19-530

No. 19-____

In the Supreme Court of the United States

James Kerr Schlosser,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

James Kerr Schlosser
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OCTOBER 18, 2019

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QUESTIONS PRESENTED

1. Whether the lower courts erred regarding the denied evidence, violating the defendant's constitutional right to a complete defense, if the evidence denied would have better shown the jury the defendants "willfulness" "reasonableness" and "state of mind" at the time of the alleged crime, proving that the defendant had no mens rea?

2. When the Appellate Court instruction is vague regarding the District Court improperly ordering restitution as a penalty due immediately absence of statutory authority, and it damaged the appellant, what can be done to correct it?

3. Should the DOJ lawfully absolve the IRS, Prosecutors? or Judges? who seemingly have no accountability, and flagrantly twist, distort and mock a defendant's religious beliefs at trial, then weaponized those miss-stated beliefs in the media, leaving the slandered appellant indefensible?

LIST OF PROCEEDINGS BELOW

United States Court of Appeals for the Third Circuit

Case No. 17-2872

James Kerr Schlosser, Plaintiff-Appellant, *v.*
United States of America, Defendant-Appellee.

Decision Date: January 30, 2019

Rehearing Denial Date: May 21, 2019

United States District Court for the Eastern District of Pennsylvania

Case No. 5:16-cr-00178-001

United States of America, Plaintiff *v.*
James Kerr Schlosser, Defendant.

Decision Date: March 6, 2017

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS (Cont.)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

CONSTITUTIONAL PROVISIONS

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

PETITION FOR WRIT OF CERTIORARI

James Kerr Schlosser, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit, to reverse and remand in part that decision; that there was evidence withheld that related to Counts Two and Three, which is contrary to the Panels ruling.

OPINIONS BELOW

The Opinion of the Third Circuit Court of Appeals was filed on January 30th 2019. (App.3a). The Order granting a Motion to Append a Supplemental Index was granted by the Court of Appeals for the Third Circuit May 9th, 2019. (App.9a). The Order denying rehearing en banc and the dissent from denial of en banc review was filed May 29th, 2019. (App.35a)

JURISDICTION

The judgment of the Third Circuit District Court was entered on March 6, 2017. A timely petition for rehearing en banc was denied by The Third Circuit Court of Appeals entered judgment on May 29, 2019. Justice Samuel A. Alito granted appellant's application for an extension of time to file a petition for a writ of certiorari through October 18, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

- **Fourth Amendment**

  The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

- **Fifth Amendment**

  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- **Sixth Amendment**

  In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

- **Pennsylvania Constitution Article I, § 9— Rights of accused in criminal prosecutions**

  In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

STATEMENT OF THE CASE

This case presents an important and recurring question of criminal tax liability that has divided the courts of appeals. Section 7203 of the Internal Revenue Code makes it a misdemeanor for:

> "Any person required under this title to pay any estimated tax or tax, . . . who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, be guilty of a misdemeanor." (emphasis added).

Proving this willfulness is at the heart of a prosecutor's duty, and the circuits are split on how much evidence can be admitted to constitutionally fulfill a Defendant's right to prove their innocence. In the case at hand, by denying pivotal and exculpatory evidence from the jury, the prosecutors and Court hamstrung the defendant's ability to present a clear defense. The "due process" clause of the Fifth Amendment and the Sixth Amendment's criminal trial provisions have been determined to be the basis for the constitutional right to present a complete defense. This constitutional right protects a defendant's right to compulsory process to secure witnesses for trial, as well as his right to testify in his own behalf and to offer relevant documentary evidence supportive of his defense, so the case was appealed.

Then, the Opinion of the Panel of the Third Circuit Court of Appeals stated:

> "Given the task before the jury, we must decide whether the District Court acted within its discretion in allowing Schlosser to testify extensively as to the content of the seminar while excluding from evidence the actual materials Schlosser received at the seminar. We discern no abuse of discretion. The District Court allowed Schlosser to testify comprehensively about the Thayer seminar. The admission of seminar materials, therefore, would have been piling on." . . . "Nor were the excluded materials from the Thayer seminar relevant to any of Schlosser's other reasons for thinking he was free from federal taxation."

Appellant wonders if points of law, facts and evidence were overlooked by the Panel and the District Court, since many of those excluded exhibits are relevant not only to the 7212(a) charge in Count 1, which has been dismissed, but also to the 7302 charges in Counts 2 and 3.

In District Court, the defendant's attorney argued that denying the evidence was unconstitutional, because the jury couldn't understand the heart of the defendant or why he developed that state of mind, and exhibits were not presented for the truth of the matter.

STATEMENT OF THE FACTS

A. Factual Background and Prior to the United States District Court for the Eastern District of Pennsylvania

1. In 1994 defendant attended meetings where a lawyer Jeffrey Thayer described what defendant thought was a lawful process whereby the Federal or U.S. citizenship could be renounced, avoiding encroaching Federal Jurisdiction, and as an added bonus, that the income tax only applied to U.S. citizens, not state citizens. Defendant followed that advice and in good faith sent letters to the IRS, the U.S. Attorney General, SSA and others agencies giving notice of his decision, but got no answers from them to his recollection. Appellant had filed tax returns previously, but after his revocation he did not file returns from 1994 through 2014, believing that he had lawfully exited the system.

2. After the 1994 filing, the defendant did not hear from the IRS for about 12 years, (other than an agency prepared a return in 1997, (only for the 1994 tax year, for about $1000.) In 1999 defendant attended seminars by the same lawyer, and created some corporation soles., as a ministry and one to work his medical sales business through, being told that these types of corporations were not required to file.

3. In 2006 IRS agent Dianne Ramos learned of that outstanding 1994 assessment (App. 409, 414-415, 425-426 428). In Exhibit 22A (App.70a) clearly suggests that Ramos unlawfully obtained evidence from a financial institution before summons were issued or the case was referred criminally.

