UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America
Appellee,

v.

Dkt. No. 12-1712

IRWIN SCHIFF,
Appellant.

MEMORANDUM OF LAW IN SUPPORT OF APPELLANT'S MOTION AT ISSUE

Comes now the Appellant, Irwin Schiff, pro se, and in support of his Memorandum of Law in Support of Appellant's Motion at Issue, states as follows:

Appellant was charged with filing federal income tax returns that were "false and fraudulent". However (as was quoted on all of Schiff's zero returns at issue) his reporting of zero income was based on his understanding that the Supreme Court, who, in Merchant's Loan and Trust, held that "the word (income) must be given the same meaning in all of the Income Tax Acts of Congress as was given to it in the 'Corporate Excise Tax Act of 1909' and that meaning has now definitely been settled by decisions of this Court." (See Appellant's zero return in Exhibit A, pages 9 as shown in his book, "The Federal Mafia: How the Government Illegally Imposes and Unlawfully Collects Income Tax", hereinafter referred to as "Federal Mafia").

Since neither the Appellant nor any of those filing zero returns had any income that would have been taxable under the Corporate Excise Tax Act of 1909, they rightfully reported zero income on all the zero returns at issue. At trial, Schiff testified at length as to why the Supreme Court holding in Merchant's Loan and Trust was still valid law. (See attached B transcript pages-- hereinafter referred to as "TP"). In addition, Schiff testified how the 1895 Pollock decision (never reversed, nor overturned, the 16th Amendment notwithstanding) as well as House Report No. 1337 and Senate Report No. 1662, 2nd Session, 83rd Congress) (attached as Exhibit B also supported his understanding of why he could legally report zero income. Both Congressional reports stated that "income" as

used in 26 USC 61 was used in its "Constitutional sense" which is obviously different from income used in its "ordinary sense" as taxpayers generally report it.

At trial, the prosecutors did not challenge Schiff's understanding of these cases and Congressional reports in any way, nor did they present any witnesses who contradicted Schiff's understanding as to why these Supreme Court decisions and Congressional reports allowed him to legally report zero income.

Obviously, to convict Appellant of 11 of 12 counts of the indictment charging him with filing "false and fraudulent returns", the government had to prove that his understanding of these aforementioned Supreme Court decisions and Congressional Reports were false and that he was aware that his understanding of them was also false.

Therefore, this panel already has proof that Appellant cannot be guilty of any of the charges in the indictment. However as the following will show, both the district and Appellate court have an overriding self-interest in not reversing Schiff's conviction. Therefore, the 9th Circuit could not impartially evaluate Appellant's §2255, and therefore would claim that any material/ valid issue that Schiff would claim as to why his conviction should be reversed would be ruled by the Court as "harmless error."

All of the claims and charges in the Court's ruling were either false or had nothing to do with the charges in Appellant's indictment as stated above. Appellant will now address those charges in the order they appear in the Court's order of November 7, 2013.

I. The Government's ruling refers to its claim that Appellant was legitimately convicted of being in a conspiracy "to defraud" the United States (with two of his employees) by interfering with the functions of the IRS's ability to ascertain, compute, assess and collect taxes." However, as Schiff will show, if any fraud is taking place, it is being perpetuated by the Government, in support of their attempts to deceive the public into thinking that there was/is a law making individuals "liable" for Federal income tax. In addition, as the following will show, the IRS has no lawful authority to "assess, compute, ascertain, or collect" taxes. So the Government's bedrock allegation is without merit.

However, the jury was instructed pertaining to how they were to determine that a conspiracy existed. For example, in Jury Instruction No. 27, "in order for a conspiracy to exist there has to be an agreement, though the agreement need not be formal." Also, jurors were told that "although individuals may be working

together, it did not necessarily mean there was a conspiracy." All the indicted parties obviously worked together at Freedom Books to promote the interest of Freedom Books- which was to sell the products of Freedom Books, and provide additional information as requested by the public. The Government presented no evidence or testimony that any of these products sought to defraud the Government of any taxes legally owed. No witness ever testified concerning an agreement, be it formal or informal, so this element was neither raised nor proved.

The Government has never proven a single Count One claim. For example, page four of the Government's indictment says,

> "The alleged conspirators promoted, marketed, and sold materials , contains instructions on how to file false and fraudulent 'zero returns'... and how to file false and fraudulent exempt IRS forms W-4's with employers to stop tax withholding."

Although the Government made reference to materials sold by Freedom Books, they did not introduce any Schiff book, document, audiotape, or videotape which allegedly advised people to file false tax returns. If the Appellant was marketing material advising people how to file false documents, why weren't these documents introduced at trial?

The Government made repeated claims that the Appellant "advised" people how to file false and fraudulent W-4's. In "Exhibit A" (Pages 154 and 155 in the "Federal Mafia"), Schiff explains how an employee can legally stop withholding taxes from his paycheck by reproducing IR Code Sect. 3402(N). It explains, in pertinent part, that, "if an employee believes he incurred no liability for the preceeding year and anticipates no liability for income tax... for his current taxable year, then he can legally claim exempt from withholding." On page 154 Appellant states, "Based upon your current understanding of the law, do you think you could supply your employer with such a statement?" The Appellant also sold thousands of copies of the IR Code, and almost all of the witnesses testified that they had purchased IR Codes from Freedom Books. Thus, all an employee would have to do is reference the index of the IR Code sold by Freedom Books, published by the Research Institute of America, and they would see an insertion in the index (enclosed hereto as "Exhibit C") marked, "Liability For". Its list directs the reader to the Code Section for some 31 Federal taxes. However, the "income tax" is not included. From this one insertion, an individual could reasonably conclude that no such thing as an income tax "liability" exists. In addition, at least three witnesses testified that they claimed exempt as a result of the information in the Appellant's book. Yet the Government (on cross-examination or

re-direct) never made any attempt to show why the witnesses' "exempt" claim was false. Schiff even asked one witness why he believed he was exempt from withholding. This would have been an excellent opportunity for the prosecutor to impeach Schiff's beliefs and expose the flaws in his theories. Interestingly, the government never availed themselves of this opportunity. Even more curious was the government's objection to a witness doing so- and the Court sustaining it. Obviously the prosecutor did not want the jurors to know that they, too, can legally stop the withholding of taxes from their pay.

