

The following is a Motion I filed today to dismiss all of the charges since it is impossible for me to get a fair trial as guaranteed to me by the 6th Amendment – therefore, I cannot be put to trial at all. Such a motion should be filed, I suggest, by anyone being prosecuted for any tax offense based upon his belief that the income tax does not apply to him for whatever reason he believes to be true, Naturally the reasons have to be tailored to the individual case, and the more prominent is the person being prosecuted, the more valid are the reasons given. In any case, this establishes why nobody whose views challenge the validity of the income tax can ever be given a fair trial, pursuant to the 6th Amendment.

IRWIN SCHIFF, PRO PER
 444 EAST SAHARA AVE
 LAS VEGAS NV 89108
 PHONE: 702 385-6920
 FAX: 702 385-6917

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

UNITED STATES OF AMERICA)	
)	CASE NO: CR-S-04-0119 –KJD(LRL)
Plaintiff)	
)	MOTION TO DISMISS: 6 TH
v)	AMENDMENT VIOLATION
)	SCHIFF CANNOT HAVE A
IRWIN SCHIFF ET AL)	FAIR TRIAL
)	
)	
Defendants.)	
_____)	

Defendant IRWIN SCHIFF submits the following points and authorities to support his motion to dismiss this trial, it cannot go forward because it violates his 6th Amendment guarantee of a fair trial.

SHORT STATEMENT OF FACTS

I, Irwin Schiff, regarded by many as America's leading "Income Tax Protestor" (so to speak, for purposes of this paper), have been indicted for various alleged income tax related crimes against the United States of America. All of the alleged crimes arise out the fact that I hold and advocate certain beliefs that pose a threat to the government's collection of income taxes, which all federal court's believe "are the lifeblood of government, and their prompt and certain availability an imperious need" *Bull v. United States* 295 US 247, 259-260. Based upon numerous court decisions, it is apparent that federal courts believe that protecting the government's stream of revenue is more important than protecting the constitutional rights of American citizens. Consider the case of *U.S. v. Carlson*, 617 F2d. 518. In that case both the government and the court agreed that if Carlson filed a "truthfully completed tax return...Carlson could have been prosecuted under 26 U.S.C. 7205." Despite that acknowledgement the court held:

If Carlson's asserting of the privilege were valid [as it obviously was], it would license a form of conduct that would undermine the entire system of personal income tax collection ...We are thus confronted with the collusion of two critical interests: the privilege against self-incrimination, and the need for public revenue collection by a process necessarily reliant on self reporting...[and that]...the character and urgency of the public interest in raising revenue through self-reporting weighs heavily against affording the privilege to Carlson ...[and that since the government's power] to raise revenue is its life blood...if other taxpayers were] permitted to employ Carlson's scheme ...[this would] seriously impair the government's ability to determine tax liability ...[and the government's ability to collect income taxes would be] inordinately burdensome if not impossible...[and that since] The record discloses that Carlson was a tax protestor...Carlson failed to assert the privilege in good faith."

(Bracketed material added by Defendant for continuity)

Based on the admissions by both the court and the prosecutor that had Carlson filed a traditional return he could have been prosecuted pursuant to 26 U.S.C 7205, Carlson

obviously asserted “his privilege¹ in good faith.” However, because Carlson was a “tax protestor” and because his assertion of a constitutional right threatened the “need for public revenue” (as perceived by federal courts²) Carlson was summarily and unabashedly deprived of that constitutional right.

Though I do not disagree with the federal income tax laws, nor believe that any provision in the Internal Revenue Code is “invalid,” my beliefs, if adopted by a significant segment of the American population would obviously undermine the government’s ability to collect income taxes – which this court views as its primary duty to protect. So is this Court going to allow me to prevail in this case given what it perceives to be the consequences to the federal government’s ability to collect income taxes if that happens – regardless of whether or not **my beliefs are valid** or if I hold them in *good faith*?

The courts are charged with being an **impartial** arbitrator in deciding the applicable law, in the operation of their courtroom, so as to protect the rights and liberties of individuals brought before them, from being deprived of those rights and liberties by an all powerful government. It is called the “concept of ordered liberty”, a fundamental principle of American jurisprudence and the law of the land.

