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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF LAS VEGAS

UNITED STATES	)	CRIMINAL INDICTMENT
	)	
Plaintiff	)	CR-S-04-0119-KJD (LRL)
	)	
V		
	)	MOTION TO DISMISS
IRWIN SCHIFF, CYNTHIA NEUN	)	SINCE THIS COURT
& LAWRENCE N. COHEN, a/k/a/	)	CANNOT HAVE JURISDICTION
LARRY COHEN,	)	SINCE THE INDICTMENT
Defendants.	)	FAILS TO CHARGE AN
_____	)	OFFENSE.

COMES NOW this Defendant and asks this Court to dismiss the charges against me as contained in the instant indictment, since I have been charged with committing "offenses against the laws of the United States" *that do not exist*, and the law itself has sought to protect me from such prosecution; however this Court is apparently prepared to disregard both the law and the protection it was designed to provide.

On April 1, 2004, or approximately 15 months ago, I filed a motion claiming that this Court had no subject matter jurisdiction to hear this case, because Section 7402(f) of Title 26 only provides for **civil** jurisdiction (it does not provide for criminal jurisdiction[1]). For comparison purposes, I cited § 1329 of Title 8 where Congress specifically provided for both criminal and civil jurisdiction in connection with that Title. Therefore, I pointed out, if Congress intended federal courts to have both criminal and civil jurisdiction in connection with Title 26, Congress certainly knew how to do it.

[1] Therefore, this motion does not directly apply to Count 1, which charged me (and the other two defendants) with an alleged Title 18 violation. However, my other three jurisdictional challenges do apply to Count 1. In addition, the court's lack of jurisdiction as to all counts involving Title 26, would automatically establish the fraudulent character of the alleged Title 18 violation, and thus deny the court jurisdiction on that Count, as well.

I reminded this Court of a fundamental legal principal dating back to Roman law: ***Expressio unius exclusio alterius*** (The express mention of one thing implies the exclusion of others.). I quoted from *Murphy v. Lanier*, 204 F.3rd 911(2000) where the 9th Circuit clearly reiterated and affirmed this principal in a case involving a statute that only conferred jurisdiction on state courts, not on federal courts. The *Murphy* Court stated (quoting from other appellate decisions), that since Federal courts are courts of "limited jurisdiction" jurisdiction can **only** be acquired **by** "a specific grant …authorized by Congress" and since "Federal courts may hear only those cases specifically authorized by Congress and because the statute does not specifically state that a Federal district court may hear a claim under TCPA, the 4th Circuit concluded that the language of the statute showed that…Congress…without mentioning Federal courts did not intend to grant jurisdiction over TCPA claims to Federal district courts." Then, quoting from another 9th Circuit decision, the *Murphy* court went on to add: "The express reference to state court jurisdiction does not mean that Federal jurisdiction **also** exists: instead, **the failure to provide for Federal jurisdiction indicates there is none.**" (Emphasis added) Obviously, the exact same principal **applies here**. The failure of 26 USC 7402(f) to provide for criminal jurisdiction indicates *there is none*.

In opposing my motion based on these grounds, the government did not *even mention* § 7402(f) in its Response, let alone seek to explain why, if federal courts have criminal jurisdiction over alleged Title 26 violation, this jurisdictional grant was omitted from 26 USC 7402(f). Instead, the government sought to "conjure up" the missing jurisdictional grant by claiming that "Section 3231 of Title 18 of the United States Code gives United States District Courts original jurisdiction over 'all offenses against the laws of the United States' and the Internal Revenue Code defines offenses against the laws of the United States." The utterly contrived nature of such a claim is obvious. If Congress intended district courts to have criminal jurisdiction pursuant to that statute, Section 7402(f) would have said so, as follows: "For general jurisdiction of the district courts of United States in civil actions involving internal revenue, see Section 1340 of Title 28 of the United States Code; for criminal actions see Section 3231 of Title 18 of the United States Code." However, Section 7402(f) **does not say that**. It *specifically* refers only to Section 1340 of Title 28 and does not mention *either* Title 18 or Section 3231. However, the attempt by the government (if agreed to by this Court) to fabricate a jurisdiction that clearly

does not appear in any law passed by Congress, does not merely represent clear error, it is also criminal.[2]

