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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES,	)	
	)	Civil No. CV-03-0281-LDG-RJJ
Plaintiff,	)	
	)	
v.	)	
	)	Supplementing Defendant's
IRWIN SCHIFF & CYNTHIA NEUN,	)	Motion to Stay the
	)	Injunction
Defendants.	)	

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When, on November 23, 2003, Defendant Schiff filed his Motion to Stay the Injunction issued on October 14, 2008, he had not, as yet, received the Court's Order of September 30, 2008. Since he did not receive that Order until on or about December 23, 2008, he did not comment about it in his Motion of November 23, which he will do at this time

In justifying giving the Government a summary judgement, the Court states:

Summary judgment is appropriate only 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 the movant is entitled to judgment as a matter of law...In determining whether summary judgment is appropriate, we view the facts in the light most favorable to the non-moving party and draw reasonable inferences in favor of that party.  
(Statutes and court decisions omitted)

Obviously, this Court did not apply these principles in awarding summary judgment to the Government. The Court, in fact, (as shown below) 1) ignored all the contested issues of fact (largely conceded by the Government in its discovery answers); 2) resolved all contested issues of fact (and those already conceded by the Government), in favor of the moving party, and not the non-moving party; 3) disregarded all "reasonable inferences" which should have been resolved in favor of the defendants; 4) disregarded all of the Government's answers to discovery, which revealed that the Government did not have a legal or factual leg to

stand on; and 5) disregarded and failed to comment on the Government's admission that it had no statutory authority to interfere with an employee's right to claim "exempt" from withholding, as it had been doing: in other words, it did not initiate this litigation with "clean hands."

Presumably there were a number of contested issues of fact.

1) The Government claimed in its initial complaint that Schiff's books and material misled the public with regard to income tax laws, and encouraged the public to violate those laws; however when asked in discovery to specifically identify such examples, the Government failed to do so. Naturally, defendants vigorously contested this factual issue.

2) Schiff claimed, as a factual matter, that no law made anyone "liable" for income taxes. To establish the validity of that claim, Schiff asked the Government to answer the following, simple interrogatory:

Sections 4401(c), 5703(a), 5005(a)(b) & (c), make persons "liable" for: wagering, tobacco, and liquor taxes. What is the Code section that similarly makes persons "liable" for income taxes?

The Government's answer was as follows:

**OBJECTION:** This question seeks a conclusion of law and is thus not formulated to lead to discovery of admissible evidence. The question is also objectionable as vague and ambiguous - the Government need not engage in the kind of word-games Schiff attempts to play here with the use of the word "liable." Finally, the question is improper because it clearly is argumentative and controversially formulated. The foregoing objections notwithstanding: Schiff is directed to Section 1 of the Internal Revenue Code - entitled "Tax Imposed - et seq.

Obviously, if there were a statute making person's "liable" for income taxes, the Government would simply have identified it. It would not have needed to fabricate patently nonsensical objections as contained in its answer. In addition, the Government's reference to Section 1 is erroneous on at least two grounds: 1) the word "liability" appears nowhere in section 1, or its succeeding sections; and 2) if it did, section 1 would have had to be mentioned in the Privacy Act Notice of a 1040 booklet, but it is not. Only sections 6001, 6011, and 6012 are mentioned.

In any case, what is the only "reasonable inference" that can be

"drawn" from the Government's answer? But if, as the Court states, in granting summary judgment, "all reasonable inferences" have to be "drawn" in favor of the "non-moving party," why weren't the obvious inferences derived from the Government's discovery answers not "drawn" in favor of defendants? In any case, this had to be another disputed, factual issue.

3) Also in its Order the Court states, in relevant part:

...the court found that Schiff and Neun had violated 26 U.S.C. §6701 'by preparing false tax returns and other tax-related documents for their customers.'

How could the Court have found any such thing? Schiff specifically provided the Government with a copy of his "zero" return, and requested that the Government identify any statements in it which were either false or fraudulent; and the Government failed to do so. And while the Court and the Government make reference to my "false tax returns," neither the Government nor the Court has ever identified any statement on my "zero" return as being false.

