Justice Denied: The government gets a lawless $2.6 million judgment

The following will prove to you – if you don't already know it – that Justice in America is a joke.

On June 15, 2004 Nevada District Court Judge, Philp M. Pro awarded the Government a $2.6 million dollar summary judgment in connection with its lawsuit involving "income" Schiff never received, and taxes and penalties that don't exist. His order was clearly unlawful on a variety if grounds – as shown in Schiff's "motion for Reconsideration" and "Motion Opposing the Entry of his Order", both of which are now posted on this site.

Schiff had been conducting this litigation on his own and was looking forward to a jury trial (as the issues and law required) when the Government moved for summary judgment – which would place the suit's outcome in the hands of one of its own judges. However, for a variety of reasons, Schiff was forced to seek professional help in opposing the Government's Motion. In opposing that motion, Schiff provided his lawyers with a 48 page Declaration (supported by 37 Exhibits) plus a supplemental Affidavit, which should have stopped the summary judgment on a variety of grounds. However, in their written responses and at oral argument, his attorneys did not raise any of the issues contained in Schiff's Declaration or Supplemental Affidavit – and, so far, Judge Pro has not responded to either pleading.

Despite the failure of his attorneys to raise and argue the issues contained in his Declaration and Affidavit, Judge Pro had to know about them, since they were filed and submitted to him. To get the full impact of how lawless Judge Pro's summary judgment is, Schiff suggests you first read the shorter, Motion Opposing Entry of his Order – since, apart from being the shorter of the two motions, it will also reveal to you the total fraud and lawlessness involved in all IRS seizures.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA	)	Civil No. CV –S-01-0895-PMP LRL
	)	
Plaintiff	)	
	)	
v.	)	
	)	DEFENDANT'S RESPONSE
IRWIN A. SCHIFF	)	OPPOSING THE ENTRY OF
	)	JUDGEMENT AGAINST
Defendant.	)	IRWIN A. SCHIFF
	)	

Defendant Irwin Schiff files this Response to the Governments "PROPOSED ORDER DIRECTING ENTRY OF JUDGMENT AGAINST IRWIN A. SCHIFF," This Court should deny this request since it is supported by a Declaration that is 1) unauthorized, and 2) supported by documents fraught with fraud, as the following will show. However, before turning to those totally fraudulent, supporting documents, Defendant would point out to the Court that he believes this Court is legally bound to reverse its decision of June 15, 2004 for all the reasons contained in Defendant's Motion For Reconsideration filed on July 8, 2004, since it clearly establishes that the Court was in error in awarding the Government a summary judgment.

THE DECLARATION OF SANDRA DAVAZ IS UNAUTHORIZED

1) The Government basis its request for "Entry Of Judgment" on a Declaration of Revenue Officer Sandra Davaz; however, apart from the fraudulent claims supporting it, Ms. Davaz clearly has no delegation of authority from the Secretary of the Treasury to submit Declarations regarding income taxes to *anybody* – much less this Court. This is clear from 26 U.S.C. 7608 attached hereto as Exhibit A. Defendant asks this Court to take judicial notice that Section 7608 is broken down into subsection (a) and (b). Subsection (a) deals with the "Enforcement of subtitle E and other laws pertaining to liquor, tobacco and firearms." Subsection (b) applies to the "Enforcement of laws relating to internal revenue other than subtitle E." Subsection (b), therefore, is the only subsection that applies to income taxes, since that tax is contained in subtitle A. However, only IRS agents who are "criminal investigator(s) of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue law…." can fall into

subsection (b). Since Ms. Davaz is a Revenue Officer and not a "criminal investigator of the Intelligence Division of the Internal Revenue Service…" she *must* fall into subsection (a) which applies to "Any investigator, agent, or other internal revenue officer by **whatever term designated**….". However since all IRS agents who fall into subsection (a) are only authorized to enforce the provisions of subtitle E, *and not subtitle A*, she can have **no authority** to prepare "Declarations" involving income taxes. What can be plainer than that?[1]

In addition, her reference suggesting that Code section 6151 applies to income tax is false. Exhibit B, is taken from the C.F.R. Index. It shows that 26 U.S.C 6151 only applies to those taxes covered by C.F.R. 27. However, since income taxes are covered in C.F.R. 26, and **not** C.F.R. 27, section 6151 can **not** apply to income taxes.

Having thus established that her "Declaration" is without legal force and effect (and contains a materially false claim), I will, nevertheless show how numerous claims in the documents supporting it, are also false and fraudulent on a variety of grounds.