4. Ramos initiated a complaint over 1994 taxes and in response, appellant lawfully availed himself of the appeals process afforded by the IRS for contesting only the 1994 assessment only. (App. 414). Two weeks before the United States Tax Court hearing No. 07-4812, the court granted a summary dismissal at prosecutions request. The appellant never got "his day in court". Appellant had verbally been told by the IRS lien office that the lien in question had legally expired, and the lien was released on 07/03/2006 which made the tax court decision moot; (App.67a-68a). Appellant then sought review in appealed to Appeals Court, which rejected his arguments and imposed a filing penalty of $1,000 as a sanction for raising frivolous arguments. (App 827-831; 984-985; 1103, 1110).

5. In 2009 appellant learned that a Grand Jury investigation had opened, and after 7 years, an indictment was filed against Appellant on 4/26/16 in the

Eastern District of Pennsylvania alleging 13 counts of criminal behavior, 10 of which happened before defendant was even aware of any IRS investigation or pending action.

6. Appellant was then offered two versions of a Plea Agreement, both would have forced him to lie by agreeing he had committed a crime with mens rea, when he did not. The plea's also excused all the behavior of the DOJ, IRS and would have indemnified their law breaking, potential Bivens and/or criminal actions. Appellant could not sign the documents with a good conscious.

1. Procedural History and Verdict in United States District Court for the Eastern District of Pennsylvania

1. Defendant hired tax lawyer Larry Becraft, who after many reminders from Defendant and the prosecution did not get all of the evidence from the prosecution. Becraft told defendant to read through the discovery we did have and put together the exhibit books necessary to tell his story.

2. At trial, Becraft did not bringing any witnesses on defendants behalf. Appellant himself asked his pastor as a character witness. Becraft did not interview key witnesses the defendant requested, did not objecting to any of over 200 exhibits prosecution entered, and only got a few defense exhibits entered into the record.

3. The trial was replete with examples of the prosecution and court denying necessary evidence, and defendant received prejudicial treatment due to his religious beliefs against forced SSN usage discussed later. Prosecution also spent lots of time confusing

the court and jury into believing that the TAX COURT cases were about all past taxes, and they were only about an expired tax lien for about a $1000. (App.21a)

4. On March 6, 2107, appellant was convicted on all counts, one count of attempting to interfere with the administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a), and two counts of willful failure to file a tax return, in violation of 26 U.S.C. § 7203.

5. Following the verdict, the defense moved for a new trial on the ground that exclusion of the evidence infringed appellant's constitutional right to present a complete defense. (App. 65-77). The district court denied the motion. (App.19a). A Notice of Appeal was filed timely. The defendant was immediately incarcerated at sentencing from 8/11/17 till immediate release was granted on 2/12/2018 after the Appeal and Motion for Bond Pending Appeal was entered.

2. Evidentiary Issues and Non-Admission of Key Exhibits

LOWER COURT

In the present case, petitioner took the stand and made effort to testify that he did not act willfully, but had relied in good faith upon what he was told by others; he also testified of his reliance on various documents containing legal and other information that formed his beliefs as a result of reading and studying them. Several times during trial, appellant attempted to testify about those tendered exhibits and he also offered them, but the court excluded much of that testimony and most of those exhibits, which prevented

the jury seeing the relevant documents appellant had relied upon.

Appellant thinks it is impossible to make determinations about exhibits that a juror or court has not seen. Here is brief summary of what some of the denied or excluded exhibits would have shown the jury:

> Exhibit 28: During cross examination of Independent Med Reps CEO, (IMR) (App 619-626), trial Attorney Becraft got Exhibit 28 admitted. This document is relevant to the Counts 2 and 3 as in 2012 and 2013 appellant got 1099's from IMR. It would have shown the jury how and why the Defendant lawfully requested to receive 1099's from IMR with no SSN on them. It referenced IRS code why that it is not criminal, and also detail some of his religious objections of why he will not legally provide a SSN to IMR.

After the Court admitted Exhibit 28 into evidence, in the next breath, denied this critical evidence to the jury with no explanation (App 623-624) "But I'm certainly not going to let him read the letter". This act alone denied the jury the ability to "see" or "hear" even the legality and sincerity of the Defendants actions and religious beliefs, as well as actual IRC that supported those beliefs, to show the heart of the defendant. It referenced 26 C.F.R. § 6109(a)(3), 26 U.S.C. § 6721(a)(2)(B) and § 6721(c)(1)(B), and 26 U.S.C. § 6724(a), and the EEOC brief and determination in Bruce Hanson's case CA3-92-0169T, Dallas Texas stating; the companies decision to fire Hanson for not providing a SSN was based "solely upon the policy of

the company, and not based on any requirement of the IRS or of the law."

Reading the actual IRC and even seeing what created the defendant's beliefs was critical to increase the jury's "reasonableness and credibility" assessment of the Defendants actions. A reasonable juror could have seen and understood why the Defendant thought his actions were legal, but it was denied.

App 67-68, in the Post Trial Motion by Defense Trial Lawyer, Becraft attached exhibits and argued on one page in this exhibit was the Arkansas case of *Sims v. Ahrens*, 167 Ark. 557, 271 S.W. 720 (1925), the headnotes of which stated as follows in this tendered exhibit:

"Under Const. art. 16, § 5, empowering Legislature to tax certain occupations and privileges, Legislature may declare as privilege and tax as such for state revenue those pursuits and occupations that are not matters of common right, but has no power to declare as a privilege and tax for revenue purposes occupations that are of common right."

This case held that a state income tax was really a privilege tax that could not be applied to those whose occupations were not licensed. Schlosser testified at trial that during 2012-2013 of Counts 2 and 3 in question, that he was a medical equipment salesman, which is an unlicensed occupation. This denied evidence was exculpatory.

