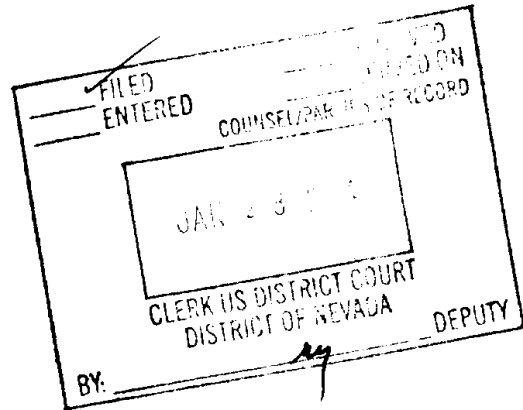


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7 Attorney for Defendant
8 IRWIN A. SCHIFF



9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA,) Civil No. CV-S-01-0895-PMP (LRL)
12)
13 Plaintiff,) **DEFENDANT IRWIN A. SCHIFF'S OPPOSITION**
14) **TO UNITED STATES' MOTION FOR**
15 vs.) **SUMMARY JUDGMENT**
16 IRWIN A. SCHIFF,)
17)
18 Defendant.)

FILED SEPARATELY

19 Defendant Irwin A. Schiff, by and through counsel undersigned, respectfully submits his
20 Opposition to United States' Motion for Summary Judgment. In support hereof, Mr. Schiff hereby
21 incorporates the Declaration of William A. Cohan and Exhibits attached thereto in Support of
22 Opposition to United States' Motion for Summary Judgment.

23 **I. INTRODUCTION.**

24 The government filed its Complaint to Reduce Assessments to Judgment pursuant to I.R.C.
25 §7401 on August 2, 2001. In it's quest for summary judgment the government acknowledges in
26 pertinent part:

27 The elements of criminal tax evasion under I.R.C. §7201 are virtually identical to the
28 elements of civil tax fraud under former I.R.S. § 6653(b).[FN6] "While the
government's burden of proof differs in the two contexts, the elements of criminal tax
evasion under §7201 and civil tax fraud under §6653(b) are identical." *Klein v.*

73

1 *Commissioner*, 880 F.2d at 262. [FN7]. * * *

2 FN6: The essential elements of a tax evasion charge under I.R.C. §7201 are (1)
3 Willfulness; (2) the existence of a tax deficiency (i.e., an additional tax due and
4 owing); and (3) an affirmative act constituting an evasion or attempted evasion.
 [Citations omitted]

5 FN7: The government's burden of proof in a criminal prosecution is to establish the
6 taxpayer's guilt beyond a reasonable doubt; whereas it need only prove the taxpayer's
7 liability for the civil fraud penalty by clear and convincing evidence. *See Wapnick v.*
 Commissioner, 73 T.C.M. (CCH) 2317 (1997).

8 United States' Memorandum at p. 9 (hereinafter "U.S. Memo.").

9 The standard for the willfulness requirement is the "voluntary, intentional violation of a known
10 legal duty." *U.S. v. Bishop*, 412 U.S. 346, 360 (1973). As the Supreme Court held in *Cheek v. U.S.*,
11 498 U.S. 192, 201-02 (1991):

12 Willfulness, as construed by our prior decisions in criminal tax cases, requires the
13 Government to prove that the law imposed a duty on the defendant, ***that the***
14 ***defendant knew of this duty, and that he voluntarily and intentionally violated that***
15 ***duty***. . . . [I]f the Government proves actual knowledge of the pertinent legal duty, the
16 prosecution, without more, has satisfied the knowledge component of the willfulness
17 requirement. **But carrying this burden requires negating a defendant's claim of**
18 **ignorance of the law or a claim that because of a misunderstanding of the law,**
19 **he had a good-faith belief that he was not violating any of the provisions of the**
20 **tax laws. This is so because one cannot be aware that the law imposes a duty**
21 **upon him and yet be ignorant of it, misunderstand the law, or believe that the**
22 **duty does not exist.** In the end, the issue is whether, based on all the evidence, the
23 Government has proved that the defendant was aware of the duty at issue, which
24 cannot be true if the jury credits a good-faith misunderstanding and belief submission,
25 whether or not the claimed belief or misunderstanding is objectively reasonable.
 [Emphasis added].

26 In a nutshell, the government must prove that Mr. Schiff willfully attempted to evade income
27 taxes by clear and convincing evidence in order to prevail on it's civil fraud penalty claim.¹

28 ¹ Notably, the Internal Revenue Service administratively assessed \$265,859.96 in civil fraud
penalties without the requisite proof for doing so. *See Declaration of Henry C. Darmstadter and*
Exhibits in Support of Motion for Summary Judgment: Exhibit 13: \$18,207.00 on an assessed tax
liability for 1980 of \$36,413.00; Exhibit 15: \$208,756.52 on an assessed tax liability for 1982 of
\$142,497.00; Exhibit 16: \$32,264.10 on an assessed tax liability for 1983 of \$24,127.00; and Exhibit

1 **II. LEGAL PRINCIPLES HAVE CHANGED SIGNIFICANTLY.**

2 The government relies on the doctrine of collateral estoppel to establish civil fraud penalties:

3
4 Numerous courts have held that a criminal conviction for federal income tax evasion
5 conclusively establishes fraud in a subsequent civil tax fraud proceeding through
6 application of the doctrine of collateral estoppel.... It is well-established that a
7 criminal tax fraud conviction under I.R.C. §7201 estops a taxpayer from denying
8 liability for civil fraud under I.R.C. §6653(b) for the same year. * * * A criminal
9 conviction under I.R.C. §7201 based upon a charge of a willful attempt to evade tax
10 necessarily involves the ultimate factual determinations necessary for a finding of
11 fraud under Section 6653(b); namely, that part of the underpayment for the taxable
12 year in issue was due to fraud. *Wapnik v. Commissioner*, 73 T.C.M. (CCH) 2317
13 (1997). Thus, in connection with this action, Schiff is precluded by the doctrine of
14 collateral estoppel from denying both the existence of an underpayment of income tax
15 with respect to the years 1980-1982 and that a portion of the underpayments was due
16 to fraud within the meaning of the applicable versions of I.R.C. §6653(b).... [*Id.*, U.S.
17 Memo., at 8-9 (citations omitted)]

18 The government concedes that the following three-prong test is essential to establish that
19 collateral estoppel applies:

20 In *Montana v. United States*, 440 U.S. 147, 155 (1979), the Supreme Court
21 established a three-prong test for determining whether collateral estoppel applies:
22 first, whether the issues presented in the subsequent litigation are in substance the
23 same as those presented in the first case; second, **whether controlling facts or legal**
24 **principles have changed significantly since the first judgment**; and third, whether
25 other special circumstances warrant an exception to the normal rules of preclusion....
26 [*Id.*, U.S. Memo., at 8 (emphasis added)].

