

Irwin Schiff's Tentative Motion for Reconsideration

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Average words per sentence: 32. Maximum: 151. Need more sentences and fewer words per sentence.

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U.S. District Court for Nevada

| | |
|---|---|
| United States, plaintiff | Case #CV - S-03-0281-LDG-RJJ |
| v | |
| Irwin Schiff, in pro per | Document #5854 Version 1.01 |
| Cynthia Neun, in pro per | |
| Lawrence Cohen, in pro per | Motion for Reconsideration. |
| All doing business as Freedom Books, | Memorandum of Authorities. |
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| www.livetaxfree.com , www.paynoincometax.com , | Date: |
| and | Time: |
| www.ischiff.com | Court: Court of Judge George in Las Vegas |
| Defendants. | |

COMES NOW DEFENDANTS and ask this Court in the interest of justice and in the interest of preserving the public's respect for the integrity of our federal court system to reconsider and reverse its order granting the government a permanent injunction.

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House Report No 1337 and Senate Report 1622 Income means “income” in its constitutional sense and not in the pre-1954 statutory sense. [Page 8 of 17](#)

Argument with Memorandum of Authorities

Argument: Judge ignored his oath of office by failing honor stare decisis

In granting the injunction, the Court has ignored both the law and its oath of office to " be bound by oath or affirmation to support this constitution."

In granting the preliminary injunction this court has willfully and deliberately disregarded all three taxing clauses of the Constitution as well as the binding nature on the Court of the following 8 Supreme Court decisions:

- Pollock v. Farmers Loan and Trust***, 158 U.S. 601;
 - Brushaber v. Union Pacific RR***; 240 U.S. 1;
 - Eisner v. Macomber***, 252 US 189 (1920)
 - Stanton v. Baltic Mining***, 240 US 103 (1915);
 - Merchant's Loan and Trust Company v. Smietanka***, 255 U.S. 509 (1921);
 - U.S. v. Hill***, 123 U.S. 681 (1887);
 - McNutt v. General Motors***, 56 S.Ct. 780;
- and ***The State of Rhode Island v. The State of Massachusetts***, 37 U.S. 709.

Argument: This district court lack subject matter jurisdiction under *U.S. v Hill*

As was pointed out to this court by defendants in their Motion to Dismiss, the issue regarding the Court's lack of subject matter jurisdiction was based on the Supreme Court holding in ***U.S. v. Hill*** supra (which, as defendants also pointed out, was also quoted and followed by the 9th Circuit in ***People v. Bruce***, 129 F.2d 431, 424 (1942)) that federal courts have no subject matter jurisdiction unless the revenue law they are seeking to enforce

"is directly traceable to power granted to Congress by Section 8, Art.1, of the Constitution to lay and collect taxes duties, duties, imposts and excises." - *U.S. v Hill*

(1887)

This court has neglected to address our concerns regarding jurisdiction.

Because we clearly established, from bedrock Supreme Court decisions, that the income tax at issue is not "traceable" to any one of the Constitution's three taxing clauses, this Court cannot have subject matter jurisdiction in connection with the litigation at issue. Defendants' motion challenging the jurisdiction of this Court on this ground was filed on April 15, 2003. The government filed its Answer on or about April 18, 2003. Defendants filed their Reply to the government's Answer (which refuted every argument in that Answer) on or about April 20, 2003. This Court has never ruled on the issues raised and argued by the litigants in those pleadings. The Court, in seeking to establish its jurisdictional claim (Page 2 of its Order) makes no mention of this issue as briefed in these pleadings.

The court has not ruled on our jurisdictional argument.

As of this date, has made no ruling on our jurisdictional argument.

Court is mistaken regarding 16th amendment; no new taxing power was created.

However, the Court does make the false claim (page 7, Lines 23- etc.) that the 16th Amendment authorized "a **non-apportioned** direct income tax on United States citizens residing in the United States " This court cites as its authority the lower court decision, *Grimes v. Comm'r*, 806 F. 2d 1451.

This court cite a lower court opinion, Grimes, and ignores Supreme Court opinion to the contrary

In making such a claim, this Court is claiming the 16th Amendment gave Congress 1) a new taxing power i.e. the power to impose a direct tax not subject to either the rule of apportionment, as required of all direct taxes, (as contained in Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4), nor subject to **the rule of uniformity**, as required of all indirect taxes (identified as "duties, imposts and excises") as provided in Article 1, Section 8, Clause 1. Thus, this Court is claiming that the 16th Amendment gave Congress a new constitutional, taxing power (not found in any of the above three clauses) authorizing a federal tax not subject to either the rule of apportionment or the rule of uniformity. This court had to know, based on excerpts from numerous Supreme Court decisions defendants supplied to this court, that such a claim has no merit whatsoever. Contrary to the Court's claim, the Supreme Court in *Brushaber*, supra, specifically held: In the matter of taxation, the Constitution recognizes these two great classes of direct and indirect taxes and lays down two rules by which their imposition must be governed namely: The rule of apportionment as to direct taxes and the rule of uniformity as to duties, imposts and excises. The *Brushaber* Court went on to point out (at pages 11-12) that:

there can not be a federal tax "lying intermediate between these two great classes and embraced by neither," - *Brushaber* opinion

and that the proposition that the 16th Amendment gave the government the power to impose a direct, non-apportioned income tax as claimed by this Court: If acceded to, would cause one provision of the Constitution to destroy another: that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either

to apportionment or to the rule of uniformity This result would create radical and destructive changes in our constitutional system and multiply confusion.

Defendant provided this court with numerous excerpts from Brushaber and other Supreme Court decisions which specifically declared that the 16th Amendment:

1) did not give Congress any new taxing power,
and

2) the 16th Amendment merely allowed Congress to impose an income tax in the form of an excise tax, and not in the form of a direct tax, as incorrectly claimed by this Court - since an income tax imposed as an excise tax would not need to be apportioned because excise taxes are not subject to this requirement.

