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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES	)	CASE NO: CV - S-03-0281-LDG-RJJ
	)	
Plaintiff	)	
	)	
V	)	
IRWIN SCHIFF, CYNTHIA NEUN	)	
And LAWRENCE N. COHEN, a/k/a/	)	MEMORANDUM THAT THE COURT:
LARRY COHEN, individually and	)	RECONSIDER ITS ORDER GRANTING
All doing business as FREEDOM	)	THE GOVERNMENT A PRELIMINARY
BOOKS, <a href="http://www.livetaxfree.com">www.livetaxfree.com</a> ,	)	INJUNCTION
<a href="http://www.paynoincometax.com">www.paynoincometax.com</a>	)	
<a href="http://www.ischiff.com">www.ischiff.com</a> ,	)	
	)	
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 preliminary injunction since in doing so, 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 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; *McNutt v. General Motors*, 56 S.Ct. 780; and *The State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709.

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 9<sup>th</sup> 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.’” Since defendants 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 and, as of this date, has made no ruling with respect to them. However, the Court does make the false claim (page 7, Lines 23- etc.) that the 16<sup>th</sup> Amendment authorized “a non-apportioned direct income tax on United States citizens residing in the United States...”, and cites as its authority the lower court decision, *Grimes v. Comm’r*, 806 F. 2d 1451. In making such a claim, this Court is claiming the 16<sup>th</sup> 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 16<sup>th</sup> 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 cannot be a federal tax “lying intermediate between these two great classes and embraced by neither,” and that the proposition that the 16<sup>th</sup> Amendment gave the government the power to impose a direct, non-apportionment 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*. (Emphasis added)

Defendant provided this court with numerous excerpts from *Brushaber* and other Supreme Court decisions which specifically declared that the 16<sup>th</sup> Amendment: 1) did not give Congress any *new* taxing power, and 2) the 16<sup>th</sup> 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. 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 16<sup>th</sup> 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 16<sup>th</sup> Amendment contains nothing repudiating or challenging the ruling in the *Pollock* case.” (The government, remember, in its Answer, argued that the 16<sup>th</sup> 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 16<sup>th</sup> 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 16<sup>th</sup> 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 16<sup>th</sup> Amendment, which, therefore, did not “amend” the Constitution in any way.

The provisions of the 16<sup>th</sup> Amendment conferred no new power of taxation...  
(*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 16<sup>th</sup> 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 (16<sup>th</sup>) 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.” 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 CANNOT BE ASSUMED AND ANY ORDER ISSUED  
WHEN A COURT HAS NO JURISDCITION 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 jurisdictional facts are challenged by his adversary in any 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 16<sup>th</sup> Amendment allowed the government to impose a non-apportioned, direct tax on income and, 2) the 16<sup>th</sup> 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 abinitio," in Re *Application of Wyatt*, 300 P. 132; Re Cavitt, 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.

## II

### **THIS COURT NEVER RULED ON DEFENDANTS' MOTION THAT THIS COURT STRIKE ALL OF THE GOVERNMENT'S PLEADINGS BECAUSE THEY WERE ALL BASED ON FRAUD**

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' decree 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. Glenshow 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 U.S 426. Indeed, the Court merely embraced the fraud perpetrated by the government and employed the same

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 16<sup>th</sup> Amendment overturned *Pollock* and, 2) permitted the government to impose an income tax as a non-apportioned 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.

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

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 16<sup>th</sup> 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 16<sup>th</sup> 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 its 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 basis upon which the Supreme Court held the Income Tax Act of 1894 unconstitutional<sup>1</sup>

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<sup>1</sup> 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

**It is clear from the above that when an income tax is imposed directly on sources 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 16<sup>th</sup> Amendment the federal courts struggled to determine the meaning of “income” as that term appeared in the 16<sup>th</sup> 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 16<sup>th</sup> 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

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source (such as an income tax imposed directly on wages, dividends, interest etc. etc.) would still be subject to the rule of apportionment.

Court disregard the crystal clear holdings of the *Pollock*, *Brushaber*, *Stanton*, *Eisner*, and *Merchant's Loan and Trust* Courts all of which clearly held the 16<sup>th</sup> 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 16<sup>th</sup> 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 16<sup>th</sup> 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

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, non-apportioned, 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

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 voluntarily 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

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 “updat(ing) 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

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. 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

prosecuted at all. 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 non-binding 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 cannot 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. 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

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.

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 5<sup>th</sup> Amendment along with his right of free speech and freedom of the press as guaranteed to him under the 1<sup>st</sup> 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 1<sup>st</sup> and 5<sup>th</sup> 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, lest this Court interpret it as being in violation of its Order of June 16, 2003. Therefore, defendant Schiff has attached as Exhibit A 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’s 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

