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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEVADA

UNITED STATES,	)	
Plaintiff,	)	Civil No. CV-S-03-0281-LDG-RJJ
v.	)	
IRWIN SCHIFF & CYNTHIA NEUN,	)	Motion for stay of the
Defendants,	)	Permanent Injunction

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Pursuant to Rule 18(a)(1) of the Fed. Rules of Appellate Procedure defendant Schiff moves for a stay of the permanent injunction issued by this Court on October 14, 2008 pending review of its Order by the Ninth Circuit, for the following reasons.

I  
**The Court Gave No Reason Why the Government  
Was Entitled to a Summary Judgment  
and Indeed the Government Was Not Entitled To One**

Because the practical result of applying the summary judgment is to deprive the party against whom judgment is granted of a trial in the usual course, the remedy is a drastic one that should be used with great caution. Schuck v. Motefiore, 2001 ND 93, 626 N.W.2d 698. Although summary judgment saves time, effort, and expense by avoiding a full trial under certain circumstances, those savings may not be gained at the expense of denying a litigant the right of trial if there is a genuine issue of material fact to be litigated. Jannelli v. Burger King Corp., 761 A.2d 417 (N.H. 2000). Because a summary judgment proceeding is a drastic remedy, strict compliance with the applicable rule is required (U.S. v. Bosurgi, 530 F.2d 1105; Parmedmelee v. Chicago Eye ShielCo., 157 F.2d 582, 168 A.L.R. 1130 (C.C.A. 8th Cir. 1946), and this is so whether or not the opposing affidavits are sufficient. Manchester Memorial Hospital v. Whitney, 6 Conn. Cit. Ct. Ct. 212, 269 A.2d 300

(App. Div. 1969). Rule 56 provides that summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."

Rule 56 of the Fed. R. Civ. P also provides that supporting and opposing affidavits in a summary judgment proceeding shall be made on personal knowledge. In this case the Government in seeking a summary judgment submitted no affidavits while the defendant submitted a 66 page sworn statement (plus 31 pages of the Government's answers to Admissions and Interrogatories plus 9 other relevant Exhibits) opposing the Government's request for summary judgment. In addition, on the basis of the Government's answers and non-answers to discovery requests, defendant Schiff filed a sworn statement of "Uncontested Issues of Fact" which the Government did not contest and which the Court in its Order did not contest, let alone refute. Defendant's sworn "Uncontested Issues of Fact" (which the Court could verify based on the Government's discovery answers which were attached to Schiff's 66 page Objection to the Government's Motion for summary judgement) stated, the following as being "Uncontested Issues of Fact" in this litigation:

- 1) There is no statute in the Internal Revenue Code that specifically makes persons "liable" for an "income" tax.
- 2) When the United States uses the term "income" in this litigation, it uses the term in its ordinary, every day sense, and does not use the term in its "constitutional" sense.
- 3) When the United States uses the term "income" in this litigation, it does not separate such income from its sources, but alleges that the sources themselves are subject to an "income" tax.
- 4) The United States cannot identify how and in what manner "The Federal Mafia" advises people to file "false and fraudulent" W-4's.
- 5) The United States cannot quote (giving the page number) any statement in "The Federal Mafia" that is "false and Fraudulent."
- 6) The United States cannot quote any statement as contained in a "zero" return that is "false and fraudulent."
- 7) The United States cannot cite any statute in the the Internal Revenue Code which authorizes the IRS Commissioner (or the IRS) to enforce and administer a federal "income" tax.

8) The United States cannot produce a delegation order from the Secretary of the Treasury to the Commissioner of the IRS delegating him with the authority to enforce and administer an "income" tax which was published in the Federal Register.

All of the above, sworn to facts, supported by the government's answers and non answers to discovery questions, had to be held as true by this Court. Instead, the Court simply ignored these uncontested facts when it unlawfully granted the Government a summary judgment.

- A -  
**Legal Issues**

Facts asserted by a party opposing a summary judgment motion, and supported by affidavits or other evidentiary material must be regarded as true. Anderson v. Liberty Lobby, Inc., 477 US 242, 106 S.Ct. 2505, 91 L. Ed. 2d 202, 4 Fed. R. Serv. 3rd 1041 (1986); Van Houten Svc.vShellOil, 417 F. Supp. 523 (D.N.J. 1975), aff'd 546 F.2d 421 (3rd Cir 1976); Dobson v. Harrise, 352 N.C. 77, 530 S.E. 2d 829 (2000). In deciding on motion for summary judgment, all factual disputes (Gen. Elec. v. Joiner, 522 US 136, 118 S.Ct. 512, 139 L. Ed. 2nd 508, 48 Fed. R. Evid. Service 1 (1997).) and justifiable or reasonable inferences are to be resolved favorably for the nonmoving party and against the moving party. Hunt v. Cromartie, 526 US 541, 119 S Ct. 1545, 143 L. Ed. 2d 731 (1999); Grayson v. McGowan, 543 F.2d 79 (9th Cir. 1976; Quinn v. Syracuse Model Corp., 613 F.2d 438 (2d Cir. 1980). Affidavits of the moving party for summary judgment (not submitted in this case) should be strictly construed<sup>s</sup>, while those of the opponent should be **liberally construed**. Hatch v. Bush, 215 Cal.. App. 2d 692, 30 Cal. Rptr. 397 13 A.L.R. 3rd 503(1st Dist. 1963). Also a court hearing a motion for summary judgment must construe all the pleadings liberally in favor of the party against whom the motion is made. First Bank of Chicago v. Pendell, 651 F. 2d 419 (5th Cir. 1981), In addition, all doubts<sup>t</sup> and all favorable inferences that may be reasonably drawn from the evidence will be resolved against a party moving for a summary judgment,