Purpose of the 16th amendment as enunciated in Pollock v Farmers Loan and Trust

This Court had to know this from the following quotations that were supplied to this Court: The whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the sources whence the income was derived. Thus the "whole purpose" of the 16th Amendment was not to amend the Constitution and give Congress a new taxing power, but to provide for a tax on "income" separated from the "sources" that produced the "income." So the sources themselves (such as wages, dividends, interest, alimony, rents, capital gains that produced the income) would not be "considered" and thus directly taxed, since a tax placed directly ON such sources would have to be apportioned, as held in **Pollock v. Farmers Loan and Trust**, supra, which ruled the Income Tax of 1894 unconstitutional for this reason. As stated in **Brushaber**, "the 16th Amendment contains nothing repudiating or challenging the ruling in the Pollock case." (The government, remember, in its Answer, argued that the **16th Amendment overturned Pollock**. Defendants pointed out to this Court the erroneous nature of that claim as proven by the above quotation, and also pointed out that the Brushaber decision contained numerous references to the Pollock decision.) Defendants also pointed out to this Court that since the 16th Amendment did not "overturn" Pollock, it was still bound by that decision. However the Court's Order of June 16, 2003 flies in the face of that decision, as this Court has to know. Consequently, the Court's claim that the 16th Amendment gave the government a new power to levy a direct tax on income without apportionment is a frivolous claim. The following quotations (all of which were supplied to this Court) further prove that the Supreme Court ruled that an income tax was

1) in its nature an excise tax which had to be imposed as such, if the tax were to be legally compulsory, and
2) Congress received no new taxing power as the result of the 16th Amendment, which, therefore, did not "amend" the Constitution in any way. The provisions of the 16th Amendment conferred no new power of taxation. Authority:

Stanton v. Baltic Mining supra.

The Sixteenth Amendment must be construed in connection with the taxing clauses in the original Constitution and the effect attributed to them before the Amendment was adopted. (*Eisner v Macomber*, supra,) A tax on income was in its nature an excise entitled to be enforced as such (since) taxes on income has been sustained as excise taxes in the past. (i.e. during the Civil War). (Quoted from the Brushaber decision) The Amendment excludes the criterion for the purpose of destroying the classifications of the Constitution by taking an excise (the income tax) out of the class to which it inherently belongs and transferring it to a class in which it cannot be placed consistently with the requirements of the Constitution. (*Brushaber*, supra) The provisions of the 16th Amendment conferred no new power of taxation but simply prohibited (a tax on income) from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived" (*Stanton v. Baltic Mining*, supra) The Sixteenth Amendment must be construed in connection with the taxing clauses in the original Constitution

and the effect attributed to them before the Amendment was adopted. (Eisner v. Macomber, supra.) A proper regard for its genesis require that the (16th) Amendment shall not be extended by loose construction so as to repeal or modify those provisions of the Constitution that require an apportionment for direct taxes upon property, real and personal. (And wages and dividends are personal property) This limitation still has an appropriate and important function, and is not to be overridden by Congress or disregarded by the courts. (Eisner v. Macomber, supra.) Since, all of the above holdings prove defendants' claim that the income tax is not imposed either on the basis of apportionment or as the indirect, excise tax, the Supreme Court ruled it to be; defendants have proved that the income "tax" at issue is not "directly traceable to the (Government's) constitutional power to lay and collect taxes."

Conclusion: This court lacks jurisdiction

Ergo, this Court had no subject matter jurisdiction to even hear this case - let alone to issue an Order with respect to it - as held in U.S. v. Hill, 123 U.S. 681.

Jurisdiction can not be assumed; any order issued by a court lacking jurisdiction is a nullity

As was pointed out to this Court by defendants in their original Memorandum of Law to support their claim that this Court had no jurisdiction to hear this litigation, Supreme Court stated in *McNutt v. General Motors*, 56 S.Ct. 780. If (an) allegation of jurisdiction facts are challenged by his adversary in an appropriate manner, he must support them with competent proof the party alleging jurisdiction (must) justify his allegation by a preponderance of the evidence. As shown by the government's answer it could supply no "competent proof" to support its claim "alleging" jurisdiction Not only didn't it supply a "preponderance of the evidence," it could supply no evidence at all to refute defendants' claim. Indeed whatever "evidence" it did submit, such as its claim that, 1) the 16th Amendment allowed the government to impose a nonapportioned, direct tax on income and, 2) the 16th Amendment overruled Pollock, merely confirmed and supported defendants' claim. And, as defendants' pointed out to this Court, the Supreme Court held in *The State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, once the question of jurisdiction is raised: "It must be considered and decided, before any court can move one step further." However, this Court insisted on moving further, even to the extent of issuing its final Order without addressing or ruling on the issue of jurisdiction as argued in all of the briefs filed by the litigants on this issue. In addition defendants further pointed out to the Court that "Jurisdiction cannot be assumed by a District Court but it is incumbent upon plaintiff to allege in clear terms, the necessary facts showing jurisdiction which must be proved by convincing evidence" *Harris v. American Legion*, 162 F. Supp.700 (numerous citations omitted). However in this case, the Court did just that: it merely "assumed" jurisdiction, since it could not support its jurisdictional claim with any of the "evidence" furnished by the government. This being the case, defendants would further respectfully remind this Court that: Once jurisdiction is challenged,

"The court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits, but, rather, should dismiss the action." *Melo v. US*, 505 F2d 1026.

