarded. These isolated moves scarcely caused a ripple on the surface, but in reality the forces working for such a tax were too vigorous and too deeply rooted to be suppressed indefinitely. And in 1909 in a surprise move these forces banded together and actually

changed our Constitution, and the whole course of our history.

I have carefully read that famous debate in the special session of Congress called by President Taft in 1909, and it should be required reading for every adult American. No modern thriller could grip and hold a reader's attention more closely, and no Shakespearean tragedy ever moved more ominously, and with surer tread to the final denouement, which was forecast with deadly certainty by the first speech on the floor of the Senate. Due to the rules of the House which preclude extended discussion, the actual debate had to take place in the Senate. However, the mastermind which spearheaded and guided the whole move, and gradually co-ordinated the forces pushing it, both Republican and Democratic, was in the House, Representative Cordell Hull from Tennessee.<sup>1</sup>

Mr. Hull had long been an advocate of the income tax. He had introduced an income tax measure in the House in 1907 and then launched a well-planned campaign to educate Congress upon the advantages and desirability of the income tax, as he saw them. He had made a thorough study of the Civil War and the 1894 income tax laws, and of the Supreme Court decision, also similar laws in England, Prussia, Switzerland, Norway and Sweden. During the sessions of 1908 and 1909 he drafted a number of resolutions which provided for the gathering and printing of available data and one which directed the Secretary of State to make investigations abroad relating to the income tax. Since Mr. Hull himself could not institute the debate in the Senate, he per-

<sup>1</sup> "In one branch of our financial system—income taxes—Judge Cordell Hull of Tennessee is considered the fountainhead of information. He is a thorough master of that subject and is relied on implicitly as an authority by both the House and the executive departments." *My Quarter Century of American Politics*.—Champ Clark, Harper & Brothers, 1920, Vol. II.

suaded one Senator Bailey of Texas to sound off upon the subject. He furnished the old windbag with data, helped him write his speeches, and throughout the whole debate played the Edgar Bergen to the lanky Texan's Charlie McCarthy.

It would be some satisfaction if the blame for this crime, for a crime it was, could be placed squarely upon the shoulders of one or the other of our two major political parties, but unfortunately both parties were guilty.<sup>2</sup> A coalition of Republicans and Democrats struck the body blow from which we are suffering so acutely today as conversely a coalition of patriotic Republicans and Democrats are now striving desperately to save the last vestiges of our Republic, so mortally wounded in 1909. What strange irony that this combination of dissident Republicans and radical Democrats compelled a conservative President and a conservative Party with a large majority in the Congress, to make a complete rightabout-face and to actually aid their political opponents in passing the "socialistic," "radical," "communistic" income tax which they had stubbornly fought for a generation. The coalition of 1909 fought for their own selfish interests; the coalition of 1951 fights for love of country, above partisan politics.

It was a rather distinguished Congress. Names known and respected today figured prominently in the debate that raged day after day, week after week, month after month. Borah of Idaho, La Follette of Wisconsin, Aldrich, De-

<sup>2</sup> Senator Cummins, Republican of Iowa proclaimed, "I congratulate the Senate and the country upon the happy and fortunate fact that we can consider this subject without tinge of partisan bias, without tinge of partisan color. I congratulate you and your constituents upon the fortunate conditions that enable us to debate and to decide this question without regard whatsoever to any party and without any obligation save that which we owe to a common country." *Congressional Record*, April 21, 1909, page 1422.

pew, Payne, Cockran of New York, Platt of Connecticut, Beveridge of Indiana, Longworth of Ohio, Lodge of Massachusetts, Penrose of Pennsylvania, Joe Cannon of Illinois and Champ Clark of Missouri were some of the outstanding leaders. But as I read that debate spread over page after page of the *Congressional Record*, I came to the inescapable and amazing conclusion that with the exception of a few who were well-informed as to the source of the income tax, this Congress was nothing but a bunch of stupid bunglers. They destroyed the most perfect device ever invented to preserve the liberty of a free people, and they hadn't the remotest idea of what they were doing.<sup>3</sup>

A few brave voices were raised in protest. Three were in the House of Representatives which debated the Amendment exactly four hours and then voted 318 to 14 to adopt it. Representative Payne prophesied truly that it would make of us "a nation of liars" and that it was "a tax upon the income of honest men and an exemption, to a greater or less extent, on the income of rascals."<sup>4</sup>

<sup>3</sup>The abysmal ignorance, as to the source and implications of the income tax, of the majority of the men who forced the Sixteenth Amendment through Congress, and their complete lack of understanding of the real meaning of the taxing provisions in the Constitution were inadvertently revealed by Senator Beveridge of Indiana in a speech on October 27, 1910. "Years ago, I declared that an income tax, increasing as incomes increase, was a rational and just method. . . . But the Supreme Court has said that the Constitution forbids Congress from laying an income tax. . . . The question was, should Congress again pass practically the exact law which the Supreme Court declared the Constitution forbids; or should we take the necessary steps to amend the Constitution so as to give Congress this power. To have done the former would have been to have struck a serious blow at popular respect for the courts, at present none too strong at best. To do the latter was to respect the decision of the Supreme Court and to follow the course prescribed by the Constitution itself for just such an emergency—its amendment. And this is what we did. We followed the method of orderly liberty." *Beveridge and the Progressive Era*, Claude G. Bowers, Houghton Mifflin Co., 1932.

<sup>4</sup>*Congressional Record*, July 12, 1909, page 4390.

I wonder what the distinguished Mr. Payne would have said could he have foreseen the Kefauver Committee investigation, or even the conviction of Al Capone for income tax evasion when he should have been tried for murder, or the revolting corruption of the present Bureau of Internal Revenue. Representative Hill of Connecticut declared that he did not believe Congress had the right "to completely change and revolutionize the taxation system of the United States."<sup>5</sup> But Representative McCall of Massachusetts knew exactly what Cordell Hull, Bailey and all their ilk were after when he warned that the income tax was for social purposes, "to regulate the citizen and regenerate the moral nature of men." Each citizen would be forced to "lay bare the innermost recesses of his soul in affidavits, and with the aid of the federal inspector, who will supervise his books and papers and business secrets, *he may be made to be good*, according to the notions of virtue at the moment prevailing in Washington."<sup>6</sup> Senator Aldrich understood from the beginning the real motive behind the income tax and had said on the floor of the Senate in 1894, "The income tax is supported by the Socialist Party, by the Populist Party, and by the Democratic Party with a few honorable exceptions, simply as a means for the redistribution of wealth."<sup>7</sup> But these farsighted men might just as well have saved their breath. Cordell Hull with Machiavellian cleverness had laid his plans well and the damage had already been done in the Senate where his Charlie McCarthy, Bailey, drawled on endlessly.

In one of his windy tirades Senator Bailey used a word that suddenly leaped at me from the page and all at once I understood the extent of their destruction, the perfect

<sup>5</sup> *Ibid.*, July 12, 1909, pages 4393-4394.

<sup>6</sup> *Ibid.*, July 12, 1909, page 4390.

<sup>7</sup> *Ibid.*, June 21, 1894.



crime which they committed. Senator Bailey said that they must find money, not for the needs of the Government, but for the WANTS of the Government. The WANTS OF THE GOVERNMENT! The WANTS of the Government that they were trying to find in 1909 were something over six hundred *million* dollars: (tiny little Connecticut poured more than that into Washington last year) the WANTS of the Government in 1951, just forty-two short years later are seventy or eighty or one hundred *billion* dollars. They can take every penny we earn, they can pass a capital levy and take every bit of property we own including the clothes off our backs, they can confiscate the wealth of the United States, every single bit of it, and there is not enough in this great, rich country of ours to satisfy the WANTS of the rapacious, grasping, greedy, unscrupulous, thieving gangsters and scoundrels who have been bred and nurtured by the income tax and who have seized control of our government.

At the conclusion of this harangue, Speaker of the House, Richard E. Byrd, the distinguished father of two distinguished sons, Admiral Richard E. Byrd and the present Senator from Virginia, Harry E. Byrd, rose, and in the most gentlemanly manner, proceeded to make mincemeat of Senator Bailey's arguments. Speaker Byrd replied:

1. No one disputed that the income tax was a just tax.
2. Not many people shared his confidence in the righteousness of the Federal Government.
3. Supplying money for extravagant Republicans could hardly appeal to a Democrat.
4. Should the Democrats win the election, their need for the income tax could be "disputed upon very reasonable grounds."

There is great hue and cry today about "States' rights."

There *are* no States' rights. When the Federal Government can go directly to the citizens of each state and siphon off from him and from the state every available penny, the rights of the state, and, of course, the individual, go with it. There is only one way for the States to get back their rights. Just stop the flow of money into Washington. It's as simple as that. By requiring direct taxes to be apportioned among the States in accordance with population, our Constitution preserved to the States their rights and their money but when an unlettered, ignorant minority in Congress forced through the Sixteenth Amendment they nullified the Constitution.

Alabama was the first state to ratify the Amendment and Massachusetts was the last. Six states either rejected it or failed to take action. I am proud that Connecticut rejected it firmly. One of the bitterest fights for ratification centered in Virginia. There the Governor favored ratification, the Senate voted to ratify but the House of Delegates refused. Finally Senator Bailey was invited to appear before a joint session of the Virginia Legislature and as usual he tried his spellbinding tactics with four arguments:<sup>8</sup>

1. The income tax was a just tax.
2. He was sure the Federal Government would not abuse this power.
3. This tax was necessary because there was no other way to raise money to pay for the extravagance of the Republicans.
4. Should the Democrats win the national election, they would need the income tax in order to reform the tariff.

The Speaker then advanced his own unanswerable arguments against the income tax:

<sup>8</sup> *The Federal Income Tax*, Roy G. & Gladys C. Blakey, Longmans, Green & Co., 1940.

1. It would bring each person into direct contact with the Federal Government, a matter of vital concern to the individual.
2. The State would be forced to yield to the Federal Government a legitimate and long-established source of revenue.
3. Even worse, the State would actually invite the Federal Government "to invade its territory, to oust its jurisdiction and to establish a Federal dominion within the innermost citadel of the reserved rights of the Commonwealth."
4. This Amendment would go far beyond the Fourteenth and Fifteenth Amendments in granting power to the Federal Government as it would reach each citizen in his everyday business of life.

He then summed up:<sup>9</sup>

A hand from Washington will be stretched out and placed upon every man's business; the eye of the Federal inspector will be in every man's counting house. . . . The law will of necessity have inquisitorial features, it will provide penalties, it will create complicated machinery. Under it men will be haled into courts distant from their homes. Heavy fines imposed by distant and unfamiliar tribunals will constantly menace the taxpayer. An army of Federal inspectors, spies and detectives will descend upon the state. . . . Who of us who have had knowledge of the doings of the Federal officials in the Internal Revenue service can be blind to what will follow? I do not hesitate to say that the adoption of this Amendment will be such a surrender to imperialism that has not been since the Northern States in their blindness forced the Fourteenth and Fifteenth Amendments upon the entire sisterhood of the Commonwealth.

I am not willing by any voluntary act to give up revenue which the State of Virginia herself needs, nor to surrender

<sup>9</sup> *Richmond Times-Dispatch*, March 3, 1910.

that measure of States' rights which . . . the construction of the Federal Courts have permitted to remain.

Is it any wonder that the son of that great man, Senator Harry F. Byrd, fights valiantly to save something from the wreckage which his father foresaw so clearly? Every prediction has come true, including Yankee imperialism rampant all over the world.

Virginia did not reject the Amendment, but it did not ratify. However on February 25, 1913, the Secretary of State certified the adoption of the Sixteenth Amendment. As Professor Blakey said, "A new era of national taxation was ushered into the United States." This Amendment permitted "a series of measures that were soon to multiply many fold the revenues of the Government, and to affect profoundly and permanently, not only the national Government, but also state and local governments, all industry and finance in the United States and consequently, the lives of its millions of citizens."<sup>10</sup> Not only did it begin the "Revolution in National Taxation" but it meant the end of the glorious American Revolution. George III and his English tyrants had won after all. Alexander Hamilton, Thomas Jefferson, George Washington, John and Samuel Adams and all of the great men who founded our country in such travail and suffering must have turned over in their graves, while two unknown Russians, Lenin and Trotsky, silently gloated.

In 1848 Marx and Engels issued the Communist Manifesto. The second major tenet of this document advocates the use of what they called the "progressive" income tax to destroy the capitalistic system. Now they didn't mean "progressive." True to communist practice they took a word and twisted its meaning to make it sound like something it isn't. They meant a "graduated" income tax: a

<sup>10</sup> *Ibid.*

tiny little rate on small incomes with an increasingly higher rate of bigger incomes and finally confiscation of everything over a certain amount. This, of course, was expressly forbidden by our rule of uniformity laid down in the Constitution and in general practice until the revenue bill of 1913 when John N. Garner, Representative from Texas, succeeded in getting a graduated rate written into the first income tax law after passage of the Sixteenth Amendment.<sup>11</sup>

<sup>11</sup> When the New Congress convened in March, 1913, the Committee on Ways and Means in drafting the revenue bill assigned the income tax section to Cordell Hull. After he had completed his draft, a subcommittee reviewed it but made very little change in the original draft.

"Although Garner was not on the subcommittee, he became very much interested in one phase of the law, namely the graduation of rates. He became the chief proponent of the principle of graduation, a plan that was contrary to the ideas of expediency held at that time by Underwood and Hull. Garner stated some years later that great pressure was brought upon the Committee from all parts of the country not to levy a progressive tax but that he and Shackelford resisted it successfully. At the time he threatened to carry his fight to the party caucus if the Committee insisted on a flat rate. Hull favored a flat rate.

"The law was written as Section II of the Act to Reduce Tariff Duties and to Provide Revenue for the Government and *for Other Purposes*.

"A tax of 1% was levied on the taxable net income of every citizen of the United States, whether residing at home or abroad and every resident of the United States, including the Philippine Islands and Puerto Rico. In addition a surtax with graduated rates was levied on the amount of taxable net income of individuals over \$20,000. These surtax rates and brackets of income were as follows:

<i>Rates of Surtax per cent</i>	<i>Amount of Income ("Brackets")</i>
1	\$ 20,000—\$ 50,000
2	50,000— 75,000
3	75,000— 100,000
4	100,000— 250,000
5	250,000— 500,000
6	500,000—

"A personal exemption of \$3000 of income was allowed each taxpayer, \$1000 if married and living with husband or wife." *Ibid*.

The efficiency of the Marx and Engels' method was verified exactly one hundred years later by Sir Stafford Cripps when he announced with great satisfaction, fairly rolling the words on his tongue because he loved it, that there were not in all England more than two hundred and fifty people with an income over twenty thousand dollars a year, after taxes. I believe that figure has now dropped to about sixteen. The leveling process never levels up—it always levels *down*. And I might add we're just a couple of laps behind England.

Recently a reporter asked me if I thought rich men were necessary to our economy. I replied that rich men are necessary to *any* economy, at least there has never been one without them. Even savage chieftains possess more than other members of the tribe. Throughout history every nation has consisted of a few rich men, living in idleness and luxury, and the masses of people who were outright slaves or who had most of what they earned wrung from them in taxes. In other civilizations the rich men amassed their fortunes from the suffering and toil of their subjects; they were the kings, the barons, the nobles. In our country most of our rich men built their fortunes by working harder and more intelligently than other men, and by keeping what they made. Also our industrialists discovered that by paying their workmen high wages they created a market for the products they manufactured. For the first time in history, fortunes were amassed by *raising* the standard of living for all the people. Of course some men got rich by looting the public treasury and by illegal grafting, but the majority of our wealthy men acquired their money honestly. Our fortunes and our higher standard of living were made possible because in *two* sentences our Constitution secured the freedom of the people by permitting them to keep what they earned; the God-given right *to own something*.

But today we see a world-wide reversion to the system of previous civilizations, the emergence of the new rich, the tyrants and despots who live in luxurious grandeur while the standard of living of their unfortunate subjects goes down and down. Certainly Hitler outdid the Kaiser, and Mussolini showed Italy something new in magnificent living. We are not permitted a peek behind the Iron Curtain but reports have it that the wedding of Stalin's daughter outshone that of George VI's in extravagant splendor. And right here at home our little ruler does very well for himself. He couldn't make a living selling socks so we elect him President of the United States where he amasses a fortune in short order, at the same time constantly upping our taxes.

Of course we also have a number of lesser fry, the incompetents who cannot make a living in competition with other men more intelligent and energetic than they, but who, by hook or crook (mostly crook) get themselves elected to high office, or worm themselves into soft berths in our vast network of bureaus and agencies and by adroit manipulation and fast footwork manage to make themselves fortunes in ways the rest of us don't quite understand. Nine-thousand-dollar mink coats, deep freezers, free hotel bills abound, but just how they are so suddenly acquired remains a closed book to most of us. We only humbly pay the income taxes that make such lovely things possible for our lords and masters.

If it were possible to compile and publish the names of new millionaires, both here and abroad, whose fortunes were made during the last nineteen years, we'd all be a bit surprised. These men have fed and fattened on the huge sums voted for supposedly humanitarian purposes by the American people, many of whom are still duped by the clever gangsters demanding more billions for "Defense," "Point Four" and "Economic Aid" to

the whole world. A check of all those former government employees now in the "importing" and "exporting" business would also be enlightening, as would a little investigation of high-pressure law firms clustered around the Capitol like hyacinth buds around their stem. These firms specialize in assisting foreign governments and private businesses to secure government loans from various government lending agencies. The deals of RFC, while widely publicized, are peanuts compared to some of the financial transactions going on under the cloak of secrecy. Some months ago a check revealed that there are twenty-six government agencies doing nothing but lending and giving our money away, and they had outstanding loans, guarantees and other commitments of over twenty-six billion dollars. No wonder law firms with government friends thrive and flourish, but although clustered closely, they do not smell as sweet as the hyacinth.

In 1924, Lenin, following in the footsteps of his great teacher, prophesied that the United States would spend itself into destruction. Cast your eye over the plain and fancy giving away of billion after billion of American dollars all over the world and you won't need three guesses as to the soundness of Lenin's prophesy.

What those bunglers really did in 1909 was to give to the Federal Government complete ownership of every cent of income in the United States, both individual and corporate. It is only by gracious consent of your Government that you are allowed a deduction for your wife, for your child, or other legal dependent. The Federal Government tells you to the penny how much you may give to charity. It *permits* you to make deductions for your business but tells you exactly how you may do so and exercises a stern veto upon anything you claim as an exemption. After circumscribing your right to spend your income as you think best, it then proceeds to levy with a



heavy hand upon anything that may be left. Analyze your tax return carefully and you must agree that the Federal Government owns your income completely, lock, stock and barrel. In other words when we passed the Sixteenth Amendment, we surrendered our RIGHT TO OWN SOMETHING. We took the first, big, requisite step into Communism.

## CHAPTER IV

*A Chain Is Forged*

THE WITHHOLDING TAX is not a new tax, it is just a new method of collecting a tax. The handmaiden of the graduated income tax, it stems from the same fountainhead—communist Russia. It was masterminded by Beardsly Ruml and clamped down upon this country by the financial magicians in Washington in the guise of war legislation during the war hypnosis of 1943. And we were promised that as a war measure it would be repealed at the end of the war. When hostilities ceased in 1945 no effort was made to keep this promise. On the contrary it was picked up and incorporated in the very next revenue bill after the war, and has become a permanent part of our tax structure where it will remain, unless something is done about it.