In Blacks 6th, it defines Exculpatory evidence as evidence "which tends to justify, excuse or clear the defendant from alleged fault or guilt." Black's Law

Dictionary 566 (6th ed. 1990). 55. . . . The Constitution guarantees the defendant nothing less."

During trial, Defendant's lawyer Becraft, offered some exhibits, denied in trial, attached as a post trial motion, supportive of the "citizenship" argument and § 7203 charges, being made by these presenters which contained pages from the below cited cases:

> *Gardina v. Board of Registrars*, 160 Ala. 155, 48 So. 788, 791 (1909): "There are, then, under our republican form of government, two classes of citizens, one of the United States and one of the state. One class of citizenship may exist in a person without the other."

The presenters also discussed their conclusion regarding what income is not, based on certain federal regulations appearing in Title 20, Code of Federal Regulations. Trial Ex 19 (App 69): Title 20 C.F.R. § 416.1103 What is not income? (App 107-113) The presenters at this meeting asserted that income had been defined as a "gain or profit" which does not arise when a party's labor is exchanged for money. Of course, this argument has been often presented to federal appellate courts and rejected. *See Wilcox v. CIR*, 848 F.2d 1007 (9th Cir. 1988). But, being wrong about a legal argument is not criminal, and it certainly applies to Counts 2 and 3 § 7203 charges for the "income" alleged in 2012 and 2013.

Appellant believes that the denial of reading or viewing previously admitted Exhibit 28 alone should be enough for this Court to see that the exclusion of this evidence deprived Defendant of a meaningful opportunity to present a complete defense, in violation

of the Defendants Fifth and Sixth Amendments, and requires the conviction on counts 2 and 3 be vacated.

When appellants lawyer would not respond to appellants calls and emails post trial, and defendant knew there was a 14-day window to put in a post trial motion, the appellant did so himself. The Prosecution responded to it, but almost two months later the Court reasoned:

> "this Court need not determine the validity of Schlosser's present motion to arrest judgment because his motion was filed *pro se* although he is currently represented by counsel." (App 10-11); . . . . .
>
> "Furthermore, the Court orders the Defendant to cease and desist from filing any further *pro se* motions, as he is represented by counsel." (App 16)

Is this a violation and contrary to the inalienable Rights appellant has, and the rights secured to him from his state Pennsylvania Constitution?

> § 9. Rights of accused in criminal prosecutions.
>
> In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor.

At sentencing the District Court in sentencing was mistaken when it stated that: "Furthermore you had the opportunity to settle this in 2007 when your

cases were heard by the Tax Court and the Court of Appeals but you chose not to do that. They told you at that time that your arguments were frivolous." (App 1384-1385) The "case" was never heard by the tax court, the liens still exist.

B. Factual Background and Proceedings in the United States Court of Appeals for the Third Circuit

1. On February 12, 2018, the Court of Appeals appointed the Federal Counsel to represent jailed Appellant on appeal. The matter proceeded to briefing and decision. Appellant challenged his conviction and sentence on a three-count indictment charging one felony count for obstruction of tax law enforcement, in violation of 26 U.S.C. § 7212(a) (Count One), and two misdemeanor counts for willful failure to file returns, in violation of 26 U.S.C. § 7203 (Counts Two and Three). Appellant raised four issues: (1) whether the conviction on Count One must be vacated due to the government's failure to prove obstruction of a particular administrative pending, as required by the intervening decision in *Marinello v. United States*, 138 S. Ct. 1101 (2018); (2) whether the conviction must be vacated on all counts due to the district court's exclusion of legal materials and evidence on which Appellant testified he relied in coming to a good faith belief; (3) whether the finding of tax loss relied upon in calculating the Sentencing Guidelines range and imposing sentence was supported by substantial evidence; and (4) whether the written judgment improperly provides for restitution as a freestanding penalty due immediately.

2. In the appellants reply brief filed 10/16/18 it raised the issues of the governments blatant prejudice against defendants religious beliefs.

3. By judgment entered January 30, 2019, with accompanying non-precedential opinion, a panel of The Third Circuit Court of Appeals vacated conviction on Count One in light of *Marinello* but affirmed conviction on Counts Two and Three, holding the district court not to have erred in excluding from evidence the legal materials on which Appellant testified he relied. In light of the vacatur of conviction on the sole felony count, the Court remanded for resentencing and correction of the restitution award.

4. On February 8, 2019 appeals counsel promptly advised Appellant of the Court's opinion and judgment and Appellant politely advised counsel he wished to proceed *pro se*.

5. On May 6th, 2019 Appellant filed Appellants Petition for Panel Rehearing and Rehearing en banc, and Appellant's Supplemental Index. On May 10th, the Appeals Court Granted the Motion for the Supplemental Index.

6. On May 29th the Appeals Court issued certified judgment in lieu of a formal mandate and remanded the case back to the United States District Court for the Eastern District of Pennsylvania, denying the rehearing.

7. On July 29th 2019 Appellant sent an unopposed motion to the lower court for a continuance for resentencing until the Supreme Court rules on the petition for certiorari, the Court graciously granted extensions, currently re-sentencing till December 16th, 2019.

8. On August 6th, 2019 Appellant filed a timely application for extension of time to file petition for

writ of certiorari to this Court over a decision from the United States Court of Appeals for the Third Circuit, which was granted, and extended till October 18th.

C. Proceedings in the United States Court of Appeals for the Third Circuit

Some of the missing exhibits quoted previously and more to come in the record are especially relevant to the § 7203 charges of Counts 2 & 3, contrary to how the Appellate Court adopting the lower courts language that allowing the defendants evidence would have just been "piling on". Opinion Pg. 4 "We discern no abuse of discretion. The District Court allowed Schlosser to testify comprehensively about the Thayer seminar. The admission of seminar materials, therefore, would have been piling on. The Opinion also stated: "Nor were the excluded materials from the Thayer seminar relevant to any of Schlosser's other reasons for thinking he was free from federal taxation."