"There is no discretion to ignore the lack of jurisdiction", *Joyce v. US*, 474 F2d 215; "The burden shifts to the court to prove jurisdiction," *Rosemond v. Lambert*, 469 F2d 416; "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted," *Lantana v. Hopper*, 102 F2d 188; *Chicago v. New York*, 37 F Supp 150. "A universal principle as old as the law is that a proceeding of a court without jurisdiction is a nullity and its judgment therein without effect either on

person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio," *in Re Application of Wyatt*, 300 P. 132; *Re Cavite*, 118 P2d 846. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27.

Argument: This court failed to rule on Defendant's Motion to Strike all of the Government's Pleadings

The fraud is in the use of wrong definition of the word "income". The government's definition was repealed in 1954.

Willful fraud upon the court is an ethical breach subjecting the Government to a fine.

On or about **April 20, 2003** Defendant's Filed a Motion to Strike all of the government's pleadings including its request for a Temporary Restraining Order, and Preliminary and Permanent Injunctions **because all of its pleadings were based on fraud**. The fraud sought to be perpetrated by the government involved its use of the word "income" in its "ordinary sense" and not in its "constitutional sense." The government knew that in adopting the Internal Revenue Code of 1954, Congress decreed that income was used in that Code in its "constitutional sense," not in its "ordinary sense." However, in all of its pleadings the government used the word "income" in its "ordinary sense," not in its "constitutional sense." Congress' decreed that "income" in the 1954 Code meant "income" in its "constitutional sense" and not in its "ordinary sense" was contained in **House Report No 1337 and Senate Report 1622**, as referenced in footnote 11 of *Commissioner of Internal Revenue v. Glenshaw Glass*, 348 U.S. 426. Defendants pointed out to this Court that neither the defendants, nor anyone they ever came into contact with, ever received "income" in its "constitutional sense." The government filed its Response to defendants' Motion to Strike on or about May 15, 2003. Defendants filed their Reply on or about May 20, 2003. However, to this day, the Court has never ruled on the issue of fraud as raised and argued in these pleadings as it is required to do. And this Court is aware that "Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows*, 91 US 426. Indeed, the Court merely embraced the fraud perpetrated by the government and employed the same 7 fraud throughout its order of June 16, 2003. Throughout its Order the court uses "income" in its "ordinary sense" and not in its "constitutional sense," as the law required it to do. In its Response, the government sought to escape the obvious implications of House Report No 1337 and Senate Report 1622, (which is that the government has for years been illegally extracting income taxes from the American public based on its using "income" in its "ordinary sense" and not using the term in its "constitutional sense") in a variety of ways. One way was by refusing to acknowledge 1) the difference between "income" in its "constitutional sense" and "income" in its "ordinary sense," and 2) by refusing to acknowledge the existence of **House Report No 1337 and Senate Report 1622**, since no mention of these reports appears anywhere in the government's Response. In addition, the government was compelled to make two patently false claims as contained in the following paragraph. The government stated: The Sixteenth Amendment was ratified to effectively overturn Pollock. The (Brushaber) Court determined that the Sixteenth Amendment eliminated any need for apportionment of the income tax, even if the tax arguably affected the value of property and therefore arguably could be considered a direct tax. Overlooking the government's double talk regarding "the value of property," the government's claim here that 1) the 16th Amendment overturned Pollock and, 2) permitted the government to impose an income tax as a nonapportioned direct tax, are claims that have already been refuted in this document. However, the fact that the government felt the need to raise them again here, means the government had no truthful defense to defendants' charges. How could they have a defense anyway? Admittedly (and as shown in the Court's Order of June 16, 2003) the government imposes the income tax on income received in the "ordinary sense," and not on income received in

a "constitutional sense" as it is required to do by law.

The subtle difference between income and a source of income.

As defendants pointed out in to this Court in their Reply to the Government's Response on this issue: The Government continues to misrepresent Section 61. For example, its statement in its Response, "Defendants suggest that the term `income' does not include such things as compensation for services, dividends, or capital gains despite their express inclusion in gross income in 26 U.S. 61," is a false statement, and its hard to believe that tax lawyers of the DOJ would not know that. These items are not "expressly included in gross income in 26 U.S. 61," as the Government claims. The only thing that Section 61 purports to do (but doesn't) is to define "Gross income." And it does so by stating, "gross income means all income from whatever source derived." While various examples of "sources" of income ("from" which "income" could be "derived") are listed, the sources themselves are not made subject to the tax. The only thing being made subject to the tax is "income" itself - whatever that term happens to mean. However, the 8 sources themselves are not made subject to the tax. The Government refuses to recognize the significance of the word "FROM" as it appears in that sentence. What is being taxed is income "FROM " those sources; the tax is not imposed ON the listed "sources" themselves. If Congress had intended to tax the "sources" themselves. it would have placed the tax ON those "sources" and not "income" FROM those sources or it wouldn't have bothered to change section 22 as it appeared in the 1939 Code. Section 22 of the 1939 Code stated that "Gross income includes income derived from, salaries, wages or compensation for personal service" and it proceeded to list a number of other items which were to be "included" in "Gross income" (See Exhibit A) And this was the same wording that was used in the original Income Tax Act of 1913. If Congress had intended to continue to tax the "salaries, wages, and compensation for personal service" of working Americans, why did Congress remove such references from the 1954 Code? Is the Government going to claim that in substantially changing the wording used to describe "income," as between section 22 of the 1939 Code and section 61 of the 1954, Congress did not intend to change the substance of what was being taxed as income? If Congress did not intend to change the substance, why did it bother to change the wording as between these two statutes? Why didn't Congress simply transfer the wording of Section 22 to Section 61 as Congress had done for 41 years? To claim that the wording was changed but not the substance is nonsense. The only question that needs to be answered is - how and why was the meaning of income changed, as between the 1954 Code and all former Codes? The reason that Congress made the changes it did, is so that it could bring the 1954 Code into compliance with what the Supreme Court had ruled in *Brushaber v. Union Pacific RR.* 240 US.1 that "income," as used in the 16th Amendment, meant. As defendants have already pointed out to the Government and to this Court in their Memorandum of Law in connection with Defendants' Motion to Dismiss this Action for Lack of Subject Matter Jurisdiction: As stated by the Supreme Court in the *Brushaber* decision, *supra*, the "whole purpose" of the 16th Amendment was not to "amend" the Constitution but: The whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the sources whence the income was derived. (Emphasis added) Thus, the Supreme Court held, that the "whole purpose" of the Amendment was to allow the Government to tax "income," separated from it source (which only happens when "sources" of "income are funneled through a corporate profit and loss statement and emerge as "profit," since only a "profit" separates "income" from the "sources" that produced the profit and thus "sources" are not "considered") as an excise tax, so as to avoid the necessity of apportionment, the bases upon which the Supreme Court held the Income Tax Act of 1894 unconstitutional¹ 1 The Supreme Court in *Pollock v. Farmers Loan and Trust*, 158 U.S. 601, held the Income Tax Act of 1894 unconstitutional because it held the income tax to be a direct tax and thus unconstitutional for want of apportionment. And the *Brushaber* Court pointed out (on page 19) that "The Amendment contains nothing repudiating or challenging the ruling