At the time I was appalled. The withholding tax fol-

lowed in the path of the income tax so logically. In fact, the income tax being such a perversion of our inalienable right to keep what we earn, simply cannot be collected entirely without some such resort to police state methods. This particular method was promulgated in 1919 by a group of English-speaking Communists in Russia who published a "Programme of the Communists" in which they prophesied that taxation would ultimately become obsolete. If one accepts the major premise of the Communist doctrine, their "Programme" is indeed logical. When the Government owns and operates all business, there can be no profits, hence no business taxes. When the Government owns all the land, there can be no land tax. Ditto for property and property taxes. Since all wealth is to be confiscated, the whole population will be employed by the State, in which happy condition all taxes will simply be deducted from the pay envelope. As they stated so frankly, "When such a state of things exists it will be simpler to deduct the necessary taxes from salaries. . . . It is not worthwhile spending both time and money on the senseless transaction of giving with one hand and taking with the other." Adapting their method to our present system we have had to improvise a bit but we've done the best we could by making the employer responsible for this "senseless transaction" and he jolly well pays for it also. My reference for this choice piece of information is page 1738, Volume 2, of the Lusk Report, filed April 24, 1920, in the Senate of the State of New York.<sup>1</sup>

<sup>1</sup>"Programme of the Communists" (Bolsheviks) N. Boukharin, Chief Theoretician. Published by the Group of English Speaking Communists in Russia, 1919.

"But in the future, taxation will also become obsolete. To the extent that production becomes nationalized, so capitalists' profits cease; as there are no more landowners the so-called land tax is abolished. Property holders are deprived of their houses and thus another source of taxation is gone. Superfluous wealth is confiscated, the rich are losing their main support and the whole population is gradually be-

If one agrees with their "Programme" naturally they are quite right to simplify tax collection in such an easy manner but to me its adoption in the United States was a shocking thing. It is an outrageous invasion of the Constitutional rights of the American people, but in common with millions of other frantic citizens, I mistakenly believed that we were justified in suspending our constitutional rights and liberties in time of great emergency, particularly when we were assured they would be returned when the emergency was over. I also had boys, near and dear to me, fighting in our armed forces all over the world and would gladly have done anything and everything to shorten the war by as much as one day. At least this method would enable us to get money back from overpaid war workers with which to prosecute the war and bring our boys home.

Please note that I said "mistakenly." I have changed my mind. I don't believe that we should *ever* suspend our constitutional rights, no matter how great the crisis because I have become convinced that there is no national disaster or emergency, including a world-wide war that cannot be handled *better* within the framework of our Constitution. Once a right is suspended it requires Herculean efforts to restore it, and right after right we never get back. Also clever politicians have learned to manufacture so-called emergencies in order to take our rights

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coming employed by the proletarian state organizations. (Later on, with complete Communism, when there is no state, people, as we have seen, will become equal comrades, and the very memory of the division of society into bourgeoisie and laborers, will vanish.)

"When such a state of things exists it will be much simpler to deduct the necessary taxes immediately from salaries. . . . It is not worth while spending both time and money on the senseless transaction of giving with one hand and taking away with the other."

Document XLVI from Report of the Joint Legislative Committee Investigating Seditious Activities, Filed April 24, 1920, in the Senate of the State of New York. Lusk Report, Vol. 2, page 1738.

away from us. The history of the last nineteen years consists of a series of "emergencies" which have been used to chip away at our Constitution, until the men who framed that immortal document would stand aghast at the wreckage which the New Dealers have made of it. This is particularly true of taxes. They are fastened down upon us in an emergency and there they remain forever. The withholding tax is a shining example.

However in 1943 I was willing to comply, but I registered a little mental reservation that if it were not repealed at the end of the war, I could not in good conscience continue to do so. Three years passed with no sign of repeal and in 1948 I knew the time had come to take action.

The decision was not easy, nor was it a hasty one. For weeks I thought about it, worried about it, tried to visualize the consequences. I discussed it several times with my brother, David, who was bitterly opposed. He could foresee only trouble and persecution if I did it. I had no fear for myself but was afraid for my family. This may sound fantastic to many people who are not aware of this strange, new evil that has crept into our national life. Why should a loyal American citizen, honestly convinced that a policy of his Government is wrong, hesitate to publicly say so and oppose that policy without fear of retaliation from that government? Very few people realize the extent to which the group of men now in power will go to silence criticism and crush opposition, or the fury and malice visited upon the hapless individual who dares to protest against their present maladministration in Washington. Ever since President Roosevelt's first inaugural speech in which he said, "The only thing we have to fear is fear itself," we've heard a lot about "Freedom from Fear" and yet never before in our history have the American people been so afraid, and the saddest commentary is that they are actually *afraid* of the people they elect to rep-

resent them. But this very fact convinced me that someone had to make a stand, although I did it in fear and I certainly expected the worst.

One morning I awoke at three o'clock, my mind flowing like a river. I saw a speech I intended to make—crystal clear. I went downstairs, made a cup of coffee, took it to my bedroom, propped the portable typewriter upon my dressing table, and wrote steadily until ten. Then I slept for a couple of hours. With some misgivings I picked up the sheets of badly typed yellow paper. Many times the inspiration pounded out on a typewriter in the middle of the night does not bear the mark of genius when read in the cold light of day. But this seemed quite good. I put it away and forgot about it for a few days.

And then again I awoke one morning at five o'clock. Again I made coffee, and again I wrote until ten. This time, not relying on my own judgment, I went downstairs and read what I had written to Mr. and Missy who live with me and take care of my house and garden. Mr. and Missy are average, substantial citizens. Politically they disagree with me because they think Mr. Roosevelt was a great man, and voted for him four times. I don't and didn't. But there can be no question as to their loyalty and patriotism. And so with some trepidation I read my little Declaration of Independence to them. They were not exactly spellbound but they understood what I meant and were in entire agreement with my views. And from that moment my mind was made up. Nothing could have dissuaded me, and for the first time in weeks, I knew peace and mental calm.

In addition to my brother, David, and Mr. and Missy there were three other people who knew that I intended to break the law. I had discussed it over dinner in New York one night, with two friends George Peck and Dr. Alfred Haake, an economist of national reputation. They

both agreed that the law was unconstitutional and that something ought to be done about it but neither quite realized that I was serious in my intention to ask for a test case. At that time they probably felt that the price one would have to pay for breaking the law and asking for the test case, would be much too high for the results that could be achieved. An ordinary individual would be inviting everything from investigation of his income tax to smear aspersions cast upon his good name and intentions. However I certainly understood them to be wholeheartedly against this pernicious law.

But to my close friend, George Waldo, editor of the *Bridgeport Telegram and Post*, I confided my exact intention and purpose. George came to dinner one evening and over our coffee in the library I read him the first rough draft. He not only approved but began striding up and down as he realized the possibilities for reform inherent in such an action. He began to analyze this un-American law and the words came tumbling over each other as if he were dictating an editorial. I grabbed a paper and pencil and tried to jot down some of it. This part is exactly as he dictated it:

Who dares to lay profane hands upon that money, to rudely filch from that free man the fruits of his labor, even before the money is in his own hands? This is a monstrous invasion of the rights of a free people and an outrageous perversion of the spirit of the Constitution. This is the miserable system foisted upon the people of our country by New Deal zealots and arrogant Communists who have wormed themselves into high places in Washington. This system is deliberately designed to make involuntary tax collectors of every employer and to impose involuntary tax servitude upon every employee.

The employer or professional man, not on a salary, is allowed a bit of time in which to prepare his accounting and

pay his tax. But from the salaried worker or wage earner that pay envelope is rudely snatched from the paymaster's hand and those taxes taken in advance out of today's butter or tomorrow's hospital bill. This withholding tax law has made a greedy, avaricious monster out of the Federal Tax Grabber and an unwilling Simon Legree of the wretched employer forced to do his dirty work for him.

George was also the author of the appellation "High Tax Harry." He had used this descriptive title in an editorial in the *Bridgeport Post* and other editors had picked it up all over the country. With due credit to George, I used it again in the speech. The audience let out a roar of approval and again it appeared in newspapers and on radios, and to this day it has stuck. And well it might. What more fitting name could be given to this brazen, little ex-haberdasher, who with one disdainful wave of his hand, boldly pushed through a raise for himself of \$25,000 and a tax-free so-called "expense account" of \$50,000 a year. And while Harry enjoys all this affluence, he has insisted every year of his reign that the rest of us pay higher and higher taxes. Like all Gaul we are divided into three parts; the taxmakers, the taxpayers and the *gall* of King Truman, the First, in grabbing from the Federal Treasury during his second term in office, more money than any other five Presidents who preceded him.

With David's protests still ringing in my ears but George's approval stiffening my spine, I left for the Pacific Coast, stopping for a day or two in Chicago. While there I consulted General Robert Wood, a friend whose judgment I value highly. As usual General Wood was gracious and welcomed me warmly. He listened intently while I read the still uncompleted speech to him. Then I looked across the desk and asked, "Shall I make this speech, General Wood?" Without hesitating, he replied, "Yes, but you know you're going to get into a lot of trouble, don't

you?" "Yes, I know. But I have to do it." He smiled rather quizzically and said, "I know you do. Go ahead, I'll back you up."

In Seattle where I stopped to call on my customers, I read the speech to another friend. Mr. MacDonald sat at his desk and listened carefully. Again I asked, "Shall I make the speech?" And with characteristic Western frankness, Mr. MacDonald shot back at me, "I'll wring your neck if you don't. It's time for someone to do something about these—taxes." He then launched into a recital of some of his experiences with the Bureau of Internal Revenue. In a tax suit the Government had compelled him to take truckloads of documents and records into court where the Government lawyers hadn't as much as glanced at them. All this was slightly annoying to Mr. MacDonald and he felt strongly upon the subject. As I started for the door, he suddenly stopped me. "Wait a minute, young lady! You know you're asking for trouble, don't you? You're on your way to court, probably the Supreme Court before you're through with this little deal." "Yes, I hope so. That's the whole idea—to test the law and throw it out." He was very serious, "But have you thought about how much it's going to cost?" "Yes, of course, but I have to do it." "All right, go ahead. I'm for it. But when the going gets rough, just remember I'm here if you need help." I blinked to keep back the tears, "Mr. MacDonald, I think I can manage it on my own. But I'll never forget that you said that."

The ballroom of the Los Angeles Biltmore was packed and several hundred were standing outside the entrance as I came through. One of my best friends, A. H. Fredericks, a reporter on the *Los Angeles Examiner*, in whom I had confided the day before, had stationed himself beside the door. He grabbed my hand, "Good luck, Vivien!" "Fred,



my knees are knocking together." "Never mind, they won't show behind that pulpit. You'll do it all right."

At the head table another friend, Norman Chandler, publisher of the powerful *Los Angeles Times*, sat beside me. He noticed my untouched lunch and asked why I didn't eat. "I can't. My tummy won't take it." He laughed, "It's not that bad, is it?" I replied, "It's worse. I'm probably a fool to stand up and risk everything on one toss of the dice, but I have to." He was suddenly serious, "Go ahead, and it won't hurt you."

Finally the waiting was over and I stood before that audience of a thousand men and was actually saying the words on which I had spent so many thoughtful hours. There was little humor in that speech. What few laughs came were incidental and more from how I said something, rather than what I said. It was a deadly serious business. In his story the next day Fred said, "Though noted for her satirical barbs at the New Deal, this time she discarded humorous twists and spoke with the earnestness of a crusader."

The audience was quiet and attentive. From the expressions on the few faces I could distinguish, I knew they realized the importance and the seriousness of the occasion. But at the end they rose and applauded and applauded until I had to stand again. Mr. Chandler grasped my hand and smiled down at me, "You see, what did I tell you?" He'll never know what those words meant.

## CHAPTER V

*The Test Case*

MUCH MISUNDERSTANDING of what I did on that day in Los Angeles arises from the fact that many people are not familiar with the function of a test case in our legislative process. The test case is as American as a hot dog. It is unique to our country and much of our law is built upon it. Congress can pass all the laws it wants to, the President can sign all the laws Congress passes, but any law passed and signed is still subject to judicial review by our courts. If the Supreme Court declares a law unconstitutional, it is no longer the law of the land, and Congress must then either drop the matter or pass another law which does conform to the Constitution. Or it may change the Constitution itself by passing an Amendment which must be ratified by two-thirds of the States. Any individual, or group of individuals, may sue another person or group in order to bring a test case to decide the constitutionality of a law, or an individual may deliberately break the law and ask for a test case. If an American citizen thinks a law is unconstitutional, it is not only his privilege but, I believe, his duty to break the law and demand that it be submitted to the court. True, when he takes such action he does so at his peril because if he loses the case and the law is found to conform to our Constitution, he must be

prepared to suffer the penalty. But until many of our courts, particularly our Supreme Court, became political arms of the present administration, a citizen could be advised intelligently by his attorney as to what his chances were of winning or losing. Unfortunately this is no longer true as our New Deal Supreme Court frequently renders decisions which primarily are politically expedient. Very little consideration, if any, is given to the mass of decisions by earlier Supreme Courts or to the actual conformity of the law with the provisions of the Constitution. It is not the function of the Supreme Court to *make* laws. It can only *interpret* laws in accordance with the supreme law of the land, the Constitution.

The most famous test case of New Deal legislation was the first, the "horse and buggy days" decision which declared the NRA unconstitutional and blew up the whole silly business. I have always been amused that Mr. Roosevelt's first panacea which would solve all our problems and usher in utopia, was identified with fowls, and eventually became all fouled up because of them, if I may be permitted a very poor pun. The symbol of the NRA was a cross-looking, belligerent Blue Eagle, and the noble experiment died on the neck of a sick chicken, very blue indeed around the gills. This great social gain, so-called, was nothing more than a chance for business to get together and set prices, which reached the height of absurdity when a man in a little town in upper New York was fined for charging five cents too little for pressing a pair of pants. And this excursion into socialism finally fell apart completely over a sick chicken.

The question was whether or not a rabbi had the right to refuse to take a chicken, which he claimed was sick, out of the coop. Before NRA the rabbi could select the chickens from the coop as he chose but the poultry code provided that he should take them as they were presented—

“straight killing” the code called it. However, the rabbi, fearful for the health of his people, defied the code and refused to take the sick chicken, and the whole NRA went to the Supreme Court. There it was very properly declared unconstitutional; price fixing might have been all right in prewar Germany or in presentday Russia, but not in the United States of America where business is built upon freedom of choice and free competition. Too bad the whole mess of illegal and unconstitutional New Deal legislation can’t be given the same wholesome treatment—it is rapidly making sick chickens of us all.

Shortly before I broke the withholding tax law, Philip Murray broke the publicity provision of the Taft-Hartley law. Mr. Murray was immediately indicted and zipped through the lower courts and into the Supreme Court so fast that Justice Felix Frankfurter accused the lower courts and the CIO of collusion. I did exactly what Mr. Murray did. I broke the law and asked to be indicted and taken to court. That was four years ago but as of this writing, I am unindicted.

Could there be any doubt in Mr. Snyder’s mind as to my motive when he read my letter to him of April 30, 1948, in which I enclosed Form W<sub>1</sub>, “Quarterly Return on Income Tax Withheld on Wages,” due on that date, and explained that it was “sent directly to you in order to bring this matter to your personal attention so that the proper legal steps may be taken at once, without the usual delays. It is simpler and will save time to inform you in this manner that I have not been collecting taxes, am not doing so now, and do not intend to collect them in the future. Therefore there can be no misunderstanding that I am deliberately violating the law.

“Since the end of the war I have withheld taxes from the wages of my employees with the greatest reluctance, because in my opinion no one has the right to take money

out of the pay envelope of another person. After careful study of the withholding tax law, I am convinced that this law is not only unjust and tyrannical in concept but is in direct violation of the Constitution of the United States. For this reason I consider it my duty as a citizen to break this law. This, as you know, is the usual procedure when a citizen questions the constitutionality of a law and is in keeping with American tradition and practice. A test case in court will bring the matter of withholding taxes to the attention of the American people. They are entitled to know who is responsible for this law and its true purpose.

“Shortly before I refused to serve any longer against my will as an unpaid tax collector, the Connecticut Federation of Labor, an affiliate of the American Federation of Labor, paid for a political advertisement in the *Hartford Times*, asking for the defeat of every Connecticut Congressman who had voted for the Taft-Hartley law. This was a deliberate, open violation of the law for the purpose of testing its validity. These unions were quickly indicted and are well on their way to court. I feel sure that the Government will wish to extend the same cooperation and courtesy to me even though I am only a small employer.

“Therefore I respectfully request that you please indict me.”

To which Mr. Snyder sent the inspired reply: “Receipt is acknowledged of your letter of April 30, 1948, with respect to income tax withholding on wages. The documents you submitted have been forwarded to the Bureau of Internal Revenue for appropriate disposition.”

In other words Mr. Snyder did not extend the same courtesy to me as that enjoyed by Mr. Murray and the CIO and the Connecticut Federation of Labor. Why?

Before leaving the subject of the test case, I cannot resist mentioning one that is brewing in New York City right

now. It seems that the City Fathers of New York, being a bit pressed for funds as usual, and searching frantically for new sources to tap, conceived the bright idea of taxing used cartons and boxes. No sooner said than done! A Sales or Use tax on the value of the carton was slapped upon the poor retailer whether he keeps or discards the carton after breaking it open and selling the contents. You can imagine the moans of anguish from such retailers as Macy's or Gimbel's who must receive hundreds of thousands of cartons every month. Keeping track of those cartons and the bookkeeping, not to mention paying the tax, would certainly add new employees to the payroll. The harassed retailers handed this little headache over to the Commerce and Industry Association of New York which has already engaged lawyers and conducted formal hearings before the Comptroller preliminary to setting up a test case. This one will certainly go to the Supreme Court. What vistas open up! How many millions of squeezed toothpaste tubes, bottle tops and cardboard boxes do we use every year? And what about wrapping paper and string?

## CHAPTER VI

### *I Refuse*

IN WESTPORT I had two sources for the unofficial dissemination of news. One was Julia's Hairdressing Parlor, the other was John the Barber. How many times I have slipped

across the street and said, "Now John, don't tell a soul but did you know—!" go back to my office and be quite sure that Westport would be fully informed upon the subject in fifteen or twenty minutes. Consequently upon returning to Westport from Los Angeles my first call was on John. He seemed glad to see me, and relieved that I was not in jail although he solemnly promised to send me some Italian abetz if "they" eventually succeeded in putting me there. This visit quieted the wild rumors with which the town was seething and temporarily calmed things down until payday.

On Friday, the payroll ready, I went upstairs where the Kellems' employees were already gathered together, and I made a little speech. I have made many speeches in my time, with more or less indifferent success, but never did I pour out my heart as I did that day in my own shop, with the cable grips, the reels of wire, the machines around me and my own people, quietly attentive, in front of me. I can't remember it all but it began with an explanation of the test case and the reason why I had broken the law and what I hoped could be accomplished. Then I said something like this: "You all know that religion and politics stop at our front door. When you apply for a job here, I do not ask you what church you belong to, with what political party you are registered, how, or for whom you vote. I do not tell you what clubs you should join, or where you should buy your groceries. I don't tell you how you should raise your children, although everybody knows that an old maid knows more on that subject than anyone else. However I deprive you of my valuable knowledge upon this matter. They're your children, you can raise them as you please. I don't meddle in your private lives in any way. You're all adults, free Americans, thoroughly capable of taking care of your own affairs.

