

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
 HARRISBURG DIVISION

3 UNITED STATES OF AMERICA, : CASE NO.
 Plaintiff : 1:01-CV-2159
4 :
 vs. :
5 : Harrisburg, PA
 : (Judge Conner)
6 THURSTON PAUL BELL, individually :
 and d/b/a/ NATIONAL INSTITUTE :
7 FOR TAXPAYER EDUCATION, : 4 November 2002
 Defendants : 9:30 a.m.
8 :

9
10 TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
11 BEFORE THE HONORABLE CHRISTOPHER CONNER
 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the United States:

14 Evan J. Davis, Esquire
15 Donald N. Dowie, Esquire
 U.S. Department of Justice
16 Tax Division, Central Trial Section
 Washington, D.C. 20530
 202-514-0079

17
18 For the Defendant:

19 Thurston Paul Bell (appearing pro se)
20 118 Carlisle Street, Suite 201
 Hanover, PA 17331
 717-637-7797

21
22 Court Reporter:

23 Wesley J. Armstrong, RPR
24 228 Walnut Street, Room 804
 Harrisburg, PA 17108
 443-418-7154
25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Thank you. Please be seated.

We're here today on the government's motion for preliminary injunction against Thurston Paul Bell, case number 1-CV-01259. It's the government's motion. Would counsel identify themselves for the record?

MR. DAVIS: Excuse me. Certainly, Your Honor. My name is Evan Davis. I'm government counsel. This is Don Dowie, who also is going to counsel. Actually in the front row is another attorney who just joined our office named Michael Raum, and down here is Chris Roginsky, who's an IRS employee.

THE COURT: Good morning.

MR. ROGINSKY: Good morning, Your Honor.

THE COURT: You may be seated, and Mr. Bell, you're representing yourself, is that correct?

MR. BELL: Yes, Your Honor.

THE COURT: Okay. Because you're going to I assume be testifying at some point during this proceeding, I'm going to swear you in now so that you're under oath, okay?

MR. BELL: Certainly.

THE COURT: Please rise and give the oath, Ms. McKinney.

1 (Mr. Thurston Paul Bell was sworn by the
2 courtroom deputy.)

3 THE COURT: Okay. The government may proceed.

4 MR. DAVIS: Thank you, Your Honor. Your Honor,
5 the defendant Thurston Bell needs to be stopped now
6 before he causes further damage to his clients or
7 the United States Treasury. Bell is selling an
8 abusive tax scheme, defrauding his clients, and
9 bilking the U.S. Treasury. Bell helped clients file
10 tax returns based on his frivolous U.S. sources
11 argument, which fraudulently claims that all
12 domestic income is tax free.

13 Bell claims that his clients have received
14 refunds in excess of a million dollars based on this
15 frivolous scheme. Bell also recruits so-called
16 senior fellows to spread his gospel throughout the
17 country and recruit more clients. Bell's clients
18 are relying on him and his fellows to provide sound
19 tax advice, but Bell, who has no tax accounting or
20 legal training, claims to be the only one who really
21 understands the tax code.

22 Nothing can be further from the truth. The
23 argument is a consistent loser, the U.S. sources
24 argument. All taxpayers who have raised it have
25 lost, most have been penalized, and most courts have

1 deemed it to be a frivolous argument. Three former
2 clients or associates have been summarily enjoined
3 for promoting the same argument, but Bell still
4 continues.

5 Bell's activities have resulted in harm to the
6 government. Clients use Bell's arguments to evade
7 their taxes and to delay the IRS process. The
8 government will eventually catch up with these
9 clients and subject them to possible civil and
10 criminal penalties. Audits and investigations will
11 continue, and the government has filed three
12 erroneous refund suits against Bell's clients or
13 former clients, but some erroneous refunds still
14 slip through.

15 In the meantime Bell is enriched by charging
16 his clients, and the government is left holding the
17 bag. What does the government need to show for its
18 preliminary injunction? Under Internal Revenue Code
19 Section 7408 the government must show that Bell's
20 conduct violates one of the two penalty sections,
21 6700 or 6701, and that an injunction is appropriate
22 to prevent the recurrence of that penalty conduct.

23 The government's preliminary injunction motion
24 and exhibits shows that Bell has violated Section
25 6700. Bell has organized and sold the tax plan or

1 arrangement. He has made material statements about
2 the excludability of income from taxation. He's
3 told people that unless their income is on a defined
4 narrow limit that is essentially just foreign
5 income, their income is tax free. Further,
6 Bell knew or had reason to know that his argument
7 was false or fraudulent. He knows of the cases
8 ruling against this U.S. sources, or also known as
9 the 861 argument, but he still continues.

10 The government's motion also showed that Bell
11 is violating Section 6701. Bell prepared and
12 assisted others to prepare documents, tax returns,
13 and letters that he knew or had reason to know would
14 be sent to the IRS, and Bell also knew that those
15 documents would result in an understatement of
16 income -- excuse me, of tax liability for his
17 clients.

18 Further, Bell essentially has admitted that he
19 won't stop absent a court order. So we've shown
20 that the injunction is appropriate to prevent the
21 recurrence. Further, the court can enjoin Bell
22 under Section 7402 of the Internal Revenue Code if
23 an injunction is necessary or appropriate to the
24 enforcement of Internal Revenue law. This
25 essentially is a catch-all statute that allows the

1 court fully specifically to focus on conduct that is
2 not subject to penalty under Section 6700 or 6701,
3 but is still essentially gumming up the IRS works in
4 the case of Thurston Bell. If his activities are
5 encroaching or hindering the IRS's activities, then
6 an injunction can be entered if it's necessary or
7 appropriate.

8 Looking now at Bell's arguments, as you've seen
9 in his preliminary injunction response brief, first
10 he tries to explain his U.S. sources argument, which
11 at first he tries to distinguish between the 861
12 argument, and for all intents and purposes they're
13 the same argument. The reason that we talk about
14 the 861 argument is if you look at the Tax Court
15 cases that have discussed situations in which
16 taxpayers have said Section 861 of the code or
17 regulations under Section 861 exempts my income
18 from taxation, that's generically the 861 argument.

19 Bell uses the same Section 861 in the code. He
20 uses the same regulations and he reaches the same
21 frivolous result that unless your income is on this
22 narrow list of sources, then it is not taxable. So
23 the government has demonstrated first that this U.S.
24 sources 861 argument is frivolous, but two of Bell's
25 arguments likely or could give the court pause.

1 First is that the proposed injunction violates his
2 1st Amendment rights, and second, that Bell is
3 simply advocating for his clients to due process
4 rights.

5 Looking at the 1st Amendment, the 1st Amendment
6 is always a concern when you're looking at Sections
7 7402 and 7408 injunctions, because the sections by
8 their terms sweep broadly and could draw in
9 protected speech if an injunction is issued under
10 them without carefully looking at the 1st Amendment
11 implications of them, and you see in the cases that
12 the government has cited in its briefs that the
13 courts really are mindful of the 1st Amendment when
14 they enter the injunctions.

15 However, the sections are constitutional
16 and the injunctions that they've entered are
17 constitutional because they focus on banning false
18 commercial speech, courses of illegal conduct, and
19 incitement to imminent lawless action, and that's
20 precisely what the government has asked for in its
21 preliminary injunction.

22 Bell is charging for faulty tax advice. Bell's
23 website contains faulty tax advice, and he charges
24 people to go into the members area of that site.
25 That's false commercial speech unprotected by the

1 1st Amendment. Further, Bell is helping clients to
2 evade their taxes by assisting them in filling out
3 forms and letters that contain his frivolous U.S.
4 sources argument. That's a course of illegal
5 conduct, and he's inviting his clients to commit
6 tax evasion.