Please find attached page 167 of "The Federal Mafia". In it, Schiff explicitly warns that although a citizen has the <u>right</u> to claim "exempt", he could be placing himself in grave legal peril by exercising that right:

> "... by claiming exempt you run the risk of going to jail! That's just how it is in Amerika. So you have to consider whether or not it's worth the risk."

Thus, all the Government's claims in Count One are demonstrably false. Nobody was ever encouraged to file a false W-4. This false charge is characteristic of the indictment as a whole.

II. Schiff was <u>not</u> merely charged with filing false zero returns, as stated in the order. He was charged with filing returns that were false- and that he knew they were false.

Because of the Government's failure to call witnesses in support of their claim that Schiff's zero returns were false (and that he knew they were false), the Appellant called Special Agent David Holland (the government's primary witness before the grand jury) as an adverse witness. It was Holland's testimony that persuaded the grand jury that Schiff's "zero returns" were false and fraudulent. Appellant handed Holland a "zero return" (TP 4482-3) and asked him to point out any statement that he considered to be false and fraudulent. The prosecutor immediately objected:

> "It is appropriate for the Court to be the only one to opine on what may be an accurate or inaccurate statement of the law... I think it's appropriate that no witness on either side go into that. We leave that to the Court."

Schiff, however, sees another "agenda" behind the Prosecutor's objection: the Government knew that Holland <u>could not identify</u> any statements on Schiff's zero return that were false or fraudulent. The inconsistency and the injustice thereof is readily apparent: Schiff was charged with a serious Federal crime involving his tax return, but neither the Government nor the Court would permit Schiff to inquire of a government witness as to what, specifically, was <u>wrong</u>

with it! Schiff contends that this proves his theories correct, and he should have never have been charged with such a crime. The Government could not meet its burden to prove that a crime had been committed. The prosecutor attempted to confuse the jury by shifting the burden of proof to the Court, who sustained the Government's objection) and says

> "The Court instructs on the law. The Court has addressed the attachments or will address them later if I have not addressed them already."

The Appellant never asked Holland to instruct on the law- merely to point out false, factual statements on the return, as charged in the indictment. This was a blatent effort by the Court to get the prosecution "off the hook" and confuse the jury.

On TP 2527-2530, Appellant cites United States v. Conner and United States v. Ballard. Both decisions point out that the word "income" is not defined in the IR Code. Since we have to look outside of the Code to find the meaning of "income", the Supreme Court cases and Congressional reports above cited provide the legal meaning of the word "income".

In the United States Supreme Court Digest (attached as Exhibit "O") the Supreme Court quotes both Brushaber and Stanton v. Baltic Mining in explaining that the purpose of the 16th Amendment was not to amend the Constitution but to avoid the need of apportionment as to exclude the source from which a taxed income was derived,"which is what "income" (in a constitutional context) means.

However, when Schiff attempted to cite the Merchant's case, Judge Dawson said, (at TP 2527-2530).

> "Merchant's Loan and Trust was decided in 1921. It has nothing to do with this case. The... there are subsequent cases that, uh, say so. Are you arguing, sir, from a position that has been rejected by every court in the United States for the last 91 years?" (See TP2530)

These statements were without merit. Apparently, the Court is laboring under the mistaken impression that a **Supreme Court** decision loses its validity due simply to the passage of time. This is untrue. Merchant's was never specifically reversed or overturned, notwithstanding the 16th Amendment. Merchant's Loan and Trust is of significant importance to Schiff's case. It was cited on every one of his zero returns and provided Schiff with his good-faith belief that he could legally report zero income for all years at issue. To successfully dismantle Schiff's case, an opponent must first dismantle Merchant's. Since Judge Dawson was trying to get Schiff convicted, he would have Shepardized Merchant's and would have found it was never overturned. So he merely

fabricated his claim that Merchants had been overturned by some unstated "Mystery Decision".

Next, the ruling at issue claims that Schiff was convicted of failure to pay income tax. Not true. Had Schiff been charged with this offense, it would have been a misdemeanor, pursuant to IR code section 7203. Instead, Schiff's alleged failure to pay income tax was an element connected to his charge of tax evasion (a felony), pursuant to Code Section 7201, as charged in Count 17. However, as stated in Jury Instruction #33, there must be a deficiency in each of the years (1979-1985) for Schiff to be guilty of Count 17. As the following will demonstrate, Schiff had no tax deficiency in any of those years. See Exhibit "E". Taken from the IRS decoding manual, ADP and IRS information, (See Exhibit M) these entries show the Transaction Codes that the IRS uses to record taxpayer activity. A "TC150" as stated in the report, is used to record an original assessment made pursuant to Section 6201. Notice that a "TC300" is used to indicate a supplemental, deficiency assessment pursuant to Section 6211. A TC300 "entry" can only be made to a module that already contains a TC150 assessment. For a deficiency to exist, two assessments have to be made: an original, TC150 assessment, and a supplemental TC300 assessment.

Attached is Exhibit "F", a five-page document which was used as the basis for reducing to judgments Appellant's alleged assessments for the years 1979-1985. The basis for this document was a declaration by a revenue officer, Sandra Davis, who certified as to the assessments made against Appellant for the years of 1979-1985.

Notice that only one assessment was shown as having been made for each of the years 1979-1985. This had to be a TC150 assessment. Therefore, no TC300 deficiency assessments could have been made for any of those years. This document alone nullifies the charges contained in Count 17. But in addition, the fraud penalties shown on the document were allegedly made pursuant to the fraud provision in Code §6655(B) (repealed). However, the fraud provisions contained in this code section are based on there being a deficiency. Since no deficiencies were recorded for the years 1979-1985, all the fraud penalties provisions were fraudulent, and thus void. In addition, all the original TC150 assessments were also fraudulent as will be shown further on. So not a single entry on this Government document which claimed Appellant owed 2.3 million was legitimate.