"Paying taxes is a duty, a responsibility and, believe it

or not, it used to actually be considered a privilege of citizenship. I do not exercise other duties, responsibilities and privileges of citizenship for you and from this day I am not going to collect and pay your income taxes for you. There is no more reason why I should pay your taxes than that you should pay mine. If they can make me responsible for your taxes just because you work for me, the next step is to make me responsible for John the Barber's taxes because he has his shop across the street from me. One is just as logical as the other.

"Today all of your wages are in the envelope. On the outside is written the amount of income tax you owe for this week. We'll put it there every pay day. We'll tell you when the taxes are due, we'll get the forms for you and help you to fill them out. We'll pay for the postal money order which you will buy and for the registered envelope in which you will send it to Hartford. We'll do anything and everything we can to help you but we will not collect nor will we pay your taxes for you.

"Now I have gambled upon your loyalty and good citizenship. I *hope* you will pay your taxes. If you don't it will be unpleasant for you and it will be practically disastrous for me."

But I had not gambled too much. I got from those people exactly the same reaction you will get from any group of intelligent, adult Americans when they are treated as such, and not as incompetent wards of the Government. They paid their taxes. And they paid them quarterly, not weekly. There is no provision in the income tax law for paying your taxes weekly. Just try to pay that often and see what happens. Why should one group of citizens pay every three months, and millions of other citizens have that tax money extracted out of their wages every week? What happens to that money? Who gets it and what do they do with it all those weeks before it is due in



the Treasury? At least the people who are forced to pay every week are entitled to interest on their money, money in millions of cases the use of which they need badly.

Naturally that first day there were a number of questions, the most important being how to handle the tax money. They decided to appoint one man to collect and hold it for the first week and then they could determine how each one would arrange to pay his tax individually. I had no part in this decision because, after making the little speech and answering questions, I went back to my office so they could talk and plan without me. I learned later that there was considerable speculation and comment, not to mention a great awakening as to the large amount of money they were actually paying.

The one main object of the withholding tax law was to lull the taxpayer to sleep, to deceive him and make him believe that not he, but someone else was paying the tax. This was an insidious tax narcotic, and the men who framed the law well knew that if the taxes were taken from the envelope each week, the individual would soon disregard the tax entirely. He would consider only the amount of money in his envelope as his pay. If he did feel any resentment it would be directed at the employer, not the Government. This is what the Government wanted and this is exactly what happened.

But suddenly in the Kellems Company a group of American citizens came to with a start. They became acutely aware that large sums of money were being drained out of the weekly pay check and that they were each one paying heavy taxes. One little girl came up to me and gasped, "Miss Kellems, have I been paying \$4.80 each week?" I asked, "Is that the amount on your envelope?" "Why yes!" "Well then that is what you have been paying." She opened her eyes wide in astonishment and said, "Oh I didn't know I was paying all that."

In June that same girl came to me and said wistfully, "You know, Miss Kellems, I have \$50 in the bank and it all has to go for income taxes. I couldn't afford to buy a new spring coat this spring and now there's the money but instead it all has to go to the Government." I couldn't resist asking her, "And have you read about all of the silly, extravagant things the Government is doing with the money?" She had, and from that moment she became one American citizen deeply interested in government spending.

Incidentally, this girl is single and she joins with me in deep resentment at the unjust provision which enables married people to divide their income and pay their taxes at a lower rate, just because they are married. Every quarter she comes in and agitates for reform of the Community Property Tax Law which would make all Americans, married or single, pay at the same rate, and of course, she is absolutely right. I'm quite sure that if Congress had come out honestly and proposed a tax upon single people, just because they are single, that law could never have been passed but as usual, a slick trick was slipped into a tax law and when the Federal Community Tax Law was passed, it automatically slapped a tax upon millions of people, just because they were not married. Considering the fact that there are many, many more women than men in our country and that due to sheer preponderance of numbers, these women can never be married, is it fair to pile an additional tax on them for a condition which they cannot help and which 99 and 44/100 per cent would change, if they could? And what about widows with children? Is it fair that they should pay at a higher rate because a husband has died, and in thousands of cases left a woman to not only rear the children, but also to go out into the business world and wrest a living for them? And let's consider the widower also. As long as his wife is

alive, he pays at the rate for all married people, but the moment she dies, his rate goes up and probably his expenses, as now he must pay someone to care for the children while he works.

This little deal was not an oversight. It was done deliberately. Congress didn't have the courage to make a straight reduction in rates for everybody so it took this devious means to accomplish a tax cut for the majority—let the minority take it on the chin, as always. I was in Washington shortly before the law was passed and had an appointment with Charlie Halleck, then Minority Leader, and Joe Martin, Speaker of the House of Representatives on another matter. Charlie volunteered, "You know, Vivien, we're going to pass this Community Property Law and reduce taxes." I replied emphatically, "That is the rankest class legislation. Many bachelors, who laughed when Mussolini passed a tax on bachelors in Italy, pay the tax and don't even know it. It is grossly unfair to all unmarried people, of which I am one." They both laughed, albeit Joe a bit sardonically, and Charlie said, "Well, we've got to do something to make Joe here get married." With considerable force, Joe, a confirmed bachelor retorted, "It's still cheap at twice the price. I'll pay first."

But this Community Property Tax Law is another example of cynical, political deception. Certainly a cut in the income tax rates was imperative and in spite of all the untrue and unkind things President Truman said about the Republican 80th Congress, the fact remains that it is the *only* Congress since 1932 that has given the American people any tax relief whatsoever. But this Congress, like all others since the Income Tax Amendment was passed, didn't have the courage to cut the higher rates in the same proportion as the lower. They accomplished their objective by passing a law which permitted all married people to

cut their rate substantially by dividing their income between them and then paying at the rate on the lower income rather than the rate on the single high income. As a matter of fact, by this device, the cut in the rates on the incomes in the higher brackets was much deeper than it was on the lower incomes. Of such trickery is politics compounded.

There is another little story which illustrates the tax consciousness of the people of the Kellems Company. This one is about a young man named Johnny. Johnny is a loved and trusted employee of the Kellems Company. He is a fine young man, married and has two children. About two years ago Johnny built a house. It's a nice, little house, completely modern and Johnny built most of it with his own hands, after work, in the evenings and during week ends. It was our pleasure and privilege to help him out a bit with the house and we're all proud of it. However I didn't know the house lacked a bathtub. It seemed completely finished and Johnny didn't tell me that he hadn't had money enough to buy the bathtub. Every so often by economizing and saving he would accumulate the money for the bathtub, then one of the children would get sick, or something else would happen, and the money would have to be spent. Finally Christmas was drawing near and Johnny promised himself that come Christmas morning his present to his wife was going to be that gleaming, white bathtub. He had the money in the bank and he could hardly wait. But Johnny had reckoned without the income tax. Came December 15th and the money for the bathtub was swept out of the Westport Bank right down into Washington. And Johnny sat down and wrote a letter to President Truman, which unfortunately he did not mail. Had I known about it I would have insisted that he send it. The letter was just one sentence. It said: "Dear

President Truman, Today I have made you a Christmas present of my bathtub.”

Shortly after this I was reading an account of socialized medicine in England and was simply charmed to discover that all baldheaded Englishmen receive from the Government, *free*, two wigs. Not one, *two!* Even those slightly bald can be covered up, free. Not only this but the wigs are combed and cleaned twice a month by the Government, free. They tell me the wig business in England is simply booming. But every time I think of one of those baldheaded Englishmen, I think of Johnny's bathtub and as far as I'm concerned that Englishman is running around with a piece of that bathtub on his bald pate. All of which epitomizes the whole tax situation in the United States and poses a very important question for the American people: Which is more important, wigs for baldheaded Englishmen or bathtubs for American boys?

By a very simple device the employers of this country have it within their power to make every worker completely tax conscious and aware of how this insane governmental extravagance is eating into the standard of living of all of us. I have not asked anyone else to do what I have done. I deliberately broke the law in order to test the constitutionality of the law. But I would like to see every employer revise his method of paying his or her employees. Instead of deducting anything from the envelope, *all* the money should be put into it, every penny that that man or woman has earned. If it is possible to pay in cash it would be a good idea to pay shortly after lunch and permit each person to keep the money for an hour or two. Then as he leaves for home, have a company collector standing right by the door or gate who will say, "You owe so much for social security, you owe so much for withholding tax, your union dues are so much, your unemployment compensation, your Blue Cross or hospi-

talization is so much, your deduction for pension fund is so much, your deduction for bonds which you are buying is so much, your contribution to the Community Chest or other charitable cause is so much." In other words give him an itemized statement each week of every penny that is taken out of his pay check, make him reach into the pay envelope and count it out and hand it over. Where a company pays by check, a company bank should be on the premises to cash the check and then require the employee to count out the deductible amounts and pay them over.

Such a payroll policy is entirely legal and if it were universally adopted, in six months we would have either a tax revolution or a startling contraction of the federal budget! Instead of promising to *give* people things in order to be elected, politicians would be promising the voters the strictest economy, and not to spend one unnecessary cent.

However such prescience on the part of the big employers is something to dream about but never to be realized. What hope is there when an organization such as the National Association of Manufacturers not only approves the withholding tax but refuses to let the matter be presented to the membership? In reply to a direct request that the Association condemn this pernicious theft from the pay envelopes of the workers of this country, Mr. Kenneth R. Miller, Treasurer and Business Manager, wrote:

The problem of the withholding tax falls within the province of the Association's Tax Committee, which is composed of members from all sections of the country and includes quite a number of industry's outstanding men. . . . While many members of the Committee dislike the withholding procedure, their general feeling seems to be that it is necessary if we are to retain a broadly based individual income tax system. Or, to state the matter differently, it is the defi-

nite *fear* [italic mine, V.K.] that the alternative to a broadly based individual income tax with the withholding procedure would be even higher taxes on business and on higher individual incomes than is now the case. We could ask the Tax Committee to give further consideration to this problem. However, I feel certain that the Committee would not change its thinking.

*Fear?* Exactly, and cowardice and compromise with fundamental American principles of equality and justice! Mr. John C. Davidson, Director, Government Finance Department, of the NAM wrote: "From time to time this subject has been discussed within the Association's Tax Committee which is representative of the membership throughout the country and includes many of the industry's top tax men. In general, the thinking of these men seems to be that, even with its disadvantages, the withholding tax is the only means for collecting income taxes from the greater majority of American workers." In other words, the workers are dishonest, the employers honest!! The man who received this letter sent it to me with this cryptic comment: "Attached is the astounding reply I got to my letter!"

However a rude awakening may be in store for some of our captains of industry. Did you notice the perfect wave of jitters which swept like a flame through the membership of both the National Association of Manufacturers and the National Chamber of Commerce at the proposal to withhold taxes on dividends and interest? But the conversion comes hard. I quote from a letter written by one of our important industrialists in Connecticut and circulated widely. This letter was written to Senator McMahan to protest against the withholding of dividends, but believe it or not, after a lengthy explanation as to the difficulty, futility and all around immorality of withholding taxes on dividends it wound up with this:

The cost to our transfer agents and consequently to the company would run to several thousand dollars a year. The cost to the Government of checking the credits on income tax would be prodigious. [Which, of course, the Government would love. They could put more people on the federal payroll. VK] The inconvenience and trouble to the many thousands of stockholders throughout the country that would have to apply for refund [How about inconvenience and trouble to millions of employees who have to apply? Again, VK] and the consequent cost of handling the applications make it seem as if we are straining at a camel to catch a gnat.

Withholding tax on dividends is in no way comparable to withholding on wages and salaries. I think that the majority of manufacturers welcome the latter for it is entirely in line with the current practice of doing everything possible to convenience employees. There are many other self-evident differences between the principle of withholding on dividends and on wages and salaries. [What are they, Mr. Industrialist? Name one. VK]

I can't help but believe that the saving to the Government is going to be much, *much less* than they anticipate and the inconvenience, cost and irritation to thousands of corporations and many, many thousands more of individual stockholders would be *much greater* than is anticipated.

Just how blind and inconsistent can an otherwise intelligent man be?

And perhaps some of the parlor-pink propaganda writers who plug so consistently for the policies of dear Russia, may also have a second thought. Taxes on royalties on books and magazine articles are to be withheld. Already they're crying crocodile tears. Well, my dears, what is sauce for the goose, is sauce for the gander. If billions of dollars can be extracted forcibly from the pay envelopes of the common people who toil for their daily bread, it's just as easy to take it from other sources and I, for one,



jolly well hope the big boys get it too—right in the dividend neck. Withholding is a vicious drug. Once the habit is formed, the victim requires increasingly bigger doses and the ultimate end of it all is complete confiscation of everything from everybody by the Frankenstein which withholding creates.

After the first week each person handled his or her own money. Some had checking accounts and simply deposited their full wages in them. Those who did not have checking accounts decided to open savings accounts and deposited therein the amount marked due on the pay envelope. We helped with this. The bank in Westport is three miles from Saugatuck where our factory was located, and it was inconvenient for our employees to go that far on payday. So they all gave their money and bankbooks to one man who made the trip and deposited the money for everybody. After a little while many of our employees developed the savings habit and put more than the amount of taxes in their accounts.

I realize that this unexpected by-product is diametrically opposed to the theories of the present maladministration of our Government. Law after law passed during the last nineteen years has been designed to discourage thrift and industry on the part of the American people. The whole plan is to penalize the industrious, enterprising citizens and to coddle the shiftless, improvident ones. The end result of such policies is apparent in the present fantastic "relief" situation in New York. During one of the most prosperous periods in our history, there are over 328,000 people on relief in New York City. The taxpayers in New York, as in other parts of the country, are faced with the problem of these families who have become accustomed to living on the money of other people. These "reliefers" not only enjoy living in this manner but they have come to regard our bounty as their natural right and our Wel-

fare Departments as their own private collection agencies. This army of leeches is increasing rapidly and their growing demands have produced the need for more social workers who, in turn, have discovered that they should encourage the "Reliefers," otherwise the social workers wouldn't have jobs. It's a pleasant little ring-around-the-rosy for them, but a bit rough for those of us who have to foot the bills.

Many people lack an understanding of the real meaning of patriotism. They confuse love of government with love of country. The true patriot may love his country and utterly despise his government. The men who founded this country were true patriots. They loved this country, its very soil, but they hated the despotic tyranny of George III and his Parliament which clamped one oppressive law after another down upon them. Today millions of Americans love their country but hate the rotten, deceitful Government which maintains itself in power by confiscating the wealth and earnings of the American people, and uses this vast treasure to buy votes with promises of false security to people who do not understand that their Government cannot promise security as it has no security to give. The only security in this world is the security which each person has within himself, the ability to cope with the problems of life as they are presented. The only security our country possesses is a strong, virile, self-reliant people, and as a matter of fact, that is the only real security for the whole world, since we are trying to carry most of the world on our backs. Let us note well and preserve our greatest asset—the character of the American people.

One day I asked my furrier if there was any difference between the quality of the skin of a ranch mink and that of a wild mink. There is a difference in color but I wondered if one skin was actually stronger and tougher than the other. His reply impressed me; I have never forgotten it. "Of

course there's a difference. You see the little wild mink has to fend for itself. It has to protect itself from the bitter cold in the winter; that's why it grows such a beautiful coat. It must ward off ferocious enemies who would devour it. It must rustle for its food. In other words, that little wild mink must take care of and protect itself against the whole world, and because of this constant struggle it grows strong and self-reliant. Its body is lithe and active, its hide tough and its fur thick and luxuriant. But the little ranch mink—well, he can be bred to have a beautiful fur, but he is protected and secure. He has a nice house, and a clean bed, his food is brought to him regularly. He doesn't have to worry about a thing. True he's beautiful to look at and his skin makes a lovely coat, but he isn't as sound and robust as his little wild brother racing about in the snow, jumping over logs, swimming streams, ever on the alert for his very life. And I'll guarantee that with all the dangers and hard work, the little wild mink is far happier than the coddled, protected little ranch mink."

Originally we were a nation of little wild minks. We had to fend for ourselves, we had to meet dangers and obstacles, we had to get our own food, build our own houses, till our soil and sell our produce for what it was really worth. And we waxed strong and great. We not only built a wonderful country, the most wonderful in the world, but we built a race of vigorous, resilient, intelligent people. What a tragedy if we forsake the danger and excitement of our highly individualistic life and become a nation of soft, coddled, little ranch minks. Eventually there will be no American race because we'll *all* want to be ranch minks, and then who will provide the food and shelter? Fortunately, there are still more wild minks among us than there are ranch minks and I believe there are enough of us to convince the rest that security lies only in each individual and we must each do our share

instead of expecting someone else to carry our burden. Of course, there are always the sick, the crippled, the incapacitated. These are our legitimate responsibility but every normal, healthy person should work, or not eat.

And there is nothing which contributes more to a feeling of self-respect and security than money in the bank. All the handouts devised by a scheming government cannot accomplish for the individual what a weekly deposit of money in the bank, earned and put there by himself, can. Saving for the rainy day is truly American. The lessons of frugality and personal responsibility taught to us from childhood have made us the people we are and I cannot believe that three centuries of such teaching can be undermined and dissipated in fifteen or twenty years.

There is no doubt what the overwhelming answer of the majority of the voters in this country would be if the following clear-cut question was presented to them: Do you want to hand your money over and let the Government spend it for you, or do you want to keep it and pay your own bills? The answer to that question is the solution to the whole dreadful situation in which we find ourselves after nineteen years of squandermania and, if squarely put to the voters of this country, would mean the overwhelming defeat of anyone colored with the faintest pink tinge of the New Deal. The answer to that question is the keystone of our American system of government and the foundation upon which our Constitution rests. Surely if a man is smart enough to earn his own money, he's smart enough to spend it.

It is at last seeping into the consciousness of even the most subsidized of our voters, that the "Government" consists only of our own neighbors, many of them unable to earn an adequate living in competition with other people. So they get a "Government" job and then promptly tell those of us who are able to make enough money to support

ourselves, to just hand it over and they'll decide how it shall be spent. A few more Marshall Plans, ECA's, Point Fours and "Defense" rackets, and the American voters are finally going to realize what a gigantic hoax the whole thing is, and they will rise up in righteous wrath and throw the whole dishonest, incompetent, crooked gang out. These may be strong words but they're pale and anaemic compared to hundreds that are used in letters sent to me from all over the country.

## CHAPTER VII

*Mr. Snyder Grabs*

THE EXPECTED SMEAR did not materialize. Apparently the financial wizards in the Treasury were caught completely off base. They issued a few uncomplimentary remarks about "that crackpot woman in Connecticut." "Don't pay any attention to her, she'll pay all right," and "She's just a publicity hound." The latter being more or less true, I didn't bother to deny it. What's the use of trying to accomplish something unless people know about it. New York State would never have ratified the Constitution if Hamilton, Madison and Jay hadn't publicized it for months in the New York newspapers. The persistent propaganda peddlers in Washington just love to monopolize the front page for themselves and they suffer excruciating pain

when someone pushes them off once in a while, particularly when that person lands a blow right in the governmental solar plexis. After the initial speech, practically every time the story broke out again was because of some stupid thing they did. They should have ignored me, exactly as they should have ignored the Housewives Rebellion down in Marshall, Texas. No confiscating bank funds—no publicity! But the Nazi mentality and the power complex has already taken such hold in Washington that they actually believe the all powerful State, for which they long so poignantly, is already here and they are incredulous that Americans still have the courage to defy them. Fortunately the spirit of America still lives and breathes and if they would get off those soft swivel chairs and go out among the people they'd discover there are plenty left who will not knuckle down and be intimidated.