(Deshazer v. Tompkins, 89 Idaho 347, 404 P.2d 604 (1965); Breen v. Peck, 28 N.J. 351, 146 A.2d 665, 73 A.L.R.2d 390 (1958), ruling that in determining the right to a summary judgment, all doubts must be resolved against the moving party.), and the evidence and inferences will be viewed in the light most favorable to the party opposing the motion. Aka v. Jefferson Hosp, 344 Ark. 627, 42 S.W. 3d 508(2001); Appleton v. Board of Educ. Town of Stonington, 254 Conn. 205, 757 A.2d 1059, 146 Ed. Law Rep. 1097 (2000). The appellate court, as well as the trial court, must view the record on summary judgment in the light most favorable to the party against whom the judgment is rendered. Stanturf v. Sipes, 447 S.W.2d 558, 35 A.L.R. 3rd 834 (Mo 1969)

In addition, the mere fact that this Court awarded the Government a preliminary injunction does not constitute final adjudication of the ultimate rights in controversy. Shoemaker v. County of Las Angeles, 37 Cal. App. 4th 618, 43 Cal. rptr. 2d 774, 102 Ed. Law Rep. 259 (2d. Dist. 1995). Whether a preliminary injunction is granted or denied has no effect on whether a final, permanent injunction will ultimately be issued. Berger By and Through Berger West Jefferson Hill School Dist., 669 A. 2d 1084, that issue must be resolved at trial; Gambar Enterprises, Inc. v. Kelly Services, 69 A.S 2d 297, 418 N.Y.S. 2d 818 (4th Dep't 1979) . The findings of fact and conclusions of law made in a preliminary injunction do not preclude the reexamination of the merits at a subsequent trial; Irish Lesbian & Gay Organization v. Giuliani, 143 F. 3d 638(2d Cir. 1998); the parties are free to offer additional evidence, and the court can come to opposite conclusions. Electronic Design & Mfg. v. Konopka, 272 Ill. App. 3d 410 208 Ill. Dec. 563, 649 N.E.2d 619 (1st Dist 1995; Toho Co. Ltd v. William

Morrow & Co., Inc, 33 F. Supp 2d 1206 46 U.S.P.Q. 2d (BNA) 1801 (C.D. Cal. 1998). A final and permanent injunction can be granted only following a final hearing on the merits. U.S.v. Baltimore & O.R. Co 225 U.S. 306, 32 S.Ct. 817, 56L. Ed 1100 (Comm. Ct. 1912); Plummer v. Am. Inst. of C.P.A.'s, 97 F. 3rd 220 (7th Cir. 1996)

In addition, the Court failS to mention in its decision that the injunction is being awarded to the Government on the basis of a summary judgment; nor does the Court explain why the Government was entitled to a summary judgment, and why the defendants - whose First Amendment rights were being abridged - were not entitled to a trial on the merits.

In addition, unlike the litigation that led to the preliminary injunction, in connection with the permanent injunction, the defendants got discovery, which led to the following factual revelations.

1) The Government could not identify any law that specifically made persons "liable" for income taxes. (As fully covered in pages 8-12 in Schiff's Response to the Government's Motion for Summary Judgment, hereinafter referred to as SR)

2) The Government could not identify any law that fell into Subtitle A (the Subtitle dealing with income taxes) that required persons "to pay" income taxes. (Pages 12-13 of SR)

3) The Government admitted to not knowing the legal meaning of "income." (pages 13-17 of SR)

4) The Government could not explain in what way "The Federal Mafia" advises people to file false W-4's. (Pages 17-23 of SR)

5) The Government could not identify any statement in "The Federal Mafia" that was either "false or fraudulent." (See pages 23-27 of SR)

6) The Government admitted (by default) that compliance with income tax statutes is voluntary. In order to avoid admitting that the income tax is based on voluntary compliance and not on compulsory compliance, the Government<sup>twice</sup> claimed, among other things, that it did not know the difference between "voluntary compliance" and "compulsory compliance." (See pages 27-34 of SR)

7) By failing to deny two relevant Admissions, the Government in fact admitted that the IRS has no statutory authority to enforce the Federal income tax. (See pages 35-36 of SR)

8 The Government could not identify one statement in "The Federal Mafia" that is false. (See pages 36-42 of SR)

Therefore, not only did the Court disregard all of the material and significant revelations revealed in the Government's answers to discovery requests (which should have resulted in the Court's giving summary judgment to defendants, and not the other way around<sup>(1)</sup>), but the Court also disregarded all the provisions of Rule 56 and all of the case law cited above, as well as all the factual claims established by defendants (which went unrefuted by the United States), and <sup>illegally</sup> resolved every factual issue- which it either ignored or misrepresented - in favor of the Government. In addition as shown below, the Court based its injunction on facts that it had to know were false.