As additional support of his position, Schiff attaches six Government documents showing taxpayer activity for the years 1980-1982 (EXHIBIT G) (which are

representative of the entries that would have been made for the years 1983-1985). The first documents show taxpayer activity including the TC Codes involved. The second set of documents are the definitive IRS 4340 documents, which do not show coded entries.

All the TC coded documents showing zero amounts were assessed as deficiencies, meaning that none existed for each year. Again, this is verified by the 4340's, which show entries of zero amounts for supplemental, deficiency assessments.

These six documents which nullify Count 17 were supplied by the Appellant and his attorney when they filed the original supplemental appeal. The Ninth Circuit, however, in declaring both appeals "unauthorized", also claimed that all of the issues raised (without addressing them individually) were "frivolous". Schiff's attorney should have not been severely sanctioned for having raised them. This one issue alone would have irrefutably reduced Schiff's sentence by five years. Although his current attornies believed this to be a legitimate legal issue in support of his §2255, they refused to raise it, since the Ninth Circuit previously declared it to be "frivolous" and heavily sanctioned his previous attorney for raising it. As was stated by the lead attorney for the firm handling Schiff's §2255, his firm 'had a national reputation to protect and could not risk being sanctioned for raising this issue.' They said that if Schiff insisted on raising it, they would include it in his §2255, but he would have to file his §2255 pro-se. Since Schiff had prior experience with the Ninth Circuit not addressing even one of 11 arguments he had raised in connection with his appeal of the Government's reducing his assessments to judgment. (This issue will be addressed in a later footnote if time and space permits). Schiff feared filing a §2255 pro se in the Ninth Circuit, concerned that they would ignore every issue he raised, as they had in the past. (See Exhibit).

Schiff is currently incarcerated in connection with the five year sentence imposed on him due to Count 17, because the Ninth Circuit falsely sanctioned his prior attorney for having raised this valid issue.

III. On pages 3 and 4, the Ninth Circuit states in its ruling that, "on direct appeal the Court characterized the evidence against Schiff as overwhelming. Particularly the evidence that Appellant attempted to deceive the Government with his zero returns." Both statements are untrue and totally without merit.

On each zero return, Appellant explicitly stated that he was reporting zero income pursuant to his understanding in which the Supreme Court held that "income" in all revenue laws meant Corporate Profit. Therefore, Appellant was reporting his income accordingly.

So what was deceptive about that statement? For the Ninth Circuit to find the statement deceiving, they had to further contend that Appellant was reporting his income in the ordinary sense and not in the Constitutional sense, where income must be separated from its source. But the Ninth Circuit knew that Appellant had from 4 to 5 employees, occupied a spacious building, sold thousands of books, audio and videotapes. Schiff put on seminars that were well attended, and charged a substantial fee for telephone and personal consultations. It would be extremely foolhardy for the Appellant to attempt to deceive the Government by claiming that year after year he received no personal income from all this economic activity. Where did the money come from to pay his personal expenses such as food, rent, clothing, and entertainment? While somebody might attempt to deceive the government by under reporting their actual income, who in their right mind would attempt to deceive the government by reporting no income at all from a reasonably successful business?

As opposed to the evidence against the Appellant being "overwhelming", the evidence was non-existent. The Government already admitted that it would call no witnesses to prove that Schiff's zero returns were false and fraudulent as charged in 11 of the 12 counts of the indictment.

Furthermore, the ruling claims that "Schiff was aware his claimed beliefs lacked merit and that he simply disagreed with the law." No statement could be more further from the truth. For example, Schiff wrote on page 11 of his book, "The Federal Mafia", (See Exhibit "A") that he agreed with the Government that the "income tax is voluntary" and quoted from the Supreme Court decision Flora v. United States. This quote was repeated in the first question asked of him on direct: "do you believe the laws are unconstitutional?"

> Schiff: "I agree with all of them. I believe every law is valid. That's why I sell the Code. And one of these days the IRS may start obeying those laws. (TP 4509-10)

Further on, Schiff said: (TP_____)

> "I have never been able to find a law that says you gotta pay income taxes, that you're liable for income taxes, that you have to keep books and records for income tax purposes. And if the Government ever shows me such a law in cross-examination, I'll take back everything I've ever said about the IRS, take all my books off the market, and put in an application at McDonalds."

However, the government never produced any such laws in cross-examination, since obviously the Government couldn't find them either.

Furthermore, On TP____, the Government stated (with the jury out) that Appellant "believed the laws were unconstitutional". Schiff never made such a claim, neither in his pretrial motions nor at any other point in his trials. Schiff stated to this Court, "if the Government ever makes such a claim to the Jury in his final Argument, I will call for mistrial." However, the Government stated this falsehood many times in his final argument (see TP_____). However, since the Prosecutor was on the other side of the courtroom with his back to the Appellant, Appellant could not hear the Prosecutor's final argument so was unable to object to the many false claims. Note that on TP4516-4518, Appellant states again, "I have never been able to find a law that says you gotta pay taxes, that you are liable for income taxes and that you gotta keep books and records."

At this point the Government objects and states, "the law should come from the bench". Judge Dawson then sustains on this basis. How could Schiff quote from a law that he stated he couldn't find? This makes no sense and reveals the collusion that was taking place between the bench and the prosecution.

The statement in the Court's final order that Appellant, "disagreed with the law" is erroneous. This statement is not in evidence anywhere and is completely without merit, as shown above.

Next, the Court says that "Schiff was punished for filing zero returns." Not true. Schiff was punished because both the trial court and the Appellant Court pretended to be bound by a fraudulent and vindictive alleged probation violation by a Connecticut District Court Judge, rather than be bound by two precedential Ninth Circuit Appellant decisions quoted in all of Schiff's zero returns. They were, United States v. Long, 618 F.2d 74 (1980), affirmed by United States v. Kimball, 896 F.2d 1218 (1990) (See footnote #1).

As quoted above, since the Government has already admitted that they were not going to call any witnesses to testify that Appellant's zero returns were false, they didn't even attempt to prove that Appellant's returns were false, let alone that he knew they were false.