But after the first flustered scurrying around, "they" subsided and so did we. The employees received their money each week and deposited their tax in their savings accounts.

Until one bright, sunshiny day in May, the door of the office opened and the Bureau of Internal Revenue walked in—four of them. I've often wondered why they travel in packs! We've never had less than two and at times as many as six have been buzzing about. Probably since their business is strictly predatory, like wolves they must travel in packs for safety. It's possible that sometimes some irate citizen will be goaded beyond endurance and in his righteous indignation clout one of them—a consummation devoutly to be wished!

They demanded our records and books and poured over them for days. Then they insisted upon interviewing every one of our employees. At the end of this searching investigation, Mr. Healy, one of the men from Hartford, turned to my brother and said, "I'm convinced that the

taxes are paid and I wish to congratulate both the Kellems Company and the employees on the way you have safeguarded the funds of the Government." With which he walked right out the door and downtown to the Westport Bank and Trust Company and said, "The Kellems Company owes \$1,685.40. Give it to us." Mr. Anderson, the president of the bank said, "What proof have you that the Kellems Company owes this money?" To which Mr. Healy replied, "We don't need any proof. We're from the Bureau of Internal Revenue." Mr. Anderson said, "That's all very well, but I've been in the banking business most of my life and I've never yet taken money out of a private account and handed it over to someone else unless there was some proof that the money was owed and that I had authority to pay it. Haven't you a court order or something?" "No," said Mr. Healy, "you give us the Kellems' money or we'll take the bank's money." Mr. Anderson, by this time in a fine state of jitters, said, "I still can't do it. Will you please give me time to see my lawyers?" Mr. Healy graciously allowed him twenty-four hours and it wasn't twenty-four minutes until Harry Sherwood was in the bank and they were in a huddle.

Then they called my lawyer in Bridgeport.

All this time I was serenely driving down from Farmington where I had spent the night, enjoying the beautiful May day in Connecticut. The dogwood was in bloom and I was so happy to live in such a lovely State. There are many beautiful spots all over our wonderful country but there's something about May in Connecticut—well, you just have to experience it to understand. I arrived at my home in Westport at peace with the world. But that peace was suddenly shattered as I entered the door and picked up the jangling telephone. My lawyer was on the other end of the wire and he crisply ordered me to get

right over to Bridgeport, fast; I was not to stop and pick any dogwood on the way.

If I live to be a hundred I shall never forget the scene which greeted me as I was ushered into his office. Here was the dignified, erudite, highly respected Mr. Arthur Comley, the dean of the legal profession in our state, and with him was the brilliant young trial lawyer, Mr. J. Kenneth Bradley. And on the polished mahogany desk before them were big books opened and piled about, sheets of paper and other memoranda—my legal advisers had been doing a research job.

They greeted me without a smile as I entered the door. They gazed upon me with the kind of an expression a lawyer probably wears when he is bidding a condemned client good-by for the last time. And then Arthur shook his finger at me and said, "Now, young lady, look at the mess you've got yourself into. They're going to take \$1,600 of your money." "What for?" I inquired quite calmly. "For taxes, that's what for." "Oh no they don't, Arthur. I read the law myself and it says plainly that if the employees pay their taxes, the employer does not have to pay them. The taxes are all paid and they can't collect them twice." "My dear child," said Arthur in that exasperating way of his, "Did you ever hear about the man in jail who said to his lawyer, 'They can't put me here' but there he was? Well, that's where you are. They *can* take the money."

It seemed to me that Arthur was deriving a certain amount of satisfaction out of the situation. He had never been in sympathy with my little crusade, chiefly because he had suffered for so many years from my legal policy which is: Never tell a lawyer anything until it's too late. And this was manifestly too late. I had not told Arthur what I was going to do in Los Angeles because I knew perfectly well that he wouldn't let me do it. Lawyers are



usually quite timid in such matters. "How can they take the money?" I demanded. "Penalty, that's how. One hundred per cent penalty." "Oh no, Arthur! I know about that too. The penalty is ten dollars per quarter, not per employee, per *quarter*. It says so, right in the law."

And so it does. I had figured it would cost me forty dollars a year to tell Mr. Snyder where to go, and it seemed cheap at double the price.

But did you ever hear of "incorporation by reference"? I hadn't either.

You start out with the Withholding Tax Law and there are lots of Sections: Section 1600, Section 1601—all the way through Section 1627, and many of these Sections have little Sections; a, b, c, d, e, and f. You can have as many Sections as you like. One Section says that the penalty for not deducting and withholding is \$10 per quarter, and another gives a criminal penalty which means you have to go to jail and pay a heavy fine. It's all quite diverting and you feel very well-informed, but tucked away off down in Section 1627, where you'd scarcely notice it, it says that all of the penalties provided in Section 1400 will apply to the Withholding Tax Law. You hurriedly thumb through to Section 1400 and are set right back on your heels because that's the Social Security Law.

And it's just lovely, all the wonderful things you're going to get—if you live long enough, or when you're dead. And oh yes, you are not taxed by the Social Security Law. Oh my no! You *contribute*. (Just try not contributing and see what happens to you.) Then there are more Sections, just like the Withholding Tax Law, but if you persevere you finally come to Section 1430 and it says that all the penalties provided in Sections 2700, 1800 and 3661 shall also apply. Still not knowing what all this double talk means and a bit groggy, you search out Section 2700 and, believe it or not, that's a tax on a pistol. It has plenty

of sections too; one says that the tax must be paid by the manufacturer which is quite all right with you, serves him right for all this mess, this is no time for maudlin sympathy what with all the trouble you're in—penalties all over the place. But you poke warily around among the Sections and there it is, tucked right in under Section 2707 (a)—the cute thing! “Any person who *willfully* fails to pay, collect or truthfully account for any pay over” the pistol tax, “or *willfully* attempts to evade, or defeat any such tax or the payment thereof” shall be penalized exactly 100 per cent of the tax not paid, collected or accounted for.

There's still Section 1800 but it's really too silly, something about licking stamps and sticking them on decks of playing cards. That one is so absurd and farfetched that later, in the trial, the Government didn't even refer to it; disregarded it altogether and pinned all their hopes on Section 2707 (a). As far as Section 3661 is concerned I never did find it.

But this, if you please, is incorporation by reference. As a matter of fact, it's *double* incorporation by reference and it took all these gyrations and all of these laws and sections of laws to take a 100 per cent penalty for not paying a pistol tax and try to put it on an employer for not collecting the withholding tax! And it had taken two top-notch lawyers hours and all of those big books on Arthur's desk, to track down incorporation by reference and double incorporation by reference, to find the law which gave the Internal Revenue agents the power to walk into the bank and rob my account of \$1,600. I don't suppose ten members of Congress knew what they were voting for when they passed it.

When Arthur finished explaining all this, something inside me snapped, and so did I, “Do you mean to tell me that even though the Government has got every dol-

lar due it, they can still fine me 100 per cent because I didn't collect it?" Arthur replied with finality, "I mean exactly that." I looked at him in blank disbelief; it just didn't seem possible. But I made my decision, "Very well then. Key down, both of you. I don't want to lose \$1,600, nobody does, but it won't break me. And if the Government can take \$1,600 from me for taxes they've already got, it's time the American people knew about it. They can have it—I'm going home."

I went home. And the next morning they walked into the bank and took it.

I'm not talking about Russia. I'm talking about Westport, Connecticut, in the year of our Lord, 1948. Did you know they could do that? Neither did I. I found out the hard way.

Well, we were back on front page again—right in the middle. And an interesting thing happened. When I first broke the law the editorials were divided about fifty-fifty, for and against me. But after the Government took this first money, the tone of the editorials changed. They poured in through the clipping service and were about 90 per cent for me. Today, that figure is at least 99 per cent.

Mr. Snyder and his tax experts apparently didn't like this. They drew back into their shell and stopped calling me all of those complimentary names, "crackpot," "publicity hound" and the like. They decided it would be best to blanket me with silence. I was very amused when a friend of mine on a visit to the Treasury Department in Washington was shown the official directive to the Treasury Representatives in each State. This directive instructed all Representatives to reply, "No comment" when a reporter asked about me. This friend sat in on a press conference while there and could hardly keep a straight face when a reporter brought my name up and was given

the "no comment" treatment. For days Barry Faris, of International News Service, enjoyed himself by sending a reporter regularly to the Treasury to ask what they intended to do in the Kellems' Case. Each time the reporter returned with the "no comment" reply.

Many people have asked why I didn't sue the bank for giving the \$1,600 to the Treasury agents, and my first impulse was to do so. But a visit to either Julia's Hair-dressing Parlor or John the Barber's the next morning would have provided the answer. Seething was the word for it. "Did you hear they had taken \$1,600 from Vivien Kellems' bank account? Just walked in and took it." "How can they do that?" "If they can take her money, they can take anybody's. I'm going down and get my money out."

A suit to recover from the bank might have tested the constitutionality of the law, but it would have been incidental, rather like coming in through the back door. I want a clean-cut issue and that is why I broke the law. It's their law. I broke it and it's up to them to defend it. If they had indicted me and brought the suit, the burden of proof would be upon them, not upon me. And after thinking it over I realized that that was exactly what they wanted and I had no intention of falling into their trap. Besides why should an innocent bystander, the bank, be put to the worry and expense of a lawsuit? A suit would have been very embarrassing to them, many depositors would have withdrawn their money and a lawsuit trying to defend an indefensible law would have cost thousands of dollars. The bank was helpless. They had no choice. It was either "hand over the Kellems' money or we'll take the bank's money." And according to the law the tax grabbers could take it.

The actual amount they took was \$1,685.40. They claimed \$837.70 for taxes, \$837.70 for penalty and \$10

interest. We had made one mistake; we had failed to keep proof that the taxes were paid. The records in the Internal Revenue Office in Hartford would show that each person had paid, and it had never occurred to me that they would collect the taxes twice. The Treasury in Washington had Mr. Healy's report and they knew the taxes were paid, but they deliberately gave out the impression that they were only collecting money for taxes which I had refused to pay. Even today some people still believe this to be true.

But we never made that mistake again. As the date for the second quarterly payment drew near, I asked our employees if they were willing to be photographed buying postal money orders with which to pay the taxes. They were. I then telephoned the New York and Bridgeport newspapers and asked if they would be interested in a picture of the Kellems' employees when they purchased postal money orders to pay their taxes. They would. And so we all trooped across the street to the post office while the photographers recorded the event. That picture, which was printed widely, did more to dispel the dishonest representation of the Treasury Department than anything else.

We laid all of the receipts for the money orders on a big sheet of paper and had them photostated. The photostatic copy was put in our files and the receipts were given back to the individual taxpayers. Then each payment was sent to the Collector of Internal Revenue at Hartford, return receipt requested. We photostated these receipts also, thereby keeping double proof that the taxes were paid. Since my brother and I felt that the employees should not be penalized because of our refusal to collect and pay their taxes, we paid for the postal money orders and also the charge for the registered letters. We did this every quarter.

However I was so outraged at this highhanded robbery that I wrote to the President:

June 16, 1948

The President  
The White House  
Washington, District of Columbia

My dear Mr. President:

On April 30th, I wrote your Secretary of Treasury, Mr. John M. Snyder, and requested that he indict me for violating the withholding tax law. In my opinion this law is unconstitutional and I have broken it in order to bring a test case before the Supreme Court. Either Mr. Snyder does not understand the function of a test case in our legislative process, or he too doubts the constitutionality of this law and is afraid to submit it to the jurisdiction of the Court. At any rate, Mr. Snyder did not grant my request. He chose, rather, to use the methods of the Police State.

Four agents of the Bureau of Internal Revenue came to my factory. They poured over my books and records and interviewed all of my employees, each of whom had paid their taxes. These agents then selected an arbitrary figure of \$1,685.40 and demanded that we pay it, which we refused to do since there was no money due the Government. They then went to the Westport Bank and Trust Company, placed a lien on our bank account, and demanded that the bank hand over \$1,685.40 of our money. They presented no proof that this money was due nor did they have a court order.

Appalled at this peremptory demand, the officer of the bank pleaded for time in which to consult his lawyer. To his amazement, he found that the withholding tax law actually gives the Bureau of Internal Revenue the power to confiscate private funds in this manner and if the bank refuses to hand them over, the agent can seize the bank's funds. Over my protest the bank gave them the money.

What kind of a law is this, Mr. President? It makes me responsible for taxes of another citizen because he happens to have my money. The agent of the Bureau of Internal Rev-

enue on a whim, may select any amount and seize the money, the Fourth Amendment notwithstanding. In view of these facts, don't you agree that this law should be brought before the Supreme Court? Even though you personally favor high taxes, surely you cannot condone such Hitler-like methods in collecting them.

In order to clarify the matter, I am enclosing photostatic copies of postal money order receipts for the quarterly installment of the income taxes of all the Kellems Company employees. These receipts prove that the taxes of every employee of the Kellems Company are paid up to June 15th as they were on March 15th. The funds of the Government are fully protected, there is no money owing whatsoever and yet, Mr. President, the law is still being broken because I have not deducted and withheld these taxes. Since the taxes are, and will be paid, we are not here concerned with the payment of taxes. Rather we wish to determine two fundamental issues: first, the right of the workers of this country to receive their full wages and pay their own taxes as free, American citizens, and second, the right of a private citizen to refuse to act as an unpaid tax collector for the Government.

The strong-arm methods of Mr. Snyder will not settle either of these issues. . . . The only way these two questions can be answered is by a test case before the Supreme Court.

Therefore, Mr. President, I request that you indict me in the orderly, American way provided by our Constitution.

Respectfully yours,

Vivien Kellems

The President did not reply.

Things quieted down. We continued to pay our employees and they continued to pay their taxes when due. On July 31st I sent Secretary Snyder Form W1 for the second quarter of the year and wrote:

As you know, it is my desire to test the constitutionality of the withholding tax law, and I am breaking the law so that you make take the case to court.

At first it may not have been apparent to the general public that my employees have consistently paid their taxes ever since they have received their full pay, but recently at my request, the newspapers carried a picture of the Kellems' employees buying money orders with which to pay their June 15th installment. Also each employee sent his or her taxes in a registered letter and has a return receipt from the Collector of Internal Revenue at Hartford.

Therefore there is now no misunderstanding and the issue is clearly drawn: the taxes are paid but I have not collected them. Will you indict me, Mr. Secretary, or will you again seize my property without a court order for taxes that are paid?

I await your next action with interest.

Respectfully yours,

And just to nail the issue down, I again wrote to the President:

This matter is brought to your attention once more as there has been a change in your status since my letter of June 15th. I now address you not only as President of the United States, but also as a candidate in the coming election, and as a voter, I wish to ascertain your position on the withholding tax.

Do you favor withholding taxes from the pay envelopes of the workers of this country? Do you believe that employers should be forced to act as unpaid tax collectors for the Federal Government?

Should the Supreme Court declare this law unconstitutional, 60,000,000 wage earners would receive their full pay each week, an automatic wage increase for all of them. This simple action would help people to meet high prices and, at the same time, tend to lower prices and check inflation since government expenditures would necessarily have to be reduced.

Therefore, Mr. President, I would appreciate it if you would ask Secretary Snyder to submit this law to the jurisdiction of the courts.

Respectfully yours,



Needless to say I did not receive an answer to either letter.

Then the judge in Bridgeport decided that we were in violation of the zoning laws of Westport, a fact we had never denied. Even in retrospect it does seem strange that Westport would let us operate for over six years and then suddenly decide that we were in violation, particularly since we had come to Westport openly, announcing in the paper several months ahead that we were moving the factory from New York. It has always been a question in my mind, and also in the minds of many of my friends, as whether or not this whole zoning matter was instigated by the Treasury as another annoyance to make me shut up and comply with their withholding tax law. So much pressure is put on nonconformists who dare to oppose the powers-that-be in Washington that it is entirely possible. They are really so stupid that I doubt if they actually thought of starting the zoning suit but once it got going they may have seen a chance to harass me and joined in after the fracas started. Our First Selectman (Westport doesn't have mayors) was a wild-eyed New Dealer, and spearheaded the fight against us.

But so far as inspectors and agents were concerned the Treasury let us alone for over a year. We were busy during this time, moving to a new factory in Stonington, and our new employees agreed to pay their own income taxes, which they did.

On December 15, 1948, I sent another quarterly letter to Secretary Snyder just to remind him that the battle was still joined, in which I said:

"If Congress should pass a law compelling me to dig a ditch for the Internal Revenue Department and, adding insult to injury, compel me to buy the shovel with which to dig, I doubt if you would enforce that law. Under our Constitution there is absolutely no difference between forcing me

to buy a shovel and dig a ditch, and forcing me to collect taxes and to pay for collecting them. Both are involuntary servitude expressly forbidden by the Thirteenth Amendment. Also both are forbidden by the Fifth Amendment which says that private money shall not be taken for public use.

You either believe in the Constitution of the United States or you don't. There is no halfway measure. When a citizen in good faith asks that a tax law be tested in the courts, you, a public official having sworn to uphold the Constitution, are bound to comply with that request. Why not, Mr. Secretary? Are you afraid? Surely if I can risk fine and imprisonment you can risk the test of a law so important to the employees of this country. Do you dislike having them reminded that millions of dollars are being drained from their pay envelopes every week? Indict me, Mr. Secretary, and I can no longer so remind them every three months by openly breaking the law and defying you.

Respectfully yours,

On January 15th I sent another little flyer :

Last May 13th, your agent walked into the Westport Bank and Trust Company and demanded the sum of \$1,685.40 which he claimed I owed for taxes not withheld from the wages of my employees: \$837.70 in taxes, \$837.70 penalty and \$10 interest. Under duress the Bank took this money from my account and gave it to him although your agent presented no court order or any proof that I owed the money. On the contrary, your agent knew that no money was due. He had personally interviewed my employees and had positive information that each one had paid his taxes. After his investigation he stated that the funds of the Government had been fully protected, both by the Kellems Company and by the Kellems' employees.

Today I have paid my 1948 income tax but I have deducted the sum of \$1,685.40 which you illegally took from me. If you wish that money you can sue me or you can again send your Gestapo agent and grab it from the bank.

He did not choose to sue—again he grabbed it.

On February 13th, I could not resist a reminder. I wired:

Dear Mr. Secretary: This is our anniversary. One year ago I told you I would no longer collect withholding taxes for you and from that date I have not collected one thin dime. Why don't you punish me, Mr. Secretary? Are you just negligent of your duty or is it because you know that the law is unconstitutional and your whole tax collection system would crash about your head like a house of cards? If you don't do something soon plenty of other Americans are going to realize that the law is illegal and do the same thing. Then where will you be?

And just to make sure that he did not forget me, I wrote again on March 15th.

My dear Mr. Secretary: The ides of March are upon us as every resentful taxpayer knows! Repeatedly during the past year your agents have prophesied that come March 15th there would be one grand accounting by Miss Kellems and that she would pay through the nose for not collecting withholding taxes from her employees.

Well Mr. Secretary, the date is here and I await your pleasure, or to be more exact, your displeasure.

All taxes are paid by the Kellems Company, the Kellems' employees and the Kellems' family. However, since you may plan to repeat the highhanded performance of last April and confiscate my property for taxes that are paid, I have compiled a complete list of everything I own. If you are to again emulate Mr. Stalin, I will give your agent this list. The American people wish to know just how far their Government has progressed on the path to dictatorship.