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1. "Under Fed. R. Civ. P. 56, a court may grant summary judgment in favor of a party that did not request it, but only upon proper notice to the adverse party." ; citing, Daniels v. McKay Machine, 607 F.2d 771 (7th Cir 1979); and Snelwar v. Snelwar, 27 Misc. 2d 933, 212 N.Y.S.2d 882 (Sup 1961). As quoted in Am. Jur. Vol 73 ¶ 61. Defendants did not seek a summary judgment, since they believed a trial on the merits was in the public's interest.

It is clear from all of the above, and the First Amendment issue involved, defendants were entitled to a trial in which to cross-examine Government witnesses. This is further clearly established in

"American Jurisprudence 2d", Vol. 42 ¶ 264 which states:

An application for a permanent injunction is determined on the merits only after a full evidentiary trial,<sup>(70)</sup> even though the hearing on the proceedings to obtain a preliminary injunction may touch upon or tentatively decide merit-issues.<sup>(71)</sup>

Caution: The court may grant a permanent injunction without a trial on the merits if there are no material issues of fact and the issues of law have been correctly resolved.<sup>(72)</sup>

Whether a preliminary injunction is granted or denied has no effect on whether a final, permanent injunction will ultimately be issued; that issue must be resolved at the trial, at which parties are free to offer additional evidence and the court may come to different conclusions.<sup>(73)</sup>  
(Emphasis added, and numerous citations omitted)

Since numerous/<sup>material</sup> issues of fact needed to be resolved (if the Court didn't believe they had already been resolved against the Government), they were required to be resolved at trial. Since they were not resolved at trial, the Court's Order of October 14, 2008 is actually a nullity.

- II -

**The Preliminary v. the Permanent Injunction**

Undoubtedly the Government's inability (as revealed through its answers to discovery questions) to identify in what way "The Federal Mafia" advises people to file "false and fraudulent" W-4's and false income tax returns did have an impact on the claims contained in the

permanent injunction in contrast to those contained in the preliminary injunction. For example: On page 5 of the preliminary injunction the court claimed that:

Schiff identifies The Federal Mafia as the starting point of his program<sup>(2)</sup>, and states that "[i]t shows you how to file the zero return, stop wage withholding, and explains the basics."...Schiff also advertises his program and services on the internet through testimonials, some of which identify only The Federal Mafia as the resource for avoiding paying taxes. The Federal Mafia is priced at \$38.00

Indeed, The Federal Mafia was considered so fundamental to Schiff's "fraudulent tax schemes" that the book was mentioned 47 times in the Court's preliminary injunction; while the preliminary injunction also accused Schiff of advising people to file false W-4's, so as to wrongfully stop having taxes taken from their pay. This accusation appears approximately 12 times in the preliminary injunction. However, there is no mention of The Federal Mafia in the permanent injunction, and no accusation that Schiff advises anyone to file false W-4's. So, obviously, such references and such charges were erroneously contained in the preliminary injunction.

- III -

**The Permanent Injunction Contains Patently False Claims**

- A -

Contrary To the Court's Claim  
Its Permanent Injunction Was Not Based On Any "Evidence"

On page 3 of its Injunction Order the Court writes, under the caption, "Conclusions of Law" the following.

Based on the evidence presented by the United States and the defendants, the Court finds that Irwin Schiff and Cynthia Neun, individually and doing business as Freedom Books, [www.paynoincome.com](http://www.paynoincome.com), and [www.ischiff.com](http://www.ischiff.com), are engaging in conduct subject to penalty under 26 U.S.C. §§6694, 6695, 6700, and 6700. Accordingly, the court finds that Schiff and Neun, and their associated entities and websites should be permanently enjoined under 26 U.S.C. §§ 7407, 7408.

The Court finds that the United States and the public will suffer irreparable harm in the absence of this permanent injunction and that Schiff and Neun will suffer little, if any harm, if the



permanent injunction is granted. The United States has shown the public interest will be served through granting this permanent injunction. Finally, the evidence presented by the United States and the defendants show that absent this permanent injunction, Schiff and Neun will continue to violate 26 U.S.C. §§ 6694, 6695, 6700, and 6701 and interfere with the enforcement of the internal revenue laws. Accordingly, the Court finds that a permanent injunction under 26 U.S.C. § 7402 is necessary and appropriate for the enforcement of the internal revenue laws.