In addition, Schiff has repeatedly pointed out to this Court, that when he reports his income as "zero" he is reporting his income in the "constitutional sense," in accordance with House Report 1337 and Senate Report 1622 (issued when the 1954 IR Code was promulgated), which stated that income as used in §61 was used in its "constitutional sense." However, in all of its rulings, the Court falsely pretends that Schiff, in reporting "zero" income, is reporting his income in the "ordinary sense." Schiff devoted numerous pages in his 66 page response to the Government's "Motion For Summary Judgment" to these distinctions - including extensive excerpts from Supreme Court decisions which explain why income in the "ordinary sense" can not be taxed, absent apportionment. For the Court to pretend that these distinctions do not exist, amounts to nothing less than judicial fraud.

4. The Court mentions that "Schiff and Neun assert legal arguments



which were rejected by the court in the preliminary injunction." That was largely due to the fact that the Government put on no witnesses that could be cross-examined and because the defendants did not have access to discovery. As Schiff has already stated, The Government's answers to discovery have already shown, that the Government does not have a legal or factual leg to stand on. Besides, as numerous citations in Schiff's Motion to Stay have shown, ""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)" ; numerous other decisions cited, <sup>such as,</sup> at a permanent injunction "parties are free to offer additional evidence, and the court can come to an opposite conclusion." The point is, before my First Amendment rights are abridged, I have a right to confront my accusers in court. It is a blatant denial of "due process" to allow the mighty United States to hide behind the Court's robes in this instance.

5. In addition, the Court states, "In his opposition to summary judgment, Schiff persists in arguing that paying income taxes is voluntary." The Court is wrong. Schiff didn't have to "argue" this issue at all. Schiff merely provided the Court with numerous Government documents, all of which indicating that paying income taxes is voluntary. I would now ask the Court to take judicial notice of Treasury Regulation 26 C.F.R. 601.602(a): it says, "The tax system is based on voluntary compliance." (Actually "voluntary compliance" is an oxymoron. If something is voluntary, you don't have to comply; and if you have to comply, it can't be voluntary. Therefore, "voluntary compliance" means the same thing as "voluntary.")

If Schiff is wrong on this issue, this Court will have to rule <sup>that</sup> Treas. Reg. 26 601.602(a) is void, based on the Court's claim that the income tax is based on "compulsory compliance" and not on "voluntary compliance." Absent the Court doing that, the reasonable inference to be derived from T.R. 601.602(a) is that the payment of income tax is voluntary, and that inference has to be made in favor of defendants. That inference alone, defeats the summary judgment.

Further, the Court again obfuscates Schiff's position by stating it is based on his claim that "there is no legal obligation to pay income taxes." However, Schiff's claim is more basic than this. His claim is that there is no law that makes anyone "liable" for income taxes; and if this is so, how can anyone have a "legal obligation to pay income taxes"? Of course, the Government confirmed this as covered above. And if Schiff were wrong on his claim, this Court could have easily refuted it <sup>by</sup> citing the law and quoting from it, in its Ruling. But the Court didn't do so. Why not?

6) Further the Court states:

Schiff...maintains that neither the government nor the court have specifically identified anything false or fraudulent in his materials. The court's preliminary injunction, however, went into detail about the fraudulent and misleading content of Schiff's program and materials. The Ninth Circuit throughout its opinion, also makes specific reference to Schiff's misleading and fraudulent claims, 379 F. 3d 626-630

Schiff, of course, never sold any "program." He preached that the laws themselves allowed the public to avoid paying income taxes, so why would he sell a "program" for that purpose? Obviously, the Government and the Court merely conjured up such an alleged "program" so they could illegally deprive Schiff of his First Amendment right <sup>of free</sup> speech, under the guise of preventing him from selling a "program." Schiff would also take issue with other claims contained in the above, as he did in the following paragraph which was contained in his opposition to the Govt.'s <sup>summary judgment</sup> motion for