But nothing could goad Mr. Snyder to action and all remained quiet on the Treasury front.

Then suddenly, in August, 1949, they walked into the Mystic Bank and Trust Company, and I don't know what

it is about the figures one and six—they just love them—they reversed them and took over \$6,100.

And this time John Fitzpatrick, Collector of Internal Revenue in Hartford, stated definitely in a letter that the full amount was for penalty. There was no question that the taxes had been paid, they admitted there was no interest due, which proves that any American has the right to demand that he be allowed to pay his taxes quarterly, not weekly. These taxes had been paid quarterly and the Government claimed no interest. There is no provision in the income tax law for paying your income tax weekly. Just try to do it and see what happens. Why should some people pay quarterly and millions have it forcibly taken out of their pay every week? What happens to that money? Who has the use of it all those weeks before it is due in the Federal Treasury? If the Government is going to siphon off these millions of dollars every week, then at least it should be forced to pay interest on the money. If this isn't stealing, it's the closest thing to it that I know.

And in the case of the \$6,100 as with the \$1,600, no trial, no lawyer, no judge, no proof that the money was owed. They just walked in and took it. This in free America by the same little gang of men who made a great to-do about insuring bank deposits. I issued one statement to the press and said that the only difference between John Snyder and Jesse James was that Jesse had a gun.

Missy probably summed it up better than anyone else, "But Miss Kellems, you put the money in the bank to keep it safe, didn't you? Well then, how can they take it?" Perhaps some kind reader can answer Missy. I can't.

## CHAPTER VIII

*I Sue*

WELL, FUN'S FUN and all that sort of thing but a little company such as ours can stand only so many of such levies, which Mr. Snyder understood quite well. We decided to bring suit to get our money back.

Now you can sue the Government but you have to get permission first. You do this by filling out a form. And in passing I must tell you that we always fill out *all* forms. There's a big penalty if you don't fill out forms. You *must* fill out forms. What on earth are two million form shufflers going to do down there in Washington if we don't fill out forms! And so we filled out a form which in substance said, "Please give the money back." We waited three months and finally Mr. Snyder said, "No, we won't give the money back." I didn't think he would.

And at long last on February 6, 1950, I found myself in the dignified, dark-paneled, Federal District Court in New Haven. I was sitting there quietly, waiting for the judge to appear when a tall, handsome man came over, stuck out his hand cordially and said, "Hello, Vivien. Call me Adrian." "Why yes, yes Adrian," I stuttered, "who are you?" "I'm the prosecutor."

Well, I must confess I hadn't expected anything like that. Adrian was nice—nice to look at, too. We grew to

be quite good friends during the many months of court appearances which lay ahead of us. In fact, I must say that all of the men we have dealt with, particularly the ones from the Internal Revenue Department in Connecticut, have been charming and agreeable. I lost my temper only once and that was when John the Barber told me that the Revenue Agents were interviewing our employees in their homes, scaring some of them half to death. The sick mother of one of our boys had a serious relapse after the inspector came to her home. Just another example of how afraid American citizens are of their Government, another proof of the fear that has been instilled into the hearts of people by the income tax Gestapo. I was furious. However, John Fitzpatrick straightened it out and it never happened again.

It was pleasant to meet Adrian and I said, "Now Adrian, you're going to help push this thing along, aren't you? We've been so many months getting into court, let's hurry up and get it over." "Why certainly, Vivien, certainly," said Adrian. "You just leave everything to me. Everything will be taken care of perfectly." But little did I know Adrian. Or to be quite fair and exact, little did I know what laws and lawsuits are like. Again I found out the hard way.

The question to be decided that day was could we bring one suit for the full amount, \$7,819.20 or must we have two suits. The whole thing seemed silly to me, one or two suits, it was all against the Government. However, the reason for this hearing was because the Government will not submit to a jury trial. Just why, I don't understand. You can sue the Government, all right, once you fill out some forms, but your suit must be heard by a Federal judge. Pleasant, isn't it, for the Government since it appoints all the judges. Why shouldn't the Government stand trial before a jury, the same as anyone else? The

Government belongs to the people, doesn't it? (Well, anyway it did originally.) And juries are made up of people. But it won't. In this case, the first amount, \$1,685.40 had been seized by the Acting Collector, Thomas J. Griffen; our regular Collector had done a little fancy electioneering which violated the Hatch Act and had been deposed. Since Mr. Griffen was no longer in office, Adrian contended that we couldn't sue him but must sue the Government, in which case no jury. By the time Mr. Snyder decided to take the second amount, \$6,133.80, John Fitzpatrick had been appointed Collector, and it was quite all right to sue him, as agent for the Government, in which case we could have a jury.

So there I sat and listened to Adrian and our lawyer, Frank McGuire. Frank said why not have one suit, much simpler and, either way, if we won the Government would have to pay the money. What's the difference if you sue the Government or the Agent of the Government? But Adrian said, no, that would never do, it wouldn't be legal, that is if we insisted upon a jury trial, which we certainly did.

It was really a knotty problem and the judge said he'd have to think it over. Did they want to file some briefs? They did, and then the briefs had to be amended and that took more time. Consequently the three weeks, which in my simple ignorance I believed was the time allowed, stretched out and it wasn't until March 20th that we all reassembled in that impressive courtroom. The judge said he had decided that Adrian was right; we would have to bring two suits, one for \$1,685.40 against the Government which he would hear, the other for \$6,133.80 against John Fitzpatrick, the Agent of the Government, which a jury would decide. However, there was some compensation, the suits could both be tried at the same time, two

in one—he sitting up there for the Government, the jury over at one side, sitting for the people.

That should have brought us right into court. But no, Adrian had another idea and he declared earnestly that they've gotta put it in two paragraphs. That meant more briefs, more amendments, more motions for postponement. In desperation I said to Frank, "Do you care how many paragraphs we have? I don't. Let's give it to him in two paragraphs. Give it to him in six, if it'll make him any happier. We want to get into court."

But it couldn't be done that way. Finally I just settled down grimly and decided all one could do was to sit it out. All this nice talk about leaving it to Adrian and he'd get it tried right away! Nothing could hurry him or the judicial process and it wasn't until June 16th that we assembled again in that courtroom. By this time I knew every board in those paneled walls. We all stood up and the judge came in, looking very judicial in his black robe, and he said, yes, Adrian was right. We had to put it in two paragraphs. And it had been in two paragraphs for weeks!

But this time something new was added. Mr. Neuland, the blue-eyed, suave and charming Mr. Neuland, had come over from Washington. Naturally I was awed when Adrian brought him over and introduced him, and later when I found out that he is really the big gun of the Treasury, I was flattered that Mr. Snyder considered us important enough to have Mr. Neuland. Whenever the Treasury has a really big case they hustle Mr. Neuland right out to the scene of battle. It certainly gave the whole proceeding quite a tone, although I couldn't help wondering why he should come all the way from Washington just for a couple of paragraphs. However, Mr. Neuland didn't keep me wondering long. Arrayed in a blue suit which intensified the blue of his eyes, he stood up in front



of Judge Hincks and said, "The Government admits everything. All the taxes are paid, there is no interest due. We'll even pay back the \$837.70 which was taken in error because we now find that those taxes were paid. DISMISS THE SUIT." Imagine that! Seventy eight hundred dollars of my money in Mr. Snyder's vaults! DISMISS THE SUIT, says Mr. Neuland.

I was totally unprepared for what followed. The unassuming, rather shy, young lawyer from New London arose, and in his modest, well-cut, gray suit, stood straight and tall before the judge. He began to talk quietly and as he talked, every person in that courtroom concentrated upon his words as it slowly dawned upon us all that Frank McGuire was ready. As I listened I realized that here was something none of us had thought of, something presented quietly, with no pretense at oratorical display or thought of creating an effect; just a logical, scholarly exposition and argument of the law. Even I, untutored in the law, knew that this was something for which Mr. Neuland and the Treasury Department were totally unprepared. Not wishing to distract the slightest bit of attention from him, I nevertheless just had to share my appreciation with someone. Jotting down, "This is absolutely brilliant!" on a piece of paper I shoved it in front of Morgan McGuire, Frank's brother and partner, who sat beside me. Morgan nodded his head. He was the only person in that courtroom beside his brother who knew what was coming.

Since this brief will undoubtedly be the basis of the argument before the Supreme Court when the Withholding Tax Law, and the Social Security Law, are finally tried there, I shall try to summarize it in nonlegal words.

To begin with, it was all very well for the Government to offer to return the \$837.70. They had no business taking it in the first place because they had their Agent's report and knew perfectly well those taxes were paid.

Mr. Fitzpatrick had said on the telephone that the taxes were paid, and when the second amount was seized from the bank, he wrote a letter stating specifically that the money was for penalty only. They must have read their own law which says plainly that if the employee pays the tax it "shall not be collected from the employer." Also they took \$10 interest which wasn't due, and they could just please hand that back also, making a grand total of \$847.70 to be returned to the plaintiff without any further argument or back talk.

That matter being attended to we then proceed to the sum of \$6,971.50, being the total of the other \$837.70 taken the first time and \$6,133.80 the second, all of the PENALTIES illegally assessed and seized from the bank for the four quarters of 1948.

The only breach of duty charged against us by the Government was our failure to "deduct and withhold" the taxes. All other duties, including the filling out and filing of forms, not to mention paying for the money orders and registered letters for our employees' taxes, were performed in accordance with the law. But in spite of our, and our employees' meticulous care in safeguarding the funds of the Government, Mr. Snyder and his Simon Legree assistants were annoyed because we didn't "deduct and withhold" the taxes which they now admit were all paid on time. In fact they were so incensed at our failure to "deduct and withhold" that they decided to punish us and their authority for doing so they found in all that double-incorporation-by-reference gobbledygook which finally landed them and us in Section 2700, the one which levies a tax on pistols. Just what that tax has got to do with the withholding tax law dear only knows. It is not "deducted and withheld" because the manufacturer pays it himself. He can add the tax to the price of the pistol

(stupid if he doesn't) but he alone is responsible for the payment of the tax.

The withholding tax law doesn't levy a tax, it provides a *method* of collecting the income tax. No matter if the Government does refer to it as a tax, as it does in Section 1622 (a), it is not a tax imposed or assessed and the act studiously avoids the use of words indicating a levy, assessment or imposition. It is a withholding of wages from employees which is credited against the payment of income taxes which are not even due. The only tax is the income tax and the withholding is the *method* used to collect it.

The Federal Government admitted that it was not a tax and actually called it a "credit as a prepayment" of Federal Income Tax. At the time it was adopted the Treasury Department advised all employers to place the following statement in their employees' pay envelopes:

#### PAY-AS-YOU-GO INCOME TAX

The new "Pay-As-You-Go" income tax law became effective July 1, 1943. It requires your employer to withhold a certain proportion of your pay. This amount is *not a new tax*, but is in payment of your regular Federal Income and Victory Tax.

Beginning with the pay you are receiving today your employer has withheld this tax from your wage. Therefore, you have now begun to pay your regular Income and Victory Tax as you earn the income subject to that tax.

The money withheld is not kept by your employer, but is turned over to the United States Treasury. It is *your money*, and stands to your credit as a *prepayment* of your Federal Income and Victory Tax.

After the close of the year your employer will give you a receipt showing exactly how much of your money has gone to the United States Treasury toward the payment of your taxes. Keep that receipt. It is your evidence of tax paid.

Circular WT June 4, 1943

Now what on earth has all this got to do with a tax on a pistol? Section 2707 (a) applies only to the direct liability of a taxpayer for a tax *imposed* on him and which he, himself, must pay. Section 2700 through which we zipped on our dizzy double incorporation by reference whirl that day in Arthur's office, says: "There shall be levied, assessed, collected, and paid upon pistols and revolvers sold or leased by the *manufacturer, producer, or importer*, a tax equivalent to 11 per centum of the price for which sold or leased." Where is there any deducting and withholding in this? Our famous 2707 (a) applies only to one "who willfully fails to pay, collect, or truthfully account for and pay over the tax *imposed* by Section 2700 (a)." There is no tax *imposed* in the Withholding Tax Law.

No matter how rushed or how great the emergency, Congress never intended a penalty for nonpayment or evasion of a tax to apply against an employer for not collecting taxes that were already paid. In order to make it appear that the penalty in the pistol tax law applied to the withholding tax law, the Treasury resorted to deceit and trickery. They deliberately left out the words "imposed by Section 2700 (a)" in their Regulations and they made Section 2707 (a) read: "Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax . . . or willfully attempts in any manner to evade or defeat any such tax, or the payment thereof, shall in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded or not paid, collected or accounted for and paid over."<sup>1</sup>

If the Withholding Tax Law imposed a tax, then why did the Treasury leave the word "imposed" out of their Regulations? In his mild manner Frank referred to this attempt by the Treasury to change the meaning of the

<sup>1</sup> Regulations 116, Section 405.805.

law as "highly improper" in his brief, and I remember in court he used the word "reprehensible." But just what is it?

In plain English and in words of simple meaning, it is as low as anything that Hitler, Mussolini or Stalin ever tried to inflict upon their suffering subjects. The Withholding Tax Law is the weapon that the Communists in our Government needed to steal billions of dollars from the working people of this country. They couldn't get these billions any other way, and they know it, because the people have had just about enough and are not far from revolt. As a war measure, yes; as a club in peacetime with which to beat people over the head while these gangsters reach into their pay envelopes and seize the hard-earned money needed so badly by each family, NO. They concealed the whole dirty business in a maze of legal double talk in the incorporation by reference racket, and since that still wasn't enough, they actually made the law say something it doesn't mean.

The 100 per cent penalty against the manufacturer who does not pay the tax on a pistol is to apply if one "willfully fails to pay, collect, or truthfully account for and pay over the tax." In the Kellems' case the taxes were:

1. Paid by each individual.
2. Since the taxes were paid, there was nothing to collect.
3. Truthfully accounted for by the Kellems Company. All forms were properly filled out and filed on the dates due, and our books and records were open to the Government.

Where was there any attempt to "willfully attempt to evade or defeat any tax or the payment thereof"? On the contrary, every penny of the Government's funds was carefully safeguarded and paid on time.

Mr. Snyder and his legal advisers in the Treasury knew all of this perfectly well. Then why did they seize the money? For one reason only, to punish me for daring to exercise my right as an American citizen to break the law and ask for a test case. If I had lost in a fair trial, then they had the right to fine me, but under no circumstance did they, nor do they now, have the right to collect a fine from me or anyone else without due process of law. If they can arbitrarily, in the tradition of the boldest bank robber, walk into a bank and seize money as a penalty for taxes that are already paid, then the next step is to walk into our homes and seize property or persons, according to their whim. This is a logical sequence and unless this highhanded usurpation of our rights is not halted, and now, we will live to see exactly that happen. They have the foot in the door with their attempt to collect insurance premiums from housewives, but fortunately they are meeting unexpected resistance. This resistance may well be the little fuse that will blow up the whole withholding atom bomb, and with it the gangsters and scoundrels who are riding roughshod over our honored Constitution.

And as for their little incorporation by reference racket, it should be prohibited. If a penalty is honest and fair, then it should be worded simply and put right in the law, so that one doesn't have to hire a Philadelphia Lawyer to ferret it out.

And incidentally what kind of a virus infests men who go to Washington and become public officials? How could Mr. Snyder, a nice, substantial man, a banker himself, permit and condone such an action against an American citizen? I'm sure that before Mr. Snyder became Secretary of the Treasury, had anyone walked into his bank in St. Louis, and demanded money from a private account

without any proof that money was owed, he would have been appalled.

When Frank McGuire had finished Judge Hincks said he would give his decision later. And with a smile he assumed that both lawyers would like to file briefs. They would.

## CHAPTER IX

### *The Judge Decides*

IT WAS LATER, much later, four months and ten days to be exact, before Judge Hincks decided. On October 26th, he handed us eleven pages of decision, but the gist of it can be boiled down to two sentences: The Government must return the \$847.70, which they had agreed to do and he would not dismiss the suit for Mr. Neuland. He didn't seem to think too highly of Frank's brief but did agree that we were entitled to our day in court; therefore the case would go to trial.

I shall try to translate Judge Hincks' opinion into non-legal words as his reasoning should be presented but I reserve to myself the right to state my disagreement with it. Judge Hincks is an erudite and learned man and it requires considerable temerity on my part to disagree with him, especially in matters of law since he is an expert and I am a novice, but perhaps it isn't the law so much as just simple reasoning.

Our disagreement undoubtedly stems from a fundamental difference between two types of minds. Just as it is utterly impossible for me to grasp the mechanics of the logical masculine mind, so it is not within the province of man to understand the wholly illogical, intuitive feminine mind. How can mere man be expected to understand women when we don't understand ourselves? I'm sure Judge Hincks meant to be complimentary when he suggested that I should have acted as a prudent businessman would have acted, but he expected something which just couldn't be, ever. Never in my whole life have I acted as a prudent businessman. Twenty-five years of hard knocks and bruising bumps in business have taught me a bit of control and caution but it has not changed my system of arriving at mental destinations apparently without having traversed any neural pathways or indulging in any mental processes. Addison recognized this feminine frailty when he sagely opined, "The woman that deliberates is lost."

Prudent businessmen and lawyers *know* how they arrive at a decision, women never. But if the solution of our present dreadful dilemma is left to lawyers and prudent businessmen, all our freedom and liberty will disappear right down the drain. All the prudent businessmen are busy running back and forth to Washington getting business for themselves. They are constantly hiring high-priced public relations experts to keep them from "sticking their necks out" and getting into trouble with the petty czars who sit on bureaus in Washington making ten thousand silly rules and regulations. The prudent businessmen of this country are trying to play with the New Deal exactly as Fritz Thyssen and the prudent businessmen of Germany tried to get along with Hitler, and if they aren't stopped, they and the rest of us will all come to the same bad end.



Certainly Sam Adams, to my mind the greatest revolutionary of them all, was by no stretch of the imagination a prudent businessman. He was constantly in financial trouble, his friends had to buy him new clothes when he went to Congress in Philadelphia, but Sam Adams never took his eye off the ultimate goal—freedom and liberty for his country. The prudent businessmen and the lawyers wrote the Constitution but it was Sam Adams' constant agitation and *lack* of prudence which, in large part, made the war inevitable and the Constitution possible. Prudent businessmen in colonial times tried to get along under the tyranny of George III, today prudent businessmen are in the National Association of Manufacturers and the National Chamber of Commerce trying to temporize and compromise with the evil tyranny which is riding roughshod over our American constitutional rights. God, in his infinite wisdom, must have known what he was doing when he made women illogical because if this country is snatched away from the brink on which it is tottering, it will be women, acting intuitively, that save us, not the prudent businessmen consulting their expensive lawyers.

But I do wish I could explain to Judge Hincks why my action wasn't willful and arbitrary. It just had to be done. I suffered acutely while making the decision which certainly was intentional and deliberate but not willful. I hope he will believe that I'm trying to be fair and not cite me for contempt of court for disagreeing with him.

First he says that we're quite wrong that the Withholding Tax Law does not impose a tax but only provides a method for collecting the income tax. He says that the Government *calls* it a tax, does so over and over in Sections 1622 (a) and (d), 1623, 1625 (a), 1626 (a) and (d) and 1627. So he holds that it is a tax. Just as Gertrude Stein intoned, "A rose is a rose, is a rose," and convinced us that "Gertie has something there, it *must* be

a rose," so the Government's reiterating "A tax is a tax, is a tax," convinced the judge that it *must* be a tax. However, he neglected to explain Circular WT of June 4, 1943, in which the Government says specifically that "This amount is not a *new tax*, but is in payment of your regular Federal Income and Victory Tax. . . . It is *your money*, and stands to your credit as a prepayment of your Federal Income and Victory Tax."

