Irwin A. Schiff, 08537-014
Federal Correctional Complex
PO Box 33
Terre Haute, Indiana 47808

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Petitioner, 2:04-CR-00119-KJD-LRL

vs.

IRWIN A. SCHIFF, et. al.,

Defendants.

Supplement to Defendant's Rule 60(b)(a) Motion
Seeking Relief from the Court's 15 Contempt Orders

In Defendant's original Rule 60(b)(4) motion, he was able to analyze Contempt Orders 2, 5, 6, 7, 14, and 15 and show why they did not comply with the conditions in Rule 42(b) of the Fed. R. Crim. P or with the Ninth Circuit's Order of 12/26/2007. As defendant locates more relevant portions of the trial transcript, he is able to analyze additional Contempt Orders, as follows.

CONTEMPT ORDER NUMBER FOUR

This Contempt Order has to do with the admission by the Court of a Report originally prepared by Howard Zaritsky in May 1979 for the Congressional Research Service. It was originally entitled "Some Constitutional Questions Regarding the Federal Income Tax," and was updated by him in January 1980, and further updated by John R. Luckey in Sptember 1984, when its title was apparently changed to "Frequently Asked Questions Concerning the Federal Income Tax." This Report was furnished to congressmen to enable them to answer questions on the income tax, posed to them by their constituents. Congressman would generally send the entire Report to

such constituents and tell them they would undoubedly find their answer in the Report.

Now the Government introduces this Report into evidence at TP 3713, with the prosecutor stating that, "We're introducing it for notice to (Schiff) as to what the law actually is," and it was admitted on that basis. What is so outragiously partisan in this, is that throughout the trial Judge Dawson would not allow Schiff to introduce **the actual law** even when it was **directly related** to the testimony being given or the legal authority of the witness to act in the manner they testified to - or to even testify at the trial! Dawson's excuse for never allowing Schiff to introduce any law was that "The Court will instruct on the law." Yet he did not raise this objection when the Government sought to inject the absurd, personal opinions of two lawyers as being "the law."

For example. At TP's 1626-27, Judge Dawson refused to allow Schiff to introduce Code section 6751 because it would have revealed how the IRS was illegally imposing the $500 frivolous penalty - as the manner of its imposition was explained by IRS supervisor, Christy Morgan. Section 6751 required that the document imposing the penalty be signed by two persons. According to Ms. Morgan, no such individualized document was even used, much less being signed by anybody. Judge Dawson would not allow Schiff to confront Ms. Morgan with the law, so the jury could see how she and the rest of her staff were breaking the law.

On TP 4142 the Government's summation witness testified that he "reconstructed" Schiff's income "for the years 1997 through 2002." So Schiff then asks, "When you did that, where you doing it legally or illegally?" "I was doing it legally." At which point Schiff

attempts to hand Lowder the Internal Revenue Code and says, "Can you take your Codce book and show me a law where you are authorized to do that." The prosecutor now objects and the Court sustains the objection, and says, "Mr. Schiff. the Court will instruct on the law, move on." Of course, Schiff hadn't "instructed" on the law at all. The witness testified that he "reconstructed" Schiff's income "legally," so Schiff merely asked him to identify the law that "legally" allowed him to do that. However, the Court would not allow him to identify any such law based on the claim that "The Court instructs on the law."(1)

On TP 2577 IRS Special Agent, Sara Brana, testified that she was involved in an undercover investigation of the Chrristian Patriot Association, and that Irwin Schiff had an account with that Association.