II
IN CONNECTION WITH THE YEAR 1979

2) The first document attached to her Declaration shows IRS entries for the year 1979. The first entry states: "(Code) 150 Return filed and tax assessed (Date) 05-20-1985 (Amount) 0.00." This entry claims that a return was filed on 05/20/1985 and "0.00 tax assessed" on that date. However my *alleged* 1979 income tax liabilities for 1979 were determined by the U.S. Tax Court. In connection with that litigation, the Government stipulated (Exhibit C) that "Petitioner did not file an individual tax return (Form 1040) for 1979." (Exhibit B was taken from Exhibit 2 of Darmstadter's Declaration) So this entry on this document is false. But the fraud doesn't stop there. The 150 entry shown on the document stands for a "TC 150" entry. Attached as Exhibit D. are excerpts from the IRS "ADP and IDRS Information" and shows that a "TC 150" entry means, "A tax liability assessed from the original return" and allows the IRS to "establish a tax module." Since, admittedly, I filed no return for

[1] This too can be said regarding the Declarations of both Revenue Agents Gerald A. Dragon and Robert J. Netcoh which were submitted by the Government as being material to their motion for summary judgment. Since both Dragon and Netcoh must also fall into subsection (a) of Code Section 7608, they **too** can have **no delegated authority** to make any **enforcement declarations** in connection with income taxes. In his Declaration and Motion to Reconsider, Defendant provided the Court with various reasons why the Declarations of both Dragon and Netcoh should be disregarded by the Court; however, this is a reason that Defendant might have overlooked. However, its significance cannot now be overlooked by this Court.

1979, no tax could have been "assessed from the original return," nor could a "tax module" have been created. So the "TC 150" entry shown on this document is fraudulent, since no "TC 150" entry was possible for the year 1979. Therefore, the "0.00" assessment entry was also fraudulent, since there could not have been any legitimate assessment (and a "TC 150" entry) when no return was filed. As the IRS decoding manual further shows a "TC 300" entry can only be entered to "a tax module which contains a TC 150 transaction." Since "TC 300" entries are dependant on valid "TC 150" entries (and since the "TC 150" entry shown above was invalid) then both of the two "TC 300" entries shown on that document were also invalid. Therefore the "TC 300" "quick assessment" for $44,199.99 shown as occurring on 09-03-1992 was **obviously fraudulent**, and is, therefore, null and void just on this basis alone. However, *to establish its fraudulent string of entries* with respect to the 1979 taxable year, the Government had to make a "0.00" assessment on 05-20-1985 (in order to fool its master computer), so it could "establish a tax module." In any case, the first assessment made for the year 1979 is shown to have occurred on 05-20-1985 and not on 09-03-92 as claimed by the Government in its complaint and in Ms. Davaz's schedule. Since the government has 10 years to reduce its assessments to judgment, that 10 year period started on 05-20-1985 and not on 09-03-92, as the Government seeks to claim. Therefore, the statute of limitations in reducing Defendant's alleged 1979 assessments to judgment ended on 05-20-1995 or some 5 years before the Government instituted this law suit - as claimed by Defendant in his Declaration and in his Motion for Reconsideration. However, the fraud contained in this document does not stop here, as the following will show.

5) The next entry "560 ASSESSMENT STATUTE EXPIR DATE EXTENDED TO 08-21-1992." How could the IRS unilaterally extend the "statute expiring date"? If they could do that, no statute of limitation date would ever have any meaning, since the IRS could unilaterally extend them for its own benefit. Obviously, this was an unauthorized and unlawful extension and merely shows how the IRS breaks the law to suit itself (and assumes that nobody will ever find out, since who will ever get to see [and/or understand] these coded entries?) – while challenging them would cost taxpayers considerable time and money.

6) The next entry is, "320 FRAUD PENALTY 09-03-100 $22, 100." As shown by the attached pages 191-193 and 196 from the Tax Court Transcript (attached along with page 172, in Exhibit E), the only act of tax fraud alleged at my Tax Court trial was "failure to file"

and failure to file does not constitute an "affirmative act" of tax fraud pursuant to U.S. v. Spies, 317 US 492. As shown by transcript pages 191-192. Apparently the fraud penalty was determined by "shooting darts at a dart board" since Tax Court Judge, Charles E. Clapp II, stated he "didn't care," if that's how Mr. Cingo, the Government's witness, determined it.