**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.

\_\_\_\_\_  
Irwin A. Schiff

## TRANSCRIPT OF "SCHIFF REPORT" # 7-4

It has been a long time since 7-3, so I have a lot to report to you. As you all know, Judge Lloyd George granted the government a restraining order banning me from selling *The Federal Mafia* - as of the date of this recording the book is still banned. Like most of the times in the past I learn more when the government does something to me. In fact, that's when I learn the most. The reason I know more about the income tax than everyone else is because the government has done more things to me than it has done to anyone else. The problem is I generally learn about what I should have done, after the government has done it. So what I discover generally benefits others more than me - but as a result of what the government has done to me in the last 4 months I have discovered a lot that will benefit me as well as others. I also want to write a book entitled, "*The Constitution is Dead and How the Supreme Court Killed It.*" The amazing thing is the Constitution is really dead, since all the clauses in it that were designed to limit the power of the federal government are now totally disregarded by the government. As you already know, all three of the Constitution's taxing clauses are ignored as well as its two monetary clauses. I now have absolute proof that the 1<sup>st</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Amendments are also without force and effect even without regard to the provisions of the new Homeland Security Act - which is destined to make matters worse. So what's left? I have to laugh when the public and the media get so upset about whether the "under God" provision of the Pledge of Allegiance was to be eliminated. As a practical matter, "With liberty and justice for all" has already been eliminated, but no one seems to care about that, or the fact that 1<sup>st</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Amendments as well as all of the monetary and taxing provisions of the Constitution have been effectively eliminated from the Constitution. So the whole country focuses on the "under God" provision of the Pledge of Allegiance as if the rest of the pledge and the other provisions of the Constitution remain intact. And with all the financial aid that the government has promised to give Africa to fight A.I.D.S., (regardless how noble that project might be), as well as all other types of foreign economic aid - where does the Constitution authorize it? Besides, this country is broke anyway, but we pretend to be rich enough to spread around all this global economic aid. Between our 500 billion dollar trade deficit and 400 billion dollar federal deficit that's almost 1 trillion dollars in deficits not counting city and state deficits. And while Article 8 Section 2 gives the government the right to borrow money, where in the Constitution is the government given the power to lend money? It's not there; so all of the government's lending activities, student loans, mortgage loans, small business loans, and loans to the international monetary fund are all unconstitutional. So Jefferson's admonition about binding up the government

in the chains of the Constitution" is a joke. The Constitution binds up nothing. And it is amazing how the American public keeps referring to the Constitution as if it really exists- when today it is a totally meaningless document. The only purpose it serves is to mislead the public into thinking that it really limits the government's power. And of course every day manufacturers are going out of business while we continue to turn out more lawyers, accountants, loan advisors, mortgage brokers, social workers, teachers, more and more bean counters, so now less than 15 % of American workers produce any tangible wealth. Our trade deficit alone breaks down to about \$4,000 for every family in America. So the consumption of every American family is now being subsidized (apart from personal debt) by about \$4,000 worth of goods produced by workers in other countries, which presumably we will pay back someday. Of course we are never going to pay them back. So for how long do you think they will continue sending us goods "on the cuff" before they catch on? Look around your community and see how much manufacturing is left. Look what these Washington parasites are allowing to happen. We are facing the total disappearance of our industrial base. We will soon be a nation of 300 million people who will be making none of the products we need - with the exception of agricultural products, but more of those products are being imported - to maintain a 21<sup>st</sup> century existence.

But you have all heard me sing this song before and it was the subject of my first book "The Biggest Con" that I wrote 30 years ago - and it is the subject of "How An Economy Grows," which, if you don't have those books, you should order them today. It is important, if you are not paying income taxes, to be able to explain to others why paying income taxes is not patriotic, but, in doing so, you are actually helping to destroy America's industrial base.

But now I am going to focus on what is one of the most important discoveries regarding the income tax I have ever made - if not my most important discovery. It will allow you to blow the income tax away in practically every conceivable situation - and I wouldn't have made the discovery unless the Government had not sought to reduce to judgment that \$2.5 million dollar lawsuit - based on three coerced returns I filed during that probation hearing as described on page 283 of "The Federal Mafia." This has to do with the Supreme Court case of *C.I.R. v. Glenshaw Glass*, which I have enclosed as Exhibit 1. As you know and as stated on the attachment to the "zero" return, "income," for tax purposes means a corporate profit. But to make that point we relied primarily on *Merchants Loan & Trust v. Smietanka* etc. a 1921 case as well as other cases cited in the last paragraph of that attachment. However, a fly in the ointment has always been the 1955 Supreme Court case of *Glenshaw Glass*, a much later Supreme Court case that appears to contradict *Smietanka* and all those other cases. If you look at the case it specifically claims that "Gross

income” includes income from "salaries, wages, and compensation from personal services. " Now I always knew this case was wrong - since how could such items be taxable given the *Brushaber* and *Smietanka* decisions that held "income", for tax purposes, must be separated from its source and, that “income” in the revenue laws meant the same thing as the word meant in the Corporation Excise Tax Act of 1909, and that the income tax had to be imposed in the form of an excise tax. You have all heard me say that from 1913 to 1954 the income tax laws were themselves illegal, since they did not impose the income tax as the excise tax the Supreme Court in *Brushaber* and *Baltic Mining* ruled the tax to be, and the tax was not imposed on income “separated from the source." This is why the income tax was repealed in 1954, with the adoption of the 1954 Code, as explained in “Schiff Report” 6-2. But how could we raise these issues in a court? No district court is going to say that the Supreme Court in *Glenshaw Glass* was wrong – but based on the new information as contained in this “Schiff Report” we are now capable of arguing – either verbally or in written pleadings why the *Glenshaw* decision no longer applies. They would ignore those earlier decisions and cite the later 1955 *Glenshaw Glass* decision as somehow superceding those earlier Supreme Court decisions. This is what the government did in response to my discovery requests in connection with the \$2.5 million dollar case, which I got postponed due having to turn my attention to the seizures of all my records and the restraining order. I obviously could not deal with all this litigation at the same time, especially when a lot of the documents the government seized were documents I needed to fight the \$2.5 million dollar assessment case.