in the Pollock case " Therefore an "income" tax not separated from its sources. It is clear from the above that when an income tax is imposed directly on sources of income, (such as wages, interest dividends) the sources are taken into "consideration" and thus a tax on such sources could not be "relieved from apportionment," but would have to be imposed on the basis of apportionment. Further quoting from its Reply of May 20, 2003 defendants pointed out to this Court: In the years immediately following the passage of the 16th Amendment the federal courts struggled to determine the meaning of "income" as that term appeared in the 16th Amendment. The constitutional meaning of income ultimately became clarified and fixed by the Supreme Court in the 1921 case of *Merchant's Loan & Trust Co. v. Smientanka*, 255 US 509, 518, 519, which held (quoting merely the last line of a more extensive definition) There would seem to be no room to doubt that the word [income] must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and what that meaning is has now become definitely settled by decisions of this court. And what was taxable under the Corporation Excise Tax Act of 1909, was corporate profit, so, obviously, "corporate profit" is the only thing that can be taxable today under the 1954 Code. And finally the defendants stated in their Reply: The Government misrepresents or doesn't understand *Commissioner v. Glenshaw Glass Co.* 348 U.S. 426 (1955) The *Glenshaw Glass* case involved a case based on the 1939 Code and had nothing to do with the 1954 Code. So the *Glenshaw* Court had no reason to "clarify the understanding of the 'constitutional' definition of income" as the Government claimed, and in fact did not do so. The *Glenshaw* Court simply referred, in dicta, to footnote 11, which confirmed that Congress in House Report 1337 and Senate Report 1622 (Reports which the Government in its Response does not even mention) stated that "Section 61(a) provides that gross income includes 'all income from whatever source derived.' This definition is based upon the 16th Amendment and the word 'income' is used in its constitutional sense." So *Glenshaw Glass* did not "clarify" anything with respect to what income in its "constitutional, sense" meant. The footnote merely noted what both the House and Senate stated what the word "income" was to mean in the 1954 Code as opposed to what the word meant in the 1939 Code. So since the Government in its Reply refuses to recognize the difference in the wording of Section 61 as contrasted to the wording in Section 22 (and its reference to *Lucas v. Earl* confirms that) and the change in substance that such a change in wording implies, it is clear that the DOJ is enforcing the income tax on the basis of the provisions of Section 22 of the 1939 and not on the provisions of Section 61 of the 1954 Code which obviously changed the provisions of Section 22 of the 1939 Code. And the DOJ is certainly disregarding the intent of Congress as expressed House Report 1337 and Senate Report 1622. However, this Court cannot ignore the "will of the legislature" as expressed in these congressional reports, nor the changes that obviously occurred when Congress changed the wording of Section 61 from what had appeared in Section 22 of the 1939 Code. Nor can this source (such as an income tax imposed directly on wages, dividends, interest etc. etc.) would still be subject to the rule of apportionment. 10 Court disregard the crystal clear holdings of the *Pollock*, *Brushaber*, *Stanton*, *Eisner*, and *Merchant's Loan and Trust* Courts all of which clearly hold that. The 16th Amendment conferred no new power of taxation on Congress. a) The taxing power of Congress is still confined to the power conferred on it in the original Constitution, and the 16th Amendment changed nothing with respect to those powers. b) The income tax was held to be an excise tax, and only when it is imposed as such is it free from the rule of apportionment. c) A direct tax on sources of income is unconstitutional unless apportioned. d) That "income" in a "constitutional sense" has to mean "income" in which the "sources" of that income are not "considered." e) In taxing "wages" and "dividends" the "sources" are being "considered," and thus an income tax on such "sources" can only be lawfully imposed pursuant to the rule of apportionment. f) A tax on corporate profit is not a tax on the "sources" that produced the profit. g) Therefore "income" in the "constitutional sense" (i.e. in the 16th Amendment sense) means a corporate profit. h) Since the Senate and House Reports 1622 and 1337 stated that income in the 1954 Code was