Based on this account the prosecutor stated (TP 2583) that "this evidence is part of affirmative acts of evasion taken by Mr. Schiff to avoid his tax liability." Further on Schiff objects to the prosecutor "using a term that has never been proven. He said my tax liability. Now, nobody's taken the stand and said I had a tax liabily. So he is assuming a fact not in evidence. ..Would one of the Government's attorneys like to take the stand and show me where I have a tax liability. " The Court then said: "One of the first witnesses for the Government testified as to that. Your objection is overruled. Go ahead." However, Schiff

1) Of course, in this case, the Court could not "instruct" on the law at all, and didn't. Since Schiff filed returns for the years 1997-2002 showing "zero" income, Lowder would have had to determine Schiff's alleged, total tax for each of those years. However there is no statute in the Internal Revenue Code that authorizes the Secretary (let alone the IRS) to determine a person's **total tax.** Section 6211 authorizes the Secretary to determine a "deficiency," "if a return is made by the taxpayer and an amount was shown as the tax by the taxpayer thereon." However, since Schiff filed a return showing no tax "thereon," if the Government believed that Schiff filed a "false return" the Government's only legal recourse was to sue Schiff for the income taxes it believed that Schiff owed for those years pursuant to 6501(c)(1). Therefore, the Court's excuse in protecting the Government's witness who had been engaged in an illegal activity was erroneous on various grounds.

has absolutely no recollection of any such testimony by any Government witness, since if any Government witness did so testify, Schiff on cross-examination would have wanted to know the statute establishing such a liability - and, of course, the witness could not identify any such statute. Even the Court, in charging the jury, could not identify any such statute - but claimed that Code sections 1, 61, 63, and 6012 "working together" made persons liable for income tax, and Schiff is certain that no Government witness provided any such testimony.

On cross-examination Schiff asks Ms. Brana, "in the past have you investigated people - U.S. citizens living in the United States?" "Yes." Then Schiff asks, "Does your job description authorize you to investigate criminal violations of people living in the United States?" Of course, her answer had to be, "No," as shown by the job description of special agents, which was included as Exhibit C in Schiff's original Rule 60(b)(a). The Government objects to the question on "relevance," which is immediately sustained. Of course, its relevance is obvious. Since her job description only authorizes her to "enforce the criminal statutes applicable to income (taxes)...involving United States citizens residing in foreign countries and nonresident aliens...," and since Schiff falls into neither catagory, she had no authority do to any income tax investigation involving Schiff and to testify with respect to income taxes at Schiff's trial. Further on Schiff asks, "Is there any section of the Internal Revenue Code that you have ever seen that authorizes you to investigate criminal violations of the Internal Revenue Code?" The Court now says,"Again, the Court will instruct on the law." But, of course, Schiff never commented on any law. Schiff merely asked the witness if she ever saw a law that authorized her to investigate

criminal violations of the Int. Rev. Code. A truthful answer would have to be, "No," since there is no such authority given to IRS agents in the Code.

Then Schiff asks"Do you have any delegated authroity from the Secretary to do any investigation at all?" The Court then says, "Mr. Schiff, we are going to sidebar." At side bar the Court says, in relevant part." I have repeatedly told you to quit trying to put the law in front of the jury....I've warned you enough. Notwithstanding my rulings, you continue to ask questions in an attempt to elecit law from the witness even after I say it's irrelevant. You are in contempt of court. One day in jail deffered until the conclusion of this trial. The next time it will double and it will continue to double until you respect the rulings of the Court." Schiff then points out that he wasn't arguing the law; and that he was not violating any law by putting money in the Christian Patriot Association, and that the agent was not authorized to investigate Schiff. Schiff then brings up section 7608, which clearly establishes that special agents, who carry firearms, are ~~not~~ only authorized "to ivestigate the enforcement of subtitle (e) taxes, such as liquor, tobacco, and firearms." The Court then says: I've already rejected that argument. I saw that in your moving papers. That has been ruled on long ago." SCHIFF:"Here's the statute." Based on the clear wording of the statute, one would have to be blind not to see that the authority to "carry firearms" is only given to agents who fall into subparagraph (a), and subparagraph (a) only deals with subtitle (e) taxes. Agents dealing with other taxes, such as income taxes, fall into subparagraph (b), and are not authorized to carry firearms. Since Ms. Brana carried firearms, she could not