7 The website also contains protected speech,
8 and likely Bell is talking to his clients about
9 protected speech. On his website he rails against
10 the government, the court system. There's nothing
11 wrong with doing that. The 1st Amendment protects
12 that. The government is not trying to shut down
13 Bell's website. The government is asking the court
14 to simply enter an injunction that stops his false
15 commercial speech, stops incitement to imminent
16 lawless action, and stops his course of illegal
17 conduct, helping others to evade their taxes.
18 Looking at the --

19 THE COURT: Excuse me, are you also, are you
20 asking though to shut down the members only area
21 of the website?

22 MR. DAVIS: Only to the extent the members only
23 section has false commercial speech and in theory
24 could incite or as part of the course of the illegal
25 conduct, so that the same standard would apply to

1 Bell's actions and discussions with his clients as
2 to the website.

3 Bell's second major argument involves due
4 process, and when you hear the term due process you
5 think well, there's nothing wrong with bringing a
6 due process argument, but Bell essentially says the
7 Goldberg vs. Kelly and a number of other cases
8 require that his clients be allowed to cross-examine
9 witnesses at the audit stage, which is the first
10 stage of the process, and the reason that he wants
11 to cross-examine witnesses, he wants to bring
12 employers in, he wants to bring his clients'
13 employers in and say, "My client's income is not
14 from a source outside the United States. It's not
15 from a source listed in Regulation 1.861."

16 He wants to argue the merits of, or lack
17 thereof of the U.S. sources argument with employers.
18 Number one, it's a waste of time, but number two,
19 due process does not require what Bell is saying.
20 Due process requires that before serious adverse
21 harm occurs administratively that the person have an
22 opportunity to cross-examine and confront witness,
23 and that process is allowed to taxpayers
24 specifically in the situation of income taxes by
25 going to Tax Court.

1 Before the assessment has become final they
2 have an opportunity to appeal the Tax Court,
3 cross-examine anyone that they want, bring their
4 legal arguments to a neutral court. So the due
5 process that is required by Goldberg and the other
6 cases that Mr. Bell cites is in the system. Bell
7 essentially is making up what he thinks due process
8 should be without regard to what the cases say.

9 In summary, Bell denies very few of the
10 government's allegation. If you look at his
11 arguments in the response brief, he doesn't talk
12 about "I didn't do work for Ray Berglund, I didn't
13 work with Hal Hearn." He admits to owning and
14 writing the contents on the website. He also admits
15 to encouraging and assisting others to file tax
16 returns and other documents with the IRS based on
17 this frivolous U.S. sources argument.

18 He also admits to pushing this due process
19 argument, all in support of his U.S. sources
20 argument. So the analysis of whether to enjoin
21 him is really reduced to one question: Is the U.S.
22 sources argument correct? Do the tax code and
23 regulations say that domestic income is tax free?

24 Of course not. Bell's argument is nonsense.
25 The tax court knows it, the 8th Circuit knows it in

1 the Madge case, federal courts in Tampa and Atlanta
2 who have enjoined Bell's former associates know it,
3 and despite his protestations to the contrary, Bell
4 knows it. Bell needs to be enjoined immediately
5 before he convinces one more taxpayer to evade their
6 taxes and before he draws more money and resources
7 from the government.

8 Complaining about taxes is one thing, but
9 charging people for bad tax advice and convincing
10 them to stop paying taxes is a whole different
11 ballgame. Bell needs to be stopped now, and we
12 ask to court to enter the proposed preliminary
13 injunction. Thank you, Your Honor. Do you have any
14 questions?

15 THE COURT: Not at this time. Do you intend to
16 present any witnesses today?

17 MR. DAVIS: No, but we brought Chris Roginsky
18 from the IRS essentially. If the court has any
19 concerns, we can certainly present Mr. Roginsky.
20 Otherwise we would leave him as a possible rebuttal
21 witness, but other than that we would like to rest
22 on the deposition attachments, the exhibits, the
23 declarations, etc., attached to our preliminary
24 injunction motion, and just to remind the court, we
25 submitted a short memorandum and additional, an

1 additional exhibit I believe on Thursday or Friday
2 which included essentially excerpts from a
3 deposition of a gentleman by the name of David
4 Eichner. Do you know if the court received that?

5 THE COURT: I have not looked at that. I have
6 not seen that. Do you have an extra copy?

7 MR. DAVIS: We can get our copy, but we can
8 certainly pass this up if the court -- do we
9 actually have the --

10 MR. DOWIE: I believe we also have the brief.

11 THE COURT: When was that filed?

12 MR. DAVIS: It was filed at the latest on
13 Friday, but I thought it was actually filed on
14 Thursday.

15 MR. DOWIE: We have the brief here, Your Honor,
16 but perhaps when we take a break we could obtain the
17 brief.

18 THE COURT: Why don't we do that. What does
19 this new document consist of?

20 MR. DAVIS: Actually Mr. Dowie took the
21 deposition, if you don't mind I'd --

22 THE COURT: Mr. Bell has a copy. Is that your
23 extra copy?

24 MR. BELL: That's mind.

25 THE COURT: I don't want you to give up your

1 copy. Thank you for the offer.

2 MR. DAVIS: Mr. Dowie took the deposition. I
3 think he'd be the best person to answer --

4 MR. DOWIE: Yes, Your Honor, just to give a
5 brief background of the supplemental brief and
6 transcript from the deposition of David Eichner
7 which we supplied, we filed the brief just to give
8 the court a brief road map as to the additional
9 evidence we believe this deposition transcript
10 affords the court as a basis for entering the
11 preliminary injunction, and I'll go ahead and just
12 summarize that here if the court will indulge.

13 THE COURT: Sure.

14 MR. DOWIE: David Eichner up until a few months
15 ago was the putative general counsel and legislative
16 liaison for NITE. Mr. Bell here hired Mr. Eichner
17 back in early 2001 I believe to serve in this role
18 as the -- now, I should say initially even though he
19 was labeled the NITE general counsel, Mr. Eichner
20 had a juris doctor degree from Rutgers University,
21 but he did not at that time have a license to
22 practice law, and as I understand it did not receive
23 a license until approximately one month ago from the
24 state of Arizona.

25 Nonetheless, Mr. Bell hired him and marketed

1 him as the general counsel for NITE. Mr. Eichner
2 assisted Mr. Bell in marketing the abusive sections
3 861 scheme. He met with NITE clients, and perhaps
4 most importantly assisted in drafting numerous
5 drafts which were filed in federal and state courts
6 asserting among other things the frivolous section
7 861 or U.S. sources argument.

8 Now, he did these things at Mr. Bell's
9 direction, and he was paid for them by Mr. Bell.
10 He earned approximately I believe in a year and a
11 half about \$15,000 for assisting Bell clients. Some
12 of his more, or one of his more notorious clients
13 was Thomas Madge, whom the Tax Court fined \$25,000
14 for asserting the frivolous U.S. sources of the
15 Section 861 argument and whom then at Mr. Bell's
16 direction then filed a frivolous brief with the 8th
17 Circuit appealing that Tax Court decision, and of
18 course the 8th Circuit affirmed the Tax Court.

19 Still not satisfied, Mr. Eichner assisted
20 Mr. Madge at Mr. Bell's direction to draft the
21 petition for certiorari to the United States Supreme
22 Court, again asserting the frivolous U.S. sources
23 argument, and in the process taking Mr. Madge's
24 money for these purported services. Of course the
25 Supreme Court denied certiorari. Among other things

1 Mr. Eichner also admitted to advising NITE clients
2 as to filing what are known as zero tax returns.
3 That's essentially a return that states that a
4 taxpayer has not earned any taxable income despite
5 the fact that the taxpayer may have earned a
6 substantial amount of money working within the
7 United States during a given tax year.

8 Even more importantly, he testified that he had
9 on multiple occasions seen and heard over, as I
10 understand it over the telephone Mr. Bell making or
11 providing the same advice to taxpayers, telling them
12 they could file a zero tax returns, or zero returns
13 as they're called, regardless of the fact that they
14 may have earned substantial amounts of money working
15 within the United States during a given tax year.

16 Finally, Mr. Eichner has provided a significant
17 amount of testimony they gave Mr. Bell, or that
18 shows that Mr. Bell knows and has reason to know
19 that his arguments are frivolous. For example,
20 Mr. Eichner made it clear that he and Mr. Bell had
21 drafted an extensive discussion of the Tax Court
22 case known as Aiello versus Commissioner. That's
23 A-I-E-L-L-O. I believe that's cited in our briefs.

24 THE COURT: I'm familiar with that case.

25 MR. DOWIE: Yes, sir. I know the court has of

1 course read the materials. We note that that case
2 found its Section 861 argument to be frivolous, and
3 Mr. Bell is obviously aware of the case. Mr. Bell
4 is aware of publications from the Internal Revenue
5 Service stating that the U.S. sources argument is
6 unlawful, and I believe there's some other things,
7 but that I think and I hope provides the court with
8 a brief sketch of what the additional information
9 from Mr. Eichner's deposition will offer with
10 respect to this matter. If the court has any
11 questions?