Throughout the USDC proceeding Prosecution was objecting that most the Defense materials were inadmissible, actually Prosecutor Miller seemed twitterpated on "hearsay", (*E.g.*, App. 689, 735, 781,763,746, 853).

Oxford English Dictionary defines twitterpated, adj. Origin: Formed within English, by compounding. Etymons: twitter n.3, pated adj. 1. love-struck, besotted; infatuated, obsessed. Also: excited, thrilled.

Appeals attorney Donoghue had argued marvelously but the response was mute; (Appeal pg.45-46) "As to the exhibits that did have these features, the court barred Mr. Schlosser from introducing any of them.

In doing so, the district court initially relied on the rule against hearsay. (App. 689, 723). This was error because the defense did not offer the documents for the truth of their content, but rather to demonstrate that Mr. Schlosser adopted his beliefs after hearing them espoused by a man holding himself out as an attorney who supplied what appear to be legal authorities. *See* Fed. R. Evid. 801(c)(2) (defining hearsay as statement that "a party offers in evidence to prove the truth of the matter asserted in the statement"). The district court later recognized that the rule against hearsay did not prohibit the materials' introduction: in its opinion denying Mr. Schlosser's motion for a new trial, the court states instead that the materials were excluded as "duplicative." (App. 13-14). Contrary to this view, permitting Mr. Schlosser to testify concerning the beliefs he formed after attending the Thayer seminars was not the same thing as permitting him to show the jury legal materials he understood to support those beliefs. The documents stood to corroborate his testimony in a way that no unadorned profession of sincerity could.

Otherwise, the district court stated that permitting introduction of the materials would have impeded "efficiency." (App.XX). If that is so, the proper course would have been to limit the defense presentation, not to exclude the evidence altogether. Indeed, limitation was the course originally urged by the government in briefing on a motion in limine. At that juncture, the government acknowledged that Mr. Schlosser must be permitted to identify legal authorities as well as "third party materials" on which he relied in forming his stated beliefs. (App. 59). It urged that Mr. Schlosser be limited to reading excerpts without

admission of the documents themselves. (App. 59-60). In the end, however, Mr. Schlosser was not even permitted that much. Instead, at trial, the prosecutor changed course and erroneously urged that the materials were inadmissible hearsay. (*E.g.*, App. 689, 735, 853). As a result, the defense was prevented altogether from showing the jury evidence that Mr. Schlosser had encountered an attorney who produced authorities appearing to support the views he espoused."

REASONS FOR GRANTING THE PETITION

This Court's review is warranted to determine the scope of allowing evidence in mens rea cases, such as § 7212(a) and § 7203. There is an acknowledged split, among many Circuit's interpretation or the degree of "broad discretion" given to judges that affected this appellant, (Govt. Reply Br. Pg. 33) that the stand against the Third Circuit's decision at present. This case is an ideal vehicle to resolve that split because the issue is squarely presented in many of the following cases, and is dispositive of Petitioner's convictions under § 7203.

The question is also one of great significance, as everyone is subject to the tax code, and § 7203 is frequently used by the IRS in indictments, so this Court should decide whether Congress intended that willfulness, defined therein to upend the structure of the Code's criminal tax provisions and bestow such broad powers on prosecutors and judges "broad discretion" to deny exculpatory evidence at trial.

This Court's review is necessary because other circuits tend to allow more evidence in *mens rea* cases than the Eastern District of PA and the 3rd Circuit and Appellate court did here. Below, the 11th, 3rd, 1st, 2nd and 9th Circuits speak to this and similar issues:

Moreover, exclusion of evidence regarding a defendant's intent when that is the primary issue for resolution by the jury results in reversal. *See United States v. Lankford*, 955 F.2d 1545, 150-51 (11th Cir. 1992) ("It is thus highly probative for the defense to show that the defendant's belief—whether or not mistaken—was reasonable; evidence of a belief's reasonableness tends to negate a finding of willfulness and to support a finding that the defendant's belief was held in good faith."). Where "the excluded testimony [is] related to the determinative issue of intent, we cannot say that the error was harmless." *United States v. Gaskell*, 985 F.2d 1056, 1063 (11th Cir. 1993); and *United States v. Versaint*, 849 F.2d 827, 832 (3d Cir. 1988) (error is not harmless where improperly excluded evidence went to the heart of the defense).

In this case, appellant was prepared to testify at trial about what various presenters told him at the several meetings he attended, and he also sought to offer the attached exhibits and explain the beliefs he acquired as a result of reading and studying them. But, appellant was denied both the opportunity to tell the jury what others told him and was further prevented from showing the jury some of the relevant documents he relied upon. An asserted belief without a demonstrable foundation is easy for a jury to reject.

See Pettijohn v. Hall, 599 F.2d 476, 480 (1st Cir. 1979) ("In the context of a criminal trial, the sixth amendment severely restricts a trial judge's discretion to reject such relevant evidence. Exclusion of relevant exculpatory evidence infringes upon the fundamental right of an accused to present witnesses in his own defense."); *Rosario v. Kuhlman*, 839 F.2d 918, 924 (2nd Cir. 1988) ("The right to present a defense is one of the 'minimum essentials of a fair trial.' * * * It is a right which derives not only from the general fairness requirements of the due process clause of the fourteenth amendment but also, and more directly, from the compulsory process clause of the sixth amendment. It is a right which comprehends more than the right to present the direct testimony of live witnesses, and includes the right under certain circumstances, to place before the jury secondary forms of evidence, such as hearsay or, as here, prior testimony."); and *DePetris v. Kuykendall*, 239 F.3d 1057, 1063 (9th Cir. 2001) ("The trial court precluded petitioner from testifying fully about her state of mind and from presenting evidence that would have corroborated her testimony. Because this evidence was critical to her ability to defend against the charge, we hold that the exclusion of this evidence violated petitioner's clearly established constitutional right to due process of law—the right to present a valid defense.").