be authorized to enforce the income tax, or if she enforced the income while brandashing a firearm - **she was breaking the law.** Instead of looking at the statute that Schiff offered him, the Court Says, "Yeah. You're just cherry-picking." "Is this what the statute says, your Honor?," attempting to hand the statute (7608) to Judge Dawson. The Court , refusing to look at the statute, now says, "You're just cherry picking. You're just taking phrases and putting them together to make your legal garbage. I've already ruled against you on this point. Now move on." So here Judge Dawson wants to sanction Schiff (but I don't believe this sanction was included in the 15 Contempt Orders) because Schiff is knowledgeable enough to know, that Special Agent Brana had no statutory or delegated authority to have investigated Schiff in the manner she did, or to even testify at his trial.

This is also true with respect to the other 3 or 4 special agents who testified at Schiff's trial. None of them had any statutory or delegated authrority to do the things they testified to, or to even testify at Schiff's trial, and, similarly, Judge Dawson would not allow Schiff to confront them with their job descriptions and Code section 7608.

On TP 4146 Schiff is cross-examining the Government's summation witnesses and after identifying for him no less than 6 Government witnesses who testified that they could find no law in the Internal Revenue Code that made them liable for income taxes, Schiff asks him, "Did any Government witness get on the stand - who I could cross-examine - and state that there is a law that made people liable for income taxes? Did any Government witness testify (to that) under oath?" At which point the prosecutor states: "Objection. That's invading

the province of this Court. It's this Court's job to instruct as to the law, not Government witnesses." (2) And further on (on TP 4148) Judge Dawson tells Schiff, "You will refrain from interjecting your view of the law."

The above are only a few examples of how Judge Dawson would not allow Schiff, under any circumstances, to raise or introduce the law - or even raise questions as to its existence-even when the law itself, or its very existence, was directly related to the legitimacy of the testimony being given.

Yet on TP 3713 Judge Dawson allows the Government to introduce the the Zaritsky/Luckey Report as being "notice (to Schiff) as to what the law actually is." Schiff immediately states, "It's an inaccurate statement of the law." However the Government again repeats, "It's an accurate statment of the law." So while Judge Dawson will not allow Schiff to introduce the law itself, he will allow the Government to introduce the Zaritsky/Luckey Report as being "an accurate statement of the law."

Why was the Report being used as notice to Schiff of the law? Because Special Agent Holland testified (at TP 3710)that "We found about four or five copies of (the Report) throughout his office." They even found a copy "in Mr. Schiff's desk." Since a number of defense witnesses, had already testified that they had purchased Internal Revenue Codes from Schiff (he sold the Code), the Special Agent raiding party had to see at least a dozen Code books in his office (and

2) Apparently neither the Government's summation witness nor the prosecutor had any recollection of an earlier Government witness who testified with respect to a law making persons "liable" for income taxes, as was referred to by Judge Dawson

probably one on his desk); so why wasn't the Internal Revenue Code **itself** introduced as being **notice to Schiff** as to what the law was? Why the Zaritsky/Luckey Report? Well, by having Special Agent Holland read the nonsense from the Report, the jury could be misled into thinking that Schiff should have believed the nonsense in the Report, rather than the law itself, as contained in the Internal Revenue Code.

For example. At TP 3722, the prosecutor asks the projectionist to display the first two paragraphs of segment 7, which is entitled, "Are Wages Taxable As Income." The first line of that segment states (and overlooking all other false and misleadings statements), "Yes, wages are taxable as income." Schiff had filed numerous pre-trial pleadings explaining why such things as wages, dividends, interest etc etc were not taxable as income pursuant to section 61 of the Code. That such items were removed from the 1954 Code, when they were included in section 22 of the 1939 Code. And that this was done so that the 1954 Code would not conflict with numerous Supreme Court decisions which held that income had tobe separated from its source in order to avoid the requirement of apportionment, and so that "income" would conform to the meaning of income in its "constitutional sense," as shown in Exhibit A of Schiff's original, Rule 60(b)(4) motion. So was Schiff supposed to abandon his understanding of what income means in our revenue laws, just because Zaritsky and Luckey don't know what they are talking about when it comes to the meaning of "income" for tax purposes?