12 THE COURT: We'll take a look at the materials
13 that you have submitted. I'll read them and review
14 them carefully before we issue a decision.
15 Mr. Bell, you have the opportunity if you would like
16 to file a response to this brief in light of the
17 fact that it is, it was filed only late last week,
18 I'll give you that opportunity.

19 MR. BELL: Thank you.

20 THE COURT: Anything further?

21 MR. DAVIS: Unless the court has questions, no,
22 Your Honor.

23 THE COURT: I don't have any questions at this
24 time. I'd like to hear from Mr. Bell.

25 MR. BELL: Thank you, Your Honor. This is my

1 first time on this side of the bench, so please
2 excuse me if I breach any protocols or --

3 THE COURT: You can speak freely from where you
4 stand.

5 MR. BELL: This case arises under a singular
6 issue. The entire thing stands or falls on false
7 speech. Whether it's commercial or not, I, the
8 defendant, don't care. If I'm saying something that
9 is false and it is harming people, I certainly want
10 it stopped, and I believe that I well demonstrated
11 that to the United States government in my Exhibits
12 B, C, and E that were attached to my affidavit of
13 facts in this case, but the speech has to be
14 narrowly confined to that which is under Section
15 6700(a)(2)(A) of 26 CFR.

16 That fact is reaffirmed by, the I believe the
17 5th Circuit -- excuse me, the 8th Circuit, in the
18 case of United States versus White. I have that
19 case with me today if the court would like to see
20 it.

21 THE COURT: Is it cited in your materials?

22 MR. BELL: No, no. That would probably be
23 something that I would submit in the future, but I
24 have that with me today.

25 THE COURT: Why don't you gave me the citation.

1 Do you have the citation?

2 MR. BELL: It is United States versus White, 769
3 F.2d 511, 1985.

4 MR. DAVIS: If I may, Your Honor, the government
5 did cite U.S. vs. White at some point. I think I
6 can tell, because I have my cases here, so it's in
7 our briefs.

8 MR. BELL: The specific page citation is page
9 515.

10 THE COURT: Okay.

11 MR. BELL: And if it pleases the court I would
12 like to read it that, it's stated that the false or
13 fraudulent representations about "the allowability
14 of any deduction or credit, the excludability of any
15 income, or the securing of any other tax benefit,"
16 26 USC, Section 6700(a)(2)(A). I don't deal with
17 credits and deductions, because credits and
18 deductions can only be claimed when one indeed has
19 gross income and makes a claim. So the only issue
20 is exempt income.

21 In this case the government bears the burden of
22 proof under Section 6700(a)(3) -- excuse me,
23 6703(a). So the issue has to be false speech in
24 regards to what is exempt income. The government
25 has to carry that burden of proof. I think it was

1 in Cowen versus United States, which was also cited
2 by the government, which I have copies of for the
3 court should it require it. On page 1148, the only
4 thing really required by the intent of the Congress
5 and the enactment of this statute is false speech,
6 and that's where I draw my position of commercial or
7 noncommercial, I need to tell the truth, because
8 what is false is false and hurts people, and what is
9 true needs to come to light, and that's why I
10 continue to press this, but falsehood is the main
11 criteria.

12 At that I want to touch on Section 7402(a),
13 where Counselor Davis claims that 7402(a) is a catch
14 all statute that would allow this court to issue an
15 injunction against even free speech or poor speech
16 that isn't covered under 6700 or 6701 or anything in
17 the other parts of Section 7400 section. I have no
18 knowledge of the plaintiff presenting any evidence
19 that the Congress intended for Section 7402(a) to
20 function in any capacity for the courts to use it as
21 a catch all against any speech or to regulate 1st
22 Amendment as a catch all, but the government
23 obviously has the authority to issue the injunction.
24 The court obviously has the authority to issue an
25 injunction, but only pursuant to criteria of four

1 factors.

2 I found four in particular which have been
3 quite profound in Detroit Free Press versus Ashcroft
4 decided by the 6th Circuit on August 26th of 2002,
5 and the government has to prevail on its merits. It
6 has to show that my speech has already been
7 determined to be false, such as in White on page
8 515, that the false speech determined in that case
9 was pursuant to the reality of judicial decisions
10 that oppose that specific speech.

11 Well, the government has the burden of proof to
12 show that Mr. Bell's speech, his specific speech, is
13 frivolous. All of the cases that Mr. Bell has
14 examined that the government has presented, not a
15 single one addresses the regulations asserted by
16 Mr. Bell, the defendant. Not a single case
17 addresses 1.861-8(a)(4), 1.861-8(t)(d)(2)(ii)(A).
18 That's 1.861-8, paren, small "d," paren, Arabic 2,
19 paren, small Roman numeral, paren, cap "A." This is
20 a matter of law. This is why Mr. Bell continues to
21 speak. It's a matter of 1st Amendment, and it is a
22 fact that according to the United States Tax Court
23 in Chevron versus Commissioner of Internal Revenue,
24 which I have copies for the court should it require
25 them, has stated that the regulations have not been

1 altered for over 80 years and have the effect of
2 law.

3 1.861-8 to be exact is the section, and
4 according to the Commerce Clearinghouse publication
5 of it, it's on page 4266, is that specific citation.
6 On page 4265 is the citation of the case called
7 United States versus Corell, U.S. Supreme Court
8 case, that says long established regulations are
9 held to have the effect of law.

10 Herein lies the controversy. In February of
11 2001 I wrote a letter to IRS Commissioner Charles
12 Rossoti. I asked him publicly to show me exactly
13 where it is that I am not understanding the law and
14 misrepresenting it, that I am not interested in
15 hurting anybody, neither the government, nor the
16 people, that I wanted the law specifically
17 addressed.

18 It has taken this case for me to understand the
19 total magnitude of that which I have done and
20 started and what the 1st Amendment is, and I have
21 begun my greatest understanding with a case called
22 Speiser versus Randall in 1958, United States
23 Supreme Court. I have copies of that case as well
24 for the court should it want it. Specifically on
25 page 521, and this was a case regarding a state

1 imposing a, technically imposing a penalty on free
2 speech, and in Speiser on page 521 the high court
3 stated that "the validity of restraint depends upon
4 careful analysis of the circumstance."

5 In light of the government having to bear the
6 burden of proof under Section 6703(a), the
7 government should be required by this court to
8 specifically address 1.861-8(a)(4) and
9 1.861-8(t)(d)(2)(ii)(A). The significance of
10 8(t)(d)(2)(ii)(A) is that the tax court has
11 continued to issue statements that there is nothing
12 within the regulations that says anything about
13 income being exempt, but 8(t)(d)(2)(ii)(A) is
14 clearly the section of regulation that defines
15 exempt income in relationship to the U.S. sources
16 argument.

17 The United States government, the plaintiff,
18 has asserted that Section 861 has nothing to do with
19 Section 61. In my briefs you will see that I have
20 shown that they do, that the tax court has twice
21 touched upon it and applied 861 statute to Section
22 61 determinations. Therefore the regulations, also
23 being law, need to be applied.

24 I have taken great risk to bring this to the
25 attention of the government, who instead of coming

1 to meet with me and talk with me has decided that
2 they would rather crush the 1st Amendment and ask
3 you for help to do so. The government in their
4 brief, as you will see in my response brief, will
5 say that, has said that Section 861 has to do with
6 foreign earned income because of a title within the
7 publication of the code to which I have responded
8 with Section 7806(b), which I have a copy
9 highlighted for all parties here today which says
10 that, "No inference, implication, or presumption of
11 legislative construction shall be drawn or made by
12 reason of the location or grouping of any particular
13 section of provision or portion of this title, nor
14 shall any table of contents, cross reference, or
15 similar outline or analysis or descriptive matter
16 relating to contents of the title be given any legal
17 effect."

18 THE COURT: Okay, Mr. Bell, I don't mean to
19 interrupt you, but if you could talk a little more
20 slowly so our court reporter can get down everything
21 that you're saying.

22 MR. BELL: Okay, but I have that for the court.
23 If the court would like a copy I will give it to you
24 for your analysis.