7) The next entry is, "240 QUICK ASSESSMENT 09-03-1992 $25,000," This entry reflects the $25,000 penalty imposed upon me by Judge Clapp for filing, what he termed, was a "frivolous" appeal to Tax Court. However, I had to file the appeal, if only to litigate and challenge the $22,100 fraud penalty, since the Government would have the burden of proving fraud if I appealed, but would escape its burden if I did not. And by appealing, I proved that there was no basis whatsoever (as shown above) to the fraud penalty. In addition, I also proved that no deficiency existed for 1979. Mr. Cingo admitted (as shown on page 172) that he had "attempted … to determine my **total** tax liability," not a deficiency. However Mr. Cingo had no authority to determine my **total** tax liability, only a deficiency, if it existed. [2] If the Government wanted to determine **my total alleged tax liability** for 1979, it had to sue me in Federal district court pursuant to 6501(c)(3) (Exhibit F). So, instead of obeying the law, the Government fabricated a "deficiency," and all the entries shown above, in order to avoid having to meet its burden under 6501(c)(3).

8). The next entry "190 INTEREST ASSESSED 09-03-1992 130,880.41" is also a fraudulent entry. Attached as Exhibit G is Treasury Decision 1995. It has never been repealed or revoked. It states, "The necessity of issuing Form 17 is twofold –first, to determine the date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second to complete the Government's lien on property belonging to the taxpayer." Defendant has attached Form 17 as Exhibit H, (it was already furnished to this Court as Exhibit 7 in Defendant's Declaration). T.D. 1995 clearly establishes that a Form 17, notice and demand for payment, must be sent out before interest can accrue and to "complete the lien" on taxpayer's property. [3] Also, as Defendant pointed out in his Declaration (at page 11) and in his Motion for Reconsideration (at page 16), no "notice and demand" for payment **was ever sent** to Defendant,

[2] And he didn't even have the authority to do that. Section 26 USC 6212 only authorizes the Secretary of the Treasury, or his delegate, to determine a deficiency, and the Secretary has never delegated any of that authority to the I.R.S.

[3] As the 9th Circuit also noted in Benatar et al. v. U.S. 209 F. 2d 734 (1954).

despite the Government claiming in paragraph 7 of its complaint, that "proper notice and demand" were sent to Defendant for all the years at issue.

26 USC 6303 requires that "The Secretary shall as soon as practical, and within 60 days, after the making of an assessment of tax ….give notice to each person liable for the unpaid tax, stating the amount and **demanding payment**…" Section 6321 states," If any person liable to pay any tax neglects or refuses to pay the same **after demand**…shall be a lien in favor of the United States. Section 6331(a) states (Exhibit I), "If any person liable to pay any tax neglects or refuses to pay the same 10 days after **notice and demand** it shall be lawful for the Secretary to collect such tax…by levy." In addition, Section 6215 states "If the taxpayer files a petition with the Tax Court, the entire amount determined as the deficiency…shall be assessed and shall be paid upon **notice and demand** from the Secretary…". Therefore, in order for: 1) interest to accrue, 2) liens and levies to become viable, and 3) Tax Court decisions to have any force and effect, **notices and demands** for payment *have to be sent* to taxpayers. However, Defendant asks this Court to take *judicial notice* that there are ***no entries*** on these document showing that any **notices and demands for payment were ever sent to Defendant**. Therefore, all of the assessment entries shown on these document are without any force and effect *just on this basis alone*.

9) The next entry, "582 FEDERAL TAX LIEN 03-31-1995" represents another fraudulent entry while revealing the fraudulent practices used by the IRS to illegally collect income taxes. All three 582 references in this document indicating that a "FEDERAL TAX LIEN" was issued in connection with Defendant's alleged 1979 tax liabilities are fraudulent. Since the Government knows that the Internal Revenue Code does not authorize IRS agents to file legitimate "tax liens," IRS agents send out benign "Notice of Federal Lien Under Internal Revenue Laws," [4] knowing full well that county recorders, not knowing the difference, will record them as "liens." Because of this, lawyers at real estate closings and escrow agents will turn over proceeds from the sale of real estate to the IRS, since they too will be fooled into thinking that legitimate "liens" were filed against such parties. Some 35 states (including Nevada) have adopted the "Uniform Federal Lien Registration Act." It provides, in relevant part, "Certification by the Secretary of the Treasury of the United States or his delegate of notices of

[4] However, when the Government has a legitimate monetary claim, it files against that party a document identified as a "Federal Lien" and not a mere "notice" of one. .

lien ….entitles them to be filed." However, no such "certification" appears on IRS "Notices of Federal Lien Under Internal Revenue Laws" and the Revenue Officers who sign them, have no delegation of authority from the Secretary to do so,[5] since they are barred by 26 U.S.C. 7608 from doing so, as shown by Exhibit A.