But the government's citing of this decision in support of its claim caused me to take a new look at *Glenshaw Glass*. In doing that, I came up with an entirely new understanding of that case which not only allows us to totally neutralize that decision but also makes it the best weapon we have against the income tax. It will now be our most powerful case and allow us to blow away the government in practically every situation involving the income tax. What makes *Glenshaw Glass* so important is that current courts have been relying on it as their authority for claiming that wages and other sources are taxable as income and that "income" is used in the law in its “ordinary sense.” Now we can deny them that ability and actually use this case to prove our position. There are many court decisions, even criminal case decisions, in which the courts have actually claimed that income as used in the 1954 Code means “income” in its “ordinary” sense. However, with the information I am about to give you, we can prove that all such court decisions were all erroneous and merely permitted federal judges to send innocent people to jail. So, what else is new? Now the *Glenshaw Glass* can be our most powerful weapon against the destructive and illegally enforced income tax. How do we apply it? For one thing – all of the courts (as well as I did when I read

this decision years ago) overlook the fact that *Glenshaw Glass* involves the 1939 Code - not the 1954 Code, so the decision itself is irrelevant as far as the current, 1954 Code, is concerned – because the ‘54 Code changed what was taxable as “income” as compared to what was taxable as “income” in the 1939 Code. You will note that *Glenshaw Glass* specifically involves Section 22 of the 1939 Code, and that section specifically lists "salaries, wages and compensation for personal service" as being specifically "included" in taxable income. However all such references were taken out of Section 61. That's the key. We are currently subject to Section 61 of the 1954 Code, not Section 22 of the 1939 Code – which is what *Glenshaw Glass* is all about. It is an understanding of this distinction that allows us to knock out the negative aspects of *Glenshaw Glass*: the substance of that decision is irrelevant. Nobody - but nobody as far as I know has ever used this argument to knock out that case.

As you can see, the wording as to what constitutes income in the ‘54 Code is entirely different than what the wording was in the 1939 Code. Obviously if Congress intended to tax income in the 1954 Code in the same manner it was taxed in the 1939 Code, Congress would not have bothered changing the wording as it did. Would they have changed the wording as to what constitutes “income” if they had not intended to change the substance of that meaning? Of course not. So obviously what the Court is talking about in *Glenshaw Glass* has nothing to do with what is taxable under the 1954 Code. So what *Glenshaw Glass* says about wages and salary being taxable is irrelevant, as far as what is currently taxable is concerned.

However, the next important aspect of *Glenshaw Glass* is something I had overlooked when I read the case years ago, which is footnote 11. And if the Government had not sued me for that \$2.5 million, I might never have known about that footnote. Let's see exactly what that footnote says. The Supreme Court in that footnote noted that House Report 1337 and Senate Report 1622 said that in passing section 61 "This section corresponds to Section 22(a) of the 1939 Code. While the language in existing section 22(a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61(a) is as broad in scope as Section 22(a). Section 61(a) provides that gross income includes 'all income from whatever source derived.' This definition is based upon the 16<sup>th</sup> Amendment and the word 'income' is used in its Constitutional sense” Now, in employing that wording, Congress lied - but nobody in the public sector would recognize or understand how Congress lied. If Congress did not intend to change the meaning of income in the 1954 Code, it would not have changed the language which had been a part of the law for 41 years and in use every since the original Revenue Act of 1913 was adopted. Congress for some reason in 1954 got pangs of conscience, and decided to change the meaning of income so as to

bring it in line with what the Supreme Court in *Brushaber* and *Smietanka* and other cases had ruled it to be. It realized the wording of Section 22 was all wrong and violated what these earlier Supreme Court decisions had ruled what "income," as used in the 16<sup>th</sup> Amendment, had to mean. The crux of the *Brushaber* decision is the statement that I isolated and quoted on page 198 of "*The Great Income Tax Hoax*," in which that court stated, "*The whole purpose of the (16<sup>th</sup>) Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived.* " Try running that by a lawyer and see if he understands it. How many federal judges do you think would understand what that line means? So the whole purpose of the 16<sup>th</sup> Amendment was not to amend the Constitution but to "relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. " Now you should all know what that statement means - but let me go over it in case you don't. It is important that you all know what that line means, so you can clearly support your position that you have no income in a "constitutional sense."

Chief Justice White who wrote that decision simply created a new meaning for the word "income" - a meaning it never had before that decision was written. The Supreme Court in that decision created a new meaning for the word "income" in order to allow Congress to tax it without apportionment - in conformity with that Amendment – and so it would not be unconstitutional on the same basis that the 1895 *Pollock* Court held the income tax of 1894 unconstitutional - which is what gave rise to the 16<sup>th</sup> Amendment itself. So what does that statement actually mean? The purpose of the 16<sup>th</sup> Amendment, the Court said, was to eliminate the constitutional requirement of apportionment by providing that the sources of income themselves would not be subject to the tax. In other words, the sources would not be considered - the sources being such things as - wages dividends, interest, real estate, capital gains – and these sources would not be "considered" or taxed as income. How many law school graduates do you think know that *The whole purpose of the (16<sup>th</sup>) Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived*” means? My guess is not one. And I doubt if more than a handful of law professors would know what that line meant either - and if they did know, they certainly wouldn't explain it to their students, since their students wouldn't have an income tax practice to go to. However all the revenue laws up to the 1954 Code taxed the sources of revenue directly – so the sources were considered - in direct violation of the *Brushaber* decision which said they couldn't be taxed if the income tax was to avoid having to be subject to the rule of apportionment. Therefore from 1913 until the 1954 Code, the income tax laws were themselves unconstitutionally worded and unconstitutionally enforced. However in fashioning a new (and