In addition, the claim by the government that "the Internal Revenue Code defines offenses against the laws of the United States" as implying that there are such laws in the Internal Revenue Code with respect to income taxes is also a total fabrication because there are **no laws** in either Title 26 or Title 18 establishing "offenses against the United States" in connection with income taxes. As proof of this, I have attached Exhibits taken from the Index of the IR Code as published by the Research Institute of America. Exhibit A pertains to federal alcohol taxes, B to firearms taxes, C to tobacco taxes, and D to income taxes. As you can see, Exhibits A, B, and C. contain entries for such things as: "failure to file or pay tax," "penalties," "record keeping" and references to either "liability," "payment," or "tax on making." However, the Index entry for income taxes shows no ***such entries***. The "income tax" section contains **no entry** for: "penalties"; **no entry** for "failure to file or pay tax"; **no entry** for "liability" or "payment"; and **no entry** involving "recordkeeping" indicating that there are no statutes in the IR Code that provide for such things in connection with income taxes. When we check the Index entry specifically covering "penalties," we are directed to statutes providing penalties for such taxes as: beer, diesel fuel, dyed fuel, firearms, gasoline, liquor, occupational taxes, stamp tax, tobacco products, and wagering taxes. However, the Index fails to direct us any statute that provides penalties in connection with income taxes. Therefore, no matter where we look in the Index to the IR Code, we can find ***no entry*** indicating that there are any laws creating "offenses," either civil or criminal, for income taxes. **What can be clearer than that?** So the attempt on the part of the government to claim that such "offenses" exist in Title 26 in order to support its jurisdictional claim reveals the total speciousness and illegality of that entire claim.

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[2] The government attempted to fabricate this non-existent jurisdiction by citing erroneous lower court decisions, as if such decisions have the "force and effect" of "law." However, (unlike 26 U.S.C. 1340) lower court decisions ***are not*** "law." For one thing, Congress never passed a law binding Americans to lower court decisions - even the IRS states it is not bound by them, so how can they bind me? Part 4, Chapter 10, of IRS Manual 4.10.7 states: (in paragraphs 4.10.7.2.9.8. & 8.1(4)) "Accordingly, the Service may acquiesce or nonacquiese in the holding of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal…Nonacquiescence signifies that…the Service **does not agree with the holding of the court** and generally, **will not follow the decision** in disposing of cases **involving other taxpayers** … the Service will recognize the precedential impact of the opinion on cases arising **within the venue** of the deciding circuit." (Emphasis added). So the IRS has such a low regard of Appellate Court decisions, it states it can disregard them in applying tax "law" in *other* circuits. This, of course, illustrates the "lunacy of the law" in America. If Congress **cannot** pass laws that apply differently in different states, how can federal courts **apply** the laws they pass on this basis?

To demonstrate, even further, the illegal character of the government's jurisdictional claim, I have included as Exhibit E the Index Entry for "Crimes" as listed in the U.S. Criminal Code. Note that sections 921-930 apply to firearms; sections 1261-1265 to liquor taxes; and sections 2341-2346 to tobacco taxes. Obviously if there were "offenses" involving income taxes, such "offenses" would have been included in Title 18 along with "offenses" for alcohol, tobacco, and firearms taxes. However ***nowhere*** in Title 18 is there any ***mention*** of "income taxes," let alone the listing of "offenses" in connection with that tax. In addition, if anyone were charged with **"***offenses***"** involving liquor, tobacco, and firearms taxes, they would be charged with violating statutes contained in Title 18 (where criminal jurisdiction clearly exists), and would not be charged with violating statutes in Title 26 where no such jurisdiction exists, as is the case here.