IV. WHY THE DISTRICT AND APPELLATE COURTS HAD A SELF INTEREST IN CLAIMING THAT APPELLANT'S ZERO RETURNS-- THOUGH CORRECT-- WERE INCORRECT

For example, in jury instruction 19 , Judge Dawson falsely states:

"Gross income is defined in Section 61" (this is one of **four** misstatements in only **one** jury instruction (19), which will be covered later on). For reasons already covered, since income is not defined in the code, neither is net or taxable income (as allegedly defined in Section 62 and 63), since all these "definitions" are dependant on the meaning of "income," which itself is not defined in the code. But in jury instruction 19, Judge Dawson specifically states that gross income "includes wages and salaries". Specifically, even such sources as wages and salary were removed even as sources of income in Section 61 of the 1954 code as they have been included in Section 22 of the 1939 Code. However, wages and salaries could not be included in the word "income" on any basis, since wages and salaries cannot be separated from the source, as for example, a corporation can separate, from their source, interest and dividends. A tax on a person's wages is a direct tax on his personal property, which is his labor. And as such, it would be "void and unconstitutional if not apportioned" as specifically held in Pollock. But obviously, in giving this jury instruction (since Judge Dawson does not explain the difference between the source of one's income and income separated from the source), the jury is misled to believe that a person's taxable income is based upon the total amount of the sources of income at issue (including wages and salaries) and not income separated from those sources. Similarily, in all of the Ninth Circuit's decisions relating to an individual's taxable income-- be it criminal or civil-- the Ninth Circuit always determined a person's taxable income based on the sources of his income (less deductions) and not on income separated from those sources. Thus again, each and every decision rendered by the Ninth Circuit over the last 50 years has been both false and unconstitutional and have violated the Pollock decision, Brushaber decision, Stanton v. Baltic Mining, Merchant's Loan and Trust, and the Congressional Reports, just to identify merely four decisions. When the Ninth Circuit saw Schiff's zero returns, they obviously realized they were correct (since no witness at Schiff's trial testified that they were not correct). However, if the Ninth Circuit were to acknowledge that Schiff's zero returns were correct, they would be acknowledging that all their prior decisions (especially regarding individuals) were incorrect. Since one cannot separate an individual's income from its sources, no private citizen can have taxable income (based on the statutes, court decisions, and congressional reports as stated above) that are greater than zero. If the Ninth Circuit determined that any individual's income was greater than zero, that decision would have been false

and unconstitutional. Obviously, the Ninth Circuit had a self-interest in concealing the fact that all of its prior decisions on the income tax had been false and unconstitutional. Therefore, they had to go to any length to hold that Schiff's zero returns were false and fraudulent. This is why the Ninth Circuit's contrived reasons as to why Schiff's zero returns were false, were not only false but illogical. This is also why the Ninth Circuit could not evaluate Schiff's §2255 impartially since it had a vested, overwhelming self-interest reason to make sure that Appellant was incarcerated for as long as possible so as to protect its own reputation for allegedly handing down correct decisions involving income taxes-- when all of its decisions, as stated above, were false and unconstitutional on the date they were issued. Therefore, it would falsely claim that any issue raised by Appellant's attorneys (regardless of how material) as to why Schiff's conviction should be reversed were always termed to be "harmless errors". The above should be so self-evident that it is needless for the Appellant to spend any more time on this. However he will give one such example: No doubt, both the court and the prosecutors were well aware of Schiff's book, "The Great Income Tax Hoax", which spent far more time explaining the meaning of income than contained in any of his other books. One chapter was entitled "Income, What Is It?" followed by another chapter entitled "Why No One Can Have Taxable Income". As shown on TP , Judge Dawson did not let the book in because "it contains misstatements of law". This, of course, represents facts not in evidence. When Judge Dawson said that, Appellant should have handed him a copy and asked him to identify any statement in it that was in violation of any law, but Appellant was too inexperienced to do so. In reality, if Judge Dawson had found any such misstatements, so would the Prosecutor. Therefore, they would have allowed the book to be admitted, so these false statements could be used to impeach Appellant so as to help prove the charges against him. But since no such misstatements of law existed, they kept the book out, which would have given official, authoritative support to Schiff's testimony, which the Court continually undermined, cast aspersions on, belittled, and undermined.

In Brushaber v. Union Pacific Railroad, 240 U.S. 1 (1915), the Court held:

> "the contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying two great classifications which have been recognized and enforced from the beginning, **is wholly without foundation**."(Emphasis added).

In the case of Stanton v. Baltic Mining, the Court said:
"In order therefore... that Article I may have proper force and effect...

it becomes essential to **distinguish** between what is and what is not "income" as the term is used, and to apply the distinction, as cases arose, according to truth and substance, without regard to form. With respect to the meaning of "income", Congress cannot-- by any definition it may adopt-- conclude the matter, since by legislation, alter the Constitution from which it derives its **power** to legislate, and within those limitations alone that power can be **legally** exercised."

So the reason why income is not defined in the Internal Revenue Code is that Congress has no authority to define it. And since gross income, pursuant to Section 61, and Net Income and Taxable Income are all not defined is that these alleged definitions are dependent on the definition of "income"... which is not defined.

As stated in Eisner v. Macomber (Page 16) and as repeatedly held:

"This (the 16th Amendment) did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income."

Despite all of the above, the 9th Circuit held in In re Beaucraft, 885 F.2d 547-49 (1989) as follows:

"For 75 years the Supreme Court and the lower Federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a non-apportioned direct income tax on American citizens residing in the United States and thus the validity of the Federal income tax as applied to such citizens."

So the Beaucraft decision is basically contrary to all of the decisions cited above. Since the 16th Amendment gave no new power to Congress such as the ability to impose a direct tax without apportionment. And such an argument was specifically stated in Brushaber, as being "without foundation". Therefore, the 9th Circuit's decision in In re Beaucraft is totally without merit.

Judge Dawson's claim in Jury Instruction 19 is false. Section 61, 62, and 63, which allegedly defines "gross income", "net income", and "taxable income", do not define them at all, since their definition is based on the meaning of income itself, which as stated above, Congress has no authority to define. In claiming in that instruction that wages and salaries are included in "gross income" merely compounds his misleading of the jury. These items were specifically removed from Section 61, as they appeared in Section 22 in the 1939 code. Unlike interest and dividends, "they cannot be separated from their source". Taxing a person's wages and salaries is not a tax on those sources, but is a direct tax on his labor, which generated the wages.