I wonder what some judge is going to say when the Marshall housewives bring the Social Security Law into court and ask what the payments under that law are. The Government may call it a tax in the law but on all its report cards and forms it calls it a "contribution." As a matter of fact, it's neither. It's an insurance premium. That judge will not need the wisdom of Solomon, but he'll require the courage of Horatio at the Bridge to declare it that.

Therefore, continues Judge Hincks, since it is a tax, the penalty for not paying the pistol tax applies to the employer for not deducting and withholding money from the pay envelope. He says we "err in attributing too narrow an interpretation" to the pistol tax law. Since Section 2700 says that the pistol tax "shall be levied, assessed, collected and paid upon pistols" this plainly puts a duty on the *tax collector* as well as the taxpayer. Right, Judge Hincks, absolutely right! But *who* is the tax collector? That's the crux of the whole thing. Certainly not I, because the Bureau of Internal Revenue has never appointed me a tax collector and it has never paid me one cent for my services in collecting its larcenous taxes for it. If the Government has a tax collector, then that tax collector certainly has the duty to collect taxes, but I not only do not want the job, I just do not qualify as a tax collector, *nor will I*.

Then the judge says that Section 2707 (a) penalizes

“any person who willfully fails to pay, collect, or truthfully account and pay over the tax,” and this language is broad enough to cover one who, *like* the tax collector, fails to collect or account for the tax. But, Judge Hincks, you neglect to say how this is done. How does a tax collector, or a person *like* a tax collector, collect a tax that already has been paid? In all your decisions you did not answer that question. It seems to me quite important.

Then Judge Hincks says that even if the employees did pay their taxes that does not relieve the employer from the 100 per cent penalty for not “deducting and withholding them.” Our claim is that it does, which he calls “self-serving and farfetched.” Again I must disagree. I call the attempt to penalize the employer 100 per cent for taxes already paid a slick trick of the Treasury Department, utterly dishonest and un-American. How could Congress or any American citizen believe that the Government is entitled to collect a 100 per cent penalty for taxes it already has? Not all the legal phraseology in all the lawbooks in the United States, not all the incorporation by reference, not all the fast ones pulled by the tyrants in our Government, not all the sophistry of all the Government lawyers laid end to end, can ever convince the American people that this is anything but despotism and tyranny in its worst form. If the Government has the taxes, that is enough; and it is entitled to no more.

Then Judge Hincks says that our claim that seizing the money from the bank was just plain punishment is “complete *non sequitur*.” No. I didn’t know what that meant either. I looked it up. It means an inference that does not follow from the premises. In other words, even though the Government had the money, it does not follow that without this stiff penalty to “stimulate compliance by other employers” other taxes could be collected

“economically.” Economically to whom, Judge Hincks? How much do you think it costs business to collect those taxes? Why shouldn’t the Government pay for collecting them? It gets the money, doesn’t it? But in plain English what the judge means is that if the Government hadn’t grabbed that money from my bank account, other employers who hate being tax collectors as much as I do, would stop collecting. Yes, that’s right, we agree on that, Judge Hincks. They *would* stop collecting. But strangely enough, that still doesn’t prove that the money wasn’t taken to punish me because I dared to break the law and ask for a test case, even though it incidentally might scare other employers into conforming. All smacks of the Hitler method to me but, of course, I could be wrong.

There is one glaring omission in Judge Hincks’ opinion. I searched all eleven pages, over and over, and nowhere could I find any reference to the contemptible trick of the Treasury Department in leaving out “imposed by Section 2700 (a)” in their Regulation 116<sup>1</sup> to make it mean that a tax was imposed in the Withholding Tax Law, when it was not. Where is your explanation of that, Judge Hincks? Why did you not refer to it?

I’m afraid I must still agree with Frank McGuire. The Withholding Tax Law provided a method of collecting income taxes and a penalty for not *paying* a tax cannot be made to apply to a *method of collecting a tax*.

The judge is a little squeamish on one point. He feels that the penalty of 100 per cent may be a little on the high side, “twice as severe as the penalty for a fraudulent return.” In other words, you can cheat and lie about your income tax and the Government can fine you only 50 per cent of the tax not paid, but you can refuse to collect the taxes and it can seize 100 per cent in addition

<sup>1</sup> Section 405.805.

to the taxes it already has. Yes, I agree with the judge—this is a bit excessive.

However, Judge Hincks decided there was one issue that has not been determined: was I, or was I not, willful in breaking the law and asking for a test case. Did I have "reasonable cause" for my action? On that point we were entitled to testify and have witnesses and he directed that the case go to court but "that the scope of the trial be confined to that single issue."

This was on October 26, 1950, and it was still not until January 23, 1951, eleven months and seventeen days after Adrian promised we'd get right into court, speedily.

## CHAPTER X

### *The Jury Decides*

TO ME it was a very solemn occasion, not because of the money involved, or the principle for which we were fighting, important as they both were. But for what the people in that courtroom represented. As a whole world is revealed in a single drop of water under the microscope so, here in miniature, was reflected the whole governmental and judicial system of our country. Mr. Neuland, an amiable man whose personal integrity could not be questioned, nevertheless representing and fighting for the entrenched greed, corruption and tyranny of our present Administra-

tion; I, small and unimportant in myself, yet posing the question, the threat to the unlimited power of the Federal Government; the judge on the dais, dignified and correct, representing the Constitution; and the jury, God Bless Them! the jury representing the people, the people to whom we must make our last, final appeal, the people who hold in their hands the ultimate decision. For if our Government and our Courts will not give us justice, we can appeal to the people and the people still have the power to change our laws and the men who administer them.

It was not a long trial; only my brother, David, and I testified and by the end of the day we had finished, although the judge did not charge the jury until the following morning. Our testimony was simple and direct. We believed the Withholding Tax Law to be unconstitutional and in accordance with American right and tradition, had broken the law in order to provide a test case. The lawyers had agreed at their pre-trial conference that my speech in Los Angeles could be introduced but after I had read it from the witness stand, Mr. Neuland tried desperately to have it stricken out. However, the judge let it stand but instructed the jury that they were to consider it as of the date given—three years ago. I certainly considered its age while reading it. There is nothing as out-of-date as a three-year-old speech, unless it's last year's hat! However, Mr. Neuland was annoyed and wouldn't permit me to read the letters to Secretary Snyder and President Truman. Frank McGuire had to read them to the jury. But they lost nothing in his reading.

Mr. Neuland's questions to both David and myself were few and based upon the assumption that the jury would agree with him that the words deliberate and intentional were synonymous with "willful" which, of course, they aren't. I wonder why he hadn't looked them up in the dictionary before coming to court. I had.

At the conclusion of Mr. Neuland's examination, Judge Hincks announced that he had a few questions and uppermost on his mind was the question about a lawyer. This part of the trial is so interesting and, as it also provides a clue to the thinking of the judge, it is here reproduced in essence:

BY THE COURT:

*Question:* Miss Kellems, did you ever get the advice of a practicing lawyer that the Withholding Act was invalid or unconstitutional?

*Answer:* Before I did this?

*Question:* Yes.

*Answer:* No.

*Question:* You did it on the strength of your own opinion of the law, or what basis?

*Answer:* I discussed it with many people, Judge Hincks. I discussed it with my brother many times and with certain friends.

*Question:* Well, is your brother a lawyer?

*Answer:* No. I had studied History of Constitutional Law in college. I am not a lawyer. But I understand clearly the function of a test case and that an American has the right to ask for a test case.

*Question:* But before you took this action you never sought the advice of a practicing lawyer.

*Answer:* No. I had a definite reason for not doing so.

*Question:* Were you aware that the Withholding Act was a statute that affects greatly the public revenues?

*Answer:* Yes.

*Question:* And did you think it proper deliberately to violate a statute of the Congress, which you knew to affect the public revenues, on the ground of your belief that the statute was invalid, without consulting a lawyer?

*Answer:* Just as proper, Judge Hincks, as for our ancestors to break the law and throw the tea into Boston Harbor.

*Question:* That protest against an Act of Parliament had to do with representation.

*Answer:* They were British subjects, weren't they?

*Question:* Is it your honest belief, Miss Kellems, that if and when you encounter any laws of the United States which you think are unwise it is your privilege or duty to violate them in order to make a test case?

*Answer:* No. I comply with many laws that I consider unwise, Judge Hincks. The only reason I would break a law is because I would doubt its Constitutionality. That is the only grounds on which I have to stand. And I think you will agree that much of our law is built upon the test case. The whole NRA was tested in the case of a sick chicken, wasn't it? Philip Murray tested the Taft-Hartley Law. He broke it precisely as I broke the Withholding Tax Law and for precisely the same reason.

*Question:* Is it then your position that any citizen who believes a given law is unconstitutional is entitled to violate that law in order to make a test case?

*Answer:* I may be wrong but I think it was Chief Justice John Marshall who so stated.

*Question:* When you have decisions to make respecting your own business which involve questions of law, do you rely on your own judgment or do you obtain the advice of a practicing lawyer?

*Answer:* Almost always I rely upon my own judgment, because many times when I have consulted lawyers it unfortunately has not turned out right. I seldom consult a lawyer until it's too late.

*Question:* When you violated the Withholding Act I understand you to say you believed the Act was unconstitutional?

*Answer:* Yes. I still think it is.

*Question:* You still do?

*Answer:* Yes, I am sorry to disagree with your opinion but I do.



MR. MCGUIRE TO THE JURY:

Ladies and gentlemen, a severe penalty has been imposed and it is for you to state now whether the motives of Miss Kellems and David Kellems were such as to make this severe penalty proper or improper.

In 1943 there occurred this radical change in our income tax procedures. We were then at war. A tax bill had been introduced which by comparison with all previous tax bills was enormous, almost beyond comprehension. Workers were moving from plant to plant. It was hard to keep track of them. Some special means had to be used to collect the tax. The withholding tax was then adopted. The same objections which can be raised to that tax could have been raised then, except that during a war people don't react the way they do when we are at peace. They do not insist, as they do when we are at peace, upon what they consider the valid and proper means.

But when the war was over in 1945, '46 went by, '47, and we came into '48. This emergency measure was still upon the books. Now was the time, if ever, when the questions about this tax could and should be raised. Now was the time when a person could ask, "Is it lawful to order one citizen to collect another citizen's tax and penalize him for not doing so even though that other citizen has paid his tax? Is it lawful to put upon an employer the burden and the expense of collecting his employee's tax without compensating the employer for the burden and for the expense? Does an employee have a right to his wages as and when earned?"

In other words, it comes down to this. Is this type of taxation, which sometimes might be called painless taxation, the Constitutional type of taxation in this country? Well, all taxes might produce squawks, but we are not dealing with the ordinary squawks which taxation produces. I think there was a Frenchman who once said that the art of taxation is to get the maximum amount of feathers with the minimum amount of squawks. That may be this here.

But when we consider the Constitutionality of it, her opin-

ion as to the Constitutionality of it, we come down to this: She knew her Constitution. She knew the Fifth Amendment to the Constitution. And she knew the Thirteenth Amendment to the Constitution, among all of the many amendments. She knew that the Thirteenth Amendment said that neither slavery nor involuntary servitude shall exist in these United States. What impressed her was, did that mean what it said and was this involuntary servitude? She knew that that was a limitation upon the power of Congress. She knew the theory of judicial review, that only a court could determine whether that was a valid limitation upon the powers of Congress and whether this violated it.

Similarly with the Fifth Amendment, she knew that that said, "nor shall private property be taken for public use, without just compensation." Clearly the Government can take taxes, but were they doing more than that here? Were they taking property, property meaning the time of the employer, the services of the employer in keeping these records, the money that it cost the employer to keep track of this tax?

She knew that the CIO and the AF of L had shortly before asked to be indicted. Could she have thought that she would get the same treatment that they got? It is a fair deduction that she thought so, and she says so.

She knew that her employees would pay their own taxes, and she was justified in that belief because they did. And the Government has admitted from the first that they did. So knowing all these things and having consulted with these people who were friends of hers and in whose judgment she relied and on whose judgment she placed a great deal of value, she took this decision without the hope or prospect of gain. And only with the hope and prospect of grief and expense, she took it—solely to test a principle; solely to test her belief; she took this action and she made a firm and courageous declaration of it without equivocation, without mincing words.

And the high-lights are she has more faith in her employees than their Government has. She believes these things to be constitutional. She is entitled to have it tested.

She sent all of these letters. She made all of these returns. She made all the returns that were required of her. Her books were open, available to anyone who might examine them. Nothing was concealed. The full and complete disclosure was made whenever it was asked—was available whenever it might be asked for. She knew nothing about this penalty. She expected a penalty, but she expected a penalty which was measured by the offense and not an arbitrary penalty which is the penalty to apply to someone who is willful in tax matters. Granted, she did this deliberately. She did this intentionally. She had to be deliberate and she had to be intentional in her action in order to get her point established. But that is a far cry from being willful, because the simple facts of the case which I have tried to relate to you show at once and the same time her good faith, her honest belief, and the total absence of any authority in the Government to assess this penalty.

What does "willful" mean? The Court will instruct you what "willful" means. But it has in the elements a lack of good faith, lack of honest belief, lack of justification, lack of reasonable cause, and it contains elements of evil motive and bad purpose. And because of those things that is why this penalty is so severe. That is why this penalty amounts to a 100 per cent of the tax even though the tax is paid.

She was not intending to interfere with any lawful arrangements for the collection of the public revenue. She was intending to find out what lawful arrangements for the collection of the public revenue were. She was not acting with any inexcusable indifference to a public right. She was merely trying to find out what the public right was under our process of checks and balances where we have the legislature, the judiciary and the executive with their proper Constitutional checks upon each other, which is the theory of judicial review in so far as it relates to the control of the judiciary over acts of Congress, in so far as it says that the public right can be tested in the courts, that lawful arrangements for the collection of the public revenue can be tested. She wanted to test the public right. She wanted to find out what lawful

arrangements for the collection of the public revenue were. Many times it is best to try to interpret a word like "willful" by looking at the contrasts of situations. We have this situation plainly before us. What can we contrast to it? We can contrast the case of the fraud, the tax fraud, the tax cheat, one who with bad faith and bad purpose keeps a double set of books, makes false entries, makes alterations in his books, makes false lists, false documents, doesn't keep any records, keeps a safe deposit box full of cash; in other words, handling his affairs to evade and escape taxation.

To me, "willful" under the law includes those things, condemns those things. It is a word of condemnation. Congress was not intending to condemn this by the word "willful." Congress was not intending to condemn those acts done in good faith with honest belief even if they were wrong, by this statute. Granted there may be some penalty. The Internal Revenue Code is full of them. But this one is far beyond the severity warranted by this action. We are not concerned with any other penalty. If there is another one, the Internal Revenue Department will go about it and probably take appropriate action at the time. We are concerned only with this one which is inapplicable, which is beyond their authority because it is beyond the purpose of the statute. Congress was not intending by this statute to condemn anyone who had the courage and the honesty to dare to take this action believing that the action was just and that the action was right. We have a case here of a woman who took a firm hold of a Governmental, an economic, and a political problem and saw it through. She, for that, was not intended to be condemned to the extent of this exorbitant penalty.

MR. NEULAND TO THE JURY:

If your Honor please, ladies and gentlemen: The sole question and the only one which you have for consideration is whether or not the plaintiffs here, Miss Vivien Kellems and David Kellems by their conduct in refusing to withhold and deduct the income tax from wages paid to their employees, whether or not that conduct on the evidence which you have

heard was willful. Miss Kellems testified that prior to February 13, 1948, her company had strictly complied with the provisions of the Withholding Tax Act and that it had withheld and deducted the tax on the wages paid to the employees. However, on February 13 she reached the conclusion that because of her opinion and the opinion of her brother that the Withholding Tax Act was un-Constitutional, that she would thereafter deliberately and intentionally refuse to withhold that tax. She stated that her opinion as to the unconstitutionality of that Act was based upon her conversations with a college professor, I believe, or a newspaper editor, and that based upon her discussions with these individuals she reached the conclusion that in their opinion it was unconstitutional.

Why didn't she go to a lawyer? That would be the logical person or place to go to determine whether or not a certain statute was unconstitutional. If you are sick and you need a doctor, whom do you go to? A doctor, not to a college professor or a newspaper editor. It certainly is strange that she did not do that. Yet she said that, "Every time I went to a lawyer I always found out too late that I had made a mistake or got into trouble."

I am not going to attempt to tell you or give you an meaning of the word "willful." His Honor will instruct you as to the meaning of that word as used in the statute and whether or not based upon the evidence a conclusion should be reached as to whether her action was willful. It is the Government's position, of course, and which prompted the action taken by the Commissioner in assessing the penalty, that because she had deliberately and intentionally violated the law that it necessarily followed that her action was willful. She could not have done anything more to have made it more willful from our point of view. The fact that she believed that it was unconstitutional is not, I believe—and it is the position of the Government—that her opinion as to the Constitutionality of the Act, is not a reasonable ground for giving her the right to refuse to take care of her requirements under the Withholding Tax Act. Yet with a full

knowledge that she had violated the law and had intentionally and deliberately done so, yet, knowing the consequences of her act, she continued to do so until just recently.

Some point was made here as to the severity of the penalty. True it is that the penalty is an amount equal to the tax, namely 100 per cent. Of course, the Commissioner of Internal Revenue did not place that penalty in the statute. That was done by Congress. Congress specifically provided for the assertion of a penalty where there was a willful violation. The legislative history of the statute—while I don't want to argue the law here—clearly indicates that one of the reasons for making such a severe penalty was to take care of the extraordinary expense which the Collector was put to collect the tax where a violation such as this had occurred.

His Honor has already indicated his position or this Court's position as to the Constitutionality of the Act. And I do not believe that you can take into consideration the fact as argued by Mr. McGuire that there was a violation of the Constitution on the basis of involuntary servitude or the taking of private property without just compensation. The statute is presumed to be Constitutional and until the Supreme Court says otherwise, it is a valid act.

I, therefore, leave that for your consideration, and I know that on the basis of the evidence and the instructions which the Court will give you, that your verdict in favor of the defendant should be rendered.

MR. MCGUIRE TO THE JURY:

Ladies and gentlemen, if I understood Mr. Neuland correctly, what he said was, Why did Miss Kellems wait from 1943 to 1947?

Does he blame her for not having taken this action in 1943 when there was a war on, not recognizing the emergency? Of course, wars of that sort make the Constitution, as everything else, expendable. That is why she waited. She expected it to be repealed. She waited two more years and it wasn't. The emergency measure was still on the books. Then she acted.

He also says, "Why not go to a lawyer?"

There is no requirement of law that anybody, no matter how rich they are, should go to a lawyer.

He mentioned also the extra expense put upon the Government in collecting the tax. There was no extra expense upon anybody except Miss Kellems. She and her brother took care to see that their employees knew what their tax was, each week put it aside and each quarter paid it. The Government was not put to any expense. The Government *is* put to expense in the case of the cheat and the fraud and the tax evader, but not here. Do we not have here a case of the American virtue which has been shown by our history from the Declaration of Independence to the present day? What are some of the great American virtues that have given this country the leadership that it has? They are courage, honesty, patriotism and a firm determination once your mind is made up. How many times has it occurred to almost all of us to take some definite and positive action when we thought something happening was wrong? And what has deterred us? Fear of notoriety, fear of expense, fear of blame. Those things hold us back. We expect those things from some of our contemporaries but we do not expect them from our Government. We do not expect from our Government the fear of notoriety, the fear of blame, the fear of harassment or the fear of expense.