Exhibit F is from the Index of the Code of Federal Regulation that indicates where to find the regulations that implement the various statutes contained in Title 18. The regulations that apply to liquor, tobacco, and firearms taxes are shown as being in CFR 27; the regulations that apply to income taxes are, of course, in CFR 26. Attached as Exhibit G are Regulations from CFR 27 that apply to alcohol, tobacco, and firearms taxes. Regulation 72.11 specifically confers enforcement authority on ATF agents; however, the government will not be able to produce **any regulation** that similarly confers enforcement **authority** on IRS agents. Also note that the statutory **authority** for these regulations are shown as coming from *no less* than **seven Title 26 *statutes*,** as well as **two *statutes*** from **Title 18**, and *statutes* from various other titles. Therefore, there is no question that these regulations have the "**force and effect"** of law since they show that they derive their authority **from *statutes.*** However, the government will not be able to produce **ONE REGULATION** (that applies to income taxes) that shows that its authority is derived from some statute. If the government in its Response produces any such regulation, I will immediately plead guilty to all charges. The fact is there are ***no regulations*** involving income taxes that show their authority as being is derived from some statute—which is why all such regulations do not have the "force and effect of law," and are actually benign. However, since the public does not know that, the courts are able to enforce them as if they had such force and authority.

Exhibit G is an Excerpt from the Index of the Code of Federal Regulations that provides even more proof of this. It shows where to find the regulations that apply to the statutes

appearing in the IR Code. Note that all such regulations that apply to the enforcement provisions of the Code are shown as appearing only in CFR 27, and **not one of them** is shown as appearing in CFR 26. The regulations covering *assessments* are shown as appearing in 27 CFR Part 70; levy authority, in 27 CFR Part 70; seizure authority, in CFR 27 Parts 70,170, and 296; and summons authority, in 27 CFR Part 70. So, all of the enforcement provisions in the Internal Revenue Code only apply to liquor, tobacco, and firearms taxes, and to such other taxes that might be enforced by CFR 27 regulations. ***There are no implementing regulations shown for income taxes*** in connection with ***any*** *enforcement* provision of the Internal Revenue Code.[3]

Therefore, no matter where we look, either in the Internal Revenue Code, the U.S. Criminal Code, or in the Code of Federal Regulations, we can not find: (1) ***one statute*** ;or (2) ***one regulation*** (having the "force and effect" of law) or; (3) any **penalty provisions** (either civil or criminal of civil) *that apply to income taxes.*

What does this mean? It *obviously* means that this Court, in **conspiracy** with the Justice Department, is seeking to prosecute me (and the other defendants) for "crimes" that **do not exist**, pursuant to a jurisdiction it **does not have.** Proof of this conspiracy (in violation of 18 USC 241) abounds in all manner of actions and inaction taken by this Court.

On April 28, 2005 (Doc. 136) I asked the government to produce, in accordance with the provisions of 26 USC 7701(11), the Delegation Order from the Secretary of the Treasury delegating to the Commissioner of Internal Revenue the authority to collect income taxes and, as required by 44 USC 1505, a copy of its publication in the Federal Register. It is Defendant's contention that no such documents exist and, if they do not exist, all 33 Counts of the instant indictment would have to be dismissed for fraud, since the indictment is based on numerous representations to the grand jury (as reflected in every count in the indictment) that the law authorizes the IRS to assess and forcibly collect income taxes, and that the defendants conspired to "obstruct and defeat" the "lawful functions of the Internal Revenue Service in ascertaining, computing, assessing, and collecting taxes." However, as I pointed out in my Motion, the IRS is nowhere authorized in the Internal Revenue Code to do any of these things. All such authority is given ***only*** to the Secretary of the Treasury who can, ***if he chooses***, *delegate* such authority to the IRS. However, if the Secretary does make such a delegation of authority (by delegating such

[3] While there are regulations in CFR 26 that apply to income taxes, none of them have any legal force for the reason already given, nor will they apply to an enforcement statute – i.e. they might apply to obtaining a deduction. .

authority to the Commissioner of the IRS) such Delegation Order must be *published* in the Federal Register if it is to have any *legal* effect. If the government cannot produce these two documents – then the **IRS HAS NO LEGAL AUTHORITY TO ENFORCE THE PAYMENT OF INCOME TAXES** – and all charges against me H**AVE TO BE *DISMISSED* AS A MATTER OF LAW.**