obscure) meaning for the word "income" – and making its meaning synonymous with profit, but without calling it profit - the *Brushaber* Court made a false claim in saying that "the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. " No, I believe that Congress thought that in passing the Amendment they were amending the Constitution and giving itself a new taxing power, the ability to levy a direct tax on sources of income without apportionment, which is why they worded the revenue law of 1913 as they did - which remained in force until the 1954 Code. Incidentally along those lines practically all Constitutions at one time had an asterisk over the two apportionment provisions of the Constitution with footnotes that said "amended by the 16<sup>th</sup> Amendment" or words to that effect. The Constitution sent out by the Committee in charge of celebrating the 200<sup>th</sup> anniversary of the Constitution - which was headed by former Chief Justice Warren Burger - carried just such disclaimers. I wrote the Committee and pointed out their error. In any case, I hardly see Constitutions any more containing those asterisks. I believe that the "The Great Income Tax Hoax" was responsible for these changes since to my knowledge this was the first book to point out that the 16<sup>th</sup> Amendment did not amend the Constitution nor give Congress any new taxing power.

So, to get out of its dilemma of not wanting to declare the 16<sup>th</sup> Amendment and the Tax Act of 1913 unconstitutional the *Brushaber* Court concocted a new meaning for the word "income" as that word appeared in the 16<sup>th</sup> Amendment - a meaning it never had before. Prior to the *Brushaber* decision "income" meant what any dictionary said the word meant. But the Supreme Court gave a new meaning to the word - "income" as that word is used in the 16<sup>th</sup> Amendment. As used in the 16<sup>th</sup> Amendment income means "income separated from its source." And the only time that occurs is when those various sources of income are funneled through a Corporate P & L statement and emerge as "profit." In taxing corporate profit the "sources whence *the income was derived.*" - are *not* considered and not taxed. Of course, we have been saying all along that for income tax purposes "income" means a corporate profit. What we have not been saying - is that "I have no income in a 'constitutional sense'." We have been 100% right in what we have been saying - only now we have a more formidable and personalized way of saying it. In light of *Glenshaw Glass* you can now say "I have no income in a 'constitutional sense' rather than merely saying, "'income' for income tax purposes means a corporate profit." Because of the impossibility of almost anybody understanding what "income" in the 16<sup>th</sup> Amendment means – by saying it is "income separated from the source" rather than by saying "income as used in the 16<sup>th</sup> Amendment means a corporate profit" has allowed the government to illegally collect income taxes ever since. Of course, in the

1921 *Smietanka* decision, the Supreme Court came right out and said “income” as used in the 16<sup>th</sup> Amendment means a “corporate profit,” but the much later *Glenshaw Glass* case seemed to override that decision, but footnote 11 reestablishes it.

Of course, when Congress changed the statutory meaning of income in the 1954 Code - so that only a corporate profit would fall within that meaning as covered in “Schiff Report” 6-2, it didn't want the American public to know what it had done, since by changing Section 61 from how it read in Section 22, it had now excluded all Americans from having to pay income taxes. So it sought to hide what it done from the public in the following manner.

When it said in those Congressional reports that “While the language in existing section 22(a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61(a) is a broad in scope as section 22(a)” those statements designed to mislead the public as to the changes that Congress had actually made in the law. The language in Section 61(a) hadn't merely been “simplified” it had drastically changed the meaning of “income” as between those two sections. Congress used the term “simplify” as a way of misleadingly explaining why the language of Section 61 had been changed from what it was in Section 22. And it extended that lie by saying that “the all-inclusive nature of statutory gross income has not been affected thereby.” That also was a lie. The meaning of income was now totally different. Where Section 22 taxed all sources of income, Section 61 was changed so that only a corporate profit would fall within the meaning of that section. So now Section 61 conformed to the meaning of income as given to it in the *Brushaber* and *Smietanka* decisions. The only clue that Congress would now give to indicate what it had actually done, is its statement that the definition of “income” was based upon the 16<sup>th</sup> Amendment (notice, it was not based upon what a dictionary might say the word meant), but the real admission was that the word ‘income’ in Section 61 was now to be used in its “constitutional sense.” How many people reading that statement would understand what “income in its constitutional sense” meant? How many Americans would have even read those Congressional Reports at all? But here Congress clearly said that income, for tax purposes, no longer meant income in its “ordinary sense” but income in its “constitutional sense.”

I would venture to say that the first time anyone has ever publicly used the expression of income in a “constitutional sense” is when I brought this term to the attention of the court in my opening remarks on April 11, 2003 during my preliminary remarks in the injunction hearing in connection with banning of *The Federal Mafia* and in the testimony of my three witnesses, all of whom testified at that hearing that they had no income in a “constitutional sense.” And they even

attempted to explain what income in a “constitutional sense” meant – “income separated from its source.” And you can hear their testimony on the tape on my website.