In any case Defendant has included two such alleged "liens" as Exhibit J. Note that J-1 indicates an alleged lien covering the years 1979 – 1993 for $803, 048 which was filed by the Government on March 28, 1995. This amount is substantially less than the $2,276,244.78 the Government claimed Defendant owed as of August 2, 2001 when it filed the instant lawsuit – and would indicate that the Government's **entire claim is specious**. Interest alone could not have added $1.47 million in 6 ½ years to Defendant's alleged debt. In addition, the notice states "This notice was prepared and signed at etc. etc. etc…." however, the notice wasn't *"signed"* by anyone. The wording in the signature box states "for Ron Smith 3605," and shows a signature "Ron Smith." However, this "signature" was made with a signature stamp, and the document even states "NOT AN ORIGINAL SIGNATURE." So the document was not "signed" by anyone. And if it were signed "*for* Ron Smith" who was the party who signed for him? The document identifies someone as "Chief SPf 88-01 3605," but does that identify Ron Smith or the person who allegedly "signed" for him – i.e. who stamped in his signature. However, Nevada State statute 108.829 provides, in relevant part, "Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate …entitles them to be filed. However, since this "lien" was neither "signed" nor "certified" by *anyone*, (especially not by the Secretary and/or anyone delegated by him) it is worthless under Nevada law. The document is obviously a fraud on a variety of grounds and should have been thrown in the trash, rather than recorded. But that's how the United States gets away with filing bogus "liens" against uniformed and hapless citizens.

Exhibit J-2 is a $1,000 "Notice of Federal Tax Lien." It too was signature stamped by a K.L. Draper "for J. Gritis." However as established in paragraphs 11 and 18, Revenue Officer J. Gritis has no authority to enforce the payment of income taxes on any basis, an, obviously, this also applies to "K.L. Draper." (If such a person actually exists, since the IRS creates pseudonyms

[5] In order to further mislead and confuse county recorders as to the legitimacy of such "Notices," the Government prints on the bottom of such notices, "(**NOTE:** Certificate of officer authorized to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien Rev. Rul 71-466, 1971 – 2 C.B. 409), as if an IRS Rev. Rul. is binding on country recorders and can override the provisions of their own State laws.

for many of its employees). This document too is not signed nor certified pursuant to Nevada law, and therefore it too should have been thrown in the trash along with the one hand stamped by Ron Smith.

Exhibit K is a page from IRS Handbook 1.16.4, and reveals that the IRS issues two kinds of "pocket commissions," "enforcement," and "nonenforcement" commissions. Only Special Agents and Inspectors of Internal Security are issued "enforcement" commissions, all other IRS agents (including IRS Revenue Officers such as Sandra Davaz), only get "nonenforcement" pocket commissions. However, it is Revenue Officers such as Sandra Davaz who send out "notices of levy" and do the seizing of property on behalf of the IRS, as I am sure Ms. Davaz has done dozens of times. However, in describing here "duties" she is **careful** not to claim that includes the seizing property by the filing "Federal Tax Liens" and sending out "notices of levy." However if a Revenue Officer such as Sandra Davaz does not claim that her authority includes such "duties (and authority)," than what IRS agents would have such duties and authority?

Based on all of the above, it is clear that the all three entries on the instant document that claim that "FEDERAL TAX LIENS" were filed against Defendant, are all false and fraudulent on a variety of grounds.

9) The next two 670 entries, which indicate payments of $98.92 and $2,286.87, represent the seizure of $98.92 of cash which was held for Defendant at the Clark County jail where he was taken by three gun-carrying, Special Agents who arrested him on three felony counts – which were later dropped. The $2,286.87 represents what the IRS received from the sale of Defendant's automobile that the IRS seized at that time. Both items were seized by Revenue Officer Luddie Talley as shown by the IRS "notices of seizure" included in Exhibit L. However, both seizures were illegal because (as shown by Exhibits A and K) Revenue Officer Talley, 1. only has a "nonenforcement" pocket commission, and 2. is precluded by Code Section 7608 from seizing **any property** in connection with income taxes. So all the "TC 582" entries shown on this document merely reveal how the IRS goes about illegally seizing property.