However, the reality of my situation is that this Court **cannot allow me to prevail on any basis** since it perceives what that might do to the government’s ability to collect income taxes, which it also perceives as the very “**life blood**” of the government it serves. Is this court *really* going to allow me the latitude that might enable me to prove that the IRS has no authority to enforce the payment of income taxes? I do not think so -

¹ Carlson was obviously asserting his “right” not to be a witness against himself as filing a tax return would have compelled him to be. He was not merely “asserting a privilege,” he was claiming a right. “The information revealed in the preparation and filing of an income tax return is, for Fifth Amendment analysis, the testimony of a ‘witness’ as that term is used herein.” *Garner v. US*, 424 US 648

² Based on such decisions as *Carlson* and numerous others, it is apparent that the federal judiciary has concluded that the main purpose of the Founding Father’s in establishing the United States was so it could “collect taxes,” and not to “secure” “certain unalienable Rights.” Nor do federal courts in their desire to “protect the government’s stream of revenue” seem to have given any thought or credence to the wise words of Chief Judge John Marshall, who warned, in *McCulloch v. Maryland*, 4 Wheat. 316 (1819) that: “The power to tax involves the power to destroy.”

as is already indicated by this Court's refusal to allow me oral argument on some dozen motions, including five which challenged the Court's jurisdiction even to conduct this trial, and by its refusal to Rule on my Motion to Suppress, despite overwhelming evidence (which neither the government nor Magistrate Judge Leavitt attempted to refute) that the search warrant and its enforcement were illegal on a variety of grounds.

However, I am not an ordinary "tax protestor."³ I have written a number of books on the subject of income taxes (concerning how the IRS illegally collects it) spanning 30 years of research that hundreds of thousands of people have purchased and believe in – despite my prior convictions and other civil losses. In addition, the public as well as many elements of the media, know that I haven't paid income taxes for a number of years – since I have not kept that a secret. My being found "not guilty" will be perceived by a substantial segment of the American public as a vindication and confirmation of my beliefs – though being found "not guilty" would only establish that I held those beliefs in "good faith," not that those beliefs were necessarily correct as a matter of law. However, this Court understands that the vast majority of the public (and the media) will not make this distinction, but will regard my being found "not guilty" as a validation of my legal arguments with respect to income taxes. Therefore, this Court cannot take a chance of my being able to persuade the jury that I hold these beliefs "in good faith," and not that those beliefs are necessarily correct as a matter of law. Therefore, there is no way that this Court is going to allow me to have a fair trial – and chance my being found "not guilty," **by the jury** even on the issue of "willfulness," since it understands what a blow this would be to the government's ability to collect income taxes *even* if the Court ruled, pre trial, that my beliefs were **invalid** as a matter of law.

6TH AMENDMENT

The 6th Amendment guarantees **me**, Irwin Schiff, a person charged with a crime in a criminal case, a fair and impartial trial, by a fair and impartial jury and a fair and

³ Indeed I am not a "tax protestor" at all. I seek to uphold the law – which is why I sell it.

impartial judge operating in a fair and impartial courtroom. Words are words, and reality is reality – and such a trial simply will not be afforded to **me** in this case - and only a fool or a knave would claim otherwise. However, if a fair and impartial trial cannot be **guaranteed to me because** of the reality of the situation, then, under our Constitution, **I** cannot be subjected to an unfair and biased trial. The case must be dismissed and **I** must be set free.

THE GOVERNMENT’S JIHAD

The government has been on a Jihad since about 2001 to crush the growing “tax honesty” movement in this country, which has become several million strong. The government is systematically prosecuting all of the alleged leaders of the movement (or attempting to silence them via Injunctions) who have raised questions about the legitimacy of the income tax system as **the IRS enforces it**. The IRS steadfastly refuses to answer the questions of these “tax protesters” whom we shall hereafter call, “tax probers” with anything other than threats, *knowing that they can **revert to the courts** for support in stopping the questions*, not necessarily with thoughtful, analytical answers, but with summary dismissive non-answers. For Example: I have often asked where in the IR Code is the statute that makes me **LIABLE** for income taxes. The IRS answered in its Motion in Limine that it is the imposition of the tax in section 26 USC §1 that makes me “liable” for the tax. However, apart from there being **no mention** of this section in the 1040 Disclosure Act Notice that appears in the 1040 Booklet, **Section 1** is a *schedule of taxes* to be paid *upon a finding* of liability.⁴ However, once that answer (or non-answer is given), the inquiry is ended. In all of the other taxing statutes in the IR Code, there is a specific statute creating the liability for that tax. Not so for the income tax. But the courts do not allow the inquiry to go further, protecting the IRS from any kind of meaningful inquiry into this fundamental question – the most fundamental question in the

⁴ The government had previously claimed that it was the combination of Sections 1, 61, 6151, 6212 and 7203 that created the “liability.”

whole taxing structure. If I am not allowed to show the jury the law with respect to other federal taxes as compared to the law involving income taxes, the jury would have no way of understanding how I came to the conclusions I did involving income taxes. There are material differences in the way tax laws are written. How they are interpreted is a question for the judge. But how they are understood by **the Defendant** goes to his good faith belief – which is largely his only defense at trial.