What does this mean? We can all now begin saying we have no income in a “constitutional sense” instead of simply saying that income for tax purposes means a corporate profit and we can now use as our authority House Report 1337 and Senate Report 1622 as referenced in footnote 11 of *Glenshaw Glass*. So we can now use as our authority the 1955 *Glenshaw Glass* case (instead of the 1921 *Smietanka* case), since what is important in that case is footnote 11, not the decision itself - and the government now has no Supreme Court decision or statute to use against us. This uncovering of House Report 1337 and Senate Report 1622 proves that no one can have taxable income in a “constitutional sense” regardless of where one lives, what one does, or where one's revenue comes from. Nobody can have income in a “constitutional sense” for all of the reasons we have just covered.

Now I will have to amend and incorporate the concept of income in a "constitutional sense" in our 1040 attachment and in all of our response letters. I have included wording that will allow you to change the wording and incorporate the *Glenshaw Glass* case in paragraph 6. But I am kicking around the possibility of expanding this paragraph completely and eliminating everything else – which I may do when I file my own return. If you have to make a response to the IRS before I can make all these changes simply incorporate this reference on your own. It should not be not hard or complicated – especially if you have our response disk. Since I want to get this tape out to you as soon as possible, I am not sure how many of these adjustments I can make in the letters and pleadings we have already prepared - since I also have a lot of other litigation I have to take care of. If at a Collection Due Process hearing or in Tax Court, you ask the judge point blank whether the IRS is using income in its "ordinary sense" or in its "constitutional sense," what can he say? You have irrefutable proof that income in the 1954 code is used in its "constitutional sense." How is any judge going to legally get around it - if you argue it right and don't let them get off the hook?

But right now, I am still in litigation to get all of my records back, still fighting the restraining order (which I assume I will beat since I can't see how Judge George can grant the preliminary injunction based on the government's showing at the preliminary hearing and he still has not answered my motion on jurisdiction and one based on the fraud contained in all of the government's pleadings since they all fraudulently use income as defined in the 1939 Code and not how it is defined in the 1954 Code) and the \$2.5 million dollar lawsuit. I think these motions are causing him trouble, but which he will have to answer before issuing his order on the preliminary

injunction. So I don't know when he will rule on the preliminary injunction. In addition I need time to work on my next book. I had 6 chapters completed before the IRS seized my records.

I knew nothing about search warrants before they hit me with one. An IRS special agent applied for the search warrant they used against me, and 15 armed, special agents conducted the search. I now have irrefutable evidence that special agents of the IRS have no statutory authority to either apply for or conduct search warrants. This means that all such IRS search and seizures have been illegal - and I now have all the evidence to prove it. In addition, the search warrant in my case was so unconstitutionally overbroad that the agents took thousands of documents that were totally outside the scope of the warrant. The search warrant was also illegal on a variety of grounds. For example, I am supposed to be present when the search is going on; however, in my case the agents wouldn't let me in Freedom Book's offices while they conducted the search. I also discovered from this experience that the 4<sup>th</sup> and 5<sup>th</sup> Amendments to the U.S. Constitution are now dead - and I can now document just how the Supreme Court killed it. From the pleadings that have been filed in this case, it is obvious that the warrant was issued and executed illegally, but so far the Magistrate who issued the warrant has allowed the IRS to hold on to the documents that he knows were illegally seized. In allowing the IRS to continue holding my records, Magistrate Lawrence R. Leavitt knows the search and seizure was done in violation of Fed. Rules of Civ. Procedure 41(e), (41a), 41(b), and 41(h). When he declined at our last hearing (which you can hear on the web site) to grant my motion for the return of my records pursuant to Rule 41(e) (by falsely claiming that by ordering the IRS to give me copies of any of the seized documents I wanted, my motion was granted) - he proved that he had no interest in obeying the law. And all the pleadings that show this, are now a matter of public record - which I can't wait to publish.

I have moved for Reconsideration of Magistrate Leavitt's Order on his refusal to order the IRS to return my records - which he, as yet, has not answered. If he doesn't reverse his ruling, I will appeal his Ruling. The point is, I now have all the evidence that all search and seizures initiated and conducted by IRS special agents were all illegal, and there must be thousands done on this basis. The evidence I can now produce - if understood by the public - should put a stop to this practice and/or give the public a basis for suppressing any evidence gathered on this basis. But my whole search and seizure experience - which I look forward to writing about - has provided me with first hand experience and knowledge as to why the 4<sup>th</sup> and 5<sup>th</sup> Amendments no longer protect the American public in the manner they formerly did and in the manner they were designed to do. And Judge George's actions in banning my book, will, if sustained, prove that the 1<sup>st</sup> Amendment is also down the toilet. A totally mendacious federal judiciary has simply torn these protections right out

of the Constitution - and the American public hasn't a clue that this has been done and how the courts did it. I don't know what good it will do, but they ought to know about it anyway. To show how far we have come, in Figure 2-9 on page 33 of *The Federal Mafia*, you will see reference to the Supreme Court decision *Boyd v. U.S.* 116 US 616 (1896) In that case the Supreme Court reversed a civil penalty because the penalty was based upon one document that the law required Boyd to furnish – so the Supreme Court not only reversed the penalty but declared the law unconstitutional just on the basis of one compelled document. In that case the Supreme Court said:

Whereas, by the proceeding now under consideration, the court attempts to extort from the party his private books and papers to make him liable for a penalty or to forfeit his property, (p.624)

Then the court proceeded to compare the compulsory production of private papers to

“The practice...of issuing writs of assistance to the revenue officers,” and quoted James Otis as stating ““the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book,’ since they placed ‘the liberty of every man in the hands of every petty officer.’”