The 8th and 9th Circuits also agree; Excluding evidence offered at trial by the defense can result in reversal. *See United States v. Silkman*, 156 F.3d 833, 836 (8th Cir. 1998). While the *Silkman* case dealt with the exclusion of financial records in a tax trial, other courts have considered the issue of the exclusion of evidence like that at issue here. Relevant to the

§ 7302 Charges in the instant case, in *United States v. Powell*, 955 F.2d 1206, 1214 (9th Cir. 1991), which reversed a tax conviction on the grounds that evidence offered by a defendant regarding his intent was erroneously excluded, that court stated:

> "The Supreme Court in *Cheek* held that 'forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision.' *Cheek*, 111 S.Ct. at 611. Although a district court may exclude evidence of what the law is or should be, *see United States v. Poschwatta*, 829 F.2d 1477, 1483 (9th Cir. 1987), *cert. denied*, 484 U.S. 1064, 108 S.Ct. 1024, 98 L.Ed.2d 989 (1988), it ordinarily cannot exclude evidence relevant to the jury's determination of what a defendant thought the law was in § 7203 cases because willfulness is an element of the offense. In § 7203 prosecutions, statutes or case law upon which the defendant claims to have actually relied are admissible to disprove that element if the defendant lays a proper foundation which demonstrates such reliance. *See United States v. Harris*, 942, F.2d 1125, 1132 n. 6 (7th Cir. 1991); *United States v. Willie*, 941 F.2d 1384, 1391-99 (10th Cir. 1991) . . . . In addition, the court may instruct the jury that the legal material admitted at trial is relevant only to the defendant's state of mind and not to the requirements of the law, and may give other proper cautionary and limiting instructions as well." (emphasis added).

Defendant believes these exhibits should not have been excluded according to the Prosecutors own definition of hearsay. (App 54 & 56) As a result the Defense was prevented altogether from showing the jury evidence that the Defendant did not have "*mens rea*," and why he had adopted the views he espoused at that time. If these exhibits were entered, a rational trier of fact could have concluded differently. '56 was a good year, especially for the 3rd Circuit on hearsay;

In *Nuttall v. Reading Company*, 235 F.2d 546, 551 (3rd Cir. 1956) ("One of the exceptions to the rule excluding hearsay is that a man's declarations as to his state of mind may be used to establish that state of mind and, to some degree, such other things as proof of a state of mind tends to establish.")

In *United States v. Branham*, 97 F.3d 835, 851 (6th Cir. 1996) ("'Hearsay' is defined as 'a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.' Fed. R. Evid. 801(c). However, 'if the significance of a statement lies solely in the fact that it was made,' rather than in the veracity of the out-of-court declarant's assertion, the statement is not hearsay because it is not offered to prove the truth of the matter asserted.'");

Shockingly, in a side bar discussion (App.23a-26a) Defense attorney Becraft finally got upset by the prosecution and Courts denial of almost all of the evidence defendant attempted to enter, and Prosecutor Floyd Miller tried to reassure him and said "it's Theater, it's Theater". App.26a. This is inexcusable, as a prosecutors duty is outlined in *Berger v. United States*, 295 U.S. 78 (1935) P. 295 U.S. 88 states:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. . . . But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

For any Federal Government's attorney to deny critical evidence, and joke "it's Theater, it's Theater . . . " Prosecutor Miller here is striking foul blows. The Appellate Court was mute, does this Court of last resort encourage this behavior from the DOJ? This gives the DOJ/IRS the unrestrained ability to crush any Citizen at will . . . Maybe to prosecutors, with unlimited budgets & resources it's funny but never before having a criminal charge and indicted at 61, (with a flimsy twisted theory of prosecution which kept changing), the court and sentencing process and media can (and in this case did) destroy people, their name, their families, financially and their future. Furthermore, jail is a very dangerous place for a now 63-year-old "white guy", who was often called an "old head".

Shon Hopwood, ex-prisoner, and now *Associate Professor of Law, Georgetown University Law Center* "IMPROVING FEDERAL SENTENCING"; describes his experience on P. 2-3. The Total Punishment of a Long Sentence Prison Sentence

"Very few would condone, as part of an official government-enforced sentence, throwing prisoners into a tank filled with large hungry sharks. Yet when people are sentenced to long terms in an American prison, that is essentially what occurs. When people go to prison, they are be exposed to a much greater risk of serious bodily injury and death. They are also more likely to die from suicide, delayed medical care, or a lack of medical care altogether.

A sentence to federal prison includes a number of unofficial punishments that are not included as a part of the government-imposed sanction. Just a few weeks after I was sentenced, a large man who was HIV-positive told another prisoner in the federal holding facility in Oklahoma City that he planned to rape me the next morning. At the time, I weighed only 180 pounds and I couldn't have bench pressed my own weight if my life depended on it. Several prisoners warned me what was coming; apparently this was not the first time this person had assaulted someone there and the guards had done nothing. I waited for the cell door to open in the morning, clutching a homemade knife. I waited all night knowing that, even if I was successful and warded off the attack, I'd likely receive an additional sentence of imprisonment for stabbing him. That day could have destroyed me. This was just one of thousands of panic-inducing moments that was not intended to be part of my official sentence but was still real, all the same. Assault, petty jealousy and physical threats from guards, food not meant for an animal to eat, denials of medical care for a serious back injury from which I have not had a single pain-free day in thirteen years, and solitary confinement

were all part of the punishment, but not part of the sentence.

Prison is not just harsh. It cripples people. Even if prisoners make it out of prison alive, their mortality rate is higher than the general public."

In summary the denial of evidence was too voluminous to overlook. The appellant had been a man who had been taught, lived and deeply believed in some wrong legal principals for over 10 years, but throughout these last 12 grueling years since the CI agents arrived on his doorstep informing him that he was under criminal investigation, under much pressure has maintained that his actions were not criminal. The 11th Circuit *United States v. Juan*, 776 F.2d 256, 258 (11th Cir. 1985).