First of all, though the Court twice states that it is basing its Order on "evidence presented by the United States," the United States presented no evidence whatsoever in this litigation. "American Jurisprudence 2nd" defines evidence in Vol. 29 ¶ 1 as follows:

**1. Nature and definition of evidence**

Evidence is matter that makes clear the truth of fact, persuades a court of the existence of fact, or produces a just conviction of truth. It is further defined as any species of proof legally presented at trial through the medium of witnesses, records, documents, exhibits, and concrete objects for the purpose of inducing belief in the minds of the court or jury. The word "evidence" thus includes all the means by which any fact in dispute at a judicial trial is established or disproved. Any circumstance which affords an inference as to whether the matter alleged is true or false is therefore evidence, and is commonly understood to be within the meaning of that term.

Further on "Am Jur." states, in relevant part.

**3. Requirement that matter be received in court**

Matter which was not introduced or presented as evidence at trial does not come within the commonly accepted definition of "evidence." In this regard, neither testimony nor physical objects are evidence unless they are produced, introduced, and received in a trial.

Because evidence is matter which has actually been presented at trial, facts obtained through the use of discovery devices, such as written interrogatories, are not themselves evidence. They may, however, become evidence by introduction as such at the trial of the matter.  
(Footnotes and supporting court decisions omitted)

From the above, it is pretty clear that the Court's Order was not based on any "evidence presented by the United States and the defendants." Its Order was obviously based on the Court's partisanship in favor of the Government, and by its own preconceived, erroneously held, understanding of our revenue laws and by its refusal to be bound by relevant Supreme Court decisions and House and Senate Reports.

- B -

**Contrary to the Court's Claim  
Schiff and Neun Are Not "Doing Business as Freedom Books"**

In case it has escaped the Court's attention, Schiff would respectfully remind the Court that both Schiff and Neun have been Federally incarcerated for over three years - and its against prison policy (if not against the law) for Federal prisoners to conduct any business whatsoever while incarcerated. If the warden of this facility thought for a moment that I was conducting a business, he would put me in solitary and take away other privileges, such as: denying me phone privileges, , visiting privileges, and commissary privileges. Neither Schiff nor Freedom Books has a bankaccount, phone number or address, other than where he is confined. The building where Freedom Books was located was sold, and all of Schiff's records were put in storage. Even Freedom Books old phone number (which appears in thousands of books published by Freedom Books) was taken by another party, so calls to that number go to that party and not to Freedom Books. The people who Schiff and Neun can call are limited to 30 people, and they have to be approved as do those on their visiting list. Neither Schiff nor Neun have spoken to each other in over 3 years. Based on all of the above, how can Schiff and Neun, "individually and doing business as Freedom Books...(be)..engaging in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700 and 6701."? Obviously §§ 6694, 6695, 6700 and 6700 could only apply if Schiff and Neun were "doing business as Freedom Books" - but since they obviously are not (and would be in solitary if they were) the Court egregiously creates a "business" where one could not possibly exist and then proceeds to <sup>fraudulently</sup> apply the law where it cannot possibly apply.

**The Defendants Are Not Engaged In "Commercial Speech"**

The Court granted the Government a preliminary injunction largely on the basis that the defendants were involved in "false commercial speech." This Court devoted pages 14 to 20 to this claim alone, in its preliminary injunction - while referring to the charge in other parts of the injunction. Some excerpts from these pages are, as follows:

**A. Commercial Speech Aspects of the Scheme**

"A promoter's statement regarding the tax benefits of his [abusive tax schemes] constitute commercial speech...As previously discussed, Schiff's enterprise advertises and sells books, tapes and other products over the internet, and through Freedom Books, his store in Las Vegas, Nevada, and other avenues to promote his scheme. Schiff also advertises and markets seminars and workshops to instruct attendees on how anyone can implement his formulas for avoiding payment of taxes. As part of the scheme, Schiff offers for sale letter-writing services and "personal consults." He holds himself out as a "tax consultant," with experience and background in fields related to taxation.

Definitely, the portions of the scheme that would be considered "core" commercial speech i.e. that speech which proposes no more than a commercial transaction, may be enjoined if they are deceptive or misleading. (2)

Since Schiff does not sell anything, advertise anything, put on seminars or do consulting, does not have an office, phone, bank account, or address (other than his prison address), it is patently absurd for the Court to claim that Schiff is currently