The Court went on to observe – and these are samples of quotations that were included in the pleadings I filed to get my documents back.

Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of a crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other. (p 630)

And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of a crime, or to forfeit his property **is contrary to the principles of a free government.** It is abhorrent to the instincts of an Englishman; **it is abhorrent to the instincts of an American.** It may suit the purposes of a despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom. (p 632) (Emphasis added)

One would think it would be equally “abhorrent” to this Court. And the Supreme Court further observed.

The search for and seizure of stolen goods or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ *toto coelo*. In the one case, the government is entitled to the possession of the property; in the other it is not. (p. 623)

We have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. (p. 633, Emphasis added)

If the Supreme Court could conclude that the compulsory production of one document in a civil case was unconstitutional – how much more unconstitutional is the seizure by armed government agents of a truckload of personal records and documents in order to establish whether Schiff violated some unidentified revenue law?

In my case when I got to my office the IRS Special Agent David Holland who had applied for the search warrant and who was in charge of the raid, informed me I was under criminal investigation, and he read me my Miranda rights, and told me anything I said could be used against me. What difference did that make if they could seize and take out of my office a truckload of documents which could be used against me? Remember when they tried to get these documents pursuant to a civil summons (as covered in “Schiff Report” 6-1) they couldn't get the documents. If they couldn't get the documents pursuant to a civil summons how could they get them through an enforced search and seizure? The absurd and outrageous reasoning of federal courts that now justify this anomaly - which goes totally against the 4th and 5<sup>th</sup> Amendments as any high school senior should be able to figure out - is something the American public must be made aware of - yet they haven't the vaguest idea that this is going on - and with the blessing of the Supreme Court no less. Just think about this. I was not charged with any crime, yet the IRS physically prevented me from entering my own office - Freedom Books is not incorporated. I do business as Irwin Schiff dba Freedom Books so my business records are actually personal records. So the government illegally used 15 unauthorized IRS agents to seize thousands of personal documents and also sucked out the contents of 5 of my computers. They got the first 6 chapters of my next book. What right has the government to see the first 6 chapters of my next book? Let's suppose I was having an affair with the wife of a prominent physician or politician and I had some of the letters I sent to her on my computer. What right do government employees have to get copies of those letters or anything else on my computer? Even if they claim I had pornographic or terrorist material on my computer. What right does the government have to copy anything else that might be on those computers? And suppose there is no subversive or terrorist material? I claim that it is more important to protect everyone's 4th and 5<sup>th</sup> Amendment rights and rights to privacy than to expose sex perverts. I may go along with examining computers if there is a strong suspicion of terrorist

activity but there would have to be additional safeguards as to how the contents of computers have to be viewed even in those circumstances. But in my case terrorism was not involved, nor was any federal law I “allegedly” violated even mentioned. We cannot “throw the baby out with the bathwater”. The fact is that today the government is able to totally do away with the 4<sup>th</sup> and 5<sup>th</sup> Amendments and our alleged rights to privacy. And my current experiences prove it. What more proof does anyone need? Remember I was not charged with committing any crime, and the person who got the search warrant had no authority to apply for it or to execute it. I will be enclosing some of my pleadings (or excerpts from them, along with examples of government responses) in this recording.

However, I believe that you should have the information on this tape as soon as possible. If I get word that Judge George has granted the government a preliminary injunction before this tape is sent out, I will include some written information and comments about this with the other exhibits. I am dictating this around June 8, 2003. It takes from two to three weeks for us to produce the tapes and get together other material that has to go out with it.

I have also attached what material that I have written in connection with the government’s now totally lawless program regarding W-4’s. Since the government is now sending out blanket letters to employers telling them to simply disregard an employee’s “exempt” W-4 claim and treat him as if they claimed “0” or 1 exemption, there is no cut and dry answer for dealing with this problem. It all depends on a person's individual employment situation. Employers, of course, can simply throw such unsigned, IRS notices in the trashcan, but many of them don’t know that – and the IRS easily intimidates most employers, even when they get unsigned letters.

It also sickens me to have to tell people what they have to do in order to protect their assets from illegal IRS seizures. It is of course practically impossible to get lawyers who can actually help anybody and at fees that the average person can afford. What has happened is the government has passed a law (or appears to have passed a law) that requires everybody to acquire the litigating skill of a lawyer. Why should anybody have to know how to litigate an action in Tax Court? Do you have to know anything about litigation in connection with property taxes or sales taxes? The whole idea is outrageous and is something I want to cover in my next book. I want to cover the kind of judicial blackmail that is going on with IRS agents breaking the law and the inability of working Americans to acquire enough knowledge, time or money to fight them. All of you collectively have to do is spread this message especially on radio talk shows which only requires a phone call and some persistence.