25 THE COURT: Okay.

1 MR. BELL: That case basically is saying to my
2 understanding as a layman who is bound to the law,
3 because ignorance of the law is no excuse, is that
4 the words in the law mean what they say, not titles
5 or groupings or headings, that the law needs to be
6 read for what it is. The government in its motion
7 for preliminary injunction I think submitted about
8 six different arguments. I think if I recall
9 correctly, three of them actually cancelled each
10 other out, and three of them were just completely
11 unreasonable in light of the words in the law and
12 what it says.

13 If the government really believed that I, the
14 defendant, am causing damage to it, it would have
15 been nice if the government came and accepted my
16 three invitations to sit down and show me where it
17 is that I am wrong instead of doing this action, but
18 I understand if it feels that it needs to follow
19 certain procedures and even take this matter to the
20 court, but the requirement that it offer a specific
21 analysis of this argument, although Speiser was
22 1958, has been reaffirmed by the district court in
23 this state, Eastern District of Pennsylvania, in
24 American Library Association versus United States.

25 I believe that's been cited in some of my

1 briefs, but not the one regarding this matter, but
2 the American Library Association, Incorporated
3 versus U.S. was 201 F.sub 2d 401, Eastern District
4 of Pennsylvania, 2002. Page 479 seems to be the
5 bulwark of protection of speech when in the
6 government seeks to enjoin it or to suppress it.

7 In one case it's quoting from the Bantam
8 Books case, "The separation of legitimate from
9 illegitimate speech call for sensitive tools. The
10 1st Amendment demands the precision of a scalpel,
11 not the sledge hammer." I have offered an argument,
12 Section 861 regulations. There's approximately,
13 there's over 55 pages of regulations between Section
14 1.861-1 to Section 1.861-8. I state, I argue
15 sections of law on the 17th page of that group of
16 law, of that mass of law, and on the 55th page of
17 that body of law.

18 I do not believe as a citizen that I should
19 sit back and say nothing when the Tax Court attacks
20 something with a broad brush and doesn't address it,
21 that it's my political, moral obligation and duty to
22 press a matter of law that could bring hope to those
23 who are suffering under government oppression, and
24 truly oppression, Your Honor, truly oppression,
25 because we did have hearings on matters of

1 government oppression in the IRS in 1997 which gave
2 us the Revenue Reform and Restructuring Act.

3 I understand, I understand what the government
4 believes that they have here. I understand why they
5 are here today, because they have decided that
6 because my speech merely appears to be similar to
7 prior unprotected speech, that they have a duty by
8 order, request, referral, whatever, referral is the
9 proper word, of the IRS counsel in Philadelphia to
10 seek to enjoin me, but the decision of Ashcroft
11 versus Free Speech Coalition, 122 Supreme Court
12 Reporter 1389, and on April 16th, 2002 nonetheless,
13 on page 1404 of the Supreme Court Reporter of
14 West's, let me find that page very quickly, the
15 Supreme Court was gracious to our 1st Amendment
16 rights. In these troubled times it said, "Protected
17 speech does not become unprotected merely because it
18 resembles the latter."

19 For that reason I've offered my time, my
20 efforts to the people of this country and to the
21 government to sit down and show me specifically
22 where it is that my speech is incorrect, because the
23 line is finely drawn. The law and the regulations,
24 the regulations are law, and it's kind of vast, and
25 I didn't do a word count on that to find out how

1 many words are in there, but one ruling that touches
2 on the statute doesn't touch the regulations.

3 Six rulings that rule on the statute and
4 don't touch on the regulations do not touch the
5 regulations, which are still law, and I am bound to
6 from my understanding, from my understanding, and
7 that a judge saying that there is nothing within
8 this regulation that provides exemption I find
9 highly questionable in light of a definition of
10 exempt income at 1.861-8(t)(d)(2)(ii)(A).

11 I offer to this court the case of Detroit Free
12 Press versus Ashcroft, 6th Circuit, I have multiple
13 citations from pages 685, 686, 693, 704, 705, and
14 711. It covers the four factors for preliminary
15 injunction according to the 6th Circuit, which may
16 not apply here, but they seem reasonable to me. The
17 1st Amendment as stated on page 686, "The 1st
18 Amendment prohibits the government from suppressing
19 embarrassing information." I think this is
20 embarrassing to them, but I'm more than happy to
21 work it out quietly.

22 693, "The government must account for their
23 choices." I wrote an e-mail to Mr. Davis, and it's
24 somewhere in the mass of this case, probably in one
25 of the motions that Judge Yvette Kane denied, I

1 asked Mr. Davis shortly before New Year's of this
2 year to please show me now where it is that my
3 speech is false so that we can avoid this expense
4 and this effort, because I will confess to this
5 court that I have dealt with the issue of taxes for
6 eight and a half years on the edge of what would be
7 seen as legal, working with people who were being
8 hurt and seeing them taken advantage of by
9 charlatans and liars and con men, and God forbid
10 that I become one of those.

11 I want away from this. I want it addressed. I
12 do not need this in my life. For who in their right
13 mind would think that they can make an existence, a
14 meaningful, have a meaningful life by confronting
15 the IRS and the Justice Department? It's only out
16 of duty and obligation that I'm here.

17 On page 704 the 6th Circuit said in Detroit
18 Free Press, it reaffirms, they reaffirmed free
19 discussion of government affairs that the 1st
20 Amendment is key to that. 705, that the
21 government's selectivity of what information the
22 public sees is a powerful tool for deception. The
23 6th Circuit acknowledged that it's possible that our
24 government could deceive us. In almost any capacity
25 that's possible, that the 1st Amendment is the

1 bulwark against that. That is why I'm here.

2 711 was the most profound statement of our
3 times of what our nation faces under the onslaught
4 of terrorism that seeks to undermine the fabric of
5 society and collapse our civilization, that the 6th
6 Circuit stood up and said, "We're not going to do
7 the job of the terrorists and destroy that which
8 they seek to do by force with our gavel," and that's
9 at 711, their last paragraph, I will not bore the
10 court by reading it, but it is truly exciting, but
11 ultimately it states that democracy operates on
12 faith, that government officials are forthcoming and
13 honest.

14 I pray this court sees that I have attempted to
15 be forthcoming and honest. I have only stepped into
16 the arena of attempting to help people to understand
17 the administrative process of the IRS, because in
18 order to bring forth the arguments of 1.861-8(a)(4)
19 and 1.861-8(t)(d)(2)(ii)(A), the administrative
20 process must be exhausted. Mr. Davis in the
21 deposition of Mr. Larken Rose, which is not part of
22 the court record but I have a complete copy here,
23 asked Mr. Rose, who is a significant person in this
24 matter, which I hope to get to in a moment.

25 THE COURT: Would you like to make it part of

1 the record, Mr. Bell?

2 MR. BELL: I would like to, but I don't have a
3 copy for the court today.

4 THE COURT: You can submit it in your response
5 to the government's recent submission if you would
6 like.

7 MR. BELL: Thank you for the wonderful
8 suggestion, Your Honor. He asked Mr. Rose, he
9 said, "Well, if you filed your claim for refund with
10 this argument, why haven't you sued?" Well, in
11 response to Mr. Davis's question, we have worked
12 very hard, I have worked very hard for five years
13 now to completely understand the administrative
14 process, exhausted, turned over every stone, turned
15 over every point of fact and step, and we have
16 reached the point that the government merely calls
17 everything frivolous, throws the people aside, and
18 that the only thing left to do now, yes, Mr. Davis,
19 is we will litigate.

20 I have no other choice. I have to carry this
21 forward, because the Supreme Court is the final
22 interpreter of the law, and no one is addressing
23 861-8(a)(4) and 8(t)(d)(2)(ii)(A). I would like to
24 go back to the government's brief. Ultimately it
25 seems that the government, both the agents and the

1 DOJ want to stand on, stand on the term that the
2 idea that the 16th Amendment says that income taxes
3 are imposed on whatever source.

4 Well, the case called Dennis versus United
5 States, which -- gosh, I have a hard time reading
6 the citations of these things, but it's heavily
7 cited in other items, and I would obviously submit
8 something about it in the future, but it was ruled
9 in 1950 and I have a copy for the court should it
10 need it, and for plaintiff. On page 508 it said,
11 "A phrase only has meaning when associated with
12 considerations which gave birth to the
13 nomenclature."