Next the prosecutor directed the jury to Segment 8, entited "Do We Have A Voluntary Tax System," and asks Special Agent Holland

to read the first paragraph. "We do not have a voluntary tax system in the sense that payment is optional. There are specific provisions of law which require the payment of income taxes." The deception being attempted here is obvious. Notice the authors do not say that the income tax is based on mandatory compliance - since all government documents claim that it is based on voluntary compliance. They say we do not have a voluntary system "in the sense that payment is optional." What that means is, if you owe the tax, you have to pay it. Naturally. But if the payment of the tax were "voluntary," you couldn't "owe it"; therefore, payments being "optional" would have no applic - ability. So this was the semantic ruse the authors devised to avoid having to explicitly state whether the tax was either voluntary or mandatory. And if there were"specific provisions of law which require the payment of income taxes," why didn't the authors identify and quote them ? They didn't do so because they don't exist.

Then the prosecutor directs Holland to read the last paragraph of that page. Here is where the authors have to come to grips with the fact that no law makes persons "liable" for income taxes, even though numerous laws make persons "liab le" for a variety of other federal taxes. Therefore the authors had to devise some kind of explanation to account for this glaring omission, and they did so in the following, fraudulent manner, as read to the jury by Special Agent, Sam Holland.

> Another semantic argument put forth in this area revolves around use of the word "liable" in tax acts. The contention is made that the income tax statute does not use the magic words 'individual is made liable' and therefore an" - "an individual is not liable for income taxes. The federal

courts have not had much time for this argument, characterizing it as "arrogant sphistry" [45] and "blatant nonsense."[46]

Then the prosecutor asks Holland, "Are there footnotes in there?" And he replys, "Yeah. 45 and 46." "What does Footnote 45 say?" "It says, Schiff v. Commissioner." "And what does 46 say?" "See Newman v. Schiff." (The prosecutor does not ask about footnote 44, because it doesn't mention Schiff) So now the jury is fraudulently led to believe that Schiff (who apparently originated the "magic words" "made liable") should have realized that his beliefs with regard to the importance of a statute making persons "liable" for income taxes was so much "arrogant sophistry" and "blatant nonsense," without Schiff having an opportunity to cross-examine the biased and uninformed judges who said so.

The blatant fraud being perpetrated here is the suggestion that Schiff created the "magic words" being "made liable." In reality, it was the Government that did it, not Schiff. The Privacy Act Notice in a 1040 Booklet states, "Code Sections 6001, 6011, and 6012 say you must file a return for any tax **you are liable for.**" So, if you can't find a statute making you"liable" for the tax, the Government tells you you don't have to file or pay the tax. In addition, Code Sections 6001 and 6011, two statutes that the Privacy Act Notice specifically directs the public to, both make being "liable for" and being "made liable" as conditions precedent for filing a return and paying income taxes. So is the Government using the "magic words, made liable?"

Further on Zaitsky and Luckey fabricate an additional piece of nonsense. They state that Code Sections 1, 61, 63, 6012, and 6151 "working together make an individual liable income taxes." But no authority is given for such a claim. But if this were so, these five section/s would have to be mentioned in the Privacy Act Notice, but only 6012 is mentioned. In addition, how is the public supposed to figure out that these 5 Code sections "working together" make them "liable" for income taxes - especially when the word "liable" does not appear in any of the 5 statutes?