Also I have included a letter I prepared in response to a government document that acknowledges the legality of the zero return. I included this document in my Post Hearing Brief. How can Judge George claim that a “zero” return is anything but legal, since this IRS document says they are accepting them as legally filed returns? The document and letter are self-explanatory. In any case, between that document and what you have learned about income in the “constitutional sense” - should eliminate the frivolous penalty problem. If it doesn't, don't blame me. I can't force the government to obey the law.

Along these lines I again want to remind you that it is not up to me to make sure you are afforded all of your constitutional rights. All I can do is point out to you what those rights are, how the government is disregarding them, and what measures you might take to secure them. I try to give you the best information and procedures I have at the time – but it is up to you to use them effectively. So let us see what the future will bring. Keep checking my web site—hope you enjoy Schiff Report 7-4 – but that's all for now.

EXHBIT A- SCHIFF REPORT 7-4

Your Name and Address

Date

Agent's Name

IRS address

Re: Your letter of ( date ),attached

Dear Whoever:

I am in receipt of your letter (attached) in which you state, you “cannot accept (my) form 1040...(because)...it does not contain the information that the law requires (me) to give, and it does not comply with certain Internal Revenue Code requirements.”

Overlooking the fact that you don't identify what “Internal Revenue Code *requirements*” you are talking about and in what Code section I might find them, I have attached a six-page letter sent out by the office of the IRS Chief Counsel.

I call your attention to a paragraph on page 5 of that letter (which I have highlighted). Notice that paragraph states:

Accordingly, a Form 1040 that reports zeroes on each line and is signed by the taxpayer without any modifications, additions, or deletions to the attestation statement should generally be treated as a return for the purposes of sections 6501 and 6511.

I have signed my Form 1040 “without any modifications, additions, or deletions to the attestation statement,” so you are required to treat my return “as a return for the purposes of sections 6501 and 6511.”

Section 6501 establishes the general rules concerning “assessments and collections,” while Section 6511 establishes when returns are filed for the purpose of claiming a credit. So there is no doubt that my “zero” return fulfils all the qualifications with respect to the filing of a return. Since a “0” is just as much of a number as “\$50,000, you are to treat my “zeros” just as you would anyone who reported \$50,000 as gross income on their return.

I also would point out that on page 6 of that letter, the Chief Counsel points out ““We nevertheless reaffirm Long's analysis.” That letter also refers to *United States v. Kimball*, 925 F.2d 356 (9<sup>th</sup> Cir. 1991). You will not that I too cited both *Kimball* and *Long* in support of my “zero” return, at paragraph 4. So it would seem that both I and the Chief Counsel agree on that point.

In addition, I had no income in the “constitutional sense” pursuant to House Report 1337 and Senate Report 1622 as referenced in footnote 11 of *C.I.R. v. Glenshaw Glass* 348 US 426. So the zeros on my return correctly reflect my taxable income for that year.

I trust that this settles the matter, and you will proceed to process my return, just as you would any other return.

Constitutionally yours,

## EXHIBIT B – SCHIFF REPORT 7-4

As shown on page 25 of *The Federal Mafia* the Government uses the intimidating power of the IRS to deny American workers the right to claim "exempt" as provided by Code section 3402(n). This statute is so simple and clear that no one should have any trouble understanding it – especially those lawyers who are called upon to advise employers, since lawyers are presumed to understand statutes. Section 3402(n) is reproduced on page 155. It starts off, "Notwithstanding any other provision..." which means "in spite of." So, "in spite of" any other provision, employers are not "required to deduct and withhold any tax..." if employees furnish them with "withholding exemption certificates" as represented by a W-4. It is clear that there is nothing in Section 3402(n) that makes an employee's right to claim "exempt" dependent on IRS approval. As a matter of fact the IRS is not even mentioned in Code section 3402(n), or anywhere in subtitle A, for that matter.

In addition, there is nothing in section 3402(n) that requires employees to explain to anybody why they are "exempt." An employee's sworn statement speaks for itself. Therefore, how can lawyers advise employers, that they are required to honor unsigned letters from alleged IRS employees telling them to ignore sworn statements received from their *own employees* in accordance with section 3402(n)? But they do! We have even heard from state and municipal employees, that such governmental agencies are honoring such unsigned letters from the IRS. It is understandable how private employers can be intimidated by the IRS, but how can state and municipal governments be intimidated? State and municipal attorneys – *especially*- should be able to understand statutes. So how could such lawyers fail to understand the unfettered right of state and municipal employees to claim "exempt" under section 3402(n)? I will cover this kind of lawyer incompetence more fully in my next book

In any case, the Government is getting so desperate, because of the number of people who have now discovered they have a right to legally claim "exempt" from withholding, that the Government is now blatantly throwing all law to the wind and allowing the IRS to write letters to major employers telling them, not only not to honor exempt W-4's, but to treat such W-4's as if the employee had claimed 0 or 1 withholding allowance. So by claiming "exempt" you run the risk of having even more taxes taken from your pay, than if you had merely claimed 3 or 4 withholding allowances. What can you do about it? The answer is not simple: you have to decide the best approach for you to take – to protect your legal right not to have taxes taken from your wages. I can only supply you with some options. The Government's treachery in connection with W-4's is further compounded by the fact that withholding taxes are even income taxes, but represent an unconstitutional, non-apportioned "wage tax," as explained in pages 159-163 of *The Federal Mafia*. However, it is refundable under section 31(a)(1) as claimed in paragraph 10 of the attachment to the "zero" return.