14 I would have to say that that principle applies
15 to my speech, that the specifics of my speech have
16 to be analyzed for what they are, as well as what
17 the government says when they say whatever source,
18 or even when they say all inclusive, which is cited
19 in Glenshaw Glass, the Glenshaw Glass case from
20 1955, that it's fascinating to read that to find out
21 the term all inclusive actually is not the words of
22 the United States Supreme Court but are actually
23 dicta, citations from the U.S. Congress, but
24 whatever source has already been decided and stated
25 in Evans versus Gore in 1920 as basically saying

1 that whatever source does not mean whatever source,
2 and Justice Stone in his citation, in his opinion on
3 page 607 of Wright versus U.S., 1938, states that
4 whatever source does not mean whatever source, and
5 he cites Evans vs. Gore and that very famous case
6 regarding the taxation of federal judges, which I
7 know of course has been overturned on principle, on
8 principle of the judges having to pay the taxes that
9 the people have to pay.

10 To date I have yet to see a single case, Tax
11 Court, U.S. District Court, Court of Claims, circuit
12 Court, United States Supreme Court, that addresses
13 the regulations that NITE argues. NITE continues
14 and persists in this effort for the purposes of
15 redress of grievance, of hearing of the issue. If
16 the court rules on something regarding Section 861
17 statute, that is not hitting the mark, and that is
18 what our assertion is and that is what the assertion
19 of many American citizens is.

20 We want this matter specifically addressed. If
21 we're going to be bound by the regulations, then we
22 want the regulations fully applied. The court
23 addressing the statute is not sufficient. We want a
24 ruling on the regulations as was given Chevron in
25 Chevron versus Commissioner. We want a ruling on

1 this definition of exempt income.

2 For my final point on this opening statement
3 that I can -- I don't think I can make a final point
4 because I want to look at the notes quickly as to
5 what Mr. Davis's opening statements were, but in
6 Enochs versus Williams Packaging, the United States
7 Supreme Court, 1961, it was stated that "The
8 government's chance of ultimately prevailing on an
9 injunction issue is determined by the information
10 available at the time of suit."

11 Since there's no address of
12 1.861-8(t)(d)(2)(ii)(A) or 1.861-8(a)(4), I
13 don't see any that they can prevail. They have
14 not addressed the defendant's argument to prove
15 frivolity. If there was frivolity, then the
16 argument, if it was actually addressed perhaps
17 someone could say that I was defrauding or bilking,
18 defrauding and bilking the government or the people,
19 then it would be arguable. As for Mr. Davis's naked
20 assertion that I claim to be the only one who
21 understands the code, I don't think so.

22 SPECTATOR: That's right.

23 MR. BELL: There is at least one other person
24 I know who understands the code. There are many
25 people that as I understand it, and that's Mr. Rose.

1 This is his video tape that he made. I'd like to
2 enter it as evidence if possible, Your Honor.

3 THE COURT: Is there any objection, Mr. Davis?

4 MR. DAVIS: For what purpose?

5 THE COURT: It's a fair question, Mr. Bell. For
6 what purpose?

7 MR. BELL: He claims number one that I'm the
8 only person who understands the code, the Internal
9 Revenue Code. Mr. Rose spent untold hours putting
10 together an 88-minute video tape on the statutory
11 history of Section 861 and its regulations all the
12 way back to 1921. It's a presentation showing you
13 only the law, right out of the book. It's rather I
14 dry, and it says what it, it's right there for what
15 it says.

16 THE COURT: And do you have any kind of
17 connection or relation with Mr. Rose?

18 MR. BELL: Mr. Rose was at one time a member of
19 NITE. He joined for reasons I don't know precisely,
20 but he saw my website, he was probably rather
21 concerned like the plaintiff is that my speech was
22 false and frivolous and basically crazy, and he set
23 out to prove that I was wrong, and he came back
24 showing that I'm right.

25 THE COURT: Mr. Davis? Any objection?

1 MR. DAVIS: Your Honor, it's not relevant to
2 number 1 of --

3 (Verbal comments from spectator gallery.)

4 THE COURT: Now, hang on. I'm only going to
5 hear arguments from counsel, and I will clear this
6 courtroom if I hear any arguments from the gallery.
7 Is that understood? Okay. Proceed.

8 MR. DAVIS: If he's trying to tie it to my
9 statement that Mr. Bell is the only one, he claims
10 he's the only one that understands it, that's
11 certainly not relevant to what the government has
12 to show and what Mr. Bell has to show. Mr. Bell is
13 trying to introduce this essentially as Larken
14 Rose's testimony. He's trying to get in Mr. Rose as
15 some expert in the law.

16 If he's saying that all it says is what's in
17 the regulations, then the court doesn't need someone
18 else to walk it through regulations of the law. If
19 it's something else, then it's expert testimony,
20 Mr. Rose has an associate's degree in I think it was
21 arts and sciences. He's not a lawyer, he's not an
22 expert in the law, and it's simply an effort to
23 introduce his testimony as an expert, and I think it
24 should be disallowed.

25 THE COURT: Could it be relevant to the issue of

1 what NITE does, what kind of an organization it is
2 in terms of the --

3 MR. BELL: I believe, Your Honor, that it's
4 relevant in respect to showing that I have not
5 misrepresented the existence of the law nor the
6 presentment of the law and the assertion of it by
7 the NITE members, and I would also like to say that
8 I was up until 3:00 in the morning reading the rules
9 of the evidence, and in examining Rule 702 and the
10 notes regarding it, it doesn't show that for someone
11 to even be an expert that they have to be a
12 professional, that experience is also admissible.
13 Mr. Rose spent, I have no idea, at his deposition he
14 says at least 500 hours researching the law and
15 researching all of the law on this section of the
16 law.

17 THE COURT: I'm going to allow the video tape
18 to be submitted, and I'll give it the weight it
19 deserves under the circumstances after I have had
20 an opportunity to review it, and without reviewing
21 it I think I should take it in and take it into
22 consideration. We would like to have that I believe
23 marked as an exhibit, we'll mark it Defendant's
24 Exhibit Number 1.

25 MR. DAVIS: Just so the court doesn't worry

1 about copies, the government already has a copy of
2 that.

3 THE COURT: Oh, you do?

4 MR. DAVIS: Yes. It was actually one of the
5 exhibits to the Larken Rose deposition. Mr. Bell
6 is going to submit that deposition transcription,
7 he would have submitted that.

8 (Defendant's Exhibit 1 marked for evidence.)

9 MR. BELL: The government claims that
10 individuals have used this argument to file
11 erroneous refunds. There is a point of my Exhibit P
12 in support of my affidavit of facts in response to
13 the complaint, Your Honor. Exhibit P is a
14 transcript of the case of the United States of
15 America Versus Gene Webb before the Honorable Judge
16 Anne Conway. For background, Mr. Webb came to me
17 going before a judge who had just put his mother in
18 prison for filing a zero return, and that he was
19 going to be imprisoned should he not file a return
20 for sake of compliance with his probation agreement,
21 or parole, I'm not sure which one.

22 After discussing the matter with me he
23 determined that he wanted to make contentions of
24 factual nature using the Form 4852 and the Form 8275
25 making this argument. It was presented to the

1 court, to the IRS, via certified mail as presented
2 to the court. My Exhibit O shows the United States
3 attorney objecting to its submission of this type of
4 return. The Exhibit P shows that in May of 2000
5 U.S. Attorney Gold saying, "He now filed his '98 and
6 '99 returns as I understand it, there would have
7 been refunds due. However, due to his previous tax
8 problems the IRS used those refunds to apply to some
9 old debts."

10 That's on lines 16 through 19, Your Honor. It
11 appears very clear by the evidence of the admission
12 of the United States Department of Justice that
13 Mr. Webb's return, which used the argument of NITE,
14 using the forms of the government, was accepted and
15 a refund was due, and in the end the document speaks
16 for itself.