Pursuant to Pollock, such a tax on income is "void and unconstitutional unless apportioned." However, this is exactly how the Ninth Circuit has determined a person's taxable income in all of the decisions it has rendered in

Attached in Exhibit X are the two returns Schiff filed for the years 1980, 1981, and 1982 which would be representative of these returns for the years at issue. Notice, all of Schiff's zero returns were dated 10/13/1990. Notice they are all endorsed as having been received at the Andover Service Center on Oct 19, 1990. The second set of returns were all erroneously dated 8-1-99, which should have been 8-1-91) since they were submitted by Schiff at the second session of his probation violation hearing. The first date of the hearing was in April or March of 1991. And these were the tax returns from which all of the assessments shown on the documents as contained on page 3 of Exhibit F. Notice that the second set of returns from which those assessments were made does not contain one endorsement showing that they were ever processed. At TP , Christy Morgan states that when a return has a document locator number, it means it was processed. She further states at TP that if a return does not have a document locator number, it was not processed. So all the entries showing a tax due as contained in Exhibit X. Clarifying these assessments further (at TP 1677) Judge Dawson says, "this records your self-assessment, not the government's self assessment". Further proof that Schiff's zero returns were valid are contained in TP 536, 537 and 2660-2667. These entries acknowledge that Government witnesses Ms. Mitchell and Thomas Allen received deficiency notices with respect to the Zero returns they filed. So when Judge Dorsey claims in his probation violation ruling dated November of 1991 that Schiff's zero returns were invalid, assessments had already been made from them. So obviously Judge Dorsey's claims were false and fraudulent. Further, Judge Dawson states those self-assessments are yours and not the government's thereby acknowledging that assessments were made from Appellant's zero returns. (TP 1677).

Thus Schiff's zero returns were not invalid, as was continually charged by both the Court and the Government throughout Schiff's trial, and as falsely charged in this Court's final Order of 11/7/13.

the last 50 years. They have always determined a person's taxable income by totaling up the sources of his income (less deductions) and not on his income "separated from those sources". So in basing a person's taxable income on the sources of a person's income, instead of income separated from those sources, the Ninth Circuit has falsely and unconstitutionally miscalculated a person's alleged taxable income on all of the decisions it has rendered in the last 50 years- and has instead unconstitutionally put the tax on the person's property that generated the income. By not separating income from its source, the Ninth Circuit was not putting a tax on the individual's income, as it was putting a tax on the source. Or, as stated in Pollock, it was actually taxing the real and personal property that generated the income, but not the income itself. And as stated in Pollock, "a tax on the income from real and personal property is void and unconstitutional if not apportioned." Since the Ninth Circuit, therefore, was not imposing the tax on income, but on the real and personal property that generated that income, all of the Ninth Circuit's decisions on income tax involving individuals have been "void and unconstitutional" on the date they were issued. Therefore, the Ninth Circuit had a substantial interest in seeing that Appellant went to jail for as long as possible for filing constitutionally correct returns. The Ninth Circuit did so to conceal the fact that they had been falsely and unconstitutionally imposing income taxes on persons who had no taxable income at all. Therefore there was no way that the Ninth Circuit was going to impartially going to rule on the validity of Schiff's zero returns.

On page 3, the Appellate Court, in it's final Order, cited Cheek v. United States 111 S. Ct. 604 (and again cited it further). In that decision, the Supreme Court said that in an income tax case, the government has a "threefold burden": 1) it must prove that the law "imposed a duty on the defendant"; 2) That the defendant "knew of that duty"; and that 3) He violated that duty "willfully". In Schiff's prosecution, the government proved none of these elements. At trial, during the Government's case in chief, it put on no witnesses who testified that any statute made Schiff liable for or required him to pay income tax, and therefore put on no witnesses who testified that the law imposes a duty. Therefore, it introduced no statute that imposed a duty on Appellant. When Schiff was on the stand he testified that he could find no law that made him liable for the tax, required him to pay the tax, or required him to keep books and records with respect to the tax. And on cross examination, the prosecutors confronted him with no law that required him to do any of these

things. So obviously, the government did not prove that Schiff was aware of any duty on him by the income tax.

As far as the issue of willfullness is concerned, in United States v. Bishop, ~~the Supreme~~ TP Court said, "one is not willfull if he relied on good faith in a prior decision of this court." Since on page 39 of its reply brief, the Government acknowledged that Schiff's belief that he had zero income was based upon his understanding "of at least the Pollock and Merchant's Loan and Trust decisions". Since the government further acknowledged that they made no attempt "to refute Schiff's understanding of these cases," they couldn't have proved that Schiff didn't rely on these Supreme Court decisions in 'good faith."Therefore, based on the Bishop decision alone, Schiff's actions couldn't have been "willfull". Schiff had requested a jury instruction based on the Bishop holding, but Judge Dawson refused to give it. Judge Dawson preferred to give a number of false instructions that benefitted the Government, rather than give correct instructions that might benefit the Appellant.

V. On page 4 of its Order, the Court stated that Schiff "knew that numerous tax returns submitted by his clients had been returned as frivilous by the IRS and had resulted in penalties upheld by the court", and that he "knew his positions regarding tax laws were rejected in every court to consider them." Apparently, the Ninth Circuit wants to overlook all the Supreme Court decisions cited above, such as those named above which support Schiff's views. Don't they count? But since neither the trial court nor the Ninth Circuit cannot adversely address the issues Schiff was actually charged with, they had to raise other issues that are both irrelevant and false.

In addition, the Oxford American Dictionary defines "frivolous" as "not having any serious purpose or value". The attachments included in Schiff's zero returns cite no less than 25 IR Code Sections, court decisions, the Privacy Act analysis, the purpose being to substantiate the legitimacy of the zero return. So based upon the definition of "frivolous" as shown above, how can such a document be called "frivolous"? Just because the IRS says so? In addition, this was the first time Appellant ever raised a "zero return" in any prosecution. He had never raised it before. This was simply another falsehood raised by the Government in his prosecution. In addition, the Ninth Circuit itself ruled in Long and Kimball that a return reporting zero income, even if the claim was false, was still a valid return. But neither Long nor Kimball contended that their reporting of zero income actually reflected their taxable income, as

Appellant contends. No prior court ever considered the validity of Schiff's zero return, since he never raised it in any prior litigation. But even if courts had rejected the zero return, it still would not mean the zero return was incorrect. As has been explained, the Ninth Circuit's decision in In re Beaucraft was incorrect.