In the name of the Government, the Bureau of Internal Revenue has here pretended to act. It has acted as the judge and the jury and the prosecutor in assessing this penalty. It had no court order. It looked for none. It did not consult with Miss Kellems or her brother. They did not want to. They did not inquire into her good faith or her honest belief in this. They assumed that it was wrong.

They assumed incorrectly. Why did they not indict her as she asked? They didn't. Probably they didn't want to take the burden of proof of sustaining the Constitutionality of it. In this way they tried to shift the burden of going forward to her, without an investigation as to her good faith, without

looking into the facts. Acting as judge, jury and prosecutor they assessed this penalty.

But you also represent the same nation. A wrong has been done here. And we look to you to right it. The revenue at all time has been protected. All taxes have been paid. This method of chastisement is not for these people. This method of chastisement ought to be saved for those cases to which it really belongs.

An excellent way to lose two and a half pounds is to sit for two and a half hours while the jury is out. We had lunch which was a mistake, a sandwich and a glass of milk turned to just so much lead in my queasy stomach. The newsreel and newspaper photographers wanted pictures and Adrian and Mr. Neuland posed and chatted with us affably, albeit a bit condescendingly. Then suddenly word spread through the corridors that the jury was ready and we all scuttled back to our accustomed spots like so many scared rabbits. The judge appeared and at 2:25 the jury filed in. I searched each face for a clue but only one woman gave me a fleeting, little smile as she passed.

Judge Hincks had prepared what he called an Interrogatory which he had read to the lawyers and the rest of us before the jury came in that first day. It was a question to be submitted to the jury, and if their answer was "No," that would mean we had won, they would have to give us the decision. However making it more difficult, the judge had changed the wording of the Interrogatory overnight, and as he read it to us the morning of the second day, the jury must answer "Yes," for us to win. The Interrogatory had been given to the jury when they retired for their deliberations.



The CLERK OF THE COURT stood up and said: "Ladies and gentlemen of the jury, have you agreed upon a verdict?"

FOREMAN KNOX: As foreman of the jury, we have reached a verdict. This is our verdict.

He handed the Clerk a piece of paper. He read it, dead-pan, and then handed it to the judge who read it equally dead-pan.

THE COURT: (Handing paper to Clerk) Verify the Interrogatory and the verdict.

CLERK: Ladies and gentlemen of the jury, will you kindly listen to the Interrogatory propounded by the Court:

"Have the *plaintiffs proved* that the *conduct* of the *plaintiffs* in failing to withhold from wages paid to their employees, and in failing to pay over to the Collector, the aggregate sum of \$6,133.80 representing income taxes accruing against their employees, *was not willful* within the meaning of the statute as explained to you?"

"Answer: Yes."

Signed "Adelbert D. Knox, Foreman."

Is that your answer and so say you all?

The jurors answered in the affirmative. And I said to myself, Now which way was that?

CLERK: "Plaintiff's Verdict. . . . In this case the jury finds the issues in favor of the plaintiffs and therefore finds for the plaintiffs to recover of the defendant Collector the sum of \$6,133.80."

Ladies and Gentlemen of the jury, is that your verdict and so say you all?

The jurors answered in the affirmative.

And I said to myself, Let's see, Which am I, the plaintiff or the defendant? I turned to Frank and looked at him with glazed eyes. His were wide in astonishment and he breathed, "We've won!!" I gasped, "We have?"

"Yes," Frank said. Oblivious to what everybody else was doing and to the judge who was saying, "Very well. The verdict of the jury is accepted by the Court. Let it be recorded," I turned to the jury to find them beaming at me.

The judge then politely inquired if the lawyers had anything else for his attention and upon being informed that they had not, he smiled at the jury and said, "Very well. Then the Court will excuse the jury with thanks until further notice. Thank you very much." He disappeared through the door to his Chambers while I struggled to my feet along with everybody else. All this had taken exactly seven minutes but I had lived through an eternity.

With red faces Mr. Neuland and Adrian came over, perfunctorily shook hands, murmured, "Congratulations!" and like the old soldier, "faded away." I rushed to the jury and shook hands with each one. All but one woman said, "You deserved it." Then John Fitzpatrick produced his billfold and began pulling out money, "Well, Vivien, I guess I'd better begin paying you off!" I laughed and gave him a big bearhug.

## CHAPTER XI

### *The Judge Finds*

THIS WAS ONE down but several to go. We still had the other case, the one against the Government for \$1,685.40 to be decided by Judge Hincks. Also the Government now

had thirty days in which to file notice of appeal from the jury's verdict. For reasons of his own the judge withheld his verdict and announced that he would give it at a later date. Once more we waited. However there was not a dull moment. Almost immediately Mr. Neuland came bouncing right back at us with a request to the judge to set aside the verdict of the jury. He claimed that Miss Kellems had no business to read that speech in court. Personally, I thought he was just a bit late in regard to the speech. He surely could not have been unfamiliar with it; the newspapers had printed most of it when I spoke for the Los Angeles Rotary Club, and he admitted that in his pre-trial conference with Frank McGuire, he did not object to having it produced in court. Only after I had methodically and agonizingly waded through it, page by page, on the witness stand, had he leaped to his feet as though stung by a bee, and urgently moved that it be stricken from the record. But just why the jury's verdict had been wrong because they had heard the speech, he failed to specify. He only felt poignantly that Miss Kellems should not have been permitted to read it.

This urgent request had hardly time to jell when he was back with an amendment. Mr. Judge, if Your Honor please, set aside the verdict because the jury acted contrary to your charge. Now as stated before, I am certainly not an authority upon matters of law, but why do we have juries? Must they decide a case as the judge charges them, or are they there for the purpose of rendering a verdict in accordance with the facts as presented to them? The judge had specifically instructed them to do justice under the law as they saw it, and above all they were to use their good, common sense. And that is precisely what they did. If, however, the jury must arrive at a verdict as charged by the judge, then there's no doubt

that Mr. Neuland had something on his side. I'm sure Judge Hincks tried to present an impartial statement of the law and the facts as he saw them, but the reason I lost two and a half pounds while the jury was deliberating, the reason the sandwich and glass of milk settled down in a hard lump in the pit of my stomach, the reason Adrian and Mr. Neuland were so cordial, albeit condescending in chatting and posing for photographs, were because we were all quite sure Judge Hincks was sympathetic to the Government's position. He had narrowed the issue down to one question: was I or was I not willful and had I acted without "reasonable cause" and why, Oh why, hadn't I consulted a lawyer? The judge just could not forgive me for not acting as a "prudent businessman" would have acted and for not having consulted a lawyer. There was no doubt in any of our minds as we paced the corridors and waited for the jury, that the judge regarded me as a headstrong, willful woman—what did I mean trying to test the constitutionality of a law without consulting a lawyer? But fortunately the jury did not agree with him, which naturally irked Mr. Neuland.

And so, two months later, on March 30th to be exact, we all trooped back to New Haven to hear Mr. Neuland expound his grievance in that very familiar courtroom.

But it was worth it. The answer to the whole issue was contained in one question which Judge Hincks asked Mr. Neuland in Court that day, and I am willing to go before any court in the land, including the Supreme Court, and even more, I am willing to rest the entire case with the people of this country, on the answer to the question which Judge Hincks posed for Mr. Neuland.

There wasn't much discussion about the speech which Miss Kellems had read on the witness stand. After a little sober thought, Mr. Neuland had apparently decided his position was not too good; he had agreed in the pre-trial

conference to admit it and if he didn't know what was in it, he should have. Instead he pinned his hopes on the arbitrariness of the jury in daring to decide for themselves instead of the way the judge wanted them to. The judge thought he was referring to the charge itself and very properly asked, "Do you really take the position that if I made any errors in my charge that that is cause for setting aside the verdict, rather than cause for appeal?" Mr. Neuland took a deep breath and allowed as how he hadn't taken any exception to the charge. (Why should he, it was all for him?) It was the jury's reaction to the charge that annoyed him. He was convinced that the jury had not understood, or had even disregarded the charge because he felt "the charge was made to the effect that a person must use the reasonable care that an ordinary businessman would use"; that before deciding to ask for a test case "she would of necessity have to consult a lawyer."

Then came the clincher and I quote the exact words of Judge Hincks:

As to that, isn't this so, that if Miss Kellems had consulted a lawyer, and a thoroughly competent lawyer, he would have said to her something like this: "The question of the constitutionality of this particular provision of the Withholding Act has never been passed upon by any court, and if it were raised and pushed through to the Supreme Court it is utterly impossible for me or any honest lawyer to tell you what the decision would be, because in recent years in the field of constitutional law generally the Court has overruled earlier decisions, and especially in the field of civil rights the Supreme Court has departed from earlier decisions. And not only that, but time and again its decisions in these fields have been by a divided Court so that even Solomon himself couldn't tell you in advance which branch of the Court would support the statute and which branch would oppose it." If she had consulted a lawyer could a law-

yer have given her anything more definite substantially than that?

And with that question of the eminent judge, I rest my case. For the answer to that question is the key to the complete demoralization of our courts and the usurpation of the Constitutional rights of the American People. In the nineteen long years that the New Deal Party has held undisputed sway of our Government, the courts have become a political arm of the frenzied zealots and tyrants who are ruling us. Many people will remember the brazen boast of ex-Senator "Red" Pepper of Florida, when the Republicans did actually elect a majority in the House of Representatives in 1946, that "we still control the courts." Yes, they control the courts. For all those nineteen years judges have been appointed because they would give decisions, not in accordance with the law, but as needed by political expediency. What President Roosevelt could not force from the American people when he tried to pack the Supreme Court, time gave him, and you can look at it today—his handiwork, with one or two notable contributions by Mr. Truman.

And yet in the face of that question so clearly and succinctly stated by himself, Judge Hincks dropped a little bombshell twenty-six days later, when he refused to set aside the verdict but at the same time, decided the other case in favor of the Government.

In refusing to set aside the verdict of the jury, Judge Hincks was brief; he used few words but big ones. Translated into little ones, he said that the verdict of the jury was not inconsistent with the law and that they had a right to their own opinion as to what conduct could be expected of the reasonably prudent businessman. He wasn't surprised that he and the jury should disagree; throughout life people have different opinions about all kinds of

things. They may have access to the same facts, as they did in these two cases, but each person interprets these facts in accordance with their own judgment. He saw no reason for either the jury or the judge to be disturbed over their difference in conclusions because each had been conscientious in exercising their judgment faculties. But, "I cannot in good conscience surrender my own conclusion and to paraphrase the well-known aphorism of the French philosopher, I will defend to the utmost the conclusion of the jury, equally authorized as a coordinate trier of fact, and equally intelligent and honest."

But he closed with a twinkle in his eye. He allowed me costs in the case decided by the jury but added dryly, "which may be taxed in the usual course."

The decision for the Government was just a bit on the verbose side—thirteen pages of FINDINGS OF FACT, CONCLUSIONS OF LAW and OPINION.

Since most of this decision is a repetition of the whole case there is no reason to reproduce it here. He concluded the first section "FINDING OF FACT" by the flat statement that, "The plaintiffs in refusing to comply with the Withholding Act acted without reasonable cause." Under CONCLUSIONS OF LAW he again says that we are entitled to recover \$847.70, the amount Mr. Healy took in the first bank raid for taxes which he knew were paid but which the Government said were not. Later they agreed to give it back, hence once more Judge Hincks said we could have it. This left a total of \$837.70, penalty in the suit against the Government and he said the Government could keep it because I had been "willful" when I broke the law and asked for a test case.

There were one or two amusing comments in the section entitled OPINION. Judge Hincks differed decidedly with Mr. Neuland regarding the effect of the speech which I read from the witness stand. He claimed we "weakened"

the case "by putting into evidence a public address made by the plaintiff Miss Kellems in Los Angeles on February 13, 1948, in which she advocated concerted political action to repeal the income tax law." What wouldn't I have given to have seen Mr. Neuland's face when he read that! Also the judge was puzzled as to why I, "a Connecticut manufacturer, found it necessary" to go all the way to California to make the speech. Why couldn't I have been a good girl and made the announcement at home? Really what difference did it make where the announcement that I was going to break the law was made? What did the place have to do with the constitutionality of the law itself?

Since it is so unusual to have two opposing decisions on the same case as we have in this one, I felt that there must be a reason for Judge Hincks' almost unprecedented action in finding for the Government, after the jury had decided in my favor. I pondered over it many times and after re-reading the testimony and the different opinions I find two clues to his reasoning: First his questions to me on the witness stand: "Were you aware that the Withholding Act was a statute that affects greatly the public revenues?" "And did you think it proper deliberately to violate a statute of the Congress, which you knew to affect the public revenues, on the ground of your belief that the statute was invalid, without consulting a lawyer?" Second is the following statement in his final opinion, "before assuming to treat as a nullity an Act of Congress regularly enacted which had already over a period of years channeled into the national treasury the flow of tax monies running, it is fair to surmise, into the billions and affecting millions of individual citizens as well as large corporations." There isn't any doubt that he had been impressed by Mr. Neuland's statement that "the tax which was collected by withholding from employees' wages ranged any-



where from six to eight billion dollars a year and previously the tax which they had collected from the employees in that category was about 50 per cent of that, so that if we did not have that type of method of collecting taxes it might be said that the tax rate would have been considerably higher." Mr. Neuland, in chatting with me during the progress of the trial had told me how foolish I was because if withholding were abolished, the taxes on the rest of us would have to be raised. Many fair-minded, intelligent people have advanced the same argument at different times. I feel quite certain that Judge Hincks subscribes to this school of thought.

Of course, what all of these well-meaning people, including Judge Hincks and Mr. Neuland, overlook is the fact that taxes in the upper middle class and higher brackets are just about as high as they can go without outright confiscation. If all the taxable income of people receiving \$25,000 a year or more were confiscated, there would be only enough money to run the Government about ten days.<sup>1</sup> The bulk of taxes must come, and is coming from the "little" incomes and the reason the withholding tax is the Scared Cow of the Tax Lords in Washington is because it hides from the "little" taxpayer, the truly huge amount he is paying.

These well-meaning people make the mistake of assuming that it is a good thing for the Federal Government to have all of this money. I believe exactly the opposite. Not only is it very bad for the Federal Government to have these billions of dollars but forcibly seizing the wages of the working people of this country is un-American and wicked. Furthermore, compelling a private citizen to take this money from another private citizen is unconstitu-

<sup>1</sup> *The Darkening Shadow*, Nicolas E. Peterson, vice-president of the First National Bank of Boston. Published by Com. for Constitutional Government.

tional, judge or no judge, decisions or no decisions. The people without knowing their exact constitutional position in the matter, nevertheless sense that the Government has no right to deprive them of the just rewards of their labor, and that is why they just plain wouldn't pay it, if it weren't taken from the pay envelope. Mr. Neuland was right when he said that in the year before the withholding tax method became law, the working people in the lower income groups paid only 50 per cent of what they paid in the year after the employers were bludgeoned into stealing it from the pay envelope, but he is quite wrong when he says that if withholding were abolished taxes on the higher incomes would have to be raised; taxes on the higher incomes can't be raised much more, and if they were they wouldn't bring in enough money to make any real difference.

Take a look at England. The incomes of the rich and upper classes have shriveled under the blighting hand of the tax collector until they are practically nonexistent, and the heavy tax burden is rapidly shifting to the shoulders of the working people who are supposed to reap only benefits from English Socialism. In eleven short years, from 1938 to 1949, total taxes from incomes below £1000 leaped 615 per cent while those from incomes over that amount increased 170 per cent.<sup>2</sup> The people paying 615 per cent more haven't quite realized what is happening to them, although the recent election indicates that some of them are waking up. The majority have been too busy standing in line to get "free" wigs, "free" teeth, and "free" girdles.

However since there is such disagreement between the judge and jury, and between the Government and myself, and since nothing important was actually decided except that the Treasury had to return to me \$6,981.50 (actually \$7,977.75 including interest and costs which I finally re-

<sup>2</sup> *Ibid.*

ceived six months later, after repeatedly demanding it) and was permitted to keep \$837.50, I think the issue should be left to the American people for the time being. They do not need to consult a lawyer; being intelligent they have only to read a few excerpts from our Bill of Rights, refer to the dictionary for the exact meaning of one or two words, then consider the provisions of the withholding tax law and decide for themselves whether or not this law is unconstitutional. Since Judge Hincks, by his own question, admitted that Solomon himself couldn't properly advise a client as to how the Supreme Court would render its decision on this law, why not let the people use their "good common sense" as did the jury. And I am willing to abide by their decision until a test case can be forced into court.

The Fourth Amendment says: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Before 1913 if a man had walked into your office and demanded your private books and papers, you probably would have knocked him down, or called the police, or both. And quite rightly so. No one, not even the United States Government had the right to pry into your personal affairs and into the secrets of your business unless you had committed a crime and were on trial before a jury of your peers. There was a reason for this Amendment. The English had a pleasant little practice of issuing what they called Writs of Assistance, and armed with one of these papers which was easily secured, a petty official could conduct a personal search of any colonist he might select. The colonists grew weary of having their persons

searched and their houses ransacked upon the whim of some Englishman, and in 1761, James Otis of Massachusetts made himself famous by taking the matter to court. He declared in his argument, that "A person with this writ in the daytime may enter all houses, shops, etc. at will, and command all to assist him. Every man prompted by revenge, ill humor, or wantonness to inspect the inside of his neighbor's house may get a Writ of Assistance."<sup>3</sup>

The colonists had had enough of this prying into their private affairs and the Fourth Amendment ended the odious practice with finality. A man's house and his business became his castle where no one dared to intrude upon him. But the Income Tax Amendment nullified this careful provision for our privacy. Today businessmen all over the country cower before some thug of a tax inspector who couldn't be more insolent and dangerous if armed with a blackjack, and supinely permits him to scoop up anything and everything he wants from books and private files, ensconce himself in the victim's office, and pour over them to his heart's content, while demanding that half the office staff assist him in his foul search.

Most judges are still squeamish about issuing search warrants. Probable cause must be shown and the oath required must be definite and direct. But the Income Tax Inspector doesn't worry about that. He doesn't need a search warrant. As Mr. Healy said when he demanded my money from the bank, "We're from the Bureau of Internal Revenue." Selah!

Before the Income Tax Amendment the Supreme Court held that an actual entry of the premises was not necessary for a search; to force the production of books and papers for use as evidence against their owner was considered a violation of the Fourth Amendment. An Act of Congress

<sup>3</sup> *The Constitution of the United States*,—Thomas James Norton, Com. for Constitutional Government, 1940.

requiring the compulsory production of books and papers, and in the case of refusal, permitting the Government to assume the allegations of what the books and papers contained as true, was held unconstitutional by the Supreme Court.<sup>4</sup>

The protection of the Constitution is not, however, confined to the dwelling-house, but it extends to one's person and papers, wherever they may be. It is justly assumed that every man may have secrets pertaining to his business, or his family or social relations, to which his books, papers, letters, or journals may bear testimony, but with which the public, or any individuals of the public who may have controversies with him, can have no legitimate concern; and if they happen to be disgraceful to him, they are nevertheless his secrets, and are not without justifiable occasion to be exposed. Moreover, it is as easy to abuse a search for the purpose of destroying evidence that might aid an accused party, as it is for obtaining evidence that would injure him, and the citizen needs protection on the one ground as much as on the other.<sup>5</sup>

As late as 1920 the Supreme Court held that the Fourth Amendment protected a corporation and its officials from an unauthorized "sweep of all the books, papers, and documents" made by the United States Department of Justice with an invalid subpoena issued to the District Attorney. The Government admitted it had no right to make the seizure but contended that it could use the information obtained in the search, to later demand specific papers which it otherwise would not have known about. That Supreme Court said, "No."