17 Judge Anne Conway released Mr. Webb from the
18 court. He has not had to have to return. It was
19 acceptable argument. That, Your Honor, that event
20 alone was seminal in my eight years of efforts. It
21 was clear to me at that moment that I needed to pay
22 attention to what happened in that court as very
23 profound, and I went to some fact research and found
24 the case of the United States versus Sullivan, which
25 I believe is 1927, which helped me communicate to

1 NITE members that it is time to stop fighting the
2 government about the requirement to file returns,
3 that the U.S. Supreme Court was clear: If the
4 government believes you're required to file a
5 return, file the return, but it also says that
6 you're not precluded from making your arguments on
7 the face of the return in light of the existence of
8 the Form 4852 and 8275 as used by Mr. Webb in his
9 case where a judge well familiar with the law has no
10 problems putting people in jail, and a Justice
11 Department attorney who was well familiar with it
12 and originally objected it as frivolous, and the
13 IRS, all three, saying basically in paraphrase, Your
14 Honor, return received, refund due, send him home,
15 convinced me that it was time to tell the people who
16 have been fighting the government about whether or
17 not to file to stop the agony of willful failure to
18 file cases, engage the government in their process,
19 with their forms in good faith, and settle the
20 issues.

21 It is claimed that I'm enriched by this effort.
22 Probably only in my service to my fellow man.
23 Money? No. It's shoestring, Your Honor. It's
24 month to month. This isn't -- this is not something
25 that the American people want to do. They don't

1 want to come before you and take your time. They
2 don't want to go into IRS audits. They are afraid,
3 and they're all sitting back waiting to see what you
4 do to me and to the 1st Amendment. The government
5 says I know of cases. I've already given my point,
6 none of the cases address the law that I argue,
7 specifically with the specificity of a scalpel as
8 ALA stated in Speiser says that the line is finely
9 drawn. The only thing that can address it is
10 something precise.

11 It is stated that I used the same regulations
12 as others have in prior cases. I find no evidence
13 of that in the case of Aiello versus Commissioner,
14 Solomon versus Commissioner, you name the case. If
15 the case can be shown to me, I am a reasonable man.
16 I have watched for years as a gentleman by the name
17 of Bill Benson has travelled the company saying the
18 16th Amendment was never properly ratified.

19 I went to the law library, I looked into West's
20 4th Digest on the income tax, I found the case of
21 U.S. versus House. It was only a district court,
22 but its reasoning and logic as to why his argument
23 against the 16th Amendment was invalid was so purely
24 reasonable that I acknowledge without question that
25 that gentleman is wrong in his argument.

1 I am willing to reasonably resolve this. I am
2 willing to be reasonable if the government will
3 specifically address the argument. Mr. Dowie in
4 December said that will come out in court. Well, in
5 light of Enochs versus Williams Packaging, that
6 which shows my speech to be false needs to be in
7 existence in and public knowledge prior to the
8 filing of suit, or least at that moment. I haven't
9 seen it.

10 THE COURT: Mr. Bell, do you have any additional
11 arguments at this time?

12 MR. BELL: I'm trying to go through my notes
13 quickly. The government specifically cites the
14 Madge case. Again it didn't address the argument.
15 The government claims they needed to shut me up in
16 order to stop another person from believing this
17 allegedly false argument. Your Honor, I don't
18 believe that quieting me is going to shut down this
19 argument. There have been 20,000 I believe of those
20 video tapes produced. If the government fails to
21 specifically address and resolve this matter, it's
22 only going to hurt the image and the people's faith
23 in their government, as mine has been hurt because
24 of this suit.

25 THE COURT: 20,000 video tapes of what?

1 MR. BELL: Of that video tape, Exhibit 1.

2 THE COURT: Oh, okay.

3 MR. BELL: And they're being distributed. I
4 have nothing to do with that by the way. I believe
5 that Justice Brandice was very, very wise in his
6 understanding of the 1st Amendment in Whitney versus
7 California where he said when there's no clear
8 impending danger of evil, that the solution in a
9 situation of free speech is not to forcibly stop the
10 speech, but to have more speech. I believe, Your
11 Honor, that the government being given this
12 injunction at this time without specifically
13 addressing the argument will not, it may win this
14 battle, Your Honor, but it's only going to heat up
15 even worse, and I am not going to be able to help
16 anybody understand how to address the situation, how
17 to resolve the situation in the future if I am
18 muzzled.

19 As for Mr. Dowie's statements about the
20 deposition of Mr. Eichner where he made assertions
21 about me having knowledge of case law, again nothing
22 is addressed in the regulations specific, the two
23 that I have repeated to the point that I do not want
24 to harass the ears of the court any further with
25 them.

1 THE COURT: And Mr. Bell, I've already granted
2 you allowance to respond to those arguments in
3 writing.

4 MR. BELL: Yes, sir.

5 THE COURT: And I will take them into
6 consideration.

7 MR. BELL: And as for the claim that Mr. Bell
8 made advice to people to file zero returns, for his
9 sake he is not here to raise objections. I have
10 looked at this, and you will see in my response what
11 I do with this, that Mr. Dowie twists word so
12 heavily, as in his example on his Exhibit 11, on his
13 document he claims that this Exhibit 11 shows that
14 an attorney "had found no case, rule, or regulation
15 under IRC Section 861 which could be used to modify
16 section 61's definition of gross income," and then
17 he brings in his own inflection into this, his own
18 interpretation. He says, "In other words, the
19 letter informed the addressee that there was no
20 legal justification for the NITE U.S. sources
21 scheme."

22 Well, first of all, Your Honor, the letter
23 doesn't mention NITE, and second of all this exhibit
24 states "I must report," this is Exhibit 11 of that,
25 which you will get a copy of from Mr. Davis, "I must

1 report that in the course of this research I found
2 no case law, rule, or regulation addressing the
3 argument..." It is a case of first impression, Your
4 Honor, and a case of first impression, it has not
5 been ruled upon. It has not been addressed by the
6 courts. It has not been addressed by Mr. Dowie, who
7 was asked nicely to be forthcoming and honest so
8 that we could expedite this matter, save the time of
9 the court, save me the stress and anguish that has
10 gone along with facing the most powerful government
11 in the world, that would save more people from
12 arguments with the IRS and the pain and suffering
13 that they endured. I want it ended. I want the
14 issues addressed. I've sought to do it nicely. I
15 thank you for entertaining my presentation.

16 THE COURT: I have a couple of questions for
17 you. You've seen the government's argument with
18 respect to the commercial nature of your speech?

19 MR. BELL: Yes, Your Honor.

20 THE COURT: Do you agree that you are providing
21 through the NITE website advice and that your speech
22 should be considered commercial speech?

23 MR. BELL: No, Your Honor. I believe it's
24 purely political in every form. I have met
25 with people who have seen others who are out there

1 who will attempt to charge them \$40,000 just to
2 retain them in association. I have seen other
3 organizations that will charge \$600 for such, and
4 they will not even help the person understand what
5 the procedures are with the IRS, with the courts,
6 what their rights are, or even begin to crack open a
7 law book.

8 Your Honor, this is political, because taxes
9 are of a political nature, and we probably have the
10 most vital political nature second to free speech
11 within itself. That is the only reason why I can
12 see, Your Honor, that Mr. Davis, Mr. Dowie, Mr. Raum
13 would even dare to be here and to take the tax law
14 and push it up against the 1st Amendment and see
15 which one cracks first.

16 THE COURT: For that political speech are you
17 receiving any form of remuneration or any form of
18 funds flowing from members of NITE, whether it's in
19 the form of donations or in some other form?

20 MR. BELL: That would, the point is that, and
21 I'm not, I was not prepared to speak of that in
22 particular, because all I'm concerned about is
23 falsehood. For if anything I'm saying is false,
24 that is sufficient to get my full cooperation, Your
25 Honor. The point about receipt of remuneration was

1 addressed in the U.S. Supreme Court case I believe,
2 and it might be in my, I do believe I mentioned it
3 in my opposition brief. It said that remuneration,
4 Your Honor, if remuneration were the sole criteria
5 or even used as a criteria opens the door for even
6 the newspapers to be regulated.

7 THE COURT: But I'm asking you, and I'm asking
8 you directly, do you receive any form of donation or
9 remuneration or any kind of compensation whatsoever?

10 MR. BELL: As a newspaper does and as any
11 political party and political movement, Your Honor,
12 yes. That's according to this court decision that I
13 read. I see why the court determined that receipt
14 of money cannot be that determination. It has to be
15 the value of the speech. It has to be the nature of
16 what's going on. I'm not selling the pharmaceutical
17 drug, I'm not selling cars, I'm not selling a
18 commodity item. I'm discussing law, political
19 action, legal action, and rights. I'm not selling
20 these things. In fact, most of everything I do I
21 give away.