In addition, Appellant was convicted of tax evasion in 1985, only after Judge Dorsey instructed the jury that they could convict Appellant of tax evasion, even if the Government did not prove the act of evasion he was charged with committing in the indictment. Attached please find the article from "The Journal of Taxation" (Exhibit I) in which the author pointed out that Appellant never committed the crime for which he was convicted. The Government introduced Schiff's 1985 conviction as notice. This itself was highly prejudicial since the Government was attempting to prove that Appellant was still committing the same crimes. However, as shown on TP , Judge Dawson refused to allow appellant to explain the basis of his 1985 conviction and refused to allow him to introduce the "Journal of Taxation" article on the grounds that "We are not going to relitigate that case." However, Schiff was not going to relitigate the 1985 case, only false jury instructions that resulted in his conviction. Based on this totally false jury instruction the jury might have correctly concluded that since Appellant's was framed in 1985. He might have been framed again- but by a different court.

See Exhibit I

Appellant has also explained how each and every Ninth Circuit decision involving the income liability of an individual has been incorrect for over 50 years. The issues raised in generating these decisions might have been false or correct, we do not know. But what we do know is that the Ninth Circuit decisions were incorrect, and basically proved nothing. But in addition, as the following will show, the frivolous penalties were illegally imposed. On TP 1535 (see attached), Christy Morgan identifies herself as being "the Civil Penalty Coordinator in the Frivolous Filer Department of the Examination Branch". On TP 1622 upon cross examination, she explains that she confers with IRS legal counsel, and based on his evaluation, the frivolous penalty is imposed. Schiff seeks to find out "is there some document which shows who takes specific responsibility for imposing the penalty". On TP1624, Ms. Morgan again confirms "that area counsel determines it. "

Appellant was holding in his hand Code Sections 6751, which explains how

the frivolous penalty is imposed, and it states in pertinent part:

> (1) In general, no penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate."

So obviously, Ms. Morgan's testimony that all the frivolous penalties imposed by the legal counsel were imposed in violation of the law. Therefore, to impeach her testimony and show the jury how the IRS disregards the law when it imposes penalties (which would help Appellant's defense) Schiff attempts to get Section 6751 admitted so he could confront Ms. Morgan with its provisions. Judge Dawson asked to see the statute. He would have seen from the provisions of Sections 6751 that the imposition of penalties as described by Ms. Morgan were all imposed illegally. Therefore, Judge Dawson has to improvise an objection to prevent the statute from being admitted. He therefore said on TP 1627:

"I've read it, and it doesn't matter. It's irrelevant."

How could the statute be irrelevant when it proves that the imposition of numerous penalties have been imposed in violation of the law? Further, Judge Dawson stated,

> "I'm completely familiar with this argument. And I've ruled on it many times."

Schiff further states that Dawson's claim that he has ruled numerous times on this statute is false. Few lay people on whom the penalty would be imposed would not have checked the stature to see if the penalty was imposed pursuant to the law. The lay public simply assumes that what the IRS does is lawful. Schiff doubts that Judge Dawson has ever seen the statute before. His additional comment that he ruled on it and that it was relevant was designed to further mislead the jury into believing that the statute had no substance, which is why Judge Dawson could disregard the statute "numerous times". So this is an example of how Judge Dawson conducted Schiff's trial "impartially".

VI. Further on, the ruling states that, "given the extensive evidence, Schiff knew his views of the tax law were incorrect". The Government put on no witness that testified that any of Schiff's views on tax laws were incorrect, let alone that he knew they were incorrect. Since the "Federal Mafia" had been admitted, the Government did not confront Schiff with any statement in the book that the Government claimed were false, and Schiff knew was false. In addition, since the Government could not confront Schiff with any law that made

him liable or required him to pay the tax or keep books or records. So why should Schiff have believed that his views on tax laws were incorrect?

VII. In addition, the ruling claims Schiff engaged in evasive conduct by hiding his assets from the IRS levies and seizures. As Schiff explained numerous times at his trial, he had to do so to avoid illegal IRS seizure, since he knew the IRS has no legal authority to seize property. On TP 4784, the prosecutor says to Appellant:

> THE GOVERNMENT: You've challenged the authority of the IRS to seize your property on direct examination and you testified, did you not?
>
> MR. SCHIFF: Yeah, of course. They are not even mentioned in the Code, so how could they seize my property legally?
>
> THE GOVERNMENT: You've made that argument to the courts before, have you not?
>
> MR. SCHIFF: I don't think so.
>
> THE GOVERNMENT: We'll get to that in a minute as well. Mr. Schiff, how many times have you gone to court against the IRS or the Federal government?

This dialogue proves that the IRS has no legal authority to seize anybody's property. The prosecutor brought up the subject because he obviously had a statute that he thought would refute Appellant's claim. However, Appellant reiterated his claim so forcefully that the prosecutor realized that the Appellant would see through any such ruse that the prosecutor anticipated using. So he decided to confuse the jury by changing the subject. Though he said he'll "get back to it later"- he never did. This proves, as far as legal litigation goes, that Appellant's statement that the IRS has no authority to seize anybody's property is correct. Therefore, if Schiff's statement was not true, the Prosecutor was duty-bound to refute his claim by producing a statute that showed his claim was false. He did not do so; proving Schiff's statement was correct. Furthermore, Schiff has included two documents in Exhibit J that irrefutably prove that the IRS has no legal authority to seize property ("C.F.R. Index"). This shows in what codes of Federal Regulations are the implementing regulations for various statutes that provide for seizure of property in connection with taxes. Notice, that for Statute 6331-6341, the implementing regulations for the statutes are contained in 27 (C.R.F.) Part 70. 27 C.F.R. contains regulations covering Subtitle D taxes, such as A.T.F.. Notice that none