And why does it take 5 statutes to make persons "liable" for income taxes, when it only takes 1 statute to make persons "liable"for: tobacco, alcohol, wagering, firearms, and a variety of other federal taxes? So if anything is "blatant nonsense," this claim by Zaritsky/Luckey has to take first prize. In addition, the 9th Circuit in Roat v. C.I.R.,

in rejecting a claim that Code sections 6211(a) and 6020(b) be read together, stated that "Tax policy policy calls for tax statutes to be read independently," and further pointed out that these two statutes "do not reside in the same Chapter." However, in conmction with the five statutes named in the Report, they do not even reside in the same subtitle!

Incredibly, the Court largely adopted Zaritsky and Luckey's understanding of the law. In Jury Instruction 19, Judge Dawson charged the jury that Code sections 1, 61, 63, and 6012 "working together make an individual liable for income taxes."In doing so,Judge Dawson left out Code section 6151 from this instruction. Well if Zaritsky and Luckey were wrong, and only 4 sections were needed to "work together" to make you liable, and not 5, then the Report was not an "accurate statement of what the law actually is" as was claimed for it by the Government when it introduced the Report.

But the reason Schiff had so many copies of the Zaritsky/Luckey Report, is, despite the Reports nonsense as discused above, it does a good job of explaining how, and on what basis, the Supreme Court held the income tax to be an excise. It contains significant quotes from the bedrock, Supreme Court case, Brushaber v. Union Pacific Railroad, 240 U.S. 1, in which that Court stated "'taxation on income was in the nature of an excise **entitled to be enforced as such'"** (Emphasis added) Then the Report goes on to explain what excises are, under the caption **"WHAT DOES THE COURT MEAN WHEN IT STATES. THAT THE INCOME TAX IS IN THE NATURE OF AN EXCISE TAX?"** The Report then devotes an entire paragraph to explaining what excises taxes are; the first line being,"An excise tax is a tax levied on the manufacture, sale, or consumtion of a commodity or any of various taxes on privel-eges often assessed in the form of a license or fee." Well, obviously, the income tax is not levied on this basis, so obviously the payment of income

taxes cannot be made mandatory, since any such mandatory payment, not in the form of an excise, would have to be unconstitutional. So, not wanting the income tax laws to be unconstitutional, Congress, in promulgating the 1954 Code, removed from that Code all of the mandatory and enforcement provisions (including removal from the Code any enforcement authority formerly given to the Commissioner of Internal Revenue) that were in prior Codes. The 1954 Code also clarrified the meaning of "income" so that it would not be in conflict with the 1895 Pollock decision (never reversed or overruled), which held that "income" from real and personal property could not be taxed, except by the rule of apportionment; and the the 1915 Brushaber decision, which held that only "income" "separated from its source," and imposed as an excise, could escape the constitutional requirement of apportionment. Of course, Congress never informed the American public that in adopting the 1954 Code, it was essentially **repealing the income tax**, and Congress apparently relied on the Justice Department and its courts to disregard the laws that it had passed, as well as the constitutional provisions they were designed to uphold, as is amply illustrated by what transpired at Schiff's criminal trial.

The Zaritsky/Luckey Report also confirmed the numerous, pre-trial pleadings Schiff filed involving this very issue in connection with motions to dismiss. All such motions were denied, without the Court addressing this issue. Indeed, Schiff quoted extensively from the Report (in pages 10 & 11) of his pleading (Docket No. 66) entitled, "Declaration of Irwin Schiff, In Support of Motion to Dismiss," attached hereto as Exhibit D.

However, since this Report was admitted into the trial as being "Notice to Schiff as to what the law actually is," Schiff assumed it would also have to be notice to Judge Dawson "as to what the law actually is." So the day following the admission of this Report by the Court, "as to what the law actually is," Schiff filed a

motion to dismiss all charges, since, obviously, the income tax was not being levied as the excise tax the Report clearly showed the Supreme Court ruled it to be. However, the Court denied the motion, and as usual, without comment. So, while the Court admitted the Report as being "Notice to Schiff as to what the law actually is," the Court was unwilling to similarly accept the Report as notice to itself, as "What the law actually is."