If **I am not** allowed to make this kind of a comparison in front of the jury, **I will be** deprived of a fair trial because the jury has a right to understand the **BASIS** of **my** beliefs, not just **my** beliefs **vaguely**, and in this case - half a loaf is nothing.

The Jihad the government is on had to include **me** as its number one target. It has largely been **the popularity of my** books, seminars, television and radio appearances over the last 30 years that supplied the intellectual basis, rationale **le** and procedures for the so called “tax protesters” or, as some now prefer to call it, the “truth in taxation” movement.⁵ But naturally, this makes **me** an enemy of the IRS. That in itself is not a problem. The problem is, this also makes **me** an enemy of the courts which sees as its primary duty the protection of the government’s revenue --- it’s very “life blood.”

IS IRWIN SCHIFF AN ENEMY OF THE COURT?

Can a court be unbiased in this, or any other case, wherein the person preaches the downfall of the Internal Revenue System **as it collects** the income tax **by distraint**? Another way of stating the issue or a better framing of the questions is:

COULD AN AMERICAN COURT MAKE A DETERMINATION THAT THE INCOME TAX IS BEING ILLEGALLY ENFORCED?

The knee-jerk answer is that a court acting properly would take the right, legal course and let the chips fall where they may. But the reality is something different. A finding that

⁵ A good many of the reasons given by others as to why the public does not have to pay income taxes, Schiff does not subscribe to.

the income tax system is being illegally enforced, (which is what I believe is true), by any one judge would (in his mind): put the IRS out of business; put the government out of business; and thereby upset America's entire economy. It would also raise the question of retroactivity back to 1954 (when I believe the income tax was repealed) with the government having to ask for amnesty from the American people. Given this scenario, what one federal judge is about to make this finding or **even allow a jury to do so?**

PRECEDENT

The precedent in this case is not difficult. The courts have upheld the IRS in decisions that *appear* to raise the same issues that I have raised a number of times and the courts have even imposed sanctions on others – those who *have appeared* to have raised them, in an effort to quell the protest movement as it gains momentum. The government in such cases is usually protected by being awarded undeserved summary judgments – thus avoiding jury trials where government witnesses who claim that income taxes are owed would have to make those claims under oath, in open court where they could be cross-examined with respect to those claims. And in summary judgments awarded to the government by federal judges, challenging arguments opposing the government's claim of taxes due can be misstated or avoided altogether, which, of course, has been my experience in every single civil action I have been compelled to engage in against the government. But since in such civil actions federal courts have the power to deny citizens jury trials or to summarily dismiss their civil suits against the government altogether – without proper legal review of the merits it might contain - the private citizen, in such cases, has nowhere to go, since appeals are generally too costly (if one needs a lawyer) and/or too time consuming (if one needs to proceed pro se), so the all powerful, juggernaut of government wins by default.

And that is the problem. One hides their head in the sand if they ignore the reality that a court has the power to rule in arbitrary, less than meaningful ways and be upheld,

especially in areas as controversial as a wholesale challenge to the income tax laws. No federal judge will suffer a second of criticism for running with the pack, cutting **me** down at every turn, stifling every inquiry as “tax protestor gibberish”, and disallowing any inquiry into the system at all – as it is presently deemed to be legal. Of course, without proper legal inquiry such “legality” can never be questioned. And if proper inquiry is truncated at inception, (and if the tax is illegally collected as **I claim**), its illegality is never exposed. It is a self-executing, self-serving, fail-safe, a self-perpetuating machine.

PRESSURE

The pressure in this case is equally simple – put down the protestors. For the IRS, it is at any cost. For the court, there are other concerns, but as shown above, a federal judge is conflicted with his own self-interest in dealing with IRS cases. There is also an innate overwhelming pressure just to keep the “status-quo”. As outlined earlier, the American economy (supposedly buttressed by all manner of federal subsidies and “guarantees”) is perceived as being dependant on the federal income tax. Take away the income tax and the whole economy collapses is what the public and the courts largely believe. How then is any one judge expected to upturn the Nation’s entire economic system, especially in time of war?

