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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES	)	CRIMINAL INDICTMENT
	)	
Plaintiff	)	CR-S-04-1119-KJD-LRL
	)	
V	)	DEFENDANT'S MEMORANDUM OF LAW
	)	TO SUPPORT CLAIM THAT FEDERAL
IRWIN SCHIFF, CYNTHIA NEUN	)	COURTS WERE GIVEN NO JURISDICTION
And LAWRENCE N. COHEN, a/k/a/	)	TO PROSECUTE ALLEGED CRIMINAL
LARRY COHEN,	)	VIOLATIONS OF TITLE 26
Defendants.	)	
_____	)	

COMES NOW Irwin Schiff and files this Memorandum of Law in support of his Motion that this Honorable Court dismiss from the indictments at issue all counts having to do with alleged criminal violations of 26 U.S.C. 7201, 7203, and 7206 since Federal courts were given no criminal jurisdiction with respect to alleged criminal violations of 26 U.S.C. as the following will show.

I

Before a Federal court can have criminal jurisdiction, Congress must: 1) first make an act a crime, 2) fix punishment to it, and 3) declare the court that will have jurisdiction over it (See U.S. v. Hudson, 11 U.S. 32). Overlooking the fact that Congress never made failing to file income tax returns and income tax evasion crimes (income taxes are not even mentioned in either section 7201 or 7203), Congress certainly did not give Federal courts jurisdiction to conduct criminal prosecutions with respect to alleged criminal violations of Title 26.

Section 7402(f) of Title 26 is entitled "General jurisdiction" and provides as follows:

For general jurisdiction of the district courts of United States *in civil actions* involving internal revenue, see Section 1340 of Title 28 of the United States Code. (Emphasis added)

Therefore it is clear that while Congress conferred civil jurisdiction on Federal courts with respect to Title 26, it never conferred jurisdiction on Federal courts with respect to alleged criminal violations of that Title

## II

### IF CONGRESS WANTED FEDERAL COURTS TO HAVE CRIMINAL JURISDICTION WITH RESPECT TO ALLEGED VIOLATIONS OF TITLE 26 IT KNEW HOW TO DO IT

8 U.S.C. 1329 states, in pertinent part:

The district courts of the United States shall have jurisdiction of all causes, civil *and criminal*, arising under any of the provisions of this Title.  
(Emphasis added)

Obviously, therefore, if Congress had intended for Federal courts to have jurisdiction with respect to alleged criminal violations of Title 26, they knew how to do it. They would have included the same provision regarding criminal jurisdiction in 26 USC 7402(f), as they did in 8 U.S.C. 1329. Right on point is the 9<sup>th</sup> Circuit decision *Murphy v. Lanier*, 204F.3d 911(2000). It involved an appeal by Murphy who claimed that Federal courts had jurisdiction with respect to 47 U.S.C. 227 based on 28 U.S.C. 1331. The 9<sup>th</sup> Circuit (sustaining the district court) pointed out that 47 U.S.C. 227 specifically provided that it applied to “the laws or rules of state courts.” The statute at issue did not mention that jurisdiction had also been given to Federal courts. The 9<sup>th</sup> Circuit went on to observe, quoting from the Fourth Circuit case of *International Science & Technology Institute, Inc. v. Inacom Communication, Inc.*: 106 F.3d 1146(1997):

A provision that suit “may” be brought in (state) court “cannot confer jurisdiction on unmentioned courts of limited jurisdiction. which require a *specific grant*.” Id. at 1151. Because Federal courts may hear only those cases specifically authorized by Congress, and because the statute does not specifically state that a Federal district court may hear a claim under the TCPA, the Fourth Circuit concluded that the language of the statute showed that: “when in S 227(b) (3) of the TCPA, Congress authorized jurisdiction over private actions in state courts *without mentioning Federal courts*, it did not intend to grant jurisdiction over TCPA claims in Federal district courts” Id. at 1152.