used in its "constitutional sense," this can only mean that "income" in the 1954 Code means a corporate profit. I) Since it is clear from the Government Response that it refuses to recognize any distinction between "income" in a "constitutional sense" and income in an "ordinary sense," it continues to enforce the income tax as if there were no changes in the meaning of "income" as between the 1939 and 1954 Internal Revenue Codes. It is obvious from all of the above that this Court arbitrarily, illegally, unconstitutionally and in violation of its oath of office simply threw all law, facts, truth and justice out the window in issuing its Order of June 16, 2003, so as to enable the government (from which this Court draws its sustenance) to continue extorting income taxes from the American public. This is clear from a cursory sampling of the false and fraudulent statements contained in the Court's Order. For example, on page 1, the Court states. The complaint alleges that defendants recruit customers to the zero- income tax return scheme by falsely stating that income earned by individuals is not subject to federal income taxes. Defendants then advise customers to file zero-income tax returns; assist customers to submit false W-4 forms to stop withholding taxes from wages; and help customers prepare other fraudulent tax documents. Defendants do not "falsely state" that "income earned by individuals is not subject to federal income tax." The fact is their "income" is not subject to income taxes on a variety of grounds. It is the government and this Court that falsely state that the income of Americans is subject to income taxes. All three of the defense witnesses testified at the hearing that they did not pay income taxes, because their research proved to them that no law: 1) made them "liable" for income taxes, 2) no law required them "to pay" income taxes, and 3) they had no income in the "constitutional sense." Two of them testified that if the government showed them the law (on 11 cross-examination) that required them to pay taxes, they would go back to paying income taxes and the government declined to show them any such law. In fact the government did not challenge their testimony in any way. Why, if their testimony was false, didn't the government do so? Indeed, Schiff offered to withdraw his opposition to the government's request for a preliminary injunction if Mr. Davis, the U.S. attorney, would merely produce the law that made Americans "liable" for income taxes. To make it easy for him, Schiff handed him an Internal Revenue Code. Yet Mr. Davis remained silent and refused to take Schiff up on his offer. Why? And isn't it strange that while this Court cites court decisions over 100 times that presumably make Americans "liable" for income taxes, it failed to cite the law that actually does so? Why? Because this Court knows that no such law exists yet they exist in connection with all other federal taxes. Secondly, Freedom Books doesn't "recruit customers": it sells books in the same manner, as do all other publishers. Does Simon and Schuster "recruit" customers? Thirdly, defendants don't advise people to file anything unless they research the applicable law themselves and become convinced that by filing a "zero" return they are complying with the law. Since Schiff has filed a "zero" return for the last 14 years and the government has accepted them without charging him with tax evasion under 26 USC 7201 or any other crime: such as giving the government false information under 18 USC 1001, or mail fraud, wire fraud, consumer fraud or any other kind of fraud why shouldn't defendants believe that everyone can file "zero" returns in the same manner as does Schiff, without suffering any adverse legal consequences? In addition, defendants do not "help customers prepare fraudulent documents" to "stop withholding taxes." All Americans, (as was extensively explained to this Court) are given the right under 26 USC 3402(n) to stop the withholding of taxes from their wages, since they are not "liable" for income taxes as provided in that Code section. And if Americans couldn't claim exempt on that basis, why is the opportunity to do so provided on a W-4 itself? In addition, defendants provided the Court with other reasons why all Americans are "exempt" from withholding taxes, because: 1) no such taxes would have been assessed against them, 2) wages are not income in a "constitutional sense," and 3) withholding taxes are not even income taxes (as explained in pages 159-162 of The Federal Mafia) but represent an unconstitutional, nonapportioned, direct tax on wages which is imposed in section 3402(a) as opposed to income taxes which are imposed in Section 1. However, the Court has simply ignored this information in the same manner

as the Court has ignored all information provided to this Court by defendants. If the government believed defendants helped people prepare "fraudulent tax documents" it would have charged defendants with numerous violations of 26 USC 7206 long ago. Defendants advise nobody to do anything illegal, and both this Court and the DOJ know it. Page 2: The activities proscribed by the restraining order include the sale and distribution of the book *The Federal Mafia* and other books, videotapes, seminars, packages, and consultations that provide instructions on how to file or submit false or fraudulent returns and tax forms. This claim by the government and its repetition here by the Court, the Court knows is false. At the hearing, Schiff insisted on testifying under oath (while the government refused to put on any witnesses at all) and, under oath, Schiff challenged the government to produce any document from any of his books or tapes that promoted tax evasion or any violation of law, and the government refused to do so. Why? Because there is nothing in anything Schiff writes or says that promotes tax evasion or violations of law. What Schiff does is expose the government's criminal enforcement of the income tax, and how the public might protect itself - which is why the government is desperately trying to shut Schiff up. Page 3: The government bears the burden of proving each element necessary for the issuance of an injunction by a preponderance of the evidence. For the government, this didn't present much of a "burden." At the hearing the government: 1) didn't put on any witness of its own and 2) didn't attempt to cross examine or attempt to impeach or refute any of the testimony of any defense witness. Obviously, the Court could have written the exact same Order even if the government hadn't bothered to show up at all for the preliminary hearing. In connection with the alleged "Violations of 6700" (referred to on page 3) the government didn't prove even one of those elements as was specifically covered in defendants' Post Hearing Brief. For one thing, defendants do not sell an "entity, plan, or arrangement," they sell information. And in order to stop this information from reaching the public, the government has fabricated the absurd idea that this information constitutes an "entity, plan, or arrangement." As explained in defendants' Post Hearing Brief: Both Schiff and his readers understand that no individual receives "income" in a "constitutional sense" and thus they have no "income" that is taxable under the IR Code. This being the case, why would they need to "shelter" "income" they know they never received? The fact that they do not receive any taxable income is explained and incorporated in their "zero" return, as explained below. Based on such information Mafia readers discover that they don't have to spend thousands of dollars employing "tax shelters" and "schemes," as developed and sold by high priced tax lawyers and accounting firms, since they have not received any "income" that needs "sheltering." Therefore, why would Schiff sell, or his informed readers buy, "an entity, plan or arrangement" to "shelter" income they know they don't have? Schiff's students (as well as Schiff) avoid the payment of income tax just based on the provisions of the law itself which is what the government doesn't want the public to know. As far as defendants knowing the information they disseminate is false, why should they believe it's false? Schiff has successfully avoided paying income taxes for over 14 years using this information which he has highly publicized so why should defendants believe the information is false? In addition, the government did not identify one person out of the thousands who, they claim, have filed "zero" returns - who they ever prosecuted for having done so. How can any objective person listen to the tape of the hearing held on April 11, and believe that defendants believe their "statements were false or fraudulent." If anything, it is quite apparent from that tape, that it is the government and this Court who "believe" to a certainty, that their statements are "false or fraudulent." On Page 5 the Court states: Schiff's operation is based on the premise that "the income tax is voluntary," and cites a variety of statements and information to that effect Not surprisingly, many of these statements and information are taken out of context, and none of them carries the weight of legal precedent on the legitimacy of the tax positions Schiff takes. The plan then introduces customers to Schiff's zero-income tax scheme Pursuant to the scheme, Schiff advises his customers that "[f] or income tax purposes, you can legally report `zero' income and pay no income taxes regardless of how much you might have earned."