All during the discussion of this Report as allegedly being "the law"; Schiff continually objected to it being "notice" to him of the law, and noted it was largely in his office because he used it as a "teaching tool." Schiff wrote three books on taxes that sold in excess of 300,000 copies, plus he probably sold in excess of 6,000 Internal Revenue Codes. So why should Schiff need Zaritsky and Luckey to teach him something about the income tax? How many books on the income tax have they sold?

On TP 3725 (The TP where sanction 4 was imposed) Schiff says, "Your Honor, I object - this document wasn't notice to me. The document is loaded with false representations.[3] The Court then says, "Mr. Schiff --," but again Schiff says, "It wasn't notice to me." (How can this Report be "notice" to Schiff of "the law," when he sells thousands of Codes, and when he was generally holding an Internal Revenue Code in his hand when he cross-examined Government witnesses?) The Court then says, "That's a jury question."

SCHIFF: "But you're trying to pretend that it was notice to me."

THE COURT: "The jury will decide whether it was notice to you." But if

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3. The valid material in the Report concerning the excise tax nature of the income tax was initially put in the Report by Zaritsky, who focused on the constitutional aspects of the income tax. When it was later updated and revised by Luckey, he left this material in (which discredited everything else in the Report), because he obviously did not recognize its importance: if he understood it.

the Court allows the Report in as being "Notice to Schiff of the law," why should the jury believe any differently? So SChiff, totally frustrated by the blatant illegality of what is transpiring again says,"I use it as a teaching tool to show why all those arguments are false as a matter of law. Tha's why it was in my office." The Court then says: "You're testifying. You were warned about it. The attorney's objected to you testifying earlier. (I believe the Court is referring to the Government's attorneys, not the defense attorneys) You are **sanctioned** again for testifying." After the sanction Schiff still persists (Since he can't believe that this is really happening) and says, "You're saying that this is notice to me?" THE COURT: "I'm not saying anything. That's for the jury to decide. It's introduced for the purpose of showing notice"(to Schiff as to what the law is.) But isn't that saying something? What happened, therefore, to Judge Dawson's claim,as stated on TP 4518,that "The Court is the exclusive source of the law."? At Schiff's trial it would appear that it was the Court plus Howard Zaritsky and John R. Luckey who were the "exclusive source of the law."

Unfortunately Schiff does not have as he writes up this portion of his Supplemental Motion Contempt Order No. 4. Unfortunately it was packed up with his property when he was being transferred to Las Vegas for the sentencing. But as Schiff recalls, Contempt Order No. 4 was justifed on the basis that Schiff continued to"testify" even though the Court ordered him not to - and he did so "wilfully." As Schiff explained earlier, Schiff could not have done so"wilfully," since Schiff never realized he was "testifying" when he referred to himself in the first person rather then referring to himself as "the defendant," and the Court never bothered to point this out to Schiff, as it was its

responsibility to do.

But, in addition, nowhere does the Court mention, in "setting forth in detail the factual basis of the contempt conviction," that it occurred as the direct result of the Court's admitting as "notice to Schiff as to what the law actually is," a document prepared by two attorneys, which contained numerous false claims "as what the law actually is." Therefore, Contempt Order No. 4 is void. Besides not stating in what manner Schiff allegedly "testified," it doesn't "set forth" the issue that Schiff was contesting. Therefore, Contempt Order No. 4, does not comply with the provisions of Rule 42(b), and the Ninth's Circuit's order as contained in its Judgment of 12/26/2007 - and a sentence for this sanction cannot be lawfully imposed.

Dated: August 1, 2008

Irwin A. Schiff, pro se

CERTIFICATE OF SERVICE

This is to certify that on August , 2008, I deposited the foregoin SUPPLEMENT TO MY RULE 60(b)(4)MOTION in my unit mailbox for delivery to a U.S. Post Office, addressed to Christopher S. Strauss, 333 Las Vegas Blvd. South, Suite 500, Las Vegas, Nevada, 89101

Dated: August 3 , 2008

Irwin A. Schiff

Southern Pacific Co. v. Lowe, 247 U.S. 330, 335.
Burnet v. Harmel, 287 U.S.103, (1932).