After waiting approximately 4 weeks to respond to my motion, the government refused to produce the two documents and provided frivolous excuses for not doing so. The government claimed the motion was filed "out of time." However since this motion went to the jurisdiction of this court, there is no such thing as a jurisdictional challenge being filed "out of time." And secondly, since this Court has not ***even ruled*** that it *has* jurisdiction to even hear this case, since it has not yet denied *any one* of my *four motions* that claims it does *not* have any such jurisdiction that I filed over 15 month ago, how can it claim to have the jurisdiction to set up "scheduling orders" or even a trial date (now set for August 29, 2005) when it has not *yet ruled* that it has jurisdiction to even hear this case? In any case, the government represented to the Court that "If the Court wishes" the government "would file "a more detailed response." The Court did not request neither a more "detailed response" nor did it order the government to produce the two documents as requested – which, if they can not be produced, all of the charges against me would have to be dismissed. So what kind of judicial objectivity does this Court reflect when it does not require the government to produce two documents, which, if they can not be produced, would **immediately establish my innocence** to all of the charges at issue?

This raises another, related question.

WHY HASN'T THIS COURT RULED ON THE JURISDICTIONAL CHALLENGES I FILED OVER 15 MONTHS AGO?

On March 30, 2004, or two weeks before my arraignment, I raised four issues which I claimed denied this court subject matter jurisdiction. I claimed the court lacked subject matter jurisdiction because, as covered above:

1) No statute confers criminal jurisdiction on federal courts to conduct criminal trials involving income taxes, and in addition, I claimed this court lacked subject matter jurisdiction because: and, in addition,
2) The income tax is not "directly traceable" to Congress' constitutional power to "lay and collect taxes;"

3) No law made me "liable for income taxes; and
4) The government misled the grand jury concerning the legal meaning of "income" as that term is used in the Internal Revenue Code.

A fundamental principal of American jurisprudence is that the issue of jurisdiction must be addressed and decided before a court can move "one step further." So why would this Court disregard such a fundamental issue for over 15 months? There can only be one reason. The Court is convinced I am right with respect to each of those four issues, so it is obviously waiting to arbitrarily deny my four motions just prior to trial in order to prevent me from: 1) moving for "findings of fact and conclusions of law" (2) being able to file a motion for reconsideration in which I would obviously discredit and demolish any adverse ruling the Court might make; and (3) to prevent me from filing an interim appeal on any such adverse ruling. In addition:

WHY HAS THE COURT AVOIDED RULING ON MY MOTION TO SUPPRESS ALL OF THE "EVIDENCE" SEIZED AS A RESULT OF THE IRS'S ILLEGAL SEARCH AND SEIZURE OF FREEDOM BOOKS?

On June 15, 2004 I submitted a motion to suppress all of the evidence derived from the 14,000 documents seized by the IRS in its February 11, 2003 raid on Freedom Books, an unincorporated business owned by me. Documents I provided the court, which went unchallenged by the government, proved the raid was illegal on a variety of grounds. In addition, Magistrate-Judge Leavitt's observation, as contained in his Report and Recommendation of 12/21/2004, also **proved** the raid illegal as a matter of law. For one thing, the law provides that only law enforcement officers can apply for search warrants, and this warrant was applied for by Special Agent David W. Holland. However, documents I supplied the Court proved that Mr. Holland was not a law enforcement officer, and therefore he had no authority to apply for the search warrant. In addition, I supplied the Court with the official job description of special agents. It showed that they are only authorized to enforce tax laws "involving United States citizens residing in foreign countries and nonresident aliens subject to Federal income tax filing requirements." Neither the government nor Magistrate-Judge Leavitt challenged my claim that the official job description of special agents ***ALONE*** precluded any of the 15 gun-carrying special agents from participating in that raid. In addition, Magistrate-Judge Lawrence Leavitt in his Report and Recommendation of 12/21/2004 claimed that whatever authority special agents