2. Of course, nothing that Schiff ever wrote or said constituted false commercial speech or constituted an abusive tax shelter. Schiff's written and stated tax opinions merely reflected what was in the laws themselves, which were enacted to conform to the Constitution and Supreme Court decisions. Schiff did not have to devise "formulas" and "tax shelters" to avoid the payment of income taxes: the laws themselves - largely unknown to the American public - did it. As far as Schiff engaging in false commercial speech is concerned, this is what the 38 page criticism that appeared in the January, 1986 Seton Hall University School of Law "law Review" had to say about the matter - in connection with the preliminary injunction and its sustaining Ninth Circuit decision. "'The Federal Mafia' so convincingly criticizes the practices of the government of the United States, that the government has regulated Schiff's book under the guise of protecting the public from deceptive commercial speech, rather than providing Schiff's speech with the full First Amendment protection it deserves." (Page 589)

"doing business" or engaging in "commercial speech" on any basis. Therefore, there cannot be any "Commercial Speech Aspects of the (alleged) Scheme" as captioned in the Court's injunction. Therefore, there cannot be any commercial speech or abusive tax shelter to enjoin, which were the alleged reasons for the Court granting the preliminary injunction.

- D -

**The Court In Its Order Knowingly and Egregiously Misrepresented  
Why Schiff Claimed People Could Claim "Zero Income"  
Regardless Of How Much Ordinary Income They Might Have**

On page 2 of its Order the Court writes:

Defendants schemes are based on the false premise that income earned by individuals is not subject to federal income taxes. Defendants refer to this business as the "zero income" scheme because they falsely advise their customers that "[f]or income tax purposes, you can legally report 'zero' income and pay no income taxes regardless of how much you might have earned."

First of all, defendants have never referred to their position with respect to reporting "zero income" as a "scheme." Defendant's have always claimed that in reporting "zero Income" people were following the law. It's the Government and its courts who have referred to this as a "scheme," hoping, in this manner, to continue misleading the public as to what "income" means in our revenue laws.

When Schiff (and others) report "zero income" on their tax returns they explain that they do so because: 1. "income" is not defined in the Internal Revenue Code (citing Conner v. US, 303 F.Supp. 1187, 1189; and US v. Ballard, 535 F.2d 400, 404); while 2. "income" is defined by the Supreme Court in Merchant Loan & Trust v. Smietanka, 255 US 509 as, having "the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act of 1909." So her/the Supreme Court held that "income" in our revenue laws was synonymous with corporate profit.

In addition, Schiff included<sup>in</sup> his Response excerpts from House Report 1337 and Senate Report 1622 (83rd Congress, 2d Session), which was issued by Congress in 1954, along with the 1954 Code. Congress stated in those Reports that "income" was used in the 1954 Code in its "constitutional sense," which does not mean in its ordinary sense, which is how the Court and the Government obviously and erroneously use the term. When I asked the Government in discovery to admit that Justice Department lawyers always calculate income in the "ordinary sense," and not in its "constitutional sense," the Government claimed it was "uncertain as to what Schiff means when he uses the phrases 'Constitutional sense' and 'ordinary sense,'" as they relate to taxable income; proving, that in both civil and criminal litigation, the U.S. Department of Justice is always fraudulently attributing income to those it prosecutes and to those whose property it seeks to confiscate.

In addition, Schiff attached, as Exhibit D, page 637 from the 1895 Pollock decision, 158 US 601, in which the Supreme Court held that a tax on income from real and personal property (i.e. dividends, interest, rent, wages) could only be constitutionally taxed if the tax were apportioned. Schiff also attached as Exhibit E an excerpt from "Shepard's Citations" showing that the Pollock decision - the 16th Amendment notwithstanding - has never been reversed or overturned, and so remains good law even today. In addition, Schiff attached as Exhibit G. a recent page excerpt from the "Digest of the United States Supreme Court Reports." Three Supreme Court cases were cited in that excerpt as holding that the whole purpose of the 16th Amendment "...was to exclude the source from which a taxed income

was derived." Those cases were: Brushaber v. Union Pacific RR., 240 U.S. 1, Stanton v. Baltic Mining Co.; 240 U.S. 103; and Tyee Realty Co. v. Anderson, 240 US 115.

As shown on pages 47 - 49, at the preliminar hearing all three of Schiff's witnesses testified that when they reported "zero" income they were reporting their income in the "constitutional sense," and the Government's attorney did not even challenge them on this. Therefore, on page 49 of his Response Brief Schiff asked the Court to explain the meaning it gave to the term "income" when it used it in its Ruling: would it be using the term in its "ordinary sense" or in its "constitutional sense"? Schiff then reminded the Court....

If the Court is silent on the matter, then I would remind the Court that it has been held that: "Silence can be equated with fraud where there is a legal or moral duty to speak, where an inquiry left unanswered would be intentionally misleading.  
(US v. Tweel, 550 F.2d 297,299; quoting US v. Prudden, 424 F. 2d 1021 (5th Cir.)

The Court was silent on the matter. Why? Why - in its "Findings of Fact" and "Conclusions of Law" - didn't the Court rule that Schiff's reliance on all these Supreme Court cases and Congressional Reports was misplaced? Indeed, the Court in its Ruling does not even mention this relevant case law and Congressional Reports.