10) All 56 entries identified as "670 SUBSEQUENT PAYMENT LEVY" also represent fraudulent entries, and also reveal the illegal confiscation by the IRS of Defendant's entire Social Security benefits. For one thing, all these entries claim that such seizures were based upon a "levy" being made. That claim is both false and fraudulent. All such confiscations were the made on the basis of IRS "notices of levy" which are different from seizures made by

"levy." For example, as shown by Code Section 6502(b) attached as Exhibit M, "The date on which a levy is made….shall be the date on which the notice of seizure…is given." In none of those 56 seizures of Defendant's Social Security benefits, were any notices of seizure "given," so no "levy," in those instances, were "made." Notices of seizure were given in connection with the seizure of Defendant's automobile, and the $98.92 being held for him at the Clark County jail, but the $35,000 of Social Security benefits the Government took from Defendant was not "seized" – since the money was already in the government's hands. The Government simply did not send Defendant the money to which he was entitled, by law, to receive. However, the notice of levy that the Government used to confiscate Defendant's Social Security benefits, did not apply: 1. either to the Defendant, or 2. to his Social Security benefits. The confiscation of these benefits was also **illegal on a variety of other grounds** as shown below.

a. As shown in Section 6331(a) (Exhibit I) the statute only makes it "lawful for the Secretary (or his delegate)" to collect funds by either: 1. levy , or 2. notices of levy, and only in cases where the person is, 1."liable" for the taxes at issue, and where such party, 2. "neglects or refuses to pay …after notice and demand" is made upon him – and neither of these conditions (plus others shown below) were present in the instant case. 1) Neither the Secretary nor anyone with delegated authority from him sent those "notices of levy" to the Social Security Administration, 2) no statute made Defendant "liable" for income taxes, and 3) Defendant was never sent the required "notice and demand" for payment.

b. However, Section 6331(a) **also** makes clear that a notice of levy can only apply to the "accrued salary or wages" of Government employees *and* **no other property**. So the 56 "notices of levy" sent by the IRS to the Social Security Administration in order to confiscate Defendant's Social Security benefits, did not even apply to him **or** to his Social Security benefits.

c. Defendant has attached, as Exhibit N, the notice of levy (front and back) sent to the Social Security Administration in order to confiscate his SS benefits. Notice that this document is signed by IRS Revenue Officer Luddie Talley. But Talley can have no authority to send out "notices of levy" as has already been established. Notice Talley has hand written on that document "full levy," even though there is no distinction in the law as between a "levy" and a "full levy." Talley here is merely being *lawlessly* vindictive, since he realizes there is very little the public can do when IRS agents break the law like this. In addition, as confirmed by the letter

shown in Exhibit O, the maximum that can be confiscated from one's the Social Security check is 15% - **yet in my case the Government took the entire check!**

d) However, the Government is not authorized to take any portion of a person's Social Security benefits – which they have apparently done to hundreds of thousands of SS recipients. On December 11, 2003, Defendant sent the Social Security Administration a five page letter (supported by numerous exhibits), explaining why it had no authority to garnish *any portion* of Defendant's monthly Social Security check. Defendant has attached this letter as Exhibit P (minus the supporting Exhibits). However, the Social Security Administration has yet to answer that letter.

e) Exhibit M-2 is the back side of the "notices of levy" used by the Government to garnish Defendant's money in the hands of third parties. Notice that in reproducing Section 6331, the Government omits paragraph (a). Why does it do that? It does so, because it wants to hide from third parties the fact that the "notice of levy" they receive does not apply to either the person or property sought to be garnished.

f) To further mislead and intimidate third parties, the Government reproduces on the back of those "notices" section 6332 entitled **"Surrender of Property Subject to Levy."** This misleads third parties in to believing that if they do not honor these benign "notices of levy," they will themselves be liable "in their own person …in a sum equal to the value of the property …but not exceeding the amount of taxes….together with costs or interest on such sum…" That statement is totally false. Any third party can immediately discard such "notices" and nothing will happen to them. Included, as Exhibit Q, is an Affidavit from Mr. Bob Eilers who purchased Defendant's insurance agency in 1985 on the basis of an installment sales contract. The IRS sent him a "notice of levy" seeking to garnish these installment payments. Mr. Eilers ignored the IRS "notice of levy" and told the IRS if they wanted the money, to come back with a court order. He never heard from the IRS again, and he continued making installments payments to Defendant's ex-wife (to whom he had assigned the payments) for another 9 years.

g. So, over the years, the Government has illegal extracted from me over $400,000 going as far back as to 1983 – a year in which the IRS **alone** seized $250,000. These amounts, (together with interest) obviously **exceed** the $2.6 million the Government now seeks to get from me by way of an unwarranted summary judgment, and an unwarranted Court order.

