

Allocution of James Allen

As I reflect back upon my life I realize that although I may be shocked to find myself in this predicament, I also realize that it might have been inevitable that I end up here. I could say that I am the product of a dysfunctional family, but honestly, I don't believe that there are many among us who can say different. However, despite any adverse circumstances in which I may have found myself growing up, I had ingrained in me, from a very early age, a strong moral compass. As far back as I can remember, I have known the difference between right and wrong.

I recall an incident that happened when I was about six years old. My sister, Nancy (who is almost two years younger) and I walked several blocks away from home to the local convenience store to buy cigarettes...for my mother. This was, obviously, a different time. Today my mother would probably be arrested for child abuse for having sent us to the store alone. My sister revealed to me that she had taken some candy without paying for it. In other words, she stole it. As soon as we arrived home I told my mother, who made it absolutely clear that she was very displeased. She immediately took my sister and me back to the store, where she had her tell the store owner what she had done and to return the candy (at least what she hadn't already eaten!) My mother paid the store owner for the rest and we went home. My sister was devastated. I felt bad that I had told on her, but I also knew that it was the right thing to do. Taking property that doesn't belong to us is wrong; it's theft. Coincidentally, my sister has never been in any trouble with the law since that day.

As for my present circumstance, I wish for the court to know that I didn't just wake up one morning and decide to stop reporting my income from my private anesthesia practice and stop paying income tax on those monies. I felt compelled to do what I thought was right at that time, just as when I was a boy.

After the financial crisis of 2008 I came to believe, as I think that many Americans did, that there was something very wrong happening in our country and that maybe we weren't being told the whole truth. Having worked as a mortgage loan officer and broker in the late 1980's, I knew that what we were being told on the news: that the mortgage crisis was the result of the actions of greedy and unscrupulous loan officers and borrowers was, at best only partially correct and, more likely, frankly wrong; rather, I knew (or thought that I knew) that the actual cause was poorly enacted governmental legislation and regulation, coupled with greed and speculation on the part the Wall Street bankers. And I thought that if this were case, then what other misinformation were we being fed? Thus, in earnest, I began to seek out the truth. Some of what I subsequently discovered frankly shocked me and motivated me to action.

In 2009 I began reading the book 'Cracking the Code' by Peter Hendrickson and found the information contained within it very compelling, even more so because I was able to corroborate it with third-party sources, such as the U.S. Code found on the website of the U.S. Congress and case law on the U.S. Supreme Court website. Although I have no legal background, everything that I learned about the income tax simply made sense. In his book, Hendrickson postulates that the federal income tax is constitutional and completely legitimate, but also that the government's taxing authority is strictly limited and, therefore, in practice, is frequently being misapplied, backed up by legal presumptions that are simply untrue, but almost always go unchallenged.

So, for the my 2010 tax filing I gathered the courage and filed my return, along with the appropriate documentation (as recommended in the book) to specifically rebut the W-2 Information Return that my employer had sent in to the IRS. The IRS then sent me a notice claiming that my return was 'frivolous'

and that I would be required to pay a penalty. I had been forewarned that this may happen, so I was prepared to immediately respond with a letter requesting that I be sent a certified copied of the assessment, one in which the auditor is required to sign “under penalty of perjury...” that I had a legal tax liability and to state the exact nature of the supposed infraction that led to the penalty being imposed. This was never received by me; rather, there was additional correspondence sent back and forth, including many letters from the IRS stating that they were “...looking into the matter.” Finally, after an eight-and-a-half-month audit by mail, I received notice that the matter had been closed. I was informed that I was entitled to receive a 100% refund of everything that had been withheld from my pay, including federal income tax, Medicare and Social Security tax, plus \$245.37 in interest added. The check that I subsequently received from the Treasury still had some penalty monies withheld, but I considered getting back the bulk of my money a win.

In 2011 I began working as an independent anesthesiologist through locums agencies, so taxes were no longer being withheld from my pay, but 1099 Information Returns were sent in to the IRS, which made it necessary for me to file a tax return for 2011, again with documentation that rebutted the presumption that the income that I received was taxable. The audit for this year started with an IRS notice that I had a tax due in excess of \$105,000, which was followed by many threatening letters, again with claims of my having filed a ‘frivolous’ return. This audit lasted much longer, approximately twenty-three and a half months. I intermittently received letters stating that my bill was increasing, due to further interest and penalties: over \$107,000 then over \$109,000 and, finally, after about twenty-two months, I was told that I owed over \$120,000. Also, throughout this audit I received many different notices that my case was being forwarded to other offices for further review. My case must have been evaluated by at least a dozen different IRS offices across this country, all with the same response to my repeated requests for a certified assessment...silence. Finally, after about twenty-three and a half months, I received official notice that my case had been closed. The audit determined that I was, in fact, correct and had an outstanding balance due of \$-0-

Because of the positive success I was having in my dealings with the IRS, my confidence soared (as might reasonably be expected) and led me to encourage my wife to allow me to begin filing on her behalf as well. Again we experienced (at least initially) success. After a lengthy mail audit, she was notified that she was entitled to a refund of \$32,729 for tax year 2011 and \$61,196.79 for 2012. However, refund checks were never received; instead, after a year or two the IRS began re-auditing her for those years. As recently as January, 2018 we solicited the aid of the IRS Taxpayer Advocate Office in Pittsburgh, without any resolution. Then in May of 2018 we were informed that we were under investigation by the Department of Justice. We immediately began cooperating with the government.

In thinking about this case, the words of an ancient Greek philosopher named Epictetus come to mind. He said, “Appearances are of four kinds. Things either are what they appear to be; or they neither are, nor appear to be; or they are, and do not appear to be; or they are not, and yet appear to be. Rightly to aim in all these cases is the wise man's task.”

I wish that the government could have found another way to deal with this case; although, I also clearly understand why it came to this. I hold no ill will toward those individuals acting on behalf of the government; who are, after all, simply doing their jobs.

After much soul searching, I have come to realize that what I did was wrong and I am deeply sorry for my actions and I certainly cannot, in good conscience, recommend that anyone attempt to follow the same path, regardless of how alluring the message contained in ‘Cracking the Code’ may seem. I apologize to my wife, my family, my colleagues and my friends for having taken them down this

disastrous road with me. I recognize that my actions were misguided and I simply wish to move past this and get on with my life, whatever of it may be salvaged after this experience.

My greatest regret is that I may never again be able to work as an anesthesiologist, a job that required that I train for 13 1/2 years and one that I couldn't wait to get up for in the morning (most days) to go do. It is my hope that the court will take into consideration the extraordinary, extenuating circumstances of this case when deciding my fate. I can only hope that there will be a path to redemption laid out for me and that, if the court should see fit to show leniency, that the state licensing authorities will be encouraged to consider allowing me to once again practice anesthesia, which will then provide me a realistic means to be able to pay whatever civil penalties await me. I desperately wish to once again become a productive member of society. I thank the court for its thoughtful consideration of my plea for leniency.