See Exhibit N

of those implementing regulations are shown to be contained in 26 C.F.R.- the regulations that apply to income tax. This proves that the seizure provisions included in the Internal Revenue Code only apply to such excise taxes as liquor, tobacco and firearms, and don't apply to income taxes. The second exhibit shows a breakdown of the various departments of the Treasury. One of the sub-departments is entitled "Undersecretary for Enforcement", underwhich five sub-departments are shown. Notice at the bottom of the chart, there is a provision entitled "Alcohol, Tax and Trade Bureau" which obviously applies to ATF agents. It is shown being connected directly to the secretary for enforcement and is therefore shown to be subject to the enforcement powers of those six sub-departments. There is a box entitled "Internal Revenue Service", which obviously applies to income tax. Notice that it is shown as avoiding the box entitled, "Undersecretary for Enforcement" and is only tied to the Deputy Secretary, who has no enforcement authority. This document proves that no individual agency or department has any enforcement authority with respect to income tax. (see Exhibit N)

So the inference in the Court's final order that Schiff sought to avoid lawful IRS seizures by concealing his property is without merit. Since, as shown above, the IRS has no such lawful authority.

VIII. Attached as Exhibit K is a report labeled "CRS Report for Congress". This was a report prepared by a private attorney, John R. Luckey that Congressmen could use to answer questions of their constituents concerning the income tax. They were told that they can find answers in this report, which relieved the Congressmen from personally addressing the specific question. The report was introduced by the government as being "the law" and it was admitted on that basis. (See TP___) The primary reason it was admitted is that the report mentions Schiff in footnote 45 and basically called Schiff's claims with respect to the absence of income tax liability in the code, "arrogant sophistry." Basically, the report minimizes the issue of tax liability. In fact the report states that IRC 1, 63, 6012, and 6151 "working together are what makes persons 'liable' for income taxes." While practically all the claims in this report are without merit, the report does say something correct on page 4 and 5, stating in relevant part: (see pages 4 and 5)

> "In 1916, the Supreme Court examined the new income tax in the light of the Sixteenth Amendement... the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment and indirect taxes were still subject to the rule of uniformity."

The Court noted that in Pollock, "An excise tax is entitled to be enforced as such."

Interestingly enough, the next paragraph was captioned:

"WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX IS IN THE NATURE OF AN EXCISE TAX."

Thus, this report verifies in simple language all of the statements contained in the Supreme Court cases quoted above. This Government exhibit clearly and unequivocally states that despite the Sixteenth Amendment, all direct taxes still have to be apportioned (as required in the original constitution) while excise taxes have to be imposed by the rule of uniformity. However, the income tax is neither imposed as an apportioned direct tax nor as a uniform excise tax. Therefore, it represents a form of taxation that the Constitution never gave Congress the power to impose. So therefore this Court can have no authority to continue the Plaintiff's imprisonment-- which it did-- by rejecting the Appellant's §2255 and continuing to allow Schiff to be incarcerated pursuant to a tax that Congress has no constitutional authority to impose (even though Section 1 imposes an income tax, that imposition has no substance because the 1954 code contains no statute making anybody (even corporations) liable for or required to pay the "tax imposed".

This Court, the Ninth Circuit, can have no authorization to enforce a tax that the Constitution never gave Congress the right to impose. Immediately after Appellant pointed this out to the Court, Appellant filed a motion to dismiss all charges. Because the income tax was not imposed as the excise tax, this report clearly pointed out it was constitutionally held to be. On TP____, Judge Dawson rejected Schiff's motion to dismiss on this ground, but refused to state on what basis he did so, saying, "I don't have to answer any questions from you."

With respect to Judge Dawson's claim that "four statutes (working together) make you liable", Judge Dawson obviously got that from page 14 of the C.R.C. report, but changed the four statutes somewhat. Whereas the C.R.C. report stated Sections 1, 63, 6012, and 6151 were the alleged statutes working together, Judge Dawson changed this to sections 1, 62, 63, and 6012. It should be noted that this jury instruction is directly contrary to the Privacy Act notice in the 1040 booklet, which states, "Section 6001, 6011, and 6012 say you must file a return for any tax you are liable for. But even the Privacy Act does not say what sections make a person liable for the tax.

In this instance, the Ninth Circuit again refused to apply its decision in Roat v. C.I.R., 847 F2d. 1379, 81, which refused to extend the rationale it used in that decision to Judge Dawson's improvised jury instruction. In Roat, the

appellant said that sections (6211(a)) and 6020(b)) should be read together. In rejecting this claim, the court said,

> "nothing in the language of either statute suggests they should be read together."

Therefore, by applying the Ninth Circuit's logic in Roat, there is nothing in Section 1, 61, 63, and 6012 that say these sections work together. In addition, based on the Ninth Circuit's statement that "tax statutes have to be read individually", how could these four statutes be tied together? And whereas in Roat, the Ninth Circuit points out that the two statutes raised by the Appellant were "not even in the same subchapter". The four statutes identified by Judge Dawson were not even in the same **subtitle**! This jury instruction by Judge Dawson was so fundamentally flawed and fraudulent, it alone should have resulted in the reversal of the convictions of all three defendants. For example, Appellant asked the Government's summation witness on cross-examination:

MR. SCHIFF: Did you also recall Mrs. Mitchell saying she couldn't find a law that made her liable for the income tax?

He acknowledged that he did. He acknowleges that at least four other government witnesses claimed that they could not find the law that made them liable for income tax. So why didn't the prosecutor on redirect ask these witnesses, "how could you have overlooked the fact that Sections 1, 61, 62, 63, and 6012 working together made you liable for income taxes? How could you have overlooked that?" These government witnesses would have looked at the prosecutor (incredulously) and said, "what Treasury documents would have told us that?" In addition at least four defense witnesses and the Appellant would have said the same thing. So the jury heard ten witnesses say they couldn't find the law that made them "liable" for income taxes without the prosecutor on either redirect or cross producing any such statute. Therefore Judge Dawson believed he had to come to the prosecution's aid by giving this false and fraudulent jury instruction. In doing so, Judge Dawson undermined the actual testimony of witnesses at trial for the benefit of the government.