Since the passage of the Sixteenth Amendment, the Supreme Court has held the Income Tax constitutional but according to Judge Hincks, the Court has been known

<sup>4</sup> *Ibid.*

<sup>5</sup> *General Principles of Constitutional Law in the U. S. A.*,—Thomas M. Cooley, Little, Brown & Co., 1931.

to reverse itself, quite frequently of late. The Withholding Tax has not been tested, and I submit to employers all over the nation who must permit prying spies from Washington to delve at will through their private books and papers, that the whole shoddy business violates the spirit and the intent, yes, and the *letter* of the Fourth Amendment. No doubt judges and lawyers could weasele word their way out of it, but our "good common sense" knows that this highhanded invasion of our privacy is unconstitutional.

The step from the office to the home is a short one. Already the slimy inquisitor has his toe stuck in the front door and is demanding that the housewife reveal to him her personal (accounting) affairs between herself and her household employees. The relationship between the housewife and her maid is a far more intimate and personal one than that between an employer and his employee in business. The preemptory demand that the housewife collect, and herself pay insurance premiums on the people who work in and about her home is a far greater invasion of privacy than the invasion of her husband's business and is much more serious than is generally understood. It strikes at the very citadel of our American freedom. Given this entering wedge how long will it be before there is a knock on the door in the middle of the night, and some member of the family is dragged from his home never to return. Call me an alarmist, if you will, but such terror does not come all at once. In Germany the development of terror crept over the people gradually and we are following the prewar German pattern as an engineer follows a blueprint.

The Fifth Amendment says: "No person shall . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

In ancient Rome the State had the power to take private property for public use but not until the owner had been paid a fair price determined by capable men. Magna Charta also specified that no man should be deprived of his property for public use except by the law of the land, or by a judgment of his peers. In 1807 the Code Napoleon of France recognized the right of a man to be paid a "just and previous indemnity" if his property were taken for public use.

Probably the most celebrated case in our country was the suit to recover on the estate of the widow of General Robert E. Lee. The estate had been seized and sold under an Act of Congress for collecting taxes "in the insurrectionary districts" and the President had ordered that a military fort should be erected upon part of it and another part should be set aside for Arlington Cemetery. The Supreme Court ruled that the President did not have the power to do this and that Congress could not confer such power upon him as it did not have the right to seize it in the first place. The Court stated, "Not only no such power is given, but it is absolutely prohibited, both to the executive and the legislative, to deprive any one of life, liberty, or property without due process of law, or to take private property without just compensation. . . . No man in this country is so high that he is above the law."<sup>6</sup>

Here we are on very firm ground indeed. If the President of the United States couldn't get away with it, how does our St. Louis banker, Mr. Snyder think he can? There isn't any question as to who pays for the collection of the withholding tax—the employer does, out of his own pocket. Collecting taxes is peculiarly a function of the Government and the Government should pay for this job. This is "public use" and when an employer is forced

<sup>6</sup> *United States v. Lee* (1882), 106 U. S. 196.

to spend his money to pay for collecting taxes, his private property has been taken without compensation.

And how about the money taken from the pay envelope? How can any just person seriously contend that it is a tax, or a wage? It is neither one since the man has never had possession of the money. If it is a wage, then it should be given to the person who earned it and he should be permitted the use of it. If it is a tax then it should be on wages which he has received and from which he has derived benefit.

Under Magna Charta a man's right and ability to earn his living are called his "contentment" and no man can gain any "contentment" with money for which he has worked, but which has never been in his hands. I maintain vehemently that it is neither a tax, nor is it a wage. In figuring his wages, the employee disregards it entirely.

We don't need to act as prudent business men and consult a high-priced lawyer for this one. When an employer pays to collect a tax, private property is taken for public use, and the money he filches from the pay envelope is property taken without due process of law. If an employer took an automobile from one of his employees, he'd find himself in court instanter, but he takes money from his pocket, and the employee looks at him, helplessly.

The Eighth Amendment says: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Is there any need to even comment on this Amendment? If the fine or income tax evasion or fraud is 50 per cent, do you consider a fine of 100 per cent for refusal to collect a tax that is already paid, excessive? May I at the risk of being repetitious again quote from Speaker Byrd's speech before the Virginia Legislature in 1910.

A hand from Washington will be stretched out and placed upon every man's business; the eye of the Federal inspector



will be in every man's counting house. . . . The law will of necessity have inquisitorial features, it will provide penalties, it will create complicated machinery. Under it men will be hailed into courts distant from their homes. Heavy fines imposed by distant and unfamiliar tribunals will constantly menace the taxpayer. And army of Federal inspectors, spies and detectives will descend upon the state. . . . Who of us who have had knowledge of the doings of the Federal officials in the Internal Revenue service can be blind to what will follow? I do not hesitate to say that the adoption of this Amendment will be such a surrender to imperialism that has not been since the Northern States in their blindness forced the Fourteenth and Fifteenth Amendments upon the entire sisterhood of the Commonwealth.

The Thirteenth Amendment says: "Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction."

Let us consult the dictionary for the exact meaning of two words. *Webster's International Dictionary* defines involuntary as "done unwillingly or under compulsion" and has this to say about servitude: "Condition of a slave, slavery, serfdom, bondage, state of compulsory subjection to a master." The action of an employer when he is forced against his will to extract the income tax from the pay envelope of his employee is certainly "done unwillingly or under compulsion" and comes within the meaning of "involuntary." The act itself is a service, service for the all powerful master sitting in the seat of power in Washington. To the extent that he is forced to perform this act for his master, he is not a free man, but a slave. Not all the judges, lawyers and prudent businessmen in the United States can define it any other way; the withholding tax law violates the Thirteenth Amendment in every respect that it is possible to violate it. It is interesting and significant that the antonyms given in the dictionary for servi-

tude are "freedom, liberty, independence, dominance, supremacy and nobility." When the employers and the employees were brought under the yoke of the income tax and the withholding tax laws they lost their precious freedom, liberty, independence, dominance, supremacy and every vestige of nobility.

And with this statement, for the time being, I rest my case, which is also the case of millions of other Americans, and leave it in the hands of the American people. They can decide the following questions: 1. Was my right to be secure in my papers and effects against unreasonable searches and seizures violated? 2. Was I deprived of my property without due process of law when the Government seized my bank account? 3. When employers are forced to pay for collecting taxes is private property taken for public use? 4. Does this not also apply to the money taken from the pay envelope? 5. Is the fine for not collecting taxes that are already paid of 100 per cent excessive when the fine for cheating and fraud is only 50 per cent? 6. When I am forced against my will to collect taxes for the Government isn't this involuntary servitude in the true meaning of the words?

And above all, is not the honest doubt as to the constitutionality of a law, in the mind of a citizen, "reasonable cause" enough for him to break that law and ask for a test case, in the highest American tradition? Must a citizen be forced to consult a lawyer who cannot advise him as to how he could expect the Court to decide? If a person may be excessively fined by having large sums of money seized from his bank account because that citizen has exercised his American right to ask for a test case, then truly our liberty is gone and we must resign ourselves to passively accepting every vicious law that Congress passes. We have no recourse if our right to go to the Court no longer exists.

What has being "willful" got to do with it? Were Philip Murray, and the CIO, and the Connecticut Federation of Labor, all "willful" when they broke the Taft-Hartley Law? Was the rabbi "willful" when he refused to take the sick chicken out of the coop? Is the Commerce and Industry Association of New York "willful" when it sets up a test case of a tax on second-hand cartons? Have all the thousands of Americans who have broken laws and asked for test cases, ever since Chief Justice John Marshall first decided that the Supreme Court had the power to decide the constitutionality of a law, been "willful" in their actions in getting the law tested? When the Income Tax Law of 1894 was brought before the Supreme Court, was such action "willful"?

And what is a "reasonable cause"? Isn't the desire of the citizen to test the law, "reasonable cause"? That's all the other people had. Were any of them ever fined, without a trial, for exercising their American right to break the law in good faith, and ask the Government to submit that law to the courts?

We did not appeal the case. There was no possibility to test the constitutionality of the law, and too much was at stake. To try to recover \$837.70, we ran the risk of losing the \$6,981.50, and additional penalties of \$15,000, for 1949 and 1950.

A whole new case must be prepared and presented.

No, the Government did not appeal either. They had had enough.

## CHAPTER XII

*“Nothing is so Powerful as an Idea  
Whose Time Has Come.”*

—VICTOR HUGO

AS THIS final chapter is written, two important events absorb the attention of the American people. One is the 1951 tax bill recently passed by Congress, which brings our tax-take to the highest point in our history. President Truman churlishly signed it, while bitterly complaining that the rates were too low; they must be raised again next year.

But he made no gesture toward reducing his own swollen salary or paying a tax on his tax exempt \$50,000 yearly expense allowance. Nor did he mention the United States Treasury figures of June 30, 1951, which reveal the astounding fact that he has taxed the people of this country twelve billion dollars *more* than all of the other Presidents from George Washington through Franklin D. Roosevelt.

The total taxes for this period which included taxes for the Revolutionary War, the War of 1812, the Civil War, the Spanish-American War and two world-wide wars, were 248 billion dollars. The taxes for six years and two months of Harry S. Truman are 260 billion dollars.

The other matter of interest is Congressional penetration of the Iron Curtain of secrecy surrounding the operations of the Bureau of Internal Revenue, to disclose the nauseating graft, bribery, extortion and corruption with which our whole tax collection system is honeycombed.

Every day new resignations and new tax scandals make headlines. And, to top it off, we reach the all-time high in absurd and dishonest tax laws in the bizarre action of Congress in taxing gamblers and bookies whose business is illegal. Could anything reveal more clearly the depth of depravity and immorality to which we have sunk under the income tax? I wonder why they didn't include moonshiners in the Kentucky hills and abortion mills in our big cities!

Add to this the incredible fact that no one can determine within several billion dollars just how much money was appropriated at the last session of Congress. Chairman Cannon, of the House Appropriations Committee puts the total amount at \$91,626,541,716, but Representative Taber, the Committee's ranking minority member claims that actually Congress voted \$99,058,054,395. "Confusion worse confounded." But what's a mere seven or eight billion among friends?

It could be coincidence that this controversial seven or eight billion is approximately the same amount allotted to W. Averell Harriman, Director of the new Mutual Security Agency, to "aid" Europe or Timbucktoo, as he sees fit. The exact amount given to him to scatter about the world, is \$7,328,903,976 plus another billion that somehow or other didn't get spent last year. No wonder Secretary of Commerce Sawyer calls this latest bureaucratic superstructure the "Santa Claus Department."

Senator Byrd adds his bit by estimating that we shall have at least an 18 billion dollar deficit for the fiscal year beginning July 1, 1952, "despite fifteen billion dollars in new taxes piled upon us in three tax bills enacted during the year."<sup>1</sup> Just below Senator Byrd's estimate on page one of the *Wall Street Journal*, is a summary of our national personal debt, due to installment buying, which has

<sup>1</sup> *Wall Street Journal*, November 2, 1951.

mounted to thirteen billion, one hundred fifty-six million.

Figures are dull and prosaic but any thoughtful person can grasp the frightening picture presented by these figures. For back of them the war drums are throbbing in our ears with ever increasing tempo and a rising crescendo! There is only one end to the mad fiscal policy we are pursuing, but it can be reached by two different routes. Either we have a complete economic collapse from which we emerge a communist nation, or we have a whopping big war from which we emerge a communist nation. Many people believe Communism breeds war. It doesn't. War breeds Communism. Communism is the fever generated by war. It is the symptom, not the disease. Like a vulture it feeds and fattens on the carrion left by war.

Today Truman stands exactly where Hitler stood in 1931. Hitler had solved his unemployment problem as Truman has solved his, by building armaments. For six years he devoted all his energy to building a huge war machine, and he stretched the mark just as far as it would go. His financial wizard, Haljmar Schaact, had pulled one financial rabbit after another out of the hat, until there came a time when even his fertile brain could not perform one more miracle and the choice was crystal clear—economic collapse or war. And we have reached that same point. As the German mark reached its elastic limit, so will the American dollar. Like a rubber band, it can be stretched just so far and then it snaps. At that point Truman must make his choice, and as Hitler sought to save himself, so will Truman follow the same path, unless the American people can be aroused to their danger and stop him before it is too late. For when the smoke of battle clears away, the United States of America as we know and love it, will be no more.

There is one step that will save us and it is a drastic one. We must repeal the Sixteenth Amendment. No half-

way measure will do; our nation is sick unto death and only the surgeon's knife will remove the cancer that is eating our very vitals. Granted we shall suffer postoperative pain; our economy is geared to the income tax and even though the shift is accomplished over a period of years, it will tend to collapse when the tax is stopped. But the weakness following the operation is nothing compared to the chaos and certain destruction which stare us in the face if we don't get rid of it.

A limitation on the amount that can be taken from any one citizen will not help. Trying to have a "little" income tax is like trying to have a "little" pregnancy. Neither will stay little; both rapidly swell to amazing proportions. Nor will transferring the federal tax collectors to Civil Service effect a cure. Both measures are palliative drugs which lessen the symptoms but do not attack the cause of our national illness.

In his incomparable essay, "Compensation," Emerson says that the cause and effect of an act cannot be divorced from each other nor from the act itself because they are both an integral part of the act and inseparable from it; present when the act is committed. Certainly every act has a cause, and every act has an effect, otherwise there is no act. Therefore the cause and effect are contained in the act. When an income tax law is passed forcing one man to lay bare his innermost business and personal secrets to another man who has the power, not only to determine the tax but to seize his property, graft, bribery and extortion are right there. This evil result cannot be severed from the act. Human nature being what it is, inquisition is inherent in the act. A limitation of even one per cent would still mean corruption. Placing the inquisitors under Civil Service would only freeze them in their jobs and make it more difficult to get rid of them.

With the income tax must also go the graduated inher-

itance tax, the estate tax, and the capital gains tax. All three are the purest Communism, tools used by the Communists to destroy the capitalistic system. Discrimination in tax rates between married and single people must end, as must double taxation on dividends, and we must immediately repeal the law which pays one American citizen to spy and inform upon another American citizen. In fact, we must revise our whole tax structure and again levy taxes for one purpose only, raising revenue for the legitimate functions of the government. Taxes are not the private property of politicians to be used as punitive, coercive instruments against the very people who pay them. Imagine this headline, "DiSalle to Use Taxes as Club" actually appearing in the newspapers! And apparently no one was shocked.<sup>2</sup>

Taxes are not funds given to these politicians so that they may buy themselves back into office. Nor are they to be levied for the purpose of taking from the haves and giving to the have-nots, either the domestic have-nots or the international ones who are bleeding us white.

Our time-honored, constitutional rule of uniformity must again apply. *Everybody* must pay at the same rate, every single taxpayer. This is the only fair way to determine and levy taxes, and no other method was ever tolerated by us as a permanent policy until John Nance Garner forced the graduated rate into the Revenue Bill of 1913.

"But how shall we run the Government?"

How many times have intelligent people asked me this question! They conclude that, because I don't believe in some taxes, I don't believe in any taxes.

The answer is quite simple. We run the Government exactly as we ran it for one hundred and twenty-five years before we adopted the Income Tax Amendment.

First of all, we cut the overgrown monstrosity which

<sup>2</sup> *The Dallas Morning News*, AP Release, October 6, 1951, page 4.



we call “the Government” down to size by permitting it to levy only those taxes specified in the Constitution, the revenue to be used for the purposes and powers *delegated* to the Federal Government by the people.

“The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

This provision gave, and still gives to the Federal Government all the power it needs to raise money, and enough money for its legitimate functions. Before the income tax was saddled upon us, federal revenue came chiefly from customs duties, supplemented by excise taxes on tobacco and whisky. Prior to the Sixteenth Amendment, a revenue bill in Congress was always considered a tariff bill and many and long were the arguments when those tariff duties were laid.

Because those taxes could be seen, they were felt by everybody. Feelings ran high! The same was true of tobacco and whisky taxes. When the American people found drinking too expensive, because of the tax, they staged a little rebellion and the tax was lowered, pronto.

All taxes should be *visible*. Every hidden tax must be abolished and when a tax is paid, it must be recognized as a tax, and the taxpayer must feel the unpleasant pinch of paying it. The following headline on the front page of a New York newspaper tells the story: “Howling Citizens Rap 3% Sales Tax; 1500 Picket Stormy City Hall Hearing.” All because New York City upped the sales tax one per cent. Where were those “howling citizens” when Congress passed the 1951 income tax bill? Those same “pickets” would pay hundreds of dollars in income taxes to Washington, to the pennies they would dole out to New York City. But those pennies are bled, penny by penny,

constantly irritating the taxpayer and reminding him of his burden. Cutting off the puppy's tail an inch at a time, accomplishes the same result as one quick slash, but the process is accompanied by heart-rending and continuous yelps. A visible tax is seen and felt when it is paid. An income tax separated from the pocketbook at one fell swoop is forgotten between tax gatherings, or is completely disregarded when stolen stealthily from the weekly pay envelope.

Not only should all taxes be visible, but they should be levied, as much as possible, by municipal and state authorities, and collected by local citizens. A tax, levied and collected by people we know, friends and neighbors, will stay small, and so will the bribery and graft. At the very first suggestion of an increase, opposition flares up. Town meetings are held, petitions are circulated, and debates aired in newspapers and on the radio. Homegrown taxes are easily policed, and there is never-ending pressure to keep them low.

The fact that California's share of Mr. Truman's proposed 1953 budget would be \$7,288,000,000, caused scarcely a ripple in the newspapers of that wealthy state. But the announcement by a State Assemblyman that he was for cutting the state sales tax one-half per cent, which would save the citizens of California \$98,500,000 was greeted with loud cheers all over the state.

Let's make a ghost town of Washington. If our Federal Government took its nose out of the private affairs of the States and of the individual citizens, and attended strictly to its own business, it could operate efficiently in the Capitol, the White House, the Supreme Court, the House and Senate Office Buildings, the Congressional Library, the Mint, and the Pentagon Building. There is plenty of space in these buildings for everything the Federal Government

is supposed to do, including building and maintaining an adequate defense force.

Return to the States and to the people their own money. They've earned it and they can spend it far better than corrupt politicians, entrenched in bureaus and agencies, 99 per cent of which are illegal and unconstitutional. There isn't a function, outside of the ones specifically delegated to the Federal Government in our Constitution, that can't be handled better by the people, acting through their municipal and state governments.

And with this return of money, and power will go the return to the American people of their innate decency and integrity. Representative Payne prophesied truly, back in 1909, that the income tax would make of us a nation of liars, and the moral degeneration of our nation is directly traceable to the income tax. How many self-righteous citizens, shocked at the cribbing of a few West Point cadets, were lying and cheating on their income tax?

The right to own something, so carefully insured to us by our forefathers, endows the owner with dignity and self-respect, and of these are born national integrity and morality.









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