"Appellant's contention of innocent intent in this case would strain the credulity of reasonable jurors unless it could be made to appear that, as incredulous as it might seem, the belief may have rested upon a real and genuine basis. Evidence of the basis is material, whether or not it might ultimately be persuasive. Clearly, the mere fact that appellant had, in the past, engaged in the activity he seeks to prove does not insulate him from criminal responsibility for unlawful acts thereafter. His claim of innocent intent may well remain unbelievable even though supported by his historical evidence. Yet, the past events tend to make more plausible that which, absent proof of those events, would be implausible. Appellant should be allowed, subject to the discussion below, to establish the premise for his claim."

QUESTION 2—When the Appellate Court instruction is vague regarding the District Court improperly

ordering restitution as a penalty due immediately absence of statutory authority, and it damaged the appellant, what can be done to correct it?

This issue was preserved when the defense objected to imposing restitution due immediately as a penalty. Quoting Attorney Becraft in Post trial Motion (App 1274-1276)

"In paragraphs 36, 37, 38, 107 and 108, the final PSR asserts that restitution in the amount of $553,739 is due. Objection is made to these paragraphs because restitution can only be ordered to be paid during the period of supervised release. . . . .While § 5D1.3 provides for restitution for Criminal Code offenses, it does not provide for restitution for tax offenses . . . .Historically, restitution for tax crimes has not been allowed." (emphasis added)

Regardless of Becraft instructing the Court, the District Court made restitution due immediately, and the prosecution did not correct them or object, but encouraged it. In the appellants Appeal Brief on Page 53, appellant's Appeals lawyer Donoghue stated;

"sentencing memoranda concurred in the view that restitution may be ordered only as a condition of probation or supervised release, with the government arguing the court should impose such a condition and the defense contending it should not. (App. 1274, 1280, 1292, 1297-1298). In pronouncing sentence, the court indicated that it was ordering restitution as a special condition of supervised release "as per the Government's arguments." (App. 1386). Thereafter, however, the court stated that restitution was "due immediately," *i.e.*, before the commencement of supervised release. (App. 1387). The court also recommended

that Mr. Schlosser make "a minimum payment of $25 per quarter towards restitution" during confinement. (App. 1387). The judgment in turn states the amount of restitution first under the heading "Special Conditions of Supervised Release," and then again under the heading "Criminal Monetary Penalties," with a "Schedule of Payments" memorializing the quarterly obligation during confinement. (App. 5-7).

The appellant's home of 20 years was sold while he was in prison, and due to "the fake news" of the indictment being published in the newspapers locally which created a "dark cloud" of IRS involvement hanging over the property, which sold for much less than it is worth. The difference of what it did sell for and what it is worth could have been used to pay towards past taxes owed, and it left the appellant literally homeless. The Appeals Court was silent on this issue, and to ignore this and not rectify this is further damaging to the appellant.

To further exacerbate the issue, new evidence that the Appeals Court accepted but ignored; On 05/02/2018 (while the defendant was incarcerated), the USDOJ sent an Administrative Offset Notice to collect a debt, to appellants home address, knowing that he was in prison and that the case/restitution was under Appeal. (App.62a) It charged him the bill for the remaining restitution, $ 408,741.36 and applied it to SSN XXX-XX-9979 with 60 days notice to comply. Appellant was not aware of this letter and the 60 days expired prior to appellant's release, so does that violate the Treasury Offset Program Rules, the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 and the

Infernal Revenue Code? That violated appellants constitutional right of re-dress.

Thankfully, the Appeals Court and Prosecution have conceded that the written judgment improperly provided for restitution as a freestanding penalty was incorrect, and ordered it to be re-calculated, and Count 1, 7212(a) was dropped. Yet the Appellant is concerned that in the event that this Court decides not to drop the 7203 charges, if Counts 2 and 3, go back for resentencing, leaving the restitution instructions were vague and now up to the Court that leaned heavily on the Prosecutions arguments at almost every opportunity is at best unsettling. Therefore the appellant is asking this Court to clarify that restitution and re-sentencing must be limited to 2012 and 2013 only.

Marinello states:

> "neither can we rely on prosecutorial discretion to narrow the statue's scope . . . doing so risks allowing policeman prosecutors injuries to pursue their personal predilections" *Smith v. Goguen*, 415 U.S. 566, 575, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974).

Thankfully trial Prosecutor Floyd Miller stated to the jury and court; "Now he wasn't charged with filing—with failure to file for 2014, because that's included in Count 1". The appellant is assuming all of the other years were too. (App 997)

QUESTION 3—Should the DOJ lawfully absolve the IRS, prosecutors, attorneys or judges who seemingly have no accountability, and flagrantly twist, distort and mock appellant's religious beliefs at trial, then

weaponized those miss-stated beliefs in the media, leaving the slandered appellant indefensible?

> "Think of the press as a great keyboard on which the government can play."
>
> Joseph Goebbels

It's a historical fact that under the Obama administration there was prejudice displayed by the IRS, Loretta Lynch etc. against the Tea Party, Christians and other conservative groups, for which they still remain inculpable. In the instant case the Grand Jury started simultaneously in 2009, under Obama.

The prosecutors repeatedly attacked the defendant's religious beliefs, and denied the exhibits that could have explained them. This concern was raised in the Defendants Reply Brief (App 1038-9) the Panel was silent on this important issue regarding 1st Amendment Rights upon request for re-hearing. (App 917). The Defendant would like this courts judgment to determine if repeated prosecutorial slander, prejudice and ill-will of his religious beliefs could have affected the outcome of the case. (App 1009-1010; 890; 909; 917-18; 872).

This Courts intervention is necessary since the Appeals Panel was silent on Appellants questions 2 and 3, to determine prosecutorial abuse of appellant's religious beliefs and IRS and possible lawyer-prosecutorial malfeasance.