11) With respect to the two entries Coded 971. That notice was unlawfully sent. It was presumably sent out in accordance with Code Section 6330. However, the first line of that statute states: "No Levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made." However the "NOTICE" referred to in these two entries was not sent out by "the Secretary" or anyone delegated by him; it was sent out by Senior Revenue Officer Jim Gritis who, pursuant to the documents in Exhibits A and K, could not have been delegated by the Secretary to send out such a notice. So what these entries show are: 1. the unlawful action taken by the IRS in sending out this Notice, and 2. the illegality of all seizures subsequent to that notice, since 6330 bars "levies" – until Defendant receives a Notice **from the Secretary** (or his delegate) informing him of his right to a "Collection Due Process" hearing; however, **Defendant never received such a notice**.

12) So, each and **every material entry** on the Government's document for 1979 is false and/or fraudulent, while they also reveal how the IRS violated the law in seizing over $400,000 of defendant's property over the last 24 years.

III

IN CONNECTION WITH THE YEARS 1980-1985

13) The first entry for the year 1980 is shown as, "CODE 150 RETURN FILED AND TAX ASSESSED 08-08-1991 $36,413." This is the same wording that appears as the first entry, for all of the years 1981 – 1985 as attached to the Government's Proposed Order. However, in comparable documents for those years, as shown in the "Declaration" of Henry Darmstadter (Exhibit 13), the first entry for 1980 reads: " 08-08-1991 PROMPT ASSESSMENT $36, 413 08-08-1991." This same wording appears as the first entry in all of the documents shown in Darmstadter's Exhibits 14-18. Notice that none of them – at that time - claimed that those first assessments were based on "filed returns." Commenting on such absence, Defendant stated in his reply Declaration:

> Further proof that all of the taxes at issue for the years 1980 to 1982 rested on the "zero" returns I filed can be seen in the 4340 as shown in Darmstadter's Declaration Exhibits 12 - 18. These 4340's contain **no entries showing returns as being received by the IRS**. Contrast that to the government documents shown in Schiff's Exhibit 16. They contain IRS documents showing assessment activity for 9 years: 1987 - 1990, 1992 - 1994, and 1996 & 1997. I filed "zero" returns for all those years, in the same manner as I filed "zero" returns for the years 1980-1985. However, note that for all of these years the documents show "RETURN FILED AND

> TAX ASSESSED" and the amounts assessed are shown to be the "zeros" shown on my returns. So my "zero" returns were processed by the IRS and assessments made from them, albeit "zeros." So the "zero" returns I filed for the years 1980-1983 would obviously have been treated the same way, except the government now needed to create fraudulent documents and fraudulent entries in order to pretend that the taxes at issue were made from the returns I submitted at the probation hearing. The reason no returns are shown as being received on the 4340 contained in Darmstadter's Exhibits 13 - 18 (when this is always the first entry on a 4340, as shown below) is the Government could not reveal that a return was filed without revealing the fraud being perpetrated. If it showed the "zero" return I filed (as it did for the 9 years shown above), it would be admitting that that Judge Dorsey's Ruling that I filed "invalid" returns was erroneous, since the government made assessments based on them. If, on the other hand, it showed the returns I filed at the probation hearing as being my initial returns, the government would have to assess the amounts shown on those returns as original assessments, and not deficiencies, which, for a variety of reasons, it could no longer do. Darmstadter Exhibit 8 further confirms this. This is the 4340 for the year 1979, a year for which I filed no return at all. Notice the first entry is "RETURN FILED & TAX ASSESSED." The return referred to is a "dummy" return created by the IRS itself in order to fool its computer into thinking that a return was actually filed, **since the receipt of a return is a condition precedent for all IRS assessment activity (See page 23) Therefore, if the IRS claims to having received returns, even when they don't receive them, why didn't the IRS not show the receipt of returns for all the years 1980-1995 as shown in the 4340's in Darmstadter's Exhibits 13 – 18? [6] They did not do so for the reasons stated above**.

So, based on Defendant pointing out in his reply Declaration the fraud sought to be perpetrated by the Government's failure to show returns as being the basis for their initial assessments for the years 1980-1985, the Government had the IRS **change those entries** – so its "PROPOSED ORDER" could appear legitimate. But obviously, these **new entries** are fraudulent, since no such claims were made in Darmstadter's **original** Declaration. There is no question that the original entries for all of those years would have been "zero," reflecting the "zero" returns Defendant originally filed as shown in Robert J Netcoh's Declaration, Exhibits C-H).[7] Such assessment entries would have been comparable to the "zero" assessments shown in Darmstadter's Exhibit 8 (for the year 1979) and as shown in Defendant's Exhibit 16, for the years 1988-1994 and 1996. Therefore, it is clear that all of those **new**, "return filed" entries were fraudulently contrived in order to correct the omission that Defendant focused on in his Declaration.