27 It is undisputed that Mr. Schiff was found guilty of tax evasion (26 U.S.C. §7201) for the tax
28 years 1980-1982 in 1985. At that time, neither defense counsel, the government nor the court sought
a psychological evaluation of Mr. Schiff to determine whether he suffered from a mental disease or
defect relevant to the issue of "willfulness," although the district court imposed the following special
condition of probation on Mr. Schiff:

[D]efendant shall undertake counseling, at his own expense, which may include
psychiatric counseling as deemed necessary under the guidelines and supervisions of

17: \$6,632.34 on an assessed tax liability for 1984 of \$5,567.00.

1 the Probation Department. [See Declaration of William A. Cohan at ¶17 (hereinafter
2 "WAC Dcl."].

3 Consequently, the jury never considered evidence of Mr. Schiff's mental state relevant to the
4 issue of willfulness. Cf. Rule 12.2, F.R.Crim.P., which provides in relevant part:

5 * * *

6 (b) Notice of Expert Evidence of a Mental Condition. If a defendant intends to
7 introduce expert evidence relating to a mental disease or defect or any other mental
8 condition of the defendant bearing on either (1) the issue of guilt or (2) the issue of
9 punishment in a capital case, the defendant must ... notify an attorney for the
10 government in writing of this intention and file a copy of the notice with the clerk.
The court may, for good cause, allow the defendant to file the notice late, grant the
parties additional trial-preparation time, or make other appropriate orders.

11 (c) Mental Examination (1) Authority to Order an Examination; Procedures.

12 (A) The court may order the defendant to submit to a competency
13 examination under 18 U.S.C. §4241.

14 (B) If the defendant provides notice under Rule 12.2(a), the court
15 must, upon the government's motion, order the defendant to be
16 examined under 18 U.S.C. §4242. If the defendant provides notice
17 under Rule 12.2(b) the court may, upon the government's motion,
order the defendant to be examined under procedures ordered by the
court.

18 (2) Disclosing Results and Reports of the Defendant's Expert Examination. After
19 disclosure under Rule 12.2(c)(2) of the results and reports of the government's
20 examination, the defendant must disclose to the government the results and reports
21 of any examination on mental condition conducted by the defendant's expert about
which the defendant intends to introduce expert evidence.

22 The admissibility of expert testimony as to the mental state of a defendant has changed
23 significantly since Mr. Schiff's conviction in 1985. In 1997 the Ninth Circuit decided *U.S. v.*
24 *Morales*, 108 F.3d 1031 (9th Cir. 1997), overruling prior precedent on the admissibility of expert
25 testimony relevant to a defendant's required *mens rea*. The Ninth Circuit held:

26 Federal Rule of Evidence 704(b) precludes an expert, testifying as to the mental state
27 or condition of a defendant, from stating "an opinion or inference as to whether the
28 defendant did or did not have the mental state or condition constituting an element of

1 the crime charged or of a defense thereto.” Fed.R.Evid. 704(b). There is a conflict
2 in our circuit concerning the admissibility of expert testimony under this rule when an
3 expert is asked to give an opinion on a predicate matter from which a jury might infer
4 the defendant’s required *mens rea*.

5 In *United States v. Brodie*, 858 F.2d 492 (9th Cir. 1988), we held Rule 704(b)
6 precluded an expert from testifying to a predicate matter from which the jury might
7 “extrapolate” whether the defendants possessed the necessary *mens rea*. *Id.* at 496.
8 **In cases decided since *Brodie*, however, we have held Rule 704(b) does not
9 preclude an expert from testifying to a predicate matter, even if the jury might
10 infer the necessary *mens rea* from such testimony, so long as the testimony as to
11 the predicate matter does not necessarily imply the *mens rea* element. See *United*
12 *States v. Rahm*, 993 F.2d 1045, 1411-12 (9th Cir. 1993); *United States v. Gomez-*
13 *Norena*, 908 F.2d 497, 501-02 (9th Cir.), *cert. denied*, 498 U.S. 947 [] (1990). We
14 take this opportunity to overrule *Brodie*.**

15 In the present case, Gloria Ann Morales, a bookkeeper, was convicted of two
16 misdemeanor counts of willfully making false entries in a union ledger in violation of
17 29 U.S.C. §439(c). She appeals the district court’s exclusion of expert testimony that
18 she had a weak grasp of bookkeeping principles. She proffered this testimony to
19 establish a predicate from which the jury could infer she lacked the necessary *mens*
20 *rea*. The district court did not specify which rule of evidence it relied upon in
21 excluding the testimony.

22 ... We hold that the district court erred if it excluded the proffered testimony under
23 Rule 704(b). Nor was the testimony excludable under Federal Rules of Evidence 702,
24 103(a)(2), (b), or 403. The error in excluding the testimony was not harmless, and
25 we reverse Morales’s conviction.

26 *U.S. v. Morales, supra*, at 1033 (emphasis added).

27 It is not without significance that the district court imposed psychiatric counseling as a special
28 condition of probation on Mr. Schiff on December 10, 1985. It is reasonable to infer from this special
condition that the district court surmised that Mr. Schiff may suffer from a mental disease or defect.
In the ensuing years Mr. Schiff has exhibited symptoms of a chronic and severe delusional disorder²
which was observed first hand by government counsel instanter at Mr. Schiff’s Deposition on January
29 and 30, 2003, and Attorney William A. Cohan as set forth in his Declaration. See, e.g., WAC Dcl.

² See WAC Dcl. at ¶21, quoting excerpts from the DSM-IV, §297.1 on Delusional Disorders.

1 at ¶¶10, 11 and 16. All of the courts, including the Second Circuit, the Tax Court, Judge Dorsey at
2 Mr. Schiff's probation revocation hearing and this Court (the Honorable Lloyd D. George) have
3 commented on manifestations of those symptoms. See WAC Dcl. at ¶¶12, 13, 14 and 15.
4

5 Mr. Schiff has been diagnosed as suffering from a long history of chronic and acute bipolar
6 disorder and depression. See WAC Dcl. at ¶¶24 and 25, and Exhibit 3 attached thereto. Dr. Luis
7 Carlos Ortega, M.D. at Valley Hospital and Medical Center, 620 Shadow Lane, Las Vegas, Nevada
8 89106, recently treated Mr. Schiff for his bipolar disorder and severe depression; Mr. Schiff was
9 admitted for an extended stay in Valley Hospital in October, 2003. See WAC Dcl. at ¶¶24 and 25,
10 and Exhibit 3 attached thereto. Dr. Ortega further opined that Mr. Schiff suffered from a delusional
11 disorder. See WAC Dcl. at ¶25, and Exhibit 3 attached thereto.
12

13 After reviewing Dr. Ortega's Discharge Summary, Attorney Cohan obtained Mr. Schiff's
14 agreement to submit to a psychological evaluation to determine whether, to what extent and the likely
15 length of time Mr. Schiff suffers and/or has suffered from a delusional disorder impacting the issue
16 of willfulness. See WAC Dcl. at ¶26. Thus, on January 6, 2004, Mr. Schiff submitted to a
17 psychological evaluation by Licensed Psychologist Cynthia Barry, Ph.D., 1066 Saratoga Avenue,
18 Suite 100, San Jose, California. Following the evaluation, Dr. Barry prepared a Report dated January
19 9, 2004, and rendered the following diagnosis:
20