had, was derived from 26 USC 7608(a). However, that Code Section **specifically limits** agents who fall within it, to the enforcement of subtitle E taxes, such as alcohol, tobacco, and firearms taxes, and "commodities subject to tax" — assuming they have *additional* authorization derived from the Secretary, which IRS agents do not have. Therefore, even according to Magistrate-Judge Leavitt, none of the 15 gun-carrying, special agents who took part in that raid had any legal authority to do so (Report and Recommendation of 12/21/2004). In addition, the government could not produce one regulation that authorized special agents to carry firearms, and apply for and execute search warrants in connection with income taxes. So, despite my giving this Court all manner of evidence that the search and seizure carried out against Freedom Books was illegal on a **variety of grounds**, the Court has *still not made a ruling* on my Motion to Suppress, which I filed over a year ago. Why? The answer is simple. Since the evidence is so overwhelming and irrefutable that the raid on Freedom Books was illegal, if the Court were to grant my motion all of the criminal charges against all of the defendants would have to be dismissed, since the government would have almost no evidence it could ***mis*represent** to a jury. On the other hand, if the Court denied my motion, I could easily discredit it on the basis of a motion for reconsideration or by filing an interim appeal So, obviously, the court is planning to **arbitrarily** deny my motion just prior to trial, to deny me the opportunity to do either.

In addition, the fact that the government cannot produce the two documents as described above is further proof that none of the IRS agents who initiated and participated in that search and seizure had any legal authority to do so—so all that "evidence" was illegally acquired and, *by law*, should **be suppressed.**

Further proof of this can be found in the government's Response of May 10, 2005. I had asked the government to provide me with the names of the expert witnesses it intended to use at trial and a "written summary" of their testimony, as required by Rule 16(a)(1)(G). In its Response, the government stated it intended to use as its "expert" Internal Revenue Service Agent Clinton Lowder, who is identified "as an expert in tax computations." What is an expert in "tax computations"? Does that mean he knows how to use an adding machine, and so can accurately total up the alleged tax liabilities and penalties determined by others who are *actually knowledgeable* in the law itself? Why didn't the government identify him as an *expert* in **tax law?** The indictment repeatedly accuses me of filing documents and encouraging others to file documents that are both "false and fraudulent." How can one who the government only claims is

an "expert" in "tax computations" **but not in the law itself**, testify that documents I filed based on what I believed the law to be (and even citing laws and court decisions to support those document) are both "false and fraudulent" if the party is not qualified as an "expert" in the law itself? And, in addition, this alleged "expert" is supposedly going to be used as a "*summary*/expert." Doesn't the government intend to prove these charges during its case-in-chief *before* calling a "summary" witness?[4] In any case, the government stated in its Response: "Through discovery, the defendants have been provided access to the books and records seized at the search and seizure warrant of Freedom Book's office, bank records relating to each defendant, and other documents. These records are being utilized by Mr. Lowder as the basis for his *summary* computations." So, here the government claims it will be using at trial documents **whose very legal character has still not been decided by this Court** – though I **challenged their legal character over a year ago**. So how can the government anticipate using such documents until it knows how the Court will rule? Obviously the government *already knows* how the Court will rule. It knows that this Court will allow the government to use as evidence against all of the defendants, documents which **Magistrate-Judge Leavitt** has already ruled were **illegally acquired** and which I proved were **illegally acquired** on at least **six different grounds.** Apparently, in this case, the Court has no interest in what the government acquires legally or illegally.

Besides filing five motions challenging the jurisdiction of this court (which this Court has not yet ruled upon) I have filed five or six motions to dismiss on grounds that are not jurisdictional. For example, I filed a motion to dismiss all charges charging me with allegedly filing fraudulent returns, in violation of 26 USC 7206. I pointed out that, in order to prosecute me for those charges, the government would have to use against me the very returns the government compelled me to file. All those returns stated right on them that they were not filed "voluntarily," but were filed so I wouldn't be prosecuted for "failing to file" for which I had twice been prosecuted in the past. I supported my claim with both statute and Supreme Court decisions (which were not refuted by the government) and, though this Motion to Dismiss was filed on 6/15/2004 (or over a year ago) the Court has still not ruled on it. This, I suppose, is another

[4] In addition, even though I am not a lawyer and thus not entirely familiar with all the rules of court procedure, I can not find anywhere in the Federal Rules of Criminal Procedure a provision allowing for "summary witnesses" whose function is to summarize for the jury the testimony given by other witnesses.

motion the Court intends to arbitrarily rule on just before trial, so I could not challenge its Ruling with a Motion for Reconsideration.