22 THE COURT: The government contends that the
23 injunction is necessary to halt additional advice
24 being given to more people that they claim is
25 erroneous, clearly erroneous. What is your

1 intention if I do not issue an injunction with
2 respect to the use of the NITE website?

3 MR. BELL: Presently the members hall has been
4 taken down because of lack of staffing and the
5 ability to keep that information up to date.
6 Presently the members get information from me
7 directly, Your Honor. They send me a note, they
8 communique, and I provide them what they need
9 according to what I know.

10 THE COURT: What kinds of things -- and I assume
11 that that's what you would like to continue to do?

12 MR. BELL: Yes.

13 THE COURT: And what kinds of information do you
14 provide them?

15 MR. BELL: Administrative procedure, information
16 about their rights.

17 THE COURT: Including their rights under the
18 Internal Revenue Code?

19 MR. BELL: Specifically that, through the
20 administrative process. I didn't get to address
21 Mr. Davis's comment about the tax court being the
22 venue for confronting and cross-examining adverse
23 witnesses. It's my understanding, Your Honor, in
24 the Tax Court the burden of proof has already been
25 well placed on the individual and the government

1 doesn't have to call its witnesses for the person to
2 be able to confront and cross-examine. So my
3 logical conclusion was press the issue in the
4 examinations process and let's find out what the
5 reasonable answer is, why they can't bring the
6 witnesses forward in examination and expedite these
7 matters.

8 That was the determination in my mind as to
9 what to do with examinations, and I saw they clearly
10 had the authority under Section 7602 to summons the
11 witnesses against the individual, and with cases
12 such as Goldberg versus Kelly and Green versus
13 McElroy, and I think it's Olden versus Kentucky, and
14 many other case, the 6th Amendment is the key as
15 getting to the truth.

16 If the examinations process isn't about getting
17 to the truth of the matter, then I just don't even
18 want to say what kind of process it is, Your Honor.
19 It's just, it's too scary. I don't want to
20 prejudice the court with any type of emotional
21 outburst. The 6th Amendment in regards to people's
22 means to defend themselves against an agency with
23 such power, the ability to get to the truth, to know
24 the truth. That's what this is about, just to get
25 to the bottom of it.

1 The only way to get to the bottom of it,
2 Your Honor, is to take the matter through the
3 administrative process, exhaust it as the courts
4 require, and then step into the courts with a claim
5 for which relief can be granted. This court here is
6 being asked by the plaintiff to say that this
7 decision, this argument is already known to be
8 frivolous.

9 This court's authority within this regulation
10 of free speech, 6700, 6701, is limited, that it
11 cannot now put the cart before the horse and say,
12 "Well, we've now considered the argument, and now
13 we're going to address it and now it's frivolous, so
14 all your prior speech, Mr. Bell, is sanctionable."
15 No, that's not the function of this court from
16 everything that I have read. It has to already be
17 established and the burden of proof upon the
18 plaintiff to present that.

19 THE COURT: I understand. You've presented that
20 argument and you've cited the Enoch case. Do you
21 have anything further you'd like to add?

22 MR. BELL: I have nothing further, Your Honor.
23 I could present witnesses, but the admission of the
24 video tape is overwhelming. I could bring in
25 witnesses about the inconsistencies seen by the IRS,

1 but I don't want to detract this court's attention
2 and valuable time from the clear, simple issue about
3 those two sections of regulation. Do the people
4 have the right to press those regulations forward in
5 the administrative process to bring it to the
6 judiciaries attention? Do the people have the right
7 to group together, to band together so that they
8 don't continue to make the same mistakes as the tax
9 freedom fighters have repeated year after year for
10 three decades. I have sought to bring forth reason
11 and prudence and respect to this issue. I have
12 tried to avoid this day.

13 THE COURT: Anything further?

14 MR. BELL: Thank you.

15 THE COURT: Thank you for your presentation and
16 your demeanor, Mr. Bell, which was excellent. Does
17 the government have any response?

18 MR. DAVIS: Yes, Your Honor. Just a couple of
19 short points. First, the government is not saying
20 that this argument is frivolous because the Tax
21 Court has ruled on it and because courts have
22 enjoined three other people for promoting the same
23 argument. That's further evidence of why Mr. Bell
24 should stop and should know and does know that what
25 he's doing is wrong.

1 The argument is frivolous because it's
2 frivolous. If you look at the regulation, it says
3 in no -- that he's relying on, in no uncertain terms
4 it says that this regulation is only applicable to a
5 certain defined group of other sections of the
6 Internal Revenue Code, calling them operative
7 sections. There is no reasonable way of reading
8 that regulation any other way, and yet Mr. Bell and
9 Mr. Rose and whoever else he would like to submit to
10 the court as one of his friends will try to argue
11 the other way, but it's frivolous because it's
12 frivolous. The tax court decisions are helpful to
13 the court, but they also really show that Bell
14 should know and knows that his argument is
15 frivolous.

16 Next, he also talked about this case of Ms.
17 Webb, or Mr. Webb. If he submitted the, that
18 taxpayer's tax returns, the court will be able to
19 evaluate whether in fact that was number one even
20 accepted by the IRS, because I can write on my
21 return that I'm not liable for any taxes because I'm
22 left-handed, and if indeed I didn't earn any money
23 that year, then the IRS will accept the return.

24 The issue is not simply whether he made the
25 argument, but also whether the individual actually

1 earned enough money, and then the second issue is
2 did the IRS make a mistake or not. Obviously the
3 IRS has shown in this case that it does make
4 mistakes. It issued a \$475,000 refund to one of
5 Mr. Bell's clients after this case was ongoing.
6 That shows number one the IRS makes mistakes, but it
7 also shows why the injunction was needed.

8 His answer to the court's, one of the court's
9 last questions about the website and what he's
10 presently doing shows that the website, although is
11 one of the things that the government wants to
12 address, his actions are part and parcel of his tax
13 scheme. He is telling people on a daily or hourly
14 or weekly basis, whatever it is, that "You don't
15 have to pay your taxes, and I will show you how to
16 use my arguments to avoid taxes."

17 So if it's on the website or not, if he shuts
18 the website down, he will still, as he said he will
19 still give one on one advice to his clients. He's
20 essentially practicing law without a license, and
21 his clients are getting what they pay for. He's not
22 an attorney, he has no legal training, and he's
23 misinterpreting the law, misinterpreting the
24 regulations, and steering his clients wrong, and
25 they're the ones -- I mean other than the

1 government, which obviously is losing revenue, they
2 are the ones who suffer, and they don't, a lot of
3 them don't even know it. They'd still stand him
4 until he ends, which is why he needs to know through
5 the court's order that it is not okay what he's been
6 doing.

7 Finally, Bell says that he would have stopped
8 if someone addressed his argument. Well, the IRS
9 has addressed his argument on four or five occasions
10 with public pronouncements, and every time Bell and
11 Mr. Rose and other people in this movement
12 deconstruct what the IRS has said and said we don't
13 agree, you didn't exactly do this right or you don't
14 do that right, they will never be satisfied with any
15 explanation that this court gives or that the
16 government gives. They will continue to do it
17 unless they're told they can't make this argument
18 anymore. They can't get paid for it and they can't
19 incite others to evade their taxes by use of this.
20 Thank you very much, Your Honor.

21 THE COURT: Thank you. Mr. Bell, in closing
22 would you like to address any of the arguments that
23 have been raised by the government?

24 MR. BELL: Yes, sir. The government claims that
25 the argument is frivolous because it's frivolous.

1 The regulations state they are only applicable to
2 the named operative sections. I ask the court to
3 take careful judicial notice of 1.861-8(a)(4) which
4 states that the, that there are other sections and
5 other operative sections that apply and residual
6 groupings and a lot of confusing talk, but in
7 particular it states that some income from sources
8 is exempt and falls within the definition of exempt
9 income at 1.861-8(t)(d)(2)(ii)(A).

10 Mr. Davis, the plaintiff, excuse me, has not
11 shown anything that addresses the specifics of that
12 section of law to show the defendant how it is that
13 1.861-8(a)(4), does not mean what he is reading it
14 to say, and that the definition of exempt income
15 doesn't apply to that. To date I haven't seen
16 anything, so I believe that the government has
17 failed to carry its burden of proof.