Schiff justifies this claim by asserting that there is "no law requiring anyone to pay income tax." Rather, Schiff takes the position that the Constitution limits Congress' power to tax only "corporate profits." According to Schiff [f] or tax purposes, 'income' only means "corporate `profit' Therefore, no individual receives anything that is reportable as `income.' In essence we have a profits tax, not an income tax." Schiff will answer these statements in the order they were made. While the payment of income tax is indeed voluntary, that is not the basis upon which Schiff and his students avoid paying income taxes. As testified to by Schiff's witnesses, they avoid paying income taxes because they know: 1) there is no law making them "liable" for the tax, 2) there is no law requiring them "to pay" the tax, and 3) they have no "income" in the "constitutional sense" which is what is taxable under the law. They did not claim that they did not pay income taxes because its payment is "voluntary." As Schiff pointed out to the Court, there is no mention of the "voluntary" nature of the income tax anywhere in Schiff's "zero" tax return. But the payment of income tax has to be voluntary, simply because there is no law requiring anyone to pay the "tax." As for taking statements "out of context," The Federal Mafia contains entire documents in which IRS officials admit to the voluntary nature of the income tax. And (as noted 14 by the Court) defendants supplied the Court with: 1) entire newspaper articles in which IRS commissioners refer to the voluntary nature of the income tax; 2) a page right out of the Internal Revenue Manual which refers to the voluntary nature of the income tax no less than 10 times! 3) entire pages from the 1991, 1993, 1994, 1040 booklets in which Commissioners Richardson and Goldberg refer to the voluntary nature of the income tax; 4) the entire page from the court decision In Re Schmitt, 140 B.R. 571, in which the court said "I agree with the defendant's argument. Our income tax system is voluntary and the IRS must perforce rely on the self assessment of the taxpayer"; 5) two pages from the April 1998 issue of the "United States Attorneys' Bulletin" in which U.S. attorneys are instructed to use 1040 information against taxpayers in a variety of criminal prosecutions having nothing to do with income taxes. (How can there be a law requiring Americans to provide information that can be used against them in this manner?); 6) an entire page from the definitive book on the income tax "IRS Practice and Procedure" in which Professor Saltzman states, "The internal revenue laws are based on the premise that taxpayers will voluntary confess or report and pay the correct amount of their tax liability." Here Professor Saltzman correctly identifies a Form 1040 as a "confession," not a "return." Can Americans be required to submit "confessions" to the government? As far as a legal precedent is concerned, what does In Re Schmitt constitute? And since no one can have "income" in a "constitutional sense" Schiff is 100% correct in claiming "you can legally report `zero' income and pay no income taxes regardless of how much you might have earned." And, of course, Schiff is also 100% correct in "asserting that there is `no law requiring anyone to pay income taxes." If there were such a law, the Court would have identified it in its Order, but the Court, for obvious reasons, failed to do so. In addition, Schiff never made the absurd claim that "the Constitution limits Congress' power to tax only `corporate profits.'" Schiff points out that the Constitution gives Congress the power to tax anything it wants so long as it does so on the basis of either apportionment or geographic uniformity. However, the income tax is not imposed on either basis, which is one of the reasons its payment cannot be made mandatory. The Court makes it sound as if that the limitation of the term "income" to only mean "corporate profits" is something Schiff made up. The Court relies on the fact that since the American public has been so thoroughly brainwashed concerning the legal meaning of "income," that even when the Court correctly states its meaning, he expects those reading his decision to be incapable of believing it. However, the fact that the word "income" means corporate profit was fully explained to this Court as shown above. As 15 far as "According to Schiff, [f] or tax purposes, `income' only means corporate `profit,'" is precisely the meaning given to it by the Supreme Court in the Smientanka decision (as quoted above) and what "income" has to mean in the "constitutional sense." Defendants would like to know how this Court would define "income" in its "constitutional sense" as opposed to "income" in its "ordinary sense"? And Schiff is 100%