In addition on 11/1/2004 (eight months ago) I filed a Motion to Dismiss all the charges against me based primarily on the Supreme Court case of United *States v. Bishop*, 412 U.S. 346, 361 (1973) In that decision the Supreme Court held: "The requirement of an offense committed 'willfully' is not met, therefore, if a taxpayer has relied in good faith on a prior decision of this Court..." I showed in an accompanying Declaration, how I has relied in good faith on no less than **eleven** Supreme Court decisions, such as: *Brushaber v. Union Pacific Railroad Co.,* 240 U.S. 1 (1916); *Pollock v. Farmers Loan & Trust,* 157 U.S. 429 (1894); *Stanton v. Baltic Mining, 240 US 103 (1915); Eisner v. Macomber* 252 US 189 (1920); *Merchant's Loan & Trust Co v. Smietanka,* 255 U.S. 509; *Stratton's Independence v. Howbert,* 231 U.S. 399; *Southern Pacific v. Lowe,* 247 U.S. 330 (1918); *Bowers v. Kerbaugh-Empire Co.,* 271 U.S. 170 (1926); *Burnet v. Harmel,* 287 U.S.103 (1932); and *Doyle v. Mitchell Bros.,* 247 U.S. 179 (1918).

In addition, I explained how I relied on such government documents as: the Report of the Congressional Research Service, by Howard M. Zaritsky, which explained that the *Brushaber* Court held that an income tax to be an "excise tax," (however it was not being imposed on this basis), as well as House Report 1337 and Senate Report 1622, that explained that "gross income" as used in Section 61 of the 1954 Code "is based upon the 16th Amendment and the word 'income' is used in its constitutional sense." It was my claim that I reported my "income" in all the tax returns at issue in accordance with these Reports. In addition, I explained how I relied on the Disclosure Statement that appears in a 1040 booklet that advises you that you only need to file and pay taxes for such taxes as you are "liable for." And since I could not find a statute that made me "liable" for income tax, I regarded this as the government's way of notifying me that I did not have to pay income taxes.

The point is, I specifically asked for oral argument in connection with this Motion so both the government and the Court could challenge and question me at length to determine if I relied on these eleven Supreme Court decisions and other government documents in "good faith," since if I did, all of the charges against me would have to be dismissed, since they are all based on the government's claim that I know all of my representations with respect to income taxes to be false, and thus they are not only false, but also fraudulent. What better way to prove this than to confront me with my false and fraudulent claims at oral argument? And all my

statements at oral argument could also be used against me at trial? So why should the government have opposed my requests for oral argument as it did? And in over a dozen motions that I have filed requesting Oral argument, this Court has yet to grant me even one such request. Why? If this Court were interested in uncovering the truth in connection with this prosecution, what better way to do it than at oral argument? It is, therefore, clear that this criminal prosecution will not be based on a search for "truth," nor on an adversarial relationship between the government and myself as criminal trials are supposed to be conducted in America. It is clear that the court itself is my actual adversary with the government's prosecutors playing a diversionary and supporting role. However, such conduct on the part of the Court is not only immoral unethical, and a violation of the Court's oath of office, it is also illegal.

18 USC 241

18 USC 241 makes it a crime for "Two or more persons [to] conspire to injure, oppress, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States…" It is clear that I have a right "secured to [me] by the Constitution" not to be compelled to pay a federal tax that is not imposed either as an apportioned direct tax nor as a geographically uniform excise tax since these are the only two classes of taxes authorized by the Constitution.[5] Since the income tax does not fall into either class, and is not imposed pursuant to either rule, for this Court, in conjunction with Justice Department lawyers, to "injure and oppress" me by subjecting me to prosecution pursuant to a tax which is not authorized by the Constitution, obviously deprives me of a right secured to me by the Constitution, as criminalized by 18 USC 241.[6]

In addition, Section 26 USC 7402(f) secures to me my right not to be criminally prosecuted in connection with alleged violations of Title 26. Therefore, for this court, in conjunction with Justice Department lawyers, to prosecute me on this basis, also deprives me of a right "secured to (me)… by the laws of the United States," section 26 USC 7402(f), as criminalized by 18 USC 241.