21 From the historical record, Mr. Schiff's own descriptions of his behavior and Dr.
22 Ortega's recent emergency psychiatric hospitalization report, it appears that the
23 diagnosis of Bipolar Disorder is well established and warranted. Mr. Schiff had a
24 recent episode of depression with suicidal ideation, which required hospitalization,
25 but has been remediated with medication. **I also believe there is a concurrent**
26 **Delusional Personality Disorder.** The first condition is an Axis I disorder that
27 generally responds to treatment with psychiatric medication and cognitive behavioral
28 counseling. The second diagnosis is an Axis II personality disorder. For the most
part, personality disorders do not respond to treatment and are believed to be
characterological in nature. **In my opinion, and in the history detailed above, Mr.**
Schiff's distorted beliefs appear to have grown out of the stress of his business
failures and his first, undiagnosed manic episode. However, once developed,

1 **these delusional beliefs have carried forward quite separate from the state of his**
2 **bipolar mood swings and the impact of psychiatric medication. With very high**
3 **probability they will continue unabated in the future. There is a significant**
4 **element of Paranoia in his MMPI protocol;** however, he is extremely constricted
5 emotionally so that underlying anger does not surface. His pseudo-rational belief
6 system is confined to one area and there is no disorganization of thought. Further, it
7 does not appear to originate from anti-social tendencies. However, **this belief system**
8 **is not under voluntary control. Individuals suffering from Delusional Disorder**
9 **have little or no ability to alter their beliefs.** Mr. Schiff acknowledges that even
10 his two sons have advised him to pay his taxes and avoid the negative consequences.
11 However, he states that he cannot do so because "I cannot pay what I do not owe."
12 This despite the fact, that he recently experienced a suicidal depression serious enough
13 to require hospitalization (related in part to recognition of a probable prison sentence
14 if he is found guilty of the current charges). **In short, Mr. Schiff's behavior is not**
15 **rational. It is the product of a Delusional Personality Disorder that is not**
16 **amenable to treatment and is unlikely to remit.**

17 *See* WAC Dcl. at ¶26 and Dr. Barry's Report attached thereto as Exhibit 4 and incorporated herein
18 as though set forth in full.

19 In *U.S. v. Finley*, 301 F.3d 1000 (9th Cir. 2002), the Ninth Circuit reversed Finley's
20 convictions for making a false claim against the United States, attempting to interfere with the
21 administration of the Internal Revenue Service, and two counts of bank fraud, and remanded for new
22 trial on the grounds that the expert witness testimony of Licensed Clinical Psychologist John J. Wicks
23 was relevant to the issue of willfulness and not unreliable, holding in pertinent part:

24 Here, Dr. Wicks' testimony is essential to the defense. Dr. Wicks presented the only
25 evidence of Finley's diagnosed mental disorder, and the court excluded the entire
26 testimony. Finley's counsel did not have any other way of explaining the possibility
27 that Finley suffered from a mental disorder. For this reason, we determine that the
28 prejudice resulting from the error cannot be construed as harmless. [*Id.*, at 1018-19].

 Accordingly, a genuine dispute exists as to a material issue of fact precluding summary
judgment.

CONCLUSION

 Based on the prior incarcerations, sanctions, fines, reported decisions rejecting Schiff's
theories, Schiff's Deposition Transcripts instanter, revocation of probation transcript, Declaration of

1 William A. Cohan and attached psychological reports rendered by Dr. Ortega and Dr. Barry there
2 exists a genuine dispute as to a material issue of fact precluding summary judgment: *i.e.* whether Mr.
3 Schiff suffers from a mental disease or defect relevant to the issue of "willfulness" and/or guilt and/or
4 his liability *vel non* for civil fraud penalties.
5

6 WHEREFORE Defendant Irwin A. Schiff respectfully prays for an Order denying the
7 government's motion for summary judgment.

8 RESPECTFULLY SUBMITTED this 21 day of January, 2004.

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10 By 
11

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17 IRWIN A. SCHIFF
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2004, I did deposit in the United States mail, a true and correct copy of the foregoing DEFENDANT IRWIN A. SCHIFF'S OPPOSITION TO UNITED STATES' MOTION FOR SUMMARY JUDGMENT, with sufficient first-class postage affixed thereto addressed to the following:

DANIEL G. BOGDEN
United States Attorney, District of Nevada
Lloyd D. George Federal Courthouse
333 Las Vegas Blvd., South, Suite 5000
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HENRY C. DARMSTADTER
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8 IRWIN A. SCHIFF

9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA,) Civil No. CV-S-01-0895-PMP (LRL)
12)
13 Plaintiff,) **DECLARATION OF WILLIAM A. COHAN**
14 vs.) **IN SUPPORT OF OPPOSITION TO UNITED**
15 IRWIN A. SCHIFF,) **STATES' MOTION FOR SUMMARY**
16) **JUDGMENT**
17)
18)
19 Defendant.)
20)
21)

22 I, WILLIAM A. COHAN, hereby declare under penalty of perjury:

23 1. I am a member in good standing of the State Bar of Colorado, (Bar No. 7426), since
24 October 21, 1976, and the State Bar of California (Bar No. 141804), since October 6, 1989, and of
25 the United States District Courts for the districts of Arizona, Colorado, the Eastern District of
26 Michigan and the Southern, Central, Northern and Eastern Districts of California where I regularly
27 practice law. I have also been admitted to practice before and am a member in good-standing in the
28 bars of the following courts: U.S. Supreme Court (since 11/05/79); U.S. Tax Court (since 03/28/80);
U.S. Court of Appeals, Third Circuit (since 05/16/89); U.S. Court of Appeals, Fourth Circuit (since
10/07/88); U.S. Court of Appeals, Fifth Circuit (since 11/01/83); U.S. Court of Appeals, Sixth Circuit
(since 07/13/87); U.S. Court of Appeals, Seventh Circuit (since 12/22/88); U.S. Court of Appeals,
Eighth Circuit (since 05/07/79); U.S. Court of Appeals, Ninth Circuit (since 04/18/80); U.S. Court

1 of Appeals, Tenth Circuit (since 12/19/77); U.S. Court of Appeals, Eleventh Circuit (since 07/06/87);
2 and U.S. Court of Appeals, District of Columbia (since 03/31/89).

3
4 2. My office address is 8910 University Center Lane, Suite 550, San Diego, California
5 92122-1026; office telephone number: (858) 550-9095, office fax number: (858) 550-9049, and e-
6 mail: bill@williamacohan.com.

7 3. The bulk of my practice for the past twenty-seven years has been devoted to litigating
8 business and tax controversies in federal trial and appellate courts throughout the United States.

9 4. I briefly met Defendant Irwin Schiff prior to testifying as an expert witness at the
10 hearing held on December 7, 1988, in his petition for habeas corpus before the Honorable Peter C.
11 Dorsey in *U.S. v. Schiff*, Civil No. -88-223 (PCD) and Criminal No. -85-20 (PCD) (D. Conn. 1988).

