

24 and other evidence in fact that he is NOT liable, and that he has no legal, constitutional
25 “income.” Burden of proof is now on the IRS to rebut this position, with evidence and not
26 hearsay. If the Judge also believes that “everyone” must file a return, it nevertheless falls
27 as his legal duty, under oath, to not rely on presumption, hearsay and belief, but to consider
28 the evidence presented and to order IRS to prove up, or for Judge to present “findings of
29 fact and conclusions of law” to justify discarding the greater case law and substantial
30 questions raised. This did not occur.

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32 2. Judge Whitney states on Page 2, top... “Notwithstanding Petitioner’s assertion that he
33 never received such notice...”

34

35 Petitioner’s denial of receiving notice was in regard to the legal requirement for the IRS to
36 NOTIFY Petitioner PRIOR to contacting third parties. IRS only sent Petitioner a copy of the
37 actual Summons which was sent to third party, without notifying Petitioner of any third party
38 contact PRIOR TO this act.

39

40 3. Judge Whitney goes on to state... “burden then shifts to Petitioner to disprove the
41 existence of a valid purpose or to show that enforcement of the summons would otherwise
42 be an abuse of the Court’s process.” Then states...”At a minimum, Petitioner must ‘allege
43 specific facts in its response pleadings, supported by affidavits, from which the court can
44 infer the possibility of some wrongful conduct by the IRS.’”

45

46 Petitioner states that he has shown this proof in the facially void summons, which, indeed,

47 does abuse the Court's process under Federal Rules of Civil Procedure, #4. Petitioner
48 presented lawful evidence raising several substantial questions challenging IRS's hearsay
49 position upon which Judge Whitney is making conclusions. The administrative Summons,
50 by case law presented, MUST be a legally valid Summons, based on *Schulz v. U.S.* as
51 presented in previous documents. Summons was clearly NOT valid and was facially void.
52 "Specific facts" were alleged, clearly. If there was insufficient "form" in this procedure, then
53 Petitioner brings to Judge Whitney's attention the previous Judicial Notice of case law
54 regarding Pro Se cases and the requirement for the Judge to consider substance and NOT
55 form, as provided in original Petition to Quash. The substance was provided, and if
56 "affidavit" is necessary to restate the obvious, Petitioner can provide this.

57

58 Petitioner does NOT contest the fact that a lawful Summons, which goes through required
59 legal Due Process, and receiving the Judge's signature on the Summons itself prior to
60 serving said Summons WOULD be a legally valid document. Federal Rules of Civil
61 Procedure (FRCP) #4 mandate that any Summons by ANY party MUST follow the rules,
62 or be void, and there are NO laws which circumvent or separate the IRS from obeying
63 these laws. Judge Whitney seems to suggest otherwise. Petitioner cannot provide "proof"
64 of a negative... evidence of "no" laws authorizing IRS to circumvent FRCP #4. The IRS
65 must prove that they are NOT subject to FRCP #4. Other obvious case and Constitutional
66 laws which Petitioner presented refutes IRS's position. To place the burden on Petitioner
67 once the challenges are made and answer is given is incorrect procedure. The burden now
68 lies with the IRS to refute the proof, using actual laws which prove their position, and which
69 they did not do. Hearsay is useless propaganda.

70 3. Judge Whitney then cites *Powell*, throughout. Petitioner doubts the *Powell* case
71 condones violation of FRCP #4 in its ruling. Petitioner provided evidence in fact directly
72 addressing the issue whether the government had information from which to determine any
73 alleged tax liability which was the question presented by the IRS. Petitioner's social
74 security statement was presented showing that such evidence is in the government's
75 possession. To now turn this to mean that the "IRS is not in possession of records of
76 Petitioner which "Capital One Bank" holds simply opens this "element" up to IRS fair game
77 to include the entire universe of businesses and records at the whim of IRS agents, which
78 is in contradiction to the 4th Amendment, especially without Due Process and Probable
79 Cause. Does the IRS now get dictatorial and fascist powers over Americans without proof
80 and evidence, and through bypassing the Rule of Law? How much more question can
81 Petitioner raise to bring light onto the issue? Is it lawful to present hearsay testimony in an
82 attempt to prove a point, and then ignore proof to the contrary, and which proof Judge
83 Whitney has ignored?