- E -

**The Court Misstates Schiff's Claim Concerning  
the Voluntary Nature of the Income Tax  
While It Ignores the Government's  
Fraudulent Responses On This Issue**

On page 2 paragraph 4 of its Order, the Court writes:

The returns that Schiff and Neun and their associated entities<sup>(3)</sup> have continually and repeatedly prepared are based on unrealistic positions,<sup>(4)</sup> namely Schiff's claims that paying income taxes is voluntary and that wages and other income are not subject to taxation, and result in gross understatement of their customer's tax liability.

3. Schiff and Neun have no "associated entities" and 99% of all the "zero" returns filed, were prepared by the filers themselves and neither Schiff nor Neun had anything to do with them.
4. Such as: 1) Income from real and personal property can only be taxed on the basis of apportionment; 2) pursuant to the 16th Amendment, income must be separated from its sources, if it is to avoid apportionment; and 3) only income received in the "constitutional sense" is taxable under our revenue laws.

Where the Court refers to Schiff's claim "that paying income tax is voluntary," the Court would lead the readers of its Order<sup>to believe</sup> that Schiff's claim originated in Schiff's own irrational and demented mind. The Court's order does not mention that Schiff supported his claim with at least a dozen Government documents and published statements of IRS officials - which all said the same thing. For example: The IRS's own "mission statement" states its mission is to promote "voluntary compliance." A high School teaching syllabus stated that the income tax was based on "voluntary compliance" no less than three times. Former IRS Commissioner Jerome Kurtz, stated no less than six times in the 1979 IRS "Annual Report" that people pay income taxes "voluntarily." I even provided the Court with an excerpt from a the Hearing Report of a Subcommittee of the House Ways and Means Committee in which the then head of the Alcohol and Tobacco Division of the IRS (Dwight E. Davis) testified that "Your income tax is 100% voluntary, and your liquor tax is 100% enforced. Now, the situation is as different as day and night." Then Schiff asked the Court: "What could Mr. Avis possibly have meant to convey by this comparison?" In addition, Schiff provided the Court with additional documents, such as a page from one of the most authoritative books on the income tax; Michael Saltzman's book, "IRS Practice and Procedure." On page 13.01 Mr. Saltzman states: "The internal Revenue laws are based on the premise that taxpayers will voluntary confess<sup>(5)</sup> and report and pay the correct amount of their tax liability." (Emphasis added). In addition, Schiff included a page from the decision in In Re Schmitt, 140 B.R. 571 (1992) in which the Court wrote in its decision, "Our income tax system is voluntary and the Internal Revenue Service must perforce rely on self-assessment of the taxpayer."

5. Mr. Saltzman correctly identifies what a taxpayer files: it is a "confession," not a "return." But he is still confused on the issue of "liability."

In addition, Schiff supplied the Court with a page from the IRS' "Penalty Handbook," that stated no less than 11 times, that the income tax is either "voluntary" or based on "voluntary compliance."

In addition, during discovery, Schiff asked the Government to admit <sup>that</sup> while the IRS claims that income tax is based on "voluntary compliance" the IRS "never claims (it) is based on 'compulsory compliance'" Instead of simply denying the admission, if it were not true, the Government (to avoid answering truthfully) raised contrived objections to the admission and then said, "the United States is uncertain as to what Schiff means when he uses the phrases 'voluntary compliance' and 'compulsory compliance.'"

In another Admission Schiff asked the Government to admit, that: "If the English language is properly interpreted, there has to be a difference between 'voluntary compliance' and 'compulsory compliance'?" Can there be any conceivable reason that that Admission could not be admitted? However, the Government refused to answer the Admission and again stated: "The United States is uncertain as to what Schiff means when he uses the phrases 'voluntary compliance' and 'compulsory compliance.'"

Thus on this issue Schiff provided the Court with a number of IRS documents and statements of responsible officials that compliance with income tax statutes was voluntary. The Government, on the otherhand, provided no contrary documents - all the Government provided were obviously disingenuous answers to discovery questions. At trial, it would have been interesting to have a Government witness explain, why, if the income tax is based on compulsory compliance, do all these Government documents and informed people say that it is voluntary?



In any case, whether compliance with income tax statutes was voluntary or compulsory was a contested issue of fact. It was an abuse of discretion for the Court to resolve this issue in favor of the Government

- F -

The Court Had No Jurisdiction to Hear This Matter  
Because It Was Unable To Identify the Statute  
That Made Persons "Liable" For Income Taxes

Obviously, the Court can have no jurisdiction to enjoin anyone from doing anything in connection with an alleged tax for which no statute makes anyone "liable." On page 49 of his Response Brief Schiff reminded the Court, "Since the Government could not identify any statute during discovery" that made persons "liable for income taxes, it was incumbent for the Court to do so, if the Court claims that such a statute exists." However, the Court did not do so. This is another factual question in dispute. Schiff claims that no statute exists that make persons "liable" for income taxes, and neither the Government in response to discovery, nor the Court in its Order could identify any such statute. Therefore, it was again an abuse of the Court's discretion for the Court to resolve this contested issue in favor of the Government.