12 5. I recently met Mr. Schiff again on October 3, 2003, to discuss representing him in
13 connection with the Government's Motion for Summary Judgment to reduce assessments to
14 judgment and imposition of civil fraud penalties. At that time, Mr. Schiff advised that he was
15 awaiting admission to the hospital because his psychiatrist, Dr. Ortega, stated that Schiff was
16 suffering from depression and that Schiff's admission had been delayed due to lack of an available
17 hospital bed; Mr. Schiff was subsequently admitted to the hospital on October 8, 2003.

18 6. Following my meeting with Mr. Schiff I reviewed: (1) United States' Motion for
19 Summary Judgment; (2) United States' Concise Statement of Undisputed Material Facts in Support
20 of Motion for Summary Judgment; (3) United States' Memorandum of Points and Authorities in
21 Support of Motion for Summary Judgment Against Defendant Irwin Schiff; (4) Declaration of Henry
22 C. Darmstadter and Exhibits in Support of Motion for Summary Judgment; (5) Declaration of Special
23 Agent Ted Wethje; (6) Declaration of Revenue Agent Gerald A. Dragon; (7) Declaration of Revenue
24 Agent Robert J. Netcoh; and (8) the transcripts of Defendant Irwin A. Schiff's Deposition taken by
25
26
27
28

1 government counsel on January 29 and 30, 2003, in the instant matter (*See Excerpts From the*
2 *Deposition Transcript of Defendant Irwin A. Schiff In Support of Motion for Summary Judgment*).

3
4 7. I also reviewed the transcript of probation violation hearing before the Honorable
5 Peter C. Dorsey held on May 31, 1991, in the District of Connecticut.

6 8. Additionally, I reviewed the following reported decisions: (1) *U.S. v. Schiff*, 612 F.2d
7 73 (2nd Cir. 1979); (2) *Schiff v. C.I.R.*, T.C. Memo. 1984-223; (3) *Schiff v. Simon & Schuster, Inc.*,
8 766 F.2d 61 (2nd Cir. 1985); (4) *U.S. v. Schiff*, 801 F.2d 108 (2nd Cir. 1986); (5) *U.S. v. Schiff*, 876
9 F.2d 272 (2nd Cir. 1989); (6) *Schiff v. U.S.*, 919 F.2d 830 (2nd Cir. 1990); (7) *Schiff v. C.I.R.*, T.C.
10 Memo 1992-183; and (8) *U.S. v. Schiff*, 269 F.Supp.2d 1262 (D. NV 2003).

11
12 9. Notably, the Tax Court found that Mr. Schiff:

13 ... is an intelligent, educated individual. He received a Bachelor of Science degree in
14 accounting and economics from the University of Connecticut in 1950, where his
15 course work included classes in accounting, business law, and Federal income
16 taxation. In addition, he holds a CLU (chartered life underwriters) degree. CLU
degree holders are required to pass a series of exams on topics that include income
taxation.

17 *Schiff v. C.I.R.*, T.C. Memo. 1992-183.

18
19 10. Following his discharge from the hospital on October 17, 2003, I have expended
20 considerable time reviewing missives from and discussing with Mr. Schiff his positions on federal
21 income tax law, the Internal Revenue Code, case law and the Constitution. As he did in his
22 deposition, rather than reasonably considering the numerous problems created by the voluminous
23 contrary authority we must confront and overcome, Mr. Schiff repeatedly launched into recitations
24 of excerpts from his rigidly held preconceptions of "what the Court really meant" and/or exclaimed
25 he is the only person in the world who understands the Supreme Court's decisions and/or knows that
26 "income in the constitutional sense means a corporate profit." *Cf.*, Schiff Deposition (1/ 29/ 03):
27

28 MR. DARMSTADTER: So for purposes of definition so that we're not

1 misunderstanding each other, could you define what you mean by “economic
2 income.?”

3 MR. SCHIFF: Okay. ... In the general terms economic income was income, in a legal
4 sense, before the *Brushaber*. The *Brushaber* decision gave a different definition to
5 income. **What they did is they used income when they really meant profit.** So
6 they talk income separated from its source and only corporate profit is income
7 separated from the source. So every time the *Brushaber* -- that’s why it’s such a
8 difficult decision to read because they use the word “income” **when they really mean**
9 **“profit.” * * * 54 Code, if you look at the committee reports, they said we’re**
10 **using income in the constitutional sense, and income in the constitutional sense**
11 **means a corporate profit. Nobody knows this except me, apparently, but I’m**
12 **educating the public.** * * * So to answer your question ... I’ve had sources of
13 income, but I never had income as used in the 16th Amendment or as used in [IR Code
14 §] 61. 61 says gross income means all income, from whatever source derived, but,
15 of course, it doesn’t define gross income because you can’t define a word using the
16 same word in the definition. Gross income means -- well, the *Brushaber* decision and
17 a lot of -- the *Merchants Loan & Trust Company* decision define income as a
18 corporate profit. **So now, if you substitute the definition of income -- because**
19 **income isn’t defined in the Code. You know that, okay. So now let’s substitute**
20 **profit, so this is what gross income means, all profit from services, including**
21 **fees, commissions, fringe benefits.** I received no profit from these sources. [*Id.*,
22 79:11-81:21] * * *

23 MR. DARMSTADTER: Just so I can understand a little bit more of your theory, and
24 I think I do, the IRS -- based on your theory, the IRS is incorrectly including for at
25 least for individuals * * * is incorrectly determining, at least for individuals, that all
26 economic income is actually taxable income where you believe that taxable income
27 is really only a concept that applies to profits from corporations.

28 MR. SCHIFF: It’s income separated from the source. That’s what the Supreme
29 Court says. The whole purpose of the amendment is income separated from the
30 source. And the only place where income is separated from the sources is in a
31 corporation P&L statement. If the corporation has a million dollars of profit and you
32 tax the profit, you don’t know what portion of their dividends or capital gains
33 generated. You’re taxing income separated from its source. **It’s a difficult concept**
34 **to get, I know. I doubt if anybody who read the *Brushaber* decision in law**
35 **school ever understood it because it’s difficult to understand. It took me a**
36 **month using different highlighters to figure out what they were talking about.**
37 [*Id.*, 96:13-97:13 (emphasis added)].

38 11. When confronted with contradictions in his conclusions, Schiff either ignores the
39 challenge or moves on to new exhortations of what the law is and his omniscient “expertise” on the

1 meaning of income, taxable income, the court's applying the wrong standard, banking and/or money.
2 Cf. Schiff Deposition Vol 1, 99:1-17 ("There's two chapters of [my] book that says why nobody
3 can have taxable income."); 104:17-105:21 ("You better be in gold and silver because the music
4 is going to [stop]. * * * It's going to go down the tubes. I wrote a book on that. Read my
5 book...."); Vol II, 4:2-8:14 ("[I]t's clear that there's a constitutional meaning to the word
6 'income.' In many of the court decisions they apply the wrong standard. They talk about
7 income in its ordinary sense."), 40:4-41:4, 45:12-19 ("I'll refute it in a different manner. ...
8 They cannot claim I had taxable income."), 67:5-68:22 ("And, of course, I'm an expert in
9 money and banking."), 79:7-25 ("I teach people what the law is. In those days I didn't have
10 as good understanding of the law.").