84
85 If Petitioner were to attempt this tactic in a case against another individual... using a
86 "sommons" without Court proceedings and Judge's signature, and presented similar
87 hearsay claims regarding that individual and Petitioner's authority over him or his records
88 or possessions, the Judge would throw the case out immediately because there was NO
89 evidence in fact supporting the basis upon which I would be standing on to try to get
90 records or some other thing. How can the IRS accomplish this, and how can the Judge
91 support it?

93 5. Page 3, Judge Whitney's use of the term "tax protestor" suggests bias and hearsay
94 conclusions, rather than facts in evidence. He also uses various case laws to suggest
95 jurisdiction, but Judge Whitney's position is ignoring case precedent addressing the very
96 issues which undermine IRS jurisdiction over Petitioner. Precedent cannot be ignored,
97 *Powell* notwithstanding. *Powell* cannot stand on a faulty legal foundation. To attempt to
98 use and support *Powell*, and ignore all the elements which must be in place for *Powell* to
99 have affect is to circumvent case law and Due Process.

100
101 6. Petitioner believes Judge Whitney failed to consider the case laws presented, *in toto*,
102 and has ignored the bigger issues which squarely address IRS authority or position against
103 Petitioner. If the quoted IR code... 26 U.S.C. 7602... was challenged based upon case and
104 other law, and is yet used as the "authority" upon which the Judge is depending, is to abuse
105 the court's process. Petitioner isn't saying that this is an easy issue to deal with, but truth
106 and law are all that matter. All the evidence in fact presented lies uncontested and
107 unrebutted, and Petitioner has provided a vast amount of evidence to completely call into
108 question IRS's stand, but which is being ignored, and which makes the *Powell* position
109 moot.

110
111 7. Judge Whitney states on page 4... "Petitioner has failed to providence (sick) any
112 evidence to support his assertions that he is not a taxpayer subject to the internal revenue
113 tax and the provisions of the IRC."

114
115 Petitioner strongly contests this conclusion and requests the Judge to reconsider the great

116 amount of evidence bringing up substantial question of this very issue. Petitioner provided
117 evidence in fact that there was NO law making him liable to the IRS, and proof that
118 “income” was NOT something Petitioner had. How can Petitioner “prove” a negative ...
119 that he is NOT a taxpayer, apart from the case law and congressional testimony provided?
120 How does Petitioner “prove” something that there is no evidence for? The burden of proof
121 now shifts to the IRS to disprove Petitioner’s proof, and to provide the evidence to refute
122 claims made, and laws and testimony cited. To suggest otherwise is a gross miscarriage
123 of justice and Court proceedings.

124
125 8. Page 5, Judge Whitney states... “Petitioner’s arguments” do not “state a cognizable
126 claim that the IRS is attempting to exceed or has exceeded its authority delegated by
127 Congress.”

128
129 Petitioner has clearly stated an obvious claim, under many different case law proofs, along
130 with Congressional testimony. How much more “cognizant” could it possibly be?
131 Petitioner also brought up other substantial questions, with evidence, as presented
132 throughout, and to rehash it here would be redundant. How many other ways can Petitioner
133 state the facts and point to the obvious claim, and that justice is being denied Petitioner?
134 It is extremely frustrating that Judge Whitney , a public servant, would give preference to
135 the IRS and ignore Petitioner’s challenges. I would ask the Judge to consider how a Jury
136 of Petitioner’s peers, or a forum of citizens, would view the evidence presented and how
137 they would react to someone simply discarding the evidence and case law clearly
138 questioning the IRS’s position in law. If our Courts are now tools for oppression, and

139 suppression of truth, this country will not long endure.

140
141 9. Petitioner requests Judge Whitney to also consider the last correspondence sent in
142 which he believes was not considered in this case.

143
144 Based on the apparent disregard for evidence in fact presented, directly addressing all of
145 the IRS evidence and hearsay testimony, Petitioner **NOTICES** the Judge that he believes
146 this is Fraud upon the Court. This is contempt for the Rule of Law and for the judicial
147 machinery of the Honorable Court where the impartial functions of the Court have been
148 directly interfered with. Judge Whitney has a non-discretionary duty to recuse himself and
149 turn this case over to another judge. See Exhibit G of original Petition to Quash for
150 specifics of which Petitioner **NOTICES** Judge Whitney.

151
152 Petitioner also Notices Judge Whitney that there will be an appeal of this case if Procedural
153 Due Process is not forthcoming, and this Fraud on the Court is not immediately corrected.

154
155 Respectfully submitted in the spirit of truth, justice and freedom for our great country, and
156 dated this _____ day of July, 2008.

157 _____
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