> Whatever difficulty there may be about a precise and scientific definition of "income" it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; *conveying rather the idea of gain or increase arising from corporate activities*.
> *Doyle v. Mitchell Bros.*, 247 U.S. 179, (1918)(Emphasis added).

Therefore, there can be no doubt that "income" within the meaning of our revenue laws means gain or profit "arising from corporate activities." Therefore, "corporate profit" and "income" in the "constitutional sense" both mean the same thing.

25. All of the above Supreme Court decisions were discussed at greater length in Declarant's book, ***The Great Income Tax Hoax***, published in 1985. One entire chapter was devoted to just discussing and analyzing the *Pollock* decision, while another chapter was devoted to the *Brushaber* decision. Two additional chapters were devoted to merely explaining how the 16th Amendment meaning of "income" legally evolved.

26. Declarant's understanding, belief, and reliance that the above Supreme Court decisions only permitted Congress to impose an income tax as an "excise tax" was affirmed in a 1980 report issued by the Congressional Research Service, Library of Congress. It was written by Howard M. Zaritsky, Legislative Attorney, American Law Division of the Library of Congress, Report No. 80-19A, and was entitled *Some Constitutional Questions Regarding The Federal Income Tax Laws*. The Report stated at page CRS-4 & 5, in pertinent part:

> The Supreme Court, in a decision written by Chief Justice White, first noted that 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.** Rather, the Court found that the Sixteenth Amendment sought to restrain the Court from viewing an income tax as *a direct tax* because of its close affect on the underlying property.
>
> The Court noted that the inherent character of an income tax was that of an indirect tax, stating:
>
> Moreover in addition the conclusion reached in the *Pollock Case* did not in any degree involve the holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in the nature of an excise entitled to be

enforced as such.
(Emphasis added throughout)

The next paragraph in the Report was captioned, and stated as follows:

> **3. WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX IS IN THE NATURE OF AN EXCISE TAX?**
>
> An excise tax is a tax levied on the manufacture, sale, or consumption of a commodity or any of various taxes on privileges often assessed in the form of a license or fee.

Obviously, the income tax is not imposed in this manner, and, therefore, it is not imposed in accordance with the 16th Amendment and the *Brushaber* decision. Therefore, its enforcement falls within the condemnation of both *Pollock* and *Brushaber* – as well as numerous provisions of the 1954 Code, as shown below.

27. It is Declarant's belief that when the 16th Amendment was ratified, Congress believed it had amended the Constitution and given itself a new taxing power, the power to levy a direct tax on all of the various *sources* of income without the need of apportioning the tax, so it wrote the income tax laws of 1913 based on such an erroneous belief. Therefore, Congress provided in the law that "Gross income" included such items as "salaries, wages, or compensation for personal service...also interest, rent, dividends." However, subsequent Supreme Court decisions (as discussed above) clearly established that such laws were unconstitutional on at least two grounds: (1) the tax was not levied either as an excise, or as an apportioned, direct tax , and (2) the tax was not levied on "income" *separated* from such sources. This meant that the statutes pursuant to which the income tax was being collected were unconstitutional as written.[2] However, those laws remained on the books from 1913 until 1954, when Congress changed the law with the adoption of the 1954 Code. Apparently Congress came to the realization that the income tax laws as written were unconstitutional, and did not conform to what the Supreme Court had ruled in the *Brushaber* and other decisions. It is Declarant's belief that Congress, therefore, realized it had to bring the income tax statutes into conformity with the Supreme Court decisions discussed above. However, it is Declarant's belief that Congress came to the realization that it could not realistically collect an income tax either as: (1)