11
12
13 12. As the Tax Court held: "Petitioner has quoted language out of context and has
14 illogically misinterpreted holdings of cases." *Schiff v. C.I.R.*, T.C. Memo. 1984-223 (emphasis
15 added).

16
17 13. Schiff's belief system appears to be completely circular: within that system Schiff is
18 right, the government and the courts are wrong and he remains impervious to rational discussion. *See*
19 *also, Schiff v. U.S.*, 919 F.2d 830, 834 (2nd Cir. 1990), *cert. denied*, 501 U.S. 1238 (1991), wherein
20 the Second Circuit described Schiff as "an extremist who reserve[s] the right to interpret the decisions
21 of the Supreme Court as he read[s] them from his layman's point of view regardless of and oblivious
22 to the interpretations of the judiciary."

23
24 14. Mr. Schiff has ignored my repeated refusals to assert his theories and remains
25 convinced that if I assert them he will prevail because the courts will not take a pro se litigant's
26 arguments seriously. *Cf. U.S. v. Schiff*, 269 F.Supp.2d 1262, 1269 n. 3 (D. Nev. 2003):

27 Indeed, Schiff's own counsel's refusal to assert Schiff's tax theories in the hearing
28 on the motion for preliminary injunction should itself have sent a message to Schiff

1 that his tax ideology is legally frivolous. After Schiff's counsel refused to assert
2 Schiff's theories in court, Schiff dismissed her, and represented himself during the
3 remainder of the hearing.

4 15. In *U.S. v. Schiff*, 269 F.Supp.2d 1262, 1270 (D. Nev. 2003), this Court held:

5 ... Schiff is on notice of the law, notwithstanding his remonstrations that he is the one
6 who is right, and that every single legal authority to the contrary is either bogus or
7 unsound. Schiff's attempt to distinguish the adverse cases on the grounds that
8 they do not specifically involve application of his zero-income tax scheme is totally
9 unavailing. All of Schiff's schemes suffer from the same conceptual infirmities
10 rejected time and again by the courts: that income taxes are voluntary ... Schiff
11 cannot avoid the "know or had reason to know" standard by holding up a differently
12 wrapped package. Schiff knows what's in the box, and therefore knows better. *See*
13 *Estate Preservation*, 202 F.3d at 1103 ("The 'knew or had reason to know' standard
14 therefore includes 'what a reasonable person in the [defendant's] ... subjective
15 position would have discovered.'")(citations omitted).

16 16. Stints of incarceration for years, IRS levies for hundreds of thousands of dollars,
17 substantial sanctions and fines imposed by (1) the Second Circuit for bringing frivolous appeals and
18 (2) the United States Tax Court for presenting groundless and frivolous arguments demonstrate that
19 Schiff's belief system is impervious to negative feed back.¹ Schiff's expectation seems to be that
20 someday the federal courts will experience an epiphany and acknowledge that he has been right all
21 along. *Cf.*, Schiff Deposition Vol. II, 84:8-19:

22 A: I did that, but I always failed. It was always a futility because the judges the --
23 government always got a summary judgment. I mean, I'm 0 for about 17 civil cases.

24 Q: How many cases?

25 A: Jeez, I think I have more cases -- if you put a Schiff versus United States, I think
26 a whole stream of stuff comes up. I litigated in the two cases in the U.S. Court of
27 Claims. **That's all I have been doing all my life is litigating. One of these days**
28 **I hope to get it right.** [Emphasis added].

17. On December 10, 1985, the Honorable Peter C. Dorsey, United States District Judge

¹ "Solipsism: the theory that only the self exists or can be proven to exist" Webster's
Encyclopedic Unabridged dictionary of the English Language (1989 ed.) at p. 1355.

1 for the District of Connecticut, imposed the following special conditions of probation on Mr. Schiff:
2 **“defendant shall undertake counseling, at his own expense, which may include psychiatric**
3 **counseling as deemed necessary under the guidelines and supervisions of the Probation**
4 **Department.”** See Exhibit 10 attached to Declaration of Henry C. Darmstadter and Exhibits in
5 Support of Motion for Summary Judgment.²
6

7 18. However, none of Mr. Schiff’s prior counsel, the courts nor the government have
8 sought a psychological evaluation of Mr. Schiff to determine whether he suffers from a mental disease
9 or defect relevant to the issue of “willfulness” and/or guilt and/or his liability *vel non* for civil fraud
10 penalties and/or which might impact whether a “reasonable-person-and/or-knew-or-had-to-know”
11 analysis applies.
12

13 19. Your undersigned has on several occasions encountered clients whom I suspected to
14 be suffering from a delusional disorder or other mental disease or defect. For example, I represented
15 the lead defendant, Phillip Marsh, in *U.S. v. Marsh, et al.*, Case No. CR-93-0592-VRW (N.D. CA),
16 for whom I filed a notice under Rule 12.2(b), F.R.Crim.P., informing the government that Defendant
17 Marsh intended to introduce testimony relating to a mental disease or other mental condition relevant
18 to guilt. Forensic Psychiatrist, Jay M. Jackman, M.D., examined and evaluated Mr. Marsh for the
19 defense and concluded that Mr. Marsh suffered from a major delusional disorder. In preparation for
20 their Presentence Report, the Probation Department retained Psychologist Cynthia Barry, Ph.D., to
21 assess Mr. Marsh. Based on her tests and assessment Dr. Barry likewise concluded that Mr. Marsh
22 suffered from a delusional belief system. *See U.S. v. Marsh*, 144 F.3d 1229, 1242 (9th Cir. 1998).
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26 ² When asked at his deposition if he had undergone counseling as required under his
27 conditions of probation, Mr. Schiff responded: “I refuse to answer on the grounds I’m not required
28 to be a witness against myself in this proceeding.” *See Schiff Deposition Vol. I, 55, 19-23.*

1 20. My attempts at rational discussions with Mr. Schiff have been more difficult than any
2 I experienced with Mr. Marsh. Just a portion of the colloquy between Judge Dorsey and Mr. Schiff
3 at the probation violation hearing held on May 31, 1991, illustrates the *ignoratio elenchi* confronting
4 every attempt to confine Mr. Schiff's discourse to orderly discussion of one topic at a time without
5 repeated digression:
6

7 THE COURT: All right. Do you understand that, Mr. Schiff? It's not whether it's
8 valid or not, not whether it's --

9 MR. SCHIFF: No, no. Well first of all -- first of all --

10 THE COURT: The question is whether you understand --

11 MR. SCHIFF: The returns I filed are not in the package, your Honor. The returns I
12 filed -- let me explain something, your Honor. First of all the returns --

13 THE COURT: Please, please.

14 MR SCHIFF: The returns --

15 THE COURT: Please. This is not going to be a forum in which you are going to set
16 the pace. You're going to operate under my rules and under my procedures. You'll
17 have an adequate opportunity to be heard. What the contention of the government
18 is, is that the returns that you filed whatever they may have been, all of them,
19 whatever they may have been, do not qualify as valid tax returns. Now I know you
20 claim to the contrary.