IX. ADDITIONAL FALSE JURY INSTRUCTIONS BY JUDGE DAWSON

In Jury instruction 19, Judge Dawson also says,

> "The Internal Revenue is authorized by Congress to enforce and administer the Internal Revenue Code. The Internal Revenue Service may assess taxes, and may lawfully seize or levy property without Court orders in order to satisfy tax liabilities."

Every one of these statements are false. The IRS is not even mentioned in the IR Code as having any enforcement powers whatsoever. In addition, Schiff has already pointed out by testimony and documentation that the IRS is without any

authority to seize property. Since the prosecutor could not challenge Schiff's testimony on these issues during his case in chief, Judge Dawson sought to undermine Schiff's testimony by way of jury instructions.

In Jury Instruction 20, Judge Dawson points out that the secretary of the treasury, "has the power to collect taxes, and such power can be delegated to local IRS agents." And such power, "had been delegated to local IRS directors." Obviously, if the IRS was authorized by Congress to enforce the income tax, they would not have needed any such delegation of authority from the Secretary. But, the Secretary never delegated such authority to the IRS. To have delegated such authority, a) he had to delegate such authority pursuant to 26 U.S.C. 7701(12), and in addition, such delegation of authority would have to be published in the Federal Register, pursuant to 44 U.S.C. 1505, but no such documentation was ever presented at trial. On page 264 of "The Federal Mafia" is a letter that Schiff received from the Treasury Department indicating that no such delegation of authority had been published in the Federal Register. As shown on Ex. A, pp. , Judge Dawson refused to allow Schiff to specifically bring this letter to the jury's attention on the grounds that the letter was "hearsay". (See TP__)

In jury instruction 21, Judge Dawson states, "In the absence of a tax return, the Commissioner of Internal Revenue is authorized to independently calculate the tax owed, and to prepare a substitute return for the taxpayer." This is a totally false instruction. No statute in the code authorizes the Secretary to determine an individual's total tax, and no section in the code provides for "substitute returns". What the law provides, in Section 6501(c)(3) is that if an individual fails to file a return, the secretary must file a lawsuit in a district court in order to collect any tax from that individual. What the IRS has done (with the assistance of Federal courts) is to contrive illegal procedures as stated above to circumvent Section 6501(c)(3).

In Jury Instruction 25, Judge Dawson states, "The Internal Revenue Service of the Department of Treasury is an agency of the United States." Schiff specifically pointed out to Judge Dawson when they had their conference on jury instructions (as shown on TP pages) that in order for the IRS to be an agency of the Federal Government, Congress would have had to pass a law specifically making the IRS an agency of the Federal Government. But no such law has ever been passes by Congress. Schiff also pointed out that the office of the Commissioner of the IRS was created as a part of the Treasury Department in the statute passed in 1862, and that was as far as the authority of the IRS has gone. As Schiff has

already stated, Judge Dawson's jury instruction regarding that a deficiency "can arise" on the date a tax return is due was false, since it could only arise after a return is filed and audited, and an additional tax is claimed to be due by the Government.

Since convictions are often reversed based on one false jury instruction, why weren't all the convictions of all three Defendants reversed in this case, based on the aforementioned false jury instructions?

X. THE APPLICABILITY OF 18 U.S.C. §241

Section 241 provides in relevant part as follows:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any person... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same... shall be fined under this title or imprisoned not more than ten years, or both."

Obviously, the Plaintiff has a Constitutional right not to be subject or punished for any Federal tax that Congress is not authorized to impose. Since the income tax is not imposed either as an apportioned direct tax, or as a uniform excise tax, for any Court to punish Appellant for violating a tax not imposed in either manner, is to deny that person a right secured to him by the Constitution.

In addition, 26 U.S.C. §61 guarantees to all citizens the right not to have taxable income imputed to them unless it has been separated from its source. Therefore, as in this case, the Courts that are involved in not determining Appellant's taxable income by separating his income from the source, have denied the Appellant the rights secured to him by Code section 61. In addition, IR Code Sections 6001 and 6011, which are specifically identified in the Privacy Act as contained in the 1040 booklet, specifically provides that a person is not required to file tax returns or keep books and records unless he is "made liable" for the tax at issue. Since Schiff is being punished pursuant to a tax that does not make him liable for the taxes at issue, he is being punished in violation of the rights secured to him by §§6001 and 6011. All the judges and prosecutors involved in Appellant's conviction and the upholding of same are in criminal violation of 18 U.S.C. §241. So if there were any criminal violations in connection with Schiff's prosecution, it wasn't Schiff who committed them.

CONCLUSION

Based on all of the above, the Appellate court knows that Schiff cannot be guilty of any of the charges contained in the indictment. Thus this panel knows that the Government never proved any of the charges in the indictment and knows

that Appellant has been illegally imprisoned (and continues to be so) for more than eight years. Therefore, Appellant, based on his constitutional right to not be deprived of life, liberty, and property unless pursuant to law, the Ninth Circuit is legally bound to immediately order Appellant's release or to grant him the En banc hearing requested without delay. If the panel does neither, it would have at least provided the American Public with a greater understanding of the reliability of the Federal judiciary and would have also alerted the public that America, not unlike other totalitarian countries, also has "political prisoners".

DATED: January ____, 2014

Constitutionally Submitted,

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FOOTNOTES:

1. However, unlike Long and Kimball who reported as a form of protest and not really reflecting their actual income. Appellant believed that the "zeros" on on his zero return actually reflected his lawful income.

PLEASE NOTE :

2. Please note, since the Court did not grant Schiff the extension he requested on or about 12/3/13, it was impossible, given his loss of eyesight and his inability to find anybody in his unit to assist him, it was impossible for him to provide a response by 1/10/14. Therefore, this document is missing exhibits and contains errors in syntax that he did not have time to correct. Additionally, he did not have time to condense and re-type his instant reply. So some significant issues were left out. Since the law library's copy machine has been out of order for approximately 10 says and since no staff is around to make copies, it was impossible for Schiff to make copies on January 11th & 12, or two days before his appeal had to be in.