On page 13 of Judge George's Preliminary Ruling he states: "As previously discussed, the government has shown by a preponderance of the evidence that Schiff, Neun, and Cohen had violated §6701 by preparing false tax returns and other tax-related documents for their customers. These returns and documents falsely report that their customers have no taxable income and no tax liability." So Judge George's Ruling goes on for some 33 pages in which he continually repeats that Schiff's "zero" return is false; however, he never explains why it is false or what specific statements that are contained in its 14 paragraph attachment are false. Similarly, while claiming that Schiff advises people to file false W-4's, Judge George never explains on what basis such claims are false. And while indicating that Schiff's claim that no law provides for an income tax "liability" is false, Judge George, incredulously, makes no attempt to refute Schiff's claim by citing the statute that Schiff says doesn't exist.

As far as the Ninth Circuit's decision is concerned, I supplied the Court

with a letter from the attorney who handled that appeal, in which he stated that he made no attempt to argue the merits of Schiff's beliefs. In addition, an objective analysis of both the district and appellate decisions, with regard to the preliminary injunction, appeared in the May 2006 issue of the Seton Hall Law School "Law Review." It concluded that both decisions were erroneous, and "denied Schiff his freedom of speech guaranteed under the First Amendment."

In addition, the above paragraph contains numerous false and/or misleading statements. First of all, Schiff was entitled to discovery as a matter of law: he didn't acquire it through the benevolence or sufference of the Court. All of Schiff's discovery requests complied with the provisions of the Fed. R. of Civ. P. Rules 33 and 36. In addition Schiff would not use discovery to "argue" the "validity of the income tax laws," since he believes that all such laws are valid and constitutional. The problem is the Government disregards and violates those laws (and the constitutional provisions that support them) in its flagrantly illegal enforcement of the income tax. For example, this Court fails to take notice of the fact that, as a result of discovery, the Government admitted that there is no law that authorizes the IRS to write employers instructing them to disregard an employee's request to "exempt" them from withholding, in accordance with the provisions of § 3402(n). Yet the IRS sends out tens of thousands of such letters to employers who comply with them, and this kind of illegal IRS activity is only the tip of the iceberg.

The Court's further claim that Schiff would not be "allowed through discovery to debate his tax based theories or positions," makes no sense at all. To "debate" means to "argue." Why would Schiff use discovery to argue his own tax beliefs? The whole purpose of discovery is to "smoke



out" your adversary's beliefs not to argue your own. What good would it do Schiff to use discovery to argue his own tax beliefs? The fact is, Schiff's discovery did "smoke out" the Government's tax beliefs, which irrefutably revealed that the Government was enforcing the income tax in violation of law.

It is apparent, that the Court raised the issues contained in the above paragraph, in order to avoid having to deal with the Government's culpable and incriminating discovery disclosures, which revealed, among other things, that:

- 1) no law made anyone "liable" for income taxes;
- 2) no law required the payment of income taxes;
- 3) the Government admitted to not knowing the legal meaning of "income";
- 4) the Government could not identify on what basis Schiff advised people to file false W-4's;
- 5) the Government could not identify what statements on a "zero" return were false or fraudulent; and,
- 6) The Government claimed it did not know the difference between "voluntary compliance" and "compulsory compliance."

In its footnote 2., the Court says, "Schiff asserts, among other things, that (1) there is no law making persons 'liable' for income taxes, (2) no law requires anybody to pay income taxes, and (3) the United States does not know the legal meaning of 'income.'" The Court characterized such claims as being "conceptual infirmities." Schiff suspects that this was the Court's polite way of saying that such claims were "obviously absurd." And to a majority of Americans (who have been thoroughly brainwashed on the subject of income taxes) that is exactly how they would regard such claims. However, all three claims are correct, as both the Court and the Government verified in this litigation.

Schiff has already covered, how, in discovery, the Government could not identify any statute that made people "liable" for income taxes.