- G -

This Court Is Barred By the Rules of Equity  
From Granting Equity Relief To the United States  
Since It Comes To Court With "Unclean Hands"

As pointed out in Schiff's "Response to the Government's Opposition that the Court Impose Sanctions On the Government" (For its having fabricated an answer as to why it couldn't answer the Admission here discussed) and in his Response Brief (at pages 54-56); Schiff pointed out that , Robert Wesley, a witness at the hearing held in connection with the preliminary <sup>injunction</sup> / testified that his employer (the State of California) honored his "exempt" W-4 from 1998 until January of 2003, when the IRS notified his employer to cease honoring it. In addition, Schiff supplied the Court with an affidavit of Howard Ollman which certified that: the IRS sent a "letter to my employer, the United States Postal Service, informing them that the Internal Revenue Service had 'determined' that my W-4 was incorrect, and that 'it does not conform with the requirements of...section 26USC 3402' and that my employer was to 'disregard' my W-4 and 'withhold taxes as if I were single claiming 1 withholding allowance.'" Because of that letter, Mr. Ollman was denied his right to not having withholding taxes taken from his pay, as provided by 3402(n).

In its "Opposition to Defendant Schiff's Motion To Impose Sanctions and Compel Discovery Responses" the Government admitted that no law allowed the IRS to send <sup>out</sup> such letters, and by implication, allows the IRS to interfere with our revenue laws in this manner.

It is hornbook law that a party seeking equity relief must come

to court with "clean hands." Both in Schiff's "Response to the Government's Opposition to Sanctions" and in his Response to the Government's Motion for Summary Judgment, Schiff pointed out that

The United States further admits (in relevant part) that:

To demonstrate the necessity for an injunction...the United States must demonstrate...that Schiff interferes with the administration of the internal revenue laws.

Then Schiff went on to point out:

This action, of course, is an attempt by the United States to seek injunctive relief and in any such equitable action, it is fundamental that the United States must come into court with "clean hands." And where a party seeking an injunction has committed acts similar to those complained of, the court should leave the parties where it finds them and deny injunctive relief. *Edward Thompson Co. v. American Law Book*, 122 F. 922 (C.C.A. 2d Cir. 1903); *Weegham v. Killifer*, 215 F. 289 (C.C.A. 6th Cir. 1914; *Ilo Oil Indiana Natural Gas & Oil Co.* 174 Ind. 635, 92 N.E. 1 (1910).

Then Schiff went on to point out:

So here we have the United States seeking to enjoin Defendants from "interfering with the administration of the revenue laws...(even though) the United States has already admitted that the IRS does interfere with the administration of the internal revenue laws by blatantly interfering with the public's right to claim "exempt" from withholding pursuant to 26 USC 3402(n)...Therefore, just on this issue alone, the United States is not entitled to injunctive relief.

Even though Schiff twice raised this issue in his pleadings, the Court refused to address it. Even if Schiff were wrong, it was incumbent upon the Court to address the issue in its "Findings of Fact and Conclusions of Law." The fact that the Court did not do so, raises serious questions regarding the Court's impartiality.

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#### With Respect To Schiff's Website

In its final paragraph, the Court states:

The defendants must also remove from their websites and other signs and advertising all information that violates this order, including false commercial speech, speech that violates 26 U.S.C. §§ 6700, and speech that assists or is likely to incite others to violate the law.

First of all, Schiff does not sell anything, and nothing on his website is for

sale, therefore Schiff cannot be engaged in "commercial speech". There are books on Schiff's website that can be downloaded free of charge. What Schiff has posted to his website is his understanding of the revenue laws and why he believes his current incarceration is illegal as well <sup>as</sup> the trial that put him there. According to Schiff's understanding of the First Amendment, such speech is supposedly protected under that Amendment.

Schiff has also posted to his website numerous motions that he submitted to the Court in connection with his criminal trial. He has also posted Government responses to those Motions along with Magistrate Leavitt's recommendation's to the Court, showing that the Government contested Schiff's argument while Magistrate Leavitt rejected them. As a federal prisoner Schiff has no access to the internet, and has not seen his website in over three years. However, the Government in its "Renewed Motion for Summary Judgement" provided Schiff with extensive excerpts from his website - but which only constituted a small portion of the website, since it included none of the legal pleadings and the Recommendations of Magistrate Leavitt. The following are excerpts from the pages supplied to Schiff by the Government. (6)

For example, on page 27 of 36 Schiff's website states:

with respect to his four motions to dismiss: "Naturally the government disagreed with all four of my conclusions (and on) October 8, 2004 the Government filed its answer opposing my (four motions.) Click here to read its Response. On November 23, 2004 I filed my (Reply to the) Government's Response. By clicking here you can read my Response. On December 3, 2004 U.S. Magistrate Judge Lawrence R. (Leavitt filed his) "Report" recommending that U.S. District Court Judge, Kent J. (Dawson deny) my four motions to dismiss. Please read U.S. Magistrate Judge (Leavitt's) "report" and my Reply."