21 MR. SCHIFF: You Honor --

22 THE COURT: Whether they are valid or not, at the moment is not the issue. The
23 issue at the moment is whether there is some reasonable basis to believe that the
24 government's position is sound. Now you understand that?

25 MR. SCHIFF: No.

26 THE COURT: All right. Then I'm telling you that and I'm not going to conduct an
27 educational course for you.

28 MR. SCHIFF: May I just put a word in here edgewise, your Honor?

 THE COURT: You're going to get a word in --

1 MR. SCHIFF: This is whether or not I violated the terms of my probation. The terms
2 of my probation state I am to follow the instructions of my probation supervisor.
3 Now my probation supervisor never told me to file returns other than the ones I filed.
4 The basis of the government's claim is that I didn't follow the instructions of Mr.
5 Necki ... and Mr. Warren But, there's nothing in my conditions of probation that
6 say I have to follow the instructions of government employees. Now –

7 THE COURT: Mr. Schiff, you know –

8 MR. SCHIFF: Your Honor –

9 THE COURT: **I have – I have – I attempted to say put up with you, I won't say**
10 **that. I have observed the way you conduct yourself. You contort, you**
11 **misconstrue, you twist and you dodge, you bob and you weave. You don't deal**
12 **with the issues in the legal context, you deal with them in the way that you**
13 **would like to see them dealt with. Now let me just tell you what I'm going to do.**
14 I'm going to permit the government to make a presentation on – which will probably
15 consist simply of all of the returns that you have filed. I will then take into
16 consideration what you have submitted, that is the memorandum and the motion to
17 dismiss that you filed this morning, and whatever the government wants to file in
18 response, and I presume that all the government is going to do is offer the returns that
19 are on file with the IRS. Is that true, Mr. Jongbloed?

20 MR. JONGBLOED: Yes, that's correct, your Honor....

21 THE COURT: All right. What you show –

22 MR. SCHIFF: Well I assume I have a right to cross examine the government's
23 witness?

24 THE COURT: No, you're not going to have a witness, Mr. Schiff, because the fact
25 of the matter is that what the government is relying on is not a witness, but on the
26 documents themselves. Show him the documents that you're going to rely on, Mr.
27 Jongbloed.

28 MR. SCHIFF: **But someone's got to testify that –**

THE COURT: **Now just a minute. Don't tell me what somebody's got to do or**
somebody does not have to do.

MR. SCHIFF: I'm reading from the law your Honor. This –

THE COURT: **You don't have to read from the law because the fact of the**
matter is the law as you see it is frequently the law as you make it up in your
own head to suit your own convenience.

1 MR. SCHIFF: 32(1)(c) says I will have the opportunity to question the witnesses.

2 THE COURT: Mr. Schiff if there is no witness, then you're going to have no
3 opportunity to cross examine –

4 MR. SCHIFF: **WELL THEN THERE'S NO ADVERSE WITNESS.** Then there
5 has to be – who are my – who are my adversary witnesses? Who's going to say
6 that the returns I filed –

7 THE COURT: – Please –

8 MR. SCHIFF: – are not –

9 THE COURT: You know I've told you before that I'm thoroughly aware of the
10 – and I don't mean this in a theological or Semitic fashion – I am aware of the
11 rabbinical procedure by which you answer a question with a question and you
12 never get anywhere. The fact of the matter is, you're not going to ask me
13 questions because I'm not going to answer your questions. That tactic may
14 work in some forum, it's not going to work here.

15 MR. SCHIFF: Your Honor –

16 THE COURT: All I'm telling you is, that the – what I expect the government is going
17 to do. The government will show you the documents and the question of whether
18 there's probable cause is not going to be dependent upon what some witness says, it's
19 going to be dependent upon whether, under the law as I understand it and will apply
20 it, the documents that you have filed comply with the requirements. If they do as you
21 claim, that's the end of the probation violation contention.

22 MR. SCHIFF: But your Honor –

23 THE COURT: If they do not comply with the law as you claim, that's the end of the
24 matter. ... If they do not comply, then I will find probable cause –

25 MR. SCHIFF: My –

26 THE COURT: – and then you will have the opportunity to have a full hearing on the
27 matter. **Do we understand one another?**

28 MR. SCHIFF: **No, I don't, because my terms of my probation –**

THE COURT: **Then you're not listening.**

MR. SCHIFF: **I am not charged with filing lawful returns. I am charged with
not following the direction of my probation –**

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THE COURT: No, no, no, no.

MR. SCHIFF: – officer.

THE COURT: No, no, no, no, no. You're charged with violating the conditions that I imposed upon your probation –

MR. SCHIFF: Here was the condition.

THE COURT: – that says specifically that you are to file all lawfully required returns. That means file valid returns. The government claims that you have not filed valid returns.

MR. SCHIFF: My probation officer –

THE COURT: I don't care what your –

MR. SCHIFF: said –

THE COURT: I don't care what your probation officer said because the fact is that I did not give the probation officer the authority to tell you what you could and could not do. I told you what you were required to do. If you've done it then you're not re–

MR. SCHIFF: I sent you copies of those returns myself.

THE COURT: I don't care what you did, Mr. Schiff.

MR. SCHIFF: You never told me that they were – I filed those returns a year and a half ago. Your Honor, I have a – conditions of probation supervised release, and according to the conditions of my probation – these are the conditions – the conditions say that I am to follow the instructions of the probation officer. Now following the instructions of the – my conditions do not say that I have to follow the instructions of every government employee –

THE COURT: You see Mr. Schiff, you read those portions – and it's a nice, clever, cute trick – that you read those portions that suits your convenience and you don't read the basic requirement which was that you were required to file all the tax returns which were required by the law. Isn't that what it says?

MR. SCHIFF: Well first of all – first of all the instructions did not say file income tax returns. It says all returns –

THE COURT: You see – you see there's your nice little attempt to distort something. What have I got to do? I've got to tell you exactly what to do?

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MR. SCHIFF: Did your instructions – did your instructions require to file –

THE COURT: **Don't ask me a question Mr. Schiff.**

MR. SCHIFF: Well it didn't.

THE COURT: All right.

MR. SCHIFF: But more important, your Honor, I have to look to my probation officer for supervisory advice * * * *

See RT (5/31/91) 10:1-16:21 (emphasis added), attached hereto as Exhibit 1.