15) All 35 entries in this document which either refer to an IRS "lien" or "levy" are also fraudulent, for all the reasons covered in paragraphs 8 and 10 as shown above.

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[6] This is because Section 6201(a)(1) states, in pertinent part, "The Secretary shall assess all taxes…as to which returns or lists are made under this title." So without showing the receipt of a return, no assessments can be claimed to having been legally made.

[7] And the markings on those returns show that they were processed by the IRS.

16) In addition, the TC 320 "FRAUD PENALTY" was not imposed pursuant to IRS document 2797 which requires 4 signatures (Exhibit R). This penalty was imposed based on the sole authority of Revenue Agent Gerald A. Dragon who admitted in Par. 30 of his Declaration, that it was he who "asserted" the 1980 - 82 fraud penalties against Defendant, and he had no delegated authority to do so on a variety of grounds - one them being the reason covered in Paragraph 1 above.

17) The two 971 entries are also fraudulent for the reasons covered in Paragraph 11.

18) The $8,337.51 "payment" shown as resulting from a "levy," was the amount turned over to the IRS by the Bank of America pursuant to a "Notice of Levy" sent out by IRS Revenue Officer Jim Gritis, who, as shown by Exhibits A and K: 1. had no authority to do so, and 2. the Bank was under no obligation to honor the Notice, as shown in Exhibit Q. In addition, Defendant pointed out in his lawsuit, that Nevada State statutes 31.291 and 31.249 bar all banks whether "incorporated under the laws of the State of Nevada or the laws of the United States of America" from turning over depositor funds without a court order and writ of garnishment. Despite: 1. such Nevada laws, and 2. despite the fact that Gritis, at a deposition, admitted to only having a non-enforcement pocket commission, and 3. despite the fact that he could not produce a delegation authorizing him to send out such a "notice," and 4. despite Defendant showing the Court that the "notice of levy" at issue did not even apply to Defendant or the funds at issue (as shown in Par.10(b) above,) Nevada State Judge, Allan R. Earl granted the Bank of America a summary judgment.[8]

IV

ADDITIONAL COMMENTS FOR THE YEARS 1980-1985

19) At this point, Defendant does not think it necessary to continue analyzing the entries in the documents for the years 1981-1985 – since most of them would be fraudulent on the same basis as Defendant has already shown them to be with respect to the years 1979 and 1980. However, the fraud penalties shown for the years 1983-1985 are not even claimed to be based on a finding of any court. The fraud penalties alleged for those years are themselves based on fraud, since Revenue Agent Robert J. Nertcoh states, in paragraph 21 of his Declaration, "The Internal

[8] Incredibly, at oral argument, counsel for the Bank of America claimed that the Bank would have been compelled to honor the IRS "notice of levy" even if it had been sent out by **an IRS <u>custodian</u>**! And immediately following Defendant filing his lawsuit, the Bank of America, changed its "Depositor's Agreement" and barred all future lawsuits (depositors now had to settle for arbitration) and stated in its "Agreement" that it could no longer be held "liable" if the Bank turned over a depositor's money to the wrong party.

Revenue Service assessed fraud penalties for the years 1983-1985 against Schiff pursuant to the applicable version of 26 U.S.C. 6653(b) repealed in effect for those periods." Since the IRS does not legally exist as a Government agency (It was never created by an Act of Congress, only the post of Commissioner, within the Treasury Department, was created by an Act of Congress in 1862. See Exhibit S). In addition, the IRS is not **even mentioned** in Subtitle A of the Internal Revenue Code, so how can the "Internal Revenue Service (legally) assess fraud penalties" against anybody? However it is evident from paragraphs 21 and 22 and Netcoh's Exhibit S, that it was Robert Netcoh **alone** who determined the fraud penalties for those years, and he certainly had no authority to do so. At the very least, the fraud penalty would have had to be assessed on the basis of completed IRS Form 2797 (as shown in Exhibit R) which has to be signed by four people, including a "group manager," the "branch Chief," the "Chief, Examination Division," **in addition** to the person proposing the fraud penalty. In reality; however, the fraud at issue could only be **definitively** determined at a trial, as covered in Defendant's "Motion to Reconsider." However, the fraud admitted by Robert Netcoh in admitting that **he alone** determined the fraud penalties for the years 1983-1985 is a blatant admission of fraud, since he had absolutely no authority to make any such determinations on his own.