Quoting Donoghue; "Mr. Schlosser also testified to his belief that his Social Security number nonetheless is invalid because it issued on his own application while still a minor. (App. 779, 852). The government conflates these two points, however, when it parses

Mr. Schlosser's testimony to have been that "from 2009 forward," his concern about the Social Security number's issuance was his reason for not filing tax returns. *See* Gov't Br. 25, 37.

Finally, the government draws attention to Mr. Schlosser's religious objection to mandatory social insurance programs and his citation of biblical text in the course of testifying. (App. 763-765, 870). This focus is misplaced, as the defense did not put forward Mr. Schlosser's faith as the basis for his belief that, as a matter of law, he was not required to file returns. Rather, the defense was that Mr. Schlosser understood the notice-and-default procedure to have relieved him of federal tax obligations. (*See* App. 1020-1024, 1030-1032 (closing argument))."

Exclusion of this evidence and complete silence by the Appeals Panel on this issue deprives Appellant of a meaningful opportunity to present a complete defense, in violation of the Fifth and Sixth Amendments, and requires the conviction be vacated."

At trial and regurgitated in the Governments Reply Brief, pg. pg. 37. "Moreover, Schlosser said that he had religious objections to the use of Social Security numbers, which were grounded on the Bible, and offered no evidentiary support for his belief that his Social Security number was contractually invalid because he obtained it when he was a minor." (emphasis added)

Prosecution claimed "no evidentiary support" which is not true, see (App 763-784, 1374, 1376). Prosecution time and again objected exhibits out of evidence, or for some reason they were not entered. Exhibit 10 is the Defendants letter to his bank, was demanding a

SSN be associated with his families accounts. This exhibit dated 4/20/2006, describes his religious beliefs and is relevant for Counts 2 & 3, as checks from monies he earned in the years 2012-13 were deposited into a non-interest bearing account and the 1099's for those years had no SSN on them. The Defendant wrote;

> "I have held a religious objection to Social Security for many years . . . I have a letter from Social Security that says "a social security number is not required to live or work in the United States . . . I object to any government benefit that would replace my God-Given mandate or responsibility. I believe that putting my future "security" and old age benefits in the hands of men is contrary to the principals in Jeremiah 17:5 & 6, II Chronicles 16:7 and many new testament scriptures. 1 Cor. 7:21-23 encourages believers to stay free from enslavement when they can, . . . ".

This exhibit also included a copy of a Certified response from SSA to appellant for his third expedited FOIA request (which too years to get an answer), showing when appellant's SS-5 form was applied for that he was a minor, and no parental affidavits were produced. This would have been visual evidence to jurors of why the appellant believed that his SSN was illegal, and that it was not just his fairytale "belief", but it was based on actual evidence.

Exhibit 28 was allowed into evidence, stated some of Schlosser's religious objections but again, the judge but denied it's reading to the jury:

> "the whole Social Security System is based on fraud and is a Ponzi scheme", "trusting in man". Proverbs 6 and Jeremiah (as well as other Scriptures) "rebuke believers for being involved in this . . . "

Supplemental Appendix Exhibits admitted by the Panel also showed:

Ex 1A-Schlosser's exhibit list proves that not all of the exhibits were about the Thayer Seminars-contrary to the Panels ruling;

Ex. 8A mentioned the Religious Freedom Restoration Act (RFRA), "least restrictive means test". This admission is relevant in counts 2 and 3 because it would have shown the sincerity and reasonableness of Defendants actions were more based on not using a SSN while prosecutors proffered the acts were for tax evasion. The April 2004 correspondence between Defendant's lawyer and PENDOT official to make an exception to the now mandatory SSN usage to get a PA license, (which was not mandatory earlier). The 10/20/2004 response letter from SSA FOIA backing up court testimony of why appellant believed the SSN given, as a child was illegal. (App. 664, 779, 882-883). Annie White, Associate Commissioner Office of Public Inquiries quoted:

> "If a SSN is requested for someone who is under age 18 or age 18 or older and physically or mentally incapable of signing the application, the parent is the proper applicant."

There were no parental affidavits produced by SSA. Appellant testified that he does continue to maintain a religious and conscientious objection to

Social Security as a forced social insurance program, like Obamacare, noting that some of his Amish neighbors and tens of thousands of other Lancaster County residents have been able to obtain exemptions. (App. 763-766, 773-775, 783-784, 862-863).

Exhibits 21 and 22 are parts of exhibits that were objectionably withheld by Larry Becraft, defendant's own trial lawyer Affidavite of JKS.

Ex 21-A-4. (App.42a) The record reflects (App 827-831; App 938-939) why the Defendant was actually denied that opportunity to be heard in the 2007 tax court. The tax court case was only concerned over "an expired" lien on a 1994 tax bill, for about $1,000 not any other tax years as the prosecution, District Court and Panel erroneously implied. In the full Ex 21A, it appears that in 2009 the government knew the lien had expired, and they had told appellant that on 7/3/2006. IRS Criminal Investigator Michael Castellano interviewing with B. Williams-Downing Revenue Officer Advisor, and the Lien Technical Specialist L. Biting Supervisory tax examining Assist all knew it had expired, yet the prosecution hotly pursued this topic in court.

> "Based on her review of Schlosser's letter and TXMOD, her employee Ms. Harth, followed proper procedures. Ms. Harth advised Schlosser that the levy was released on 07/03/2006".

Ex 21 A-W1-34 and W1-35 note a "Letter from Schlosser dated January 21, 2010,

> "Written protest to letter CP-501 regarding civil penalty imposed by tax court for 199412.

> Schlosser asserts statute of limitations expired. Also states that he has religious objection to using a SSN and has not done so since 1994"

Had the jury been able to see these exhibits they would have had a better understanding of appellants sincerity of belief of not using a SSN, and why he believed the Tax court lien was a non-issue because even the IRS themselves said it was expired and uncollectable, and they had told the defendant verbally, but never sent proof. This evidence alone could have changed the trials outcome.