21. Based on all the foregoing and Occam's razor, I was forced to conclude that Mr. Schiff probably suffers from a severe delusional disorder or other mental disease or defect. See, e.g., excerpts from the DSM-IV, 297.1 Delusional Disorder, attached hereto as Exhibit 2, which state in pertinent part:

... Delusions are deemed bizarre if they are clearly implausible, not understandable, and not derived from ordinary life experiences (e.g., an individual's belief that a stranger has removed his or her internal organs and replaced them with someone else's organs without leaving any wounds or scars). In contrast, nonbizarre delusions involve situations that can conceivably occur in real life (e.g., being followed, poisoned, infected, loved at a distance, or deceived by one's spouse or lover).

... [A] common characteristic of individuals with Delusional Disorder is the apparent normality of their behavior and appearance when their delusional ideas are not being discussed or acted on. In general, social and marital functioning are more likely to be impaired than intellectual and occupational functioning.

Subtypes

The type of Delusional Disorder may be specified based on the predominant delusional theme: * * *

Grandiose Type. This subtype applies when the central theme of the delusion is the conviction of having some great (but unrecognized) talent or insight or having made some important discovery. Less commonly, the individual may have the delusion of having a special relationship with a prominent person (e.g., an adviser to the President) or being a prominent person (in which case the actual person may be regarded as an impostor). Grandiose delusions may have a religious content (e.g., the person believes that he or she has a special message from a deity).

1 * * *

2 **Persecutory Type.** This subtype applies when the central theme of the delusion
3 involves the person's belief that he or she is being conspired against, cheated, spied
4 on, followed, poisoned or drugged, maliciously maligned, harassed, or obstructed in
5 the pursuit of long-term goals. Small slights may be exaggerated and become the
6 focus of a delusional system. The focus of the delusion is often on some injustice that
7 must be remedied by legal action ("querulous paranoia"), and the affected person may
8 engage in repeated attempts to obtain satisfaction by appeal to the courts and other
9 government agencies. * * *

8 **Mixed Type.** This subtype applies when no one delusional theme predominates.

9 **Associated Features and Disorders**

10 Social, marital, or work problems can result from the delusional beliefs of Delusional
11 Disorder. **Ideas of reference (e.g., that random events are of special significance)**
12 **are common in individuals with this disorder. Their interpretation of these**
13 **events is usually consistent with the content of their delusional beliefs.** Many
14 individuals with Delusional Disorder develop irritable or dysphoric mood, which can
15 usually be understood as a reaction to their delusional beliefs. Especially with the
16 Persecutory and Jealous Types, marked anger and violent behavior can occur. **The**
17 **individual may engage in litigious behavior, sometimes leading to hundreds of**
18 **letters of protest to government and judicial officials and many court**
19 **appearances. ... Major Depressive Episodes probably occur in individuals with**
20 **Delusional Disorder more frequently than in the general population.** Typically,
21 the depression is relatively mild and begins after the onset of prominent delusional
22 beliefs.... [Emphasis added].

23 22. Because contrary facts and arguments simply do not penetrate Mr. Schiff's reasoning
24 and belief system, I believe that in all likelihood a psychological analysis will show that rigidity is a
25 central component of his psychological disorder. *See, e.g., U.S. v. Finley, 301 F.3d 1000, 1005-06*
26 (*9th Cir. 2002*), stating in pertinent part:

27 ... As a result of the tests and examination, Dr. Wicks testified that Finley has an
28 atypical belief system. Dr. Wicks explained that most people have an open belief
system which is subject to change, but some people have closed belief systems.
Closed belief systems are more abnormal because they are fixed and rigid. Dr. Wicks
then testified how an atypical belief system operates. Dr. Wicks testified:

 It's a closed belief system in which practical -- or information from the
real world that comes in is so grossly distorted that the person ends up
with a belief system that the average person in the culture just simply

1 would sit back and say, "Huh? How can you believe that?" If X, Y,
2 and Z doesn't fit with that, they would then come up with an
3 explanation how X, Y, and Z fit just fine with their belief system.

4 Dr. Wicks explained that a delusion is another psychological term for an atypical
5 belief system and he stated there are three major categories of delusions. Dr. Wicks
6 opined that Finley was vulnerable to a delusional disorder in December 1995, stating:
7 "He tends to hear what he wants to hear and believe what he wants to believe about
8 someone. So this had happened even prior to 1995." The doctor concluded that Mr.
9 Finley suffered from a delusional disorder from a minimum of 1995 until the present.
10 He elaborated that a person with a delusional disorder can be dissuaded from the
11 delusion "[o]nly with tremendous, tremendous difficulty."

12 23. Mr. Schiff's consistent and repeated insistence on the lawfulness of his actions and the
13 unlawfulness of the actions of the Internal Revenue Service, the Department of Justice and the
14 various courts in his cases appears to epitomize a rigid belief system as part of a mixed type delusional
15 disorder involving both grandiosity and persecution.

16 24. It is difficult to assess the degree, if any, to which Mr. Schiff appreciates that he may
17 suffer from a delusional disorder or other mental disease or defect. Nevertheless, I secured Mr.
18 Schiff's authorization to contact Dr. Ortega, the psychiatrist who recently treated Mr. Schiff for
19 bipolar disorder and severe depression, and to disclose Dr. Ortega's Report.

20 25. Dr. Ortega's Report (attached hereto as Exhibit 3) states in pertinent part:

21 **HISTORY OF PRESENT ILLNESS:** The patient is a 75-year-old male **with long**
22 **history of bipolar disorder. ... The patient is being followed up in my office for**
23 **bipolar, and last time that he was in the office, he was very depressed. ...** The
24 patient has a high profile in the society in the past, and the patient stated that he is
25 now in big trouble because of the books that he wrote and he is having court hearings,
26 government trying to put him in jail because of the books that he wrote regarding
27 taxation. The patient showed me all those books.... I found that the patient has been
28 getting more and more depressed, not going out. ... It seems that he is having suicidal
thoughts and he feels that life is not worth living, and because of the fact that he is at
high risk, I opted to get him to the hospital for treatment of his depressed bipolar.
The patient continued to show depression. I do see much of the bipolar, but because
of the fact that he is showing a bipolar through this time here and severe depression,
the patient was admitted for high risk for suicide. * * *

1 MENTAL STATUS EXAMINATION: Revealed a 75-year-old male, looking his
2 stated age, well dressed, well groomed, good eye contact, mood okay, affect is
3 appropriate to mood. Denied auditory and visual hallucination. Denied suicidal or
4 homicidal ideations **but delusions elicit**. On cognitive testing, he is alert and oriented
5 times three. The patient has good memory across the board. The patient has good
6 fund of knowledge, intelligent, concentration and attention coming back. The patient
7 is aware of his illness, his insight **and does not have good judgment...**

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ADDENDUM

In my professional opinion I felt that the patient did not pay taxes because he was convinced that the law does not require him to do so. **I think this is a delusional disorder. He has this thing for a long time but no medication seem to make him believe otherwise. The patient is presently being treated for bipolar depression.** [Emphasis added].

26. With the assistance of one of Mr. Schiff's sons, I obtained Mr. Schiff's agreement to submit to an evaluation by Licensed Psychologist Cynthia Barry, Ph.D., 1066 Saratoga Avenue, Ste 100, San Jose, California, on Monday, January 6, 2004. Following the evaluation, Dr. Barry prepared a Report dated January 6, 2004, attached hereto as Exhibit 4 and incorporated herein as though set forth in full, which states in pertinent part:

Referral Request and Procedure: Per your request, an evaluation was conducted on January 6, 2004. Mr. Irwin Schiff was interviewed for two hours. He completed the MMPI-2 and provided all of his publications for review. I also reviewed the Valley Hospital Discharge Summary signed by Dr. Luis Carlos Ortega and dated October 17, 2003. I was also provided your Declaration in opposition to the summary judgment motion in the current matter. The Caldwell Report scored and interpreted Mr. Schiff's MMPI protocol. In addition, I had a 20 minute telephone consultation with Dr. Alex Caldwell (Diplomate in Psychology and an acknowledged expert on the MMPI and its forensic applications.) For the record, we have had no prior professional or personal contact, and the evaluation of Mr. Marsh (cited in your Declaration) was provided to the U.S. Pretrial Service, Northern District of California, for whom I provided psychological services over a ten year period.

Relevant Personal History. Mr. Schiff appears to have had a normal developmental history through early childhood and college. ... His psychiatric disturbance appears concurrently with his first business failure. His investments were primarily related to oil and had tax avoidance as their major benefit. Mr. Schiff states he invested his own as well as clients' money in these tax shelters which turned out to be "Ponze" schemes. Mr. Schiff remembers taking anti-depressants as business problems


1 worsened. In retrospect, he believes his medication triggered manic behavior.
2 (Unexpected manic behavior in a patient treated with anti-depressants is, in fact, a
3 well-accepted diagnostic indicator of bipolar disorder). Mr. Schiff described his
4 actions at that time as traveling with the owner of his brokerage firm, who planned
5 to salvage their oil investments by undertaking the drilling himself. Mr. Schiff states
6 he financed their travels and their efforts with his personal credit card. He states they
7 also talked clients into investing in gold mines. He now describes the entire effort as
8 a "fiasco". He credits his secretary with managing and saving the insurance side of
9 his business and with recognizing his psychological deterioration. She convinced him
10 to enter the local Veterans Administration Hospital in approximately 1972 where he
11 was first diagnosed with Bipolar Disorder and prescribed lithium (the "gold standard"
12 treatment for leveling out bipolar mood swings). ... Mr. Schiff remembers that his
13 beliefs about the tax system developed in this period of time. He spent the next two
14 years writing his first book on the subject; his first published work is dated 1974.
15 From that point forward, Mr. Schiff has continued in his belief that only "corporate
16 profits" very narrowly defined are subject to income tax and that he is constitutionally
17 entitled to "plead the fifth" amendment on his income tax form rather than
18 "incriminate himself with respect to taxes that might be owed".

12 **Presentation.** Mr. Schiff is now 75 years old. He has had numerous medical
13 problems and acknowledges short-term memory deficits. He is pleasant and
14 cooperative and reasonably well-groomed. ... (In psychiatric terms, he is well
15 oriented to time and place and has experienced no hallucinations.) ... At this
16 immediate point in time, he does not experience depression or mania. **However, in
17 conversation he returns with bulldog determination to the taxation beliefs that
18 have captured his mind for so many years. He has limited ability to stay on any
19 other topic or to confine his answers to the questions asked. These distorted
20 beliefs have not responded to treatment by medication, nor have they altered.
21 Rather, more and more distorted beliefs are added to the system, e.g. the reason
22 he was found guilty of tax evasion in 1985 is that federal judges have a "conflict
23 of interest" in finding for the government which pays them.**

20 **Diagnosis:** From the historical record, Mr. Schiff's own descriptions of his
21 behavior and Dr. Ortega's recent emergency psychiatric hospitalization report,
22 it appears that the diagnosis of Bipolar Disorder is well established and
23 warranted. Mr. Schiff had a recent episode of depression with suicidal ideation,
24 which required hospitalization, but has been remediated with medication. **I also
25 believe there is a concurrent Delusional Personality Disorder.** The first
26 condition is an Axis I disorder that generally responds to treatment with
27 psychiatric medication and cognitive behavioral counseling. The second
28 diagnosis is an Axis II personality disorder. For the most part, personality
disorders do not respond to treatment and are believed to be characterological
in nature. **In my opinion, and in the history detailed above, Mr. Schiff's
distorted beliefs appear to have grown out of the stress of his business failures
and his first, undiagnosed manic episode.** However, once developed, these
delusional beliefs have carried forward quite separate from the state of his

1 bipolar mood swings and the impact of psychiatric medication. With very high
2 probability they will continue unabated in the future. There is a significant
3 element of Paranoia in his MMPI protocol; however, he is extremely constricted
4 emotionally so that underlying anger does not surface. His pseudo-rational belief
5 system is confined to one area and there is no disorganization of thought.
6 Further, it does not appear to originate from anti-social tendencies. However, this
7 belief system is not under voluntary control. Individuals suffering from
8 Delusional Disorder have little or no ability to alter their beliefs. Mr. Schiff
9 acknowledges that even his two sons have advised him to pay his taxes and avoid the
10 negative consequences. However, he states that he cannot do so because "I cannot
11 pay what I do not owe." This despite the fact, that he recently experienced a suicidal
12 depression serious enough to require hospitalization (related in part to recognition of
13 a probable prison sentence if he is found guilty of the current charges). **In short, Mr. Schiff's behavior is not rational. It is the product of a Delusional Personality Disorder that is not amenable to treatment and is unlikely to remit.** [Emphasis
14 added].

15 I, WILLIAM A COHAN, declare pursuant to 28 U.S.C. §1746 that the foregoing is true and
16 correct based on personal knowledge, reported decisions, deposition and probation revocation
17 transcripts, and Dr. Luis Carlos Ortega's report. EXECUTED this 12th day of January, 2004, at San
18 Diego, California.

19 
20 WILLIAM A. COHAN

21 RESPECTFULLY SUBMITTED this 21 day of January, 2004.

22 PALAZZO LAW FIRM
23 
24 BY J. LOUIS PALAZZO
25 520 South 4th Street
26 Las Vegas, Nevada 89101
27 (702) 385-3855; 385-3856 (FAX)

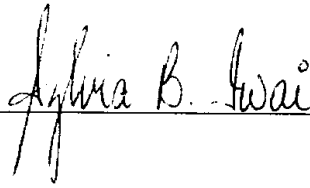
28 Attorney for Defendant
IRWIN A. SCHIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of January, 2004, I did deposit in the United States mail, a true and correct copy of the foregoing DECLARATION OF WILLIAM A. COHAN IN SUPPORT OF OPPOSITION TO UNITED STATES' MOTION FOR SUMMARY JUDGMENT, with sufficient first-class postage affixed thereto addressed to the following:

DANIEL G. BOGDEN
United States Attorney, District of Nevada
Lloyd D. George Federal Courthouse
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Las Vegas, Nevada 89101

HENRY C. DARMSTADTER
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