V

IN SUMMATION

It is clear from all of the above, and from Defendant's Motion to Reconsider filed July 8, 2004, that the IRS is enforcing the payment of income tax in violation of the laws enacted by Congress and the limitations imposed on Congress' taxing power by the Constitution. At the very least, the Court should reverse its Order of June 15, 2004 and suspend any further action on this case until the completion of the criminal trial now pending against Defendant, since many of the charges are the same and Defendant will have an opportunity to cross-examine IRS agents such as Wethje, Dragon, and Netcoh, whereas he didn't have such an opportunity to do so at his 1985 trial, **and in this action.** Defendant believes he will have no trouble exposing the perjury committed by Ted Wethje at his 1985 trial and the perjury contained in the Declaration he submitted in this case.

In addition, it is simply unfair, unreasonable, and excessive to force Defendant to have to prepare an appeal of this civil case to the 9th Circuit, even while he has to defend himself in a criminal action being brought against him by the Government. Defendant has found it

impossible even to get a knowledgeable lawyer to assist him in the criminal case. In addition, it is obvious that the lawyers that Defendant was compelled to hire in this case (since his depression made it impossible for Defendant to continue representing himself) were inadequate for the job. In any case Defendant would like the Court to consider the following. The U.S. Criminal Code provides as follows:

> **241 Conspiracy against rights of citizens**
>
> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by him by the Constitution or laws of the United States, or because of his having exercised the same ….they shall be fined not more than $10,000 or imprisoned not more than ten years or both…"

It is clear that the Constitution has "secured" to defendant " **a right"** not to be subject to a federal tax, unless that tax is imposed *either*, on the basis of **apportionment** as required by, Article 1, Sections 2 and 9, Clauses 3 and 4, or as a "duty, excise, or impost," or on the basis of **geographic uniformity** as required by Article 1, Section 8, Clause 1 - and the income tax is imposed pursuant to neither rule,[9] In addition, under the revenue laws as enacted by Congress, only "income" received in the "constitutional sense" can be subject to an income tax. This intent of Congress is clearly expressed in Senate Report 1622 and House Report 1337 (83d Congress, 2d Session) relevant pages from which were supplied to this Court as Exhibit 3 of Defendant's Declaration. The income taxes at issue here were clearly not imposed on the basis of "income" received in the "constitutional sense" but were fraudulently based on "income" received in the "ordinary sense" – in violation of " the Constitution and laws of the United States" as referred to in 18 U.S.C. 241, as quoted above.

Therefore, if this Court (in conjunction with Daniel G. Bogden , United States Attorney, District of Nevada, and Henry C. Darmstsadter, and G. Patrick Jennings, Trial Attorneys, Tax Division, U.S. Department of Justice), were to subject Defendant's assets to confiscation by the issuance of a Judgment of $2.6 million dollars – without a trial - as requested by the Government lawyers named above,[10] this would deprive Defendant of numerous rights secured to him by "The Constitution and law of the United States" and would obviously subject him to "injury and oppression" as criminalized by 18 U.S.C 241.

[9] As is clearly confirmed in numerous Supreme Court decisions, including the definitive, Brushaber v. Union Pacific RR, 240 US 1.

[10] Which is far more money than all of the assets possessed by Defendant.

For all of the above reasons and those contained in Defendant's Motion for Reconsideration, Defendant requests that this Court reject the Government's fraudulent "PROPOSED ORDER DIRECTING ENTRY OF JUDGMENT AGAINST IRWIN A. SCHIFF" and reverse its Order of June 15, 2004 and let the issues in this case be decided by an impartial, American jury

Defendant is filing this Response pro per, since he notified his former attorney, (name withheld) that he was discharging him as Defendant's attorney in this case, as of July 7, 2004 and that he so inform this Court.

ORAL ARGUMENT REQUESTED

July 14, 2004

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Irwin A. Schiff, pro per

CERTIFICATE OF SERVICE

I certify that I have this day hand delivered a copy of the foregoing to Henry C. Darmstadter and G. Patrick Jennings, Trial Attorneys, Tax Division, in care of Danial G. Bogden, United States Attorney, District of Nevada, Lloyd D. George Federal Courthouse, 333 Las Vegas Blvd. South, Suite 5000, Las Vegas, Nevada.

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Irwin A. Schiff