18 It's an interesting point that the government
19 raises that there needs to be proof that Mr. Webb's
20 return was accepted. I think that matter is res
21 judicata before Judge Anne Conway, that the U.S.
22 Attorney's Office agreed with what the IRS
23 determined. They knew well that Mr. Webb, he had
24 already been in prison before. They knew well of
25 his mother. They knew well of his boss. His mother

1 and his boss were in prison at the moment that he
2 submitted those returns by the order of that judge.

3 The government knew well what it was that he
4 submitted. I just thank God that what happened did
5 happen. Now, if the government now is complaining
6 that they're getting all these returns, well, Your
7 Honor, the prior five years of my life before the
8 Webb decision I had been seeing all kinds of people
9 listening to others running about the country saying
10 don't file returns. The Webb case showed me
11 something to show to the people to say file your
12 returns, engage the government properly, stop
13 suffering and hurting yourselves. We will resolve
14 this over time.

15 Now the government claims and protracts this
16 argument to say that my actions are a tax scheme.
17 Well, in light of the breadth of Section 6700, Your
18 Honor, I'm not going to argue that the Congress
19 enacted a law to stop false, frivolous, fallacious,
20 and fraudulent speech about the Internal Revenue
21 Code, but in enacting such a law the courts have
22 made it clear that it is always been the precepts of
23 the 1st Amendment that require the government to
24 specifically address the speech and address that
25 fine line between protected and unprotected speech

1 and not use a sledge hammer and not merely cast
2 speech into one category because it looks like it
3 is, and as far as his assertion of practice of law,
4 I have no knowledge that that is an issue before
5 this court, that it is material to this issue, and
6 that it is an issue that's within the jurisdiction
7 of this court at all.

8 I have sought to create a private organization
9 of individuals and operate to assist them in a pro
10 se capacity as a friend, as a person who has watched
11 far too many people get hurt by the false arguments
12 and charlatans in this country, and to get to the
13 only issue I see left to bring up to the government
14 and end this 30-year conflict. The government has
15 also said that they had issued numerous public
16 pronouncements.

17 Well, they wouldn't respond to my letter to
18 Charles Rossoti, the first one, the second one, nor
19 the third one. I believe I did a responsible, a
20 politically responsible act. I committed one by
21 responding in writing with specificity to the
22 government's public pronouncements that they try
23 to construe to address my specific speech, because
24 the government has not come forth with authorities
25 and specific authorities and address as required in

1 Speiser, they claim that I and others will not, will
2 never be satisfied.

3 Not true. How do they know what I believe,
4 Your Honor? How do they know what my actions are?
5 How do they know what I think? I just have clearly
6 told you what it is that I need done. They failed
7 to do it. They were supposed to do it from the
8 beginning. The case seems to be clear. They failed
9 to carry the burden of proof. Therefore, this case
10 must be dismissed post haste, because I'm under a
11 lot of stress.

12 They say that I will continue to incite others
13 to evade. As I said, for 30 years I've watched
14 people tell others not to file returns. If not
15 filing returns, seems to be a pretty clear effort of
16 an action to evade. I have no longer sought for
17 people to do that. I have never sought for them to
18 do that, but I have tried to educate them on U.S.
19 versus Sullivan to engage their government in the
20 process provided using the Form 4852 which clearly
21 states that it is used to point out when a W-2 is
22 incorrect.

23 THE COURT: And how have you used Form 4852 and
24 U.S. versus Sullivan?

25 MR. BELL: Well, U.S. versus Sullivan says that

1 if the government requires you to file a return you
2 have to file a return, and what I have sought to do
3 was help people bring forth their contentions of
4 factual nature against the claim, the naked claim of
5 the employers that they earned something that's
6 includable within gross income, because the form
7 says in its instructions as shown in Exhibit 3, my
8 Exhibit Number 3 in this case, that -- I'd better
9 read it to you.

10 THE COURT: I have it.

11 MR. BELL: Okay, "if you receive an incorrect
12 W-2." Well, looking at the logical rules of
13 evidence, the only way -- if the IRS isn't going to
14 listen to what someone says when they step into a
15 meeting, but they've created a form, it's the
16 individual's responsibility to know about the form,
17 implement the form, and implement the process
18 properly and respectfully, and that's what the 4852
19 is about. The 8270 --

20 THE COURT: Give me an example of how you would
21 use U.S. versus Sullivan and Form 4852.

22 MR. BELL: Well, the U.S. versus Sullivan is
23 just a point of understanding to help the individual
24 to understand that if you are facing a W-2 and a
25 1099 filed against you, don't try to hide, because

1 it's in the computer and it will come up one day
2 and you will have to face this. So consider when
3 the IRS tells you to file, that we don't have a
4 return, CP Form 515, 518, that the government is
5 asking you to file a return, and Sullivan certainly
6 applies in such a case.

7 THE COURT: Okay. Then tell me how you would
8 use, give me an example of how you would use Form
9 4852. Is it specifically to identify an incorrect
10 form W-2?

11 MR. Bell: Or 1099, sir, Your Honor.

12 THE COURT: Or 1099? And how would you -- give
13 me an example of how you would identify an erroneous
14 W-2.

15 MR. BELL: Well, it would be addressed, the
16 address that, the name of the person, their social
17 security number, their address, the year, the
18 employer's name and address and EIN if known, and
19 the person would make their contentions of factual
20 nature on the spaces provided in this form, which
21 would be where they would put in the amounts, and if
22 they believe they had no gross income and they had
23 nothing includable in gross income, including wages
24 as defined by law, then they would state zero in
25 contention of fact.

1 THE COURT: Okay, and have the arguments that
2 you've been raising in your briefs and that you're
3 raising here today, is that what you would use to
4 assert that the W-2 is incorrect and identify zero
5 for the wages earned?

6 MR. BELL: That's the only way I see that could
7 be used, Your Honor.

8 THE COURT: So your answer is yes?

9 MR. BELL: I have offered it to other people
10 that this is what I see. It is up to them what they
11 want to do. I never fill in any forms for anybody,
12 and I tell them this is what I see. This is what I
13 understand. If you're going to make an argument,
14 you've got to use their forms and processes.

15 THE COURT: So whether you fill out the form or
16 somebody else fills out the form, this is the manner
17 in which you describe how the form could be used?

18 MR. BELL: I understand this is the manner, if I
19 were give an specific example, I understand that was
20 the manner that was implemented by Mr. Gene Webb.

21 THE COURT: Pursuant to your advice?

22 MR. BELL: I don't want to play with the word
23 advice. I can't venture there without sitting down
24 and looking at it.

25 THE COURT: Well, pursuant to the information

1 that you provide, you anticipate that people will
2 take action with respect to Form 4852 if they agree
3 with your interpretation of the --

4 MR. BELL: If they agree.

5 THE COURT: Let me finish, if they agree
6 with your interpretation of 861 or regulations
7 promulgated thereunder and your interpretation of
8 the instructions as they appear on Form 4852.

9 MR. BELL: Yes, sir.

10 THE COURT: Thank you.

11 MR. BELL: And also Form 8275, which is quite
12 significant. As I believe my response to the motion
13 for preliminary injunction addressed the 8275 in
14 that I believe in the regulations at 1.6662-4 state
15 that the use of the 8275 absolves the filer from a
16 claim of the government of understatement of the
17 liability. I am trying to exhibit to the government
18 and to this court that my effort has been to take
19 this information and bring it to the attention of
20 the people so that they can bring it to the
21 attention of the government through the proper
22 process, not to rail, shake their fists, or waste
23 time.

24 THE COURT: Mr. Bell, how much time would you
25 like to respond to the government's most recent

1 submissions to the court?

2 MR. BELL: Thirty days would be nice.

3 THE COURT: I can't give you thirty days.

4 MR. BELL: Then I guess the rules would have to
5 be fifteen.

6 THE COURT: I'll give you fifteen days from your
7 receipt, which would have been Friday?

8 MR. BELL: Friday, yes, Your Honor.

9 THE COURT: So it will be due Monday, November,
10 help me with the date of the month, I think the
11 18th?

12 COURTROOM DEPUTY: Yes