correct when he says "[f] or tax purposes 'income' only means 'corporate profits.'" And we do "in essence" have a "profits tax" and not an income tax. This is easily provable. A corporation can have billions of dollars of income, but if it doesn't have a profit it pays no income tax on all that income. It only pays income taxes on its "profit", not on its "income." So, obviously, the income tax is, in reality, a "profits" tax, not an "income" tax. However, while corporations can have "income" in a "constitutional sense," there is no law making them "liable" to pay a tax on that income. So, while the income tax is more of a profits tax than an income tax not even corporations are "liable" to pay the tax. Therefore the so called income tax is a legal fiction, because the hallmark of a "tax" is a requirement for payment. And no such requirement in the law exists in connection with the income "tax." Page 6, Lines 275. Here the Court notes that Schiff makes provisions for "(updating) the existing attachment in the book at no additional charge." This, of course, explains why Schiff must offer more material than just what is covered in his books. He must continually update his material as he uncovers new information or develops new procedures to cope with changes in the law and IRS procedures. So this updated material is not part of any fixed "entity, plan, or arrangement," but merely reflects an educational program that must be continually updated. As a matter of fact, the attachment used by Schiff in connection with his 2002 income tax return, is totally different than the one he has been using for the last 13 years. It is much shorter, simpler and incorporates the information contained in the Glenshaw Glass decision. This again proves that all of Schiff's materials are merely part of a continuous educational process and does not represent a fixed "entity, plan, or arrangement" of any kind "as this Court and the Department of Justice falsely claim. On page 8 the Court lists a number of court decisions involving Schiff for the years 1978, 1979, 1981, 1986, 1987, and 1990 which were decisions, not involving the "zero" return which is the issue in this litigation. And in those years Schiff knew a whole lot less than he eventually came to know by the time he wrote The Federal Mafia, which was published in 1992. In addition, what Schiff might have argued in connection with these earlier cases cannot be determined from those court decisions, since appellate courts have always attributed to Schiff 16 arguments he never made which the public would never know from their published decisions. In this manner appellate courts have managed to hide from the public Schiff's true beliefs. In addition, John Williams, who was instrumental in helping the government frame Schiff in 1985, prepared Schiff's 1986 appeal. His appeal briefs misrepresented Schiff's actual beliefs, and were based on a simplistic approach that allowed him to prepare the appeal in the shortest possible time. This was the same lawyer who refused to put Schiff on the stand after Schiff asked him to do so, and who allowed Judge Dorsey to get away with instructing Schiff's 1985 jury that it could convict Schiff of tax evasion even if the government did not prove the act of evasion Schiff was charged with committing. This lawless jury instruction was the subject of a special article that appeared in the February 1987 issue of "The Journal of Taxation" - which was submitted to this Court. The article noted that Schiff's 1985 conviction was "in direct conflict with a principle that practitioners have thought, until now, to have been settled law for over 40 years." So all this earlier litigation, as cited by the Court is irrelevant, in connection with The Federal Mafia and what has been Schiff's position for the last 10 years, which, supposedly, is what this litigation is all about. It's not what Schiff believed then, but what he teaches now, that is at issue. In connection with this kind of subterfuge, the Court (on Page 9) states that "A number of individuals have been convicted of tax crimes after following Schiff's theories." However not one of them was convicted because he filed a "zero" return which is the issue in this case. In all of those cases cited by the government, the person either filed no return at all, or filed a traditional return. In the case of Dr. Dentice he filed an amended return (based upon information contained in a "zero" return) after he was indicted for tax evasion on the basis of his having filed a traditional return. It is significant to note that neither the government in its complaint nor this Court in its Order has identified one person who has been prosecuted for filing a "zero" return, despite the government's claim that thousands of people have filed "zero" returns which is why it claims it needs this

injunction. That is the issue in this case; not litigation that took place 20 years ago involving years in which Schiff did not file any return at all, let alone a "zero" return.

The prosecution created a pregnant negative; 14 years of zero income filing and only 6 convictions

What is relevant is the fact that Schiff has filed "zero" returns for the last 14 years, paid no income taxes and the government has not charged him with any tax crime, nor of committing mail fraud, wire fraud, consumer fraud or any other kind of fraud. It is also clear that if Schiff, and all those others who were prosecuted for failure to file tax returns and for filing fraudulent returns (as listed on Page 9), had filed Schiff's "zero" return they never would have been 17 prosecuted at all.

Those 6 convictions were unlawful and should be dismissed on appeal.

And finally, since none of those people identified on page 9, received "income" in a "constitutional sense" they, like thousands of other Americans, were prosecuted, convicted and illegally incarcerated. It is also clear, that all of the court cases cited by the Court in its decision were cited merely to obscure the fact that there is no law (only nonbinding judicial opinions) that supports the Court's position as reflected in its Order of June 16, 2003. This is clear from the ideas this Court seeks to enjoin defendants from expressing or writing about. For example in item #1 on page 20, the Court states Irwin Schiff and the other defendants can not advertise and market a position "in any media" "that (1) persons can legally stop paying (income) taxes or by using the plan or arrangement." If by "the plan or arrangement" the Court means by filing a "zero" return, why can't Schiff and others "advertise and market" such a position," since Schiff has successfully "stopped paying income taxes" for 14 years using this "position." Schiff is proof that this "position" is legal and does work.

Thousands of Schiff students have filed zero returns and have not been prosecuted. Schiff is right!