[5] And these provisions were not changed one wit by the passage of the 16th Amendment as my Motion to Dismiss on this ground, which this Court has yet to rule on, proved.

[6] As I have already shown, Congress wrote the income tax laws, so as **not to deprive me of that right**. It is only because this Court and the Justice Department lawyers who brought this action ***ignore*** and **violate those laws** that I am **being deprived of that right**.

In addition, sections 26 USC 7701(12) and 44 USC 1505 secure to me my right to be free from harassment and intimidation from federal employees claiming to be federal tax collectors, unless the Secretary of the Treasury has delegated such authority to them, and published that fact (so I would know about it) in the Federal Register. Therefore, for this Court to allow my prosecution for allegedly interfering with the *alleged* duties of *alleged* federal tax collectors, without requiring the government to produce the documents required by 26 USC 7701(12) and 44 USC 1505 that would **verify** such a claim, is to deny me, in collusion with Justice Department lawyers, the right and protection "secured to [me]… by the laws of the United States," sections 26 USC 7701(12) and 44 USC 1505, as criminalized by 18 USC 241.

In addition, the provisions of Section 7608 **clearly bar** IRS special agents from conducting search and seizures **of any kind** in connection with income taxes, and therefore secures to me my right not to be harassed, bothered or interfered with by illegally armed IRS special agents claiming to have enforcement authority with respect to income taxes. Therefore, for this Court to allow the government to use against me documents secured by IRS special agents in ***CLEAR VIOLATION*** of section 7608, denies me the right and protection "secured to [me]… by the laws of the United States," Section 7608, as criminalized by 18 USC 241.

In addition, this Court is fully aware (since I supplied the Court with the Congressional Reports) that in adopting the 1954 Code, Congress declared in House Report No. 1337 and in Senate Report No. 1622 (83rd Congress 2d Session) that "the word 'income'" as used in Section 61(a) of the IR Code "is used in its constitutional sense." However, this Court is allowing the government to prosecute me based on its use of the term "income" in the "ordinary sense," not in its "constitutional sense." However, section 61(a) of the IR Code secures to me my right of only having "income" received in the "constitutional sense" regarded as "income" for tax purposes. Therefore, this Court in collusion with Justice Department lawyers, is attempting to deny me the right and protection "secured to (me) …by the laws of the United States," section 61(a), as criminalized by 18 USC 241.

Therefore, it is clear from all of the above that my prosecution is being conducted illegally (on numerous grounds) and in a manner that should subject all of those responsible to criminal prosecution if law in America were applied equally to federal judges and Justice Department lawyers. However, I am bound by the provisions of 18 USC 4 to "make known to

some judge or other person" such felonious activity or I would be guilty of misprision of felony if I did not do so.

Therefore, based upon all of the above, I ask the Court to dismiss all of the charges against me, since:

1) I have committed no offense against the laws of the United States as contained in either Title 18 or Title 26;
2) This court clearly has no subject matter jurisdiction to conduct a criminal trial in connection with alleged Title 26 violations, and where no "offenses against the United States" exist; and where
3) My continued prosecution clearly represents criminal behavior on the part of this Court in conspiracy with Department of Justice attorneys in obvious violation of 18 USC 241.

Dated: July 5, 2005

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Irwin A. Schiff, Pro Per

ORAL ARGUMENT REQUESTED

CERTIFICATION OF SERVICE

I certify that I have this date hand delivered a copy of the foregoing 'Motion to Dismiss – Since the Indictment fails to Charge an Offense" to MELISSA SCHRAIBMAN and LARRY J. WSZALEK and have this day mailed copies of this Request to all parties in this action at their respective law offices as shown below.

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July 5, 2005

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Irwin A. Schiff