Is this Prosecutorial misconduct as they knew, or should have known, the '97 lien was expired and released, yet vigorously beat their big club on the Tax Court drum, deafening the jury with a false narrative (App-441).

> "The most brilliant propagandist technique will yield no success unless one fundamental principle is borne in mind constantly—it must confine itself to a few points and repeat them over and over."—Joseph Goebbels

Defendant wondered if even the Tax Court's and prosecutor knew that the 1997 lien was expired, so she requested summary dismissal and testified to such (App. 938-939) Without this concrete evidence being shown to the jury, defendants testimony appeared a tin-hat conspiratorial argument.

Ex 22-A-1 (App.45a) describes how before the case even referred criminally the testimony of the VP of a brokerage firm, that seasoned IRS Agent D. Ramos is a law breaking bully;

> "that Ms. Ramos was aggressive and may have caused his front office employees to provide information about their former client [Appellant], which potentially should not have been released without a legal summons."

This appears to be a violation of Appellant's Fourth Amendment rights by a federal officer. Can someone please re-legalize the Constitution?

Evidently withholding exculpatory evidence and twisting the truth is common amongst some prosecutors and lawyers Affidavit JKS. Sidney Powell Former Federal Prosecutor and author of License to Lie", on December 17, 2018 wrote an opinion in The Daily Caller

> "Countless people, including a former federal prosecutor, seem oblivious to one of the greatest abuses, outrages, and tragedies of our criminal justice system: innocent people are forced to plead guilty every day. Indeed, the Innocence Project alone has exonerated 31 people who spent a combined 150 years in prison on guilty pleas. That is only the tip of the proverbial iceberg. This horrific injustice is solely attributable to the unchecked power of prosecutors who now function as prosecutor, judge, jury, and executioner. They have unfettered discretion, no supervision, no limits, and most federal judges defer to them at every turn." . . . "Those who have not endured a criminal prosecution, or been close to someone who has, cannot begin to imagine the toll it takes on everyone involved—the entire family. The stress is

> incomprehensible . . . Prosecutors send innocent people to prison every day—whether by guilty plea or wrongful conviction. Prosecutors withhold evidence of innocence, they destroy evidence, and they have absolute immunity. This must change now."

In the Defendants Reply Brief Pg. iii, it references post sentencing newspaper articles Associated Press, "Man convicted of not filing taxes over 'mark of the beast,'" *Morning Call*, Mar. 8, 2017, United States Department of Justice, Press Release; *Jury Convicts Lancaster Man of Tax Fraud*, Mar. 7, 2017 where Acting United States Attorney Louis Lappen, quoted:

> "Testifying in his own defense, Schlosser told the jury that he refused to file tax returns because he concluded that the use of a social security number represented the "mark of the beast alluding to a passage in the Bible".

That statement is untrue; it's not in the record stated nor what the defendant said or believes. That's not why appellant didn't file (App 872; 918) but this disturbing theology is slander and prosecutorial malfeasance, and was published in the media; the bell can't be un-rung, embarrassing the appellant, his family and church family.

On Monday morning, the final day of trial, right after the "Curious George jurors" spent the weekend at home (probably reading newspapers), the District Court gave Jury Instructions that a newspaper report is evidence! (App 1051) "certain facts like a newspaper report or a courts opinion." On Apr. 26, 2019 www.nbcphiladelphia.com/news published a digital news-

paper article; "Weinstein's lawyers say news coverage could taint the jury pool":

"Both the prosecution and defense asked that the hearing be held behind closed doors because it focuses on sensitive matters . . .

All criminal cases should be treated as such.

This Supreme Court, the defendant's Court of Last Resort MUST stem the growing tide of IRS Agency, prosecutorial or judicial malfeasance. If the prosecution can't force a defendant who is un-willing to lie and take a "plea bargain" (*i.e.* state that the defendant had criminal intent when they did not), then with their unlimited resources, can easily destroy defendants lives, create unwanted lawyer debt, publish false narratives and weaponized them in the media, before, during and after trial, and withhold evidence from the jury.

Regarding prosecutorial misconduct, Shon Hopwood's ideas in the *UMKX Law Review* [Vol. 87:1, Pg's 79-96 are relevant. He wrote:

> "To take one example, there has recently been a national movement among criminal justice reformers to target prosecutors. Reformers are currently studying the ways to hold punitive prosecutors accountable for our country's mass incarceration of its citizens. But unlike many state and local prosecutors, federal prosecutors cannot be voted out of office. Thus, the only real check on bad DOJ policymaking officials comes from the career consequences that person experiences after leaving the DOJ. Holding these officials

accountable through such consequences is appropriate . . . "

CONCLUSION

Appellant requests that this court dismiss all of the charges of 7203 on Counts 2 and 3 and any existing or further investigations against the appellant, return all of his evidence, clear his name and address a solution for damages that he has incurred, and further investigate all the unlawful government actors and issues raised with the full power of the United States governments ability, like attorney Becraft's phone call, who made the call, the Prosecutor, DOJ, the Court? America needs to know the truth to re-gain credibility of our Criminal Justice System, which has 3 words, otherwise it voids the second word, making it a Criminal System.

In the event this court decides not to drop Counts 2 and 3, then please specify to the USDC that maximum authorized restitution is the loss from 2012 and 2013, and all future orders comply with the standard statute of limitations, (App 46-47) and please suggest an alternative sentence to jail so that appellant can work and pay back his debt to society. Further, the appellant respectfully requests this court for clarity to be given to the USDC and Government regarding restitution or filing for tax years beyond the standard statute of limitations, as District Judge in sentencing left vague instructions to "fully cooperate with the IRS by filing all delinquent or amended returns."

Does that mean they can go back 25 years, or into a college yearbook?

Therefore the Petitioner respectfully requests that this Court of his last resort grant review.

Respectfully submitted,

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