And thousands of Schiff students who have successfully used this "position" for 10 years none of whom have been charged with any crime, proves that it works. The government could not identify one person; in the thousands of persons who have filed Schiff's "zero" income tax returns, who have been prosecuted for having done so. And Schiff provided the Court with affidavits and copies of \$60,000 and \$41,000 refund checks received as a result of Schiff's "zero" return. So obviously the Court is attempting to enjoin Schiff, under threat of arbitrary imprisonment, for merely telling the truth. In addition the Court would enjoin Schiff and others from promoting their belief that the "federal income tax is voluntary." However the first Chapter of Schiff's books *The Federal Mafia and How Anyone Stop Paying Income Taxes* (a 1982 "best seller" that has been in circulation for over 20 years) establish this fact conclusively by reproducing numerous government documents which make this specific claim, and as shown in this very pleading. There is no question that the payment of income taxes is voluntary based on a number of factors. So, again, this court wants to enjoin Schiff and others from telling the truth. The first Amendment protects Americans from expressing ideas that are false, but, incredibly, here the Court wants to deprive defendants of their right to express ideas that are true! The Court would further enjoin defendants from claiming, "There is no law requiring anyone to pay income tax." But there is no such law! If there were such a law, this Court would have identified it somewhere in its 35 page Order. But it didn't do so. So again, this Court seeks to enjoin defendants from expressing ideas that are true, so this Court can continue to promote 18 ideas that are false. Also, this Court wants to enjoin defendants from expressing the idea that "there is no income tax, only a profits tax." Schiff pointed out to this Court that the income tax was a legal fiction, since no one, not even corporations are required to pay this alleged tax. But since corporations can have "income" in a "constitutional sense," while individuals cannot; the income tax is more of a "profits tax" than an income tax. But again, this Court wants to enjoin defendants from expressing an idea that is true, so it can continue (along with other federal courts) to promote an idea that is false. And this Court wants to enjoin defendants from claiming that it is "legal to report zero income regardless of what you may have earned." Of course, reporting zero income is legally correct

since no one can have "income" in a "constitutional sense.". Schiff has done so for the last 13 years and did so again on June 17, 2003 when he filed his 2002 Form 1040. And thousands of Schiff students have been doing so for years without being charged with any crime. And, of course, Schiff never advises anyone to "use false withholding forms." All Americans have a right under the law to stop the withholding of taxes from their wages since 1) they have no income tax liability, and 2) they receive no income in a "constitutional sense." Therefore, this Court would enjoin defendants from expressing and promoting ideas that are correct, so it can continue charging juries with claims that are false. And lastly, this Court seeks to prevent defendants from "Advertising, marketing or promoting Schiff's personal services as a witness or brief writer by claiming his services will be materially helpful in defending criminal prosecution; or any other false, misleading or deceptive tax position." But since Schiff has a right to testify at trials and help prepare briefs in connection with criminal prosecutions, why can't he advertise and promote his right to do so? Since the knowledge he has acquired in over 25 years of tax law research will enable him to prevent the government from convicting anybody of any income tax "crime," why can't he advertise his right to do so? In addition, since at the hearing held on March 19, 2003, this Court characterized Schiff's ideas as "nonsense," why should the Court enjoin Schiff from articulating "nonsensical" ideas from the witness stand or including them in briefs? U.S. Attorneys should have no trouble impeaching "nonsensical" ideas whether contained in briefs or articulated from the witness stand. Does this court have the right to enjoin all potential witnesses against the government by making a prior determination that their testimony might not be legally correct? It is therefore obvious that the only reason this Court would have in seeking to enjoin Schiff from advertising his services as a witness or brief writer is because it knows the government couldn't impeach his testimony as a defense witness or refute his arguments if contained in defense briefs. 19 But Schiff has a constitutional right to advertise and promote his expertise in this area and to make a living from it. In seeking to deprive Schiff of making a living in this manner, this Court is obviously seeking to deprive Schiff of "life, liberty and property" in violation of the 5th Amendment along with his right of free speech and freedom of the press as guaranteed to him under the 1st Amendment. And such advertising of his expertise would fall into Schiff's "legitimate tax-related activities or advocacy" which this court stated (Page 33, Line 9) it was "cautious not to limit." In addition, Schiff has no idea what "any other false, misleading or deceptive tax position," means since nothing Schiff teaches falls into any of these categories, and such a condition is so unspecific as to render the order "void for vagueness" and unconstitutional on this ground as well. The Court's Order is so transparently false on so many grounds that no one of average intelligence will have any trouble seeing through it. Therefore, by seeking to enforce the Court's Order that so blatantly offends the 1st and 5th Amendments and common sense, the Court will only bring disfavor on the part of the public for the entire federal court system. So in the interest of maintaining some trust and regard on the part of the public in federal district courts, the Court's Order of June 16, must be reversed. In addition, Schiff has received payment from the public for "Schiff Report 7," for which Schiff promised to deliver six tapes, of which Schiff has sent out only three. Schiff was prepared to send out "Schiff Report" 7-4 when he received the Court's Order of June 16, 2003 which was more restrictive than the Court's Temporary Restraining Order of March 19, 2003. Therefore while, Schiff believes that all of the information he was going to send out in Schiff Report 7-4 is legally correct in every respect, he is not sure how this Court might view it. Schiff, however, believes he has a moral and contractual obligation to provide his subscribers with his latest research, especially in connection with the Glenshaw Glass decision, and in connection with Schiff's uncovering the massive illegality of all IRS search and seizure operations. And though the Court's Order did say the "court is cautious not to limit defendants' legitimate tax-related activities or advocacy," which Schiff believes would allow him to send out "Schiff Report" 7-4; Schiff is reluctant to do so, less this court interpret it as being in violation of its Order of June 16, 2003. Therefore, defendant Schiff has attached as an Exhibit to this Motion a transcript of the tape that Schiff was

prepared to send out (along with two Exhibits) as "Schiff Report" 7-4, and asks the Court for its permission to send out a tape containing such information. Date: June 25, 2003

Submitted by _____ Irwin A. Schiff, Pro per

_____ Cindy Neun, Pro per

_____ Larry Cohen, Pro per

Proof of Service

CERTIFICATION OF SERVICE IT IS HEREBY CERTIFIED that service of the foregoing MOTION FOR RECONSIDERATION has been made by placing a copy in United States mail on June 25, 2003 to:

Evan J. Davis, Tax Division

U.S. Department of Justice

PO Box 7238

Ben Franklin Station

Washington, DC. 20044.

So certified: _____ Irwin A. Schiff