So let's examine your options. For one thing, if you can speak directly to your employer, you can explain to them that employers are not legally required to send employee W-4's to the IRS. While you can show your employer the law, as shown on page 155 of *The Federal Mafia*, it will be more impressive and compelling if you show your employer the actual statute, as it appears in the IR Code, which, of course, Freedom Books sells – and which comes highlighted, tabbed, and underlined for easy reference.

You can show your employer that nothing in the law requires them to send your W-4 to the IRS, and, obviously, no Treasury regulation, IRS "directive" or publication can override the clear wording of the statute. Seeing the law itself, should convince your employer that all they need do is withhold on the basis of what is claimed on your W-4. If an employee claims "exempt," the employer need not withhold any so called "income tax" from their wages. The employer merely files the employee's W-4 in his employment jacket, since it furnishes the legal basis for the employer not withholding any "income taxes" from that employee.

Should your employer get a letter from the IRS telling him/her not to honor your "exempt" W-4, you can assure them that if they continue honoring your "exempt" W-4, nothing will happen to them. Give them a letter guaranteeing to reimburse them for any expenses they might incur if they continue honoring your "exempt" W-4. Ask them to call the IRS and ask them to identify the statute that authorizes IRS employees to "direct" employers not to honor employee W-4's, filed in accordance with Section 3402(n). In sum, if you have an employer with some backbone, who you can talk to and influence, you will have no problem claiming "exempt." The problem is,

suppose you don't have an employer you can influence? The IRS relies on an employer's ignorance of the revenue laws, and their fear of the IRS to get employers to do anything when it comes to their employees.

If you work for companies like General Motors or American Express you will not be able to speak to the person who actually pays your salary. You will only get to speak to somebody who will say, "We have to do what the IRS tells us," and that person might even be the firm's incompetent and spineless legal counsel.

So while you have a legal right to claim "exempt" you might have to adopt another strategy to avoid the IRS illegally "instructing" your employer to ignore your W-4 "exempt" and extracting far more in withholding taxes than might be withheld if you had merely claimed 3 or 4 withholding allowances. Therefore, you might want to claim 9 withholding allowance, in lieu of claiming "exempt." In many cases, 9 withholding allowances might eliminate the withholding of any taxes, without having to claim "exempt" or it might eliminate a substantial portion of your taxes, and the balance you might get back with a "zero" return.

Withholding allowances pursuant to Code sections 3402(d) are related to dependents and are called "withholding exemptions." However section 3402(m) refers to "withholding allowances" and provides for the taking of "additional withholding allowances" that have nothing to do with dependents. It allows you to take "additional withholding allowances" related to "deductions required to be taken into account in determining adjusted gross income under section 62(a)..." Since, as covered in this tape (and Pages 42-43 of *The Mafia*) you have no income in a "constitutional sense," you can not have any "adjusted gross income" as defined in Section 62(a). On this basis, it would appear that you can take as many "withholding allowances" as is necessary to eliminate withholding altogether; however you should consider only claiming 9 "withholding allowance." While I recommend filing "exempt," as I have already explained, this might result in your having a greater amount of taxes (illegally) taken from your pay than if you had merely claimed 3 or 4 withholding allowances. You can sue the government if they do this, as explained in "Schiff Report 7 -2 & 3 ; however, in the meantime time you might not be able to meet your mortgage payments and other basic living expenses. Since employers are advised by the IRS to send the IRS all W-4's claiming "exempt" or claiming 10 or more withholding allowances, by claiming 9 withholding allowances you should be able to slip under this (illegal) radar, and you might never have to justify your claim of 9 withholding allowances. Also if you work for an employer who gets a letter from the IRS telling them to disregard all "exempt" W-4's, you will not get caught in that illegal net.

As further protection, you should write the following statement on the back of the W-4, on which you claim 9 withholding allowances. "This W-4 is not filed voluntarily. If I didn't file it I would not get paid. While I am entitled to claim "exempt," since I had neither income in the "constitutional sense," nor any tax liability for this year or last, I am compelled to claim 9 withholding allowances, since the IRS 'instructs' employers to disregard employee 'exempt' W-4's and to withhold the maximum amount of tax in such cases." This may be a lot to write, but squeeze it in.

This statement on the back of your W-4 should eliminate the ability of the Government to use your W-4 against you, even if the information were false, which it is not. The Government cannot compel you to give them information, and then use such compelled information against you. The Government can only use against you information voluntarily given. This statement establishes that the information on your W-4 was not given voluntarily. As a matter of fact, the Privacy Act Notice on the back of the W-4 states that "The Internal Revenue Code *requires* this information..." Your written statement merely confirms this fact. Should the IRS send you a form letter asking you to substantiate your withholding allowances, you need not respond to it. All Government requests for information must show an OMB number- usually displayed in the upper right hand corner of the document. You can see such an OMB number on the upper right hand corner of the 1040 shown on page 274: it is 1545-0074. If an IRS request for information does not contain an OMB number, it is a "bootleg" document and need not be responded to. You can send back such requests for information by writing on the form. "Since this form does not contain an OMB number, it is a "bootleg" document and does not merit a response." Or you can answer it by claiming you had no income in the "constitutional sense" and say; "See House Report 1337 and Senate Report 1622 as referenced in footnote 11 of , *C.I.R. v. Glenshaw Glass* 348 US 426"