Read my Motion to Suppress all of the alleged evidence the Government confiscated from Freedom Books on Feb. 11, 2003... On December 21 2004, U.S. Magistrate Leavitt filed his "Report" contesting my claim and recommending that Judge Dawson deny my (Motion to) Suppress. To read my reply to his report, click here.

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6. Since portions of the wording (largely the ends of a line) are cut off, Schiff guessed what the words were and enclosed them in brackets.

On page 31 of 36 we find the following:

In addition I have also posted three "Reports and Recommendations" from U.S. Magistrate Judge Lawrence R. Leavitt who argues (that my) views on these issues are dead wrong.

Therefore, in view of all these official, legal voices all explaining (on my website) - why my views on income taxes are dead wrong, how can anyone be misled by me?

I urge everyone to read all of the pleadings now posted to this website by U.S. attorneys and the court all claiming that my understanding of our income tax laws is dead wrong. (More such pleadings and documents will be posted to this website as they become available); therefore, I urge everyone to: (1) check out the Internal Revenue Code itself; (2) consult with your lawyer and/or accountant concerning all material contained on this website and anything I might have said about income taxes; and (3) ask the IRS itself. before (you rely) on anything I might have said or written in connection with income (taxes).

And further on page 32 of 36

Remember, all federal judges and U.S. attorneys maintain that what I say about income taxes is dead wrong, and in many cases even constitute tax evasion. I, of course, do not agree with them and I would never advocate violations of law - which is why I sell (the Code and its) implementing regulations. However, I may even be "delusional" (so don't take my word for anything, without checking out all of the (underlying laws) and what the IRS, the DOJ and the courts have to say about it.

Therefore my website warns the public that they are to take nothing on my web site as being the law; that the courts and the DOJ claim that all my views on the income tax are **Dead Wrong**, and might even constitute tax evasion. In addition, my website makes clear that I am in prison because of my income tax views, <sup>and that I may even be delusional.</sup> So in what way can my website "incite others to violate the law."

Now, having said all the above, Schiff still believes that his understanding of tax law is correct, and that the Government (with the held of its courts) is enforcing the revenue laws unconstitutionally. and in violation of the revenue statutes themselves - as the Government's responses (and non-responses) to discovery questions make abundantly clear. Certainly the First Amendment gives an American the right to argue that the Government is acting illegally and unconstitutionally, and such argument has nothing to do with "commerical speech" or the promotion of an "abusive tax shelter."

As stated in the Seton Hall Law School "Law Review's" critical analysis of the preliminary injunction (which was incorporated in Schiff's Response but totally ignored by the Court) :

At pages 554-555.

Political speech, including criticism of the government, occupies the core of the protection afforded by the First Amendment. As the court in *Mills v. Alabama* ( 384 U.S. 214 (1966) stated:

Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect free discussion of governmental affairs.

Most importantly, the right to criticize the government is "the heart of what the First Amendment is meant to protect" (*McCormell v. Fed. Election Comm'n*, 540 U.S. 93, 248 (Scalia, J., concurring in part and dissenting in part) (7))

Based on all of the above, there is nothing on Schiff's web site <sup>that reflects his views</sup> that he does not believe is true and correct. He also does not believe that there is anything on his web site that will "incite" anyone to "violate" the law. There are enough disclaimers <sup>and warnings</sup> on his web site to force anyone to do a lot of independent research before <sup>they</sup> acted on any information contained on his website. However, if the U.S. attorney or the Court believes there is something on Schiff's web site that is in violation of the Court's order, if they tell me what it is; why it is false, and why it violates the court's order; I will see that it gets removed from the web site.

In any case, Schiff is moving the Court - based on all of the above - to stay its Order pending review by the Ninth Circuit.

Dated: 11/23/2008

Respectfully submitted

Irwin Schiff, pro se

(1) These are only two quotes from this 38 page critique of the preliminary injunction. The critique contained 328 footnotes, approximately half of which referenced court decisions which the author believed buttressed her conclusion that in issuing and sustaining the preliminary injunction, the trial and appellate courts "denied Schiff his freedom of speech guaranteed under the First Amendment" (At page 551)

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing  
"Motion For Stay of the Permanent Injunction" was  
deposited in our unit mailbox on November 24, 2008 for  
delivery to a U.S. Post Office and addressed to:  
Michael J. Roessner, Trial Attorney, Tax Division  
U.S. Department of Justice, P.O. Box 7238, Wash. D.C.  
2004.

And a copy was sent to:

Cynthia Neun, 39011-048  
FPC Phoenix  
37930 North 45th Ave.  
Unit Papago B 012L  
Phoenix, AZ 85086