Therefore, Schiff invited the Court to do so in its Ruling. However, the Court failed to do so. Therefore, the only logical inference that can be drawn from these facts is that no such statute exists. Relative to this issue is the Court's footnote 1. In it the Court makes reference to Schiff's recent criminal conviction. However it should be noted that to get that conviction Judge Dawson was compelled to charge my jury that Code sections 1, 61, 63, and 6012 "working together make an individual liable for income taxes." Besides that instruction being erroneous on a variety of grounds, the Ninth Circuit had already ruled in Roat v. C.I.R., 847 F2d 1379 that, "Tax policy calls for statutes to be read independently." So, pursuant to the Ninth Circuit, Judge Dawson's instruction was erroneous and neither Schiff, his co-defendants, nor anyone else could be "made liable" by these four statutes "working together." Unfortunately Schiff's ineffective attorney did not raise this issue (along with numerous others) in Schiff's appeal. As a consequence, Cynthia Neun and Schiff are currently incarcerated in connection with a "tax" for which no statute makes anyone "liable."

As far as there being any requirement "to pay" income taxes, Schiff asked the Government, by way of an interrogatory, the following:

Code Sections 4371, 5811, 5142, 4401, and 5703(b) provide for the payment of taxes imposed on foreign insurers, firearms, alcohol, wagering, and tobacco taxes. What Code section similarly establishes the requirement for the payment of income taxes?

Initially, the Government's answer was exactly the same as the answer it gave on "liability," as shown on page 2. Subsequently it amended its answer and now stated that the requirement to pay income taxes was contained in section 6151. However, in my Response Brief, I pointed out to the Court why - for a variety of reasons - such an answer was false.

Some of those reasons were:

1. If 6151 was the correct answer, the Government would have known



it inititially, and would not have claimed the requirement was contained in section 1.

2. If the Code contained a requirement "to pay" income taxes, it would have appeared in Subtitle A (the subtitle dealing with income taxes), and in the same chapter in which the income tax was imposed. It would not have been stuck in Subtitle F, the subtitle dealing with "Procedure and Administration"

3. In addition, the Parellel Table of Authorities shows that all of the implementing regulations for § 6151 are contained in CFR 27 (the regulations dealing with liquor, tobacco and firearms), and not in CFR 26, which contains the regulations related to income taxes.

4. And the tax laws would not require the payment of a tax for which the tax laws made no one liable.

As far as the Government not knowing the legal meaning of income is concerned, Schiff has provided this Court with House and Senate Reports that explained that "income," as used in the 1954 Code, was used in its "constitutional sense," which, obviously, is not the same thing as "income" used in its "ordinary sense." However in an interrogatory (which the Court was made aware of), Schiff asked the Government, by way of an admission:

Admit that in determining a person's taxable income lawyers for the Justice Department never calculate such income in the "Constitutional sense" as opposed to calculating it in the "ordinary sense."

In answering that admission, the Government stated "... counsel for the United States is uncertain as to what Schiff means when he uses the phrases 'constitutional sense' and 'ordinary sense'," as they relate to taxable income. Well, if the Government admits to not knowing these differences, then, obviously, the Government is admitting that it does not know the legal meaning of income - no other inference is possible. Schiff provided the Court with numerous Supreme Court decisions which explained why such constitutional distinctions are made.

However, since the Court was determined to save the United States the embarrassment of a trial, where it would have to put on witnesses subject to cross-examination, it awarded the United States

summary judgment, even though none of the principles contained in the second paragraph of the Court's Order applied. Based on those principles, the Court abused its discretion and awarded the United States a summary judgment to which it was not entitled. Based on those principles, defendants were entitled to a trial covering all of the issues involved. Therefore, Schiff moves that the Court stay the enforcement of its injunction, pending its review by the Ninth Circuit:

Dated: January 5 , 2009

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Irwin A. Schiff, pro se

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing, Supplement to Defendant's Motion to Stay, was deposited in our unit mailbox, on January , 2009 for delivery to a U.S. Post Office, addressed to Michael J. Roessner, Trial Attorney, Tax Division, U.S. Department of Justice, P.O. Box 7238, Wash. D.C.

Dated January 5, 2009

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Irwin A. Schiff, pro se

And a copy was sent to:

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