I have been the leading “**income** tax protestor” in America for 30 years. The court has had before it a dozen motions (some for over a year) that it has never ruled upon, undoubtedly planning to do so just before trial, cutting off any right to pretrial review. (However, when pushed against the wall concerning those pending motions **challenging** jurisdiction, the court summarily ruled it had jurisdiction). Does this appear to be a “fair and impartial” tribunal? Is this the way the court treats all of its cases or has **my prosecution** been singled out for special treatment? Does this not say something disastrous about any possible chance for a fair and impartial trial under the 6th Amendment? **I** cannot even obtain the ordinary pretrial Rule 12(a) hearings in any manner, including my Motion to Suppress, even though I supplemented my original

motion with two 9th Circuit decisions (decided after the IRS raid was conducted) which further established the illegality of that search and seizure, and the (alleged) evidence the government acquired because of it.

Isn't the ordinary rule to have dates set for motions and have them actually heard and decided? Why has this not occurred in this case? Why the special handling? Why is **my** proper due process being denied before trial? **How does this bode for the actual trial?**

PRINCIPLE

The principles upon which the court has to abide are basic - truth seeking and justice, which include a fair and impartial trial. But even here, abiding interests clash. For the court, the truth is that the income tax system and everything the IRS does is well within the law. **My position is that** the truth **of the matter** is that everything the IRS does is outside of the law. This is not a case of whether the defendant robbed a "7-11 **Store**" on 2-5-04 at 2:00pm. This is a conflict of principles, of "truths," of core beliefs. This prosecution could result in my going to prison (for life) for my core beliefs just because federal prosecutors (aided by the court) were able to convince a jury (already prejudiced against "tax protestors") that such beliefs were not held in "good faith". However, there is really no one who has ever **dealt with me** who has ever doubted that **I believe** what **I teach** and say. The rest is parlor tricks, but if truth seeking is the goal, no one, including the prosecutors (and even this Court) doubts my good faith beliefs. However, the prosecutor will rely on the Court's inherent ability to mold a trial to achieve a predetermined result - which, in this case, would be not to allow the government's ability to collect income taxes to suffer as a result of this trial.

In a trial of principles, diametrically opposed, what does a court do? **I have my** truth, and the court believes it has its duty: it's duty being to protect and preserve the sanctity of the income tax from the types of challenges **I** might make at trial.

Suppose a judge heard **my** beliefs (based on my 30 years of research), and found them

persuasive. Is there a thinking person in America who believes *any* federal judge would tomorrow rule the IRS is engaged in an illegal enterprise? The political pressure on the judge alone forbids this result. A judge cannot find that **my** beliefs, no matter how legally sound he might come to regard them, are valid. A finding that **my** beliefs are valid would immediately invalidate the income tax, with repercussions to the government that I hardly need to enumerate here. The judge would suffer the recrimination of his entire brotherhood and if he were overruled, he would suffer – IRS harassment forever after. Standing up for one’s convictions is the brave and heroic road, but taking **on** the government to do it may be more than most heroes can bear.

In short, there is no way that **I** can win. No court CAN find *or allow* **my** beliefs *to prevail* at a jury trial. It is a factual impossibility, given the pressures of the time.

Given that it is factually impossible for **me** to have any judge rule that **my** beliefs are valid, and that they “comply with the law,” **I am therefore automatically** precluded from having a fair and impartial trial. Besides the impossibility built into this situation, the other inherent unfairness that attends this trial is set out in *U. S. v Wilson* 639 F.2d 500, where the court acknowledges that a jury is predisposed to convict tax protestors. Now you have a judge who cannot find **that** Defendant’s PRINCIPLES are legally valid, and a biased jury before the date of the trial. This is the antitheses of the 6th Amendment and cannot be cured.

If the court cannot guarantee a fair and impartial trial, there can be no trial at all for what is left but a known unfair and partial trial, in violation of the Constitution.

Based on all of the above, the charges against **me, Irwin Schiff,** must be dismissed.

DATED Aug. 30, 2005 _____

IRWIN SCHIFF, PRO PER

CERTIFICATE OF SERVICE

I certify that I have this date hand delivered a copy of the foregoing Motion to **Dismiss to:**

MELISSA SCHRAIBMAN
LARRY J. WSZALEK
JEFFREY A. NEIMAN
Trial Attorneys, Tax Division
US Department of Justice
333 Las Vegas Blvd., South, Suite 5000
Las Vegas, Nevada 89101

And that I have this day mailed a copy of this Motion by first class mail, to the following Attorney's of record.

CHAD BOWERS, Esq.
Counsel for Defendant Cohen
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102

MICHAEL CRISTALLI, Esq.
Counsel for Defendant Neun
732 S. 6th St. Suite 100
Las Vegas, Nevada 89109

Dated: Monday, August 29, 2005 _____ Irwin Schiff