Adopting this reasoning, the 9<sup>th</sup> Circuit went on to say, in relevant part:

The conclusion that there is no Federal jurisdiction over private actions under the TCPA does not hang on the meaning of the word “may,” but on the statutes silence on the matter of Federal jurisdiction. Because Federal court jurisdiction is limited to that conferred by Congress, the express reference to state

court jurisdiction does not mean that Federal jurisdiction also exists; *instead, the failure to provide for Federal jurisdiction indicates that there is none.* See International Science, 106 F.3d at 1153-54; EireNet, 156 F. 3d at 516-17; Foxall Realty, 156 F. 3d at 435; Nicholson, 136 F. 3d at 1288-89; Chair King, 131 F. 3d at 510-11. (Emphasis added)

This is the precise situation we have here. The provision in 26 U.S.C. 7402(f) providing for civil jurisdiction, but its “failure to provide for *criminal* jurisdiction indicates that there is none” – and any claim to the contrary would be arbitrary, specious, and an abuse of discretion and obviously contrary to the principle clearly enunciated in the decisions cited and quoted above.

When it is pointed out to the Justice Department that Congress never gave Federal courts criminal jurisdiction with respect to alleged criminal violations of Title 26, (as shown above) the Justice Department will attempt to fabricate such jurisdiction (in violation of the principle discussed above) by claiming that such jurisdiction is conferred in 18 USC 3231. The bogus nature of such a claim is obvious. Apart from being directly contrary to the principle enunciated in all of the cases cited above, the government, obviously, can not charge defendants with violating one Title, but claim it’s jurisdiction to do so lies in another Title – which is not even cited in the instant indictments as being somehow related to the court’s jurisdiction with respect to the alleged Title 26 violations. If Congress intended district courts to have criminal jurisdiction with respect to alleged Title 26 violations, they would have included such authority in 26 U.S.C 7402(f) in the same manner as they included it in 8 U.S.C. 1329. In addition, the Supreme Court ruled in *Gould v. Gould* 245 U.S. 150 (1917) that:

In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen.

In addition, the Reviser’s notes for 18 U.S.C 3231 states as follows:

This section was formed by combining sections 546 and 547 of Title 18 U.S.C., 1940 ed., with section 588(d) of Title 12, U.S.C., Banks and Banking, with *no change of substance.* (Emphasis added)

As shown by Exhibit A, section 546 stated, “That crimes and offenses *defined in this Title* shall be cognizable in the district courts of the United States....” (Emphasis added). Since

there was no change in substance when the above sections were combined, 18 U.S.C 3231 can only apply to “crimes and offenses defined” in Title 18, and can not apply to alleged crimes “defined” in other Titles, such as those contained in Title 26.

Based on all of the above, it is clear that there is absolutely no statutory support for any claim that Congress conferred jurisdiction on district courts with respect to alleged criminal violations of Title 26 and any contrary claim would obviously be contrived. Therefore all counts in the indictments at issue involving alleged violations of Title 26, such as Code Sections 7201, 7203 and 7206 must be dismissed for lack of subject matter jurisdiction.

### **JURISDICTION CANNOT BE ASSUMED**

As the Supreme Court stated in *McNutt v. General Motors*, 56 S.Ct. 780.

If (an) allegation of jurisdiction facts are challenged by his adversary in an appropriate manner, he must support them with competent proof...the party alleging jurisdiction (must) justify his allegation by a preponderance of the evidence.

And, as the Supreme Court held in *The State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, once the question of jurisdiction is raised: “It must be considered and decided, before any court can move one step further”

In addition, “Jurisdiction cannot be assumed by a District Court... but it is incumbent upon plaintiff to allege in clear terms, the necessary facts showing jurisdiction which must be proved by convincing evidence” *Harris v. American Legion*, 162 F. Supp.700 (citations omitted)

Therefore, before this Court can move “one step further” the United States must supply this Court with proof that some statute specifically gave this Court jurisdiction to conduct trials involving alleged criminal violations of Title 26.

Pursuant to 28 U.S.C. 1746, defendant certifies under penalty of perjury that the foregoing is true and correct.

Executed on March 30, 2004

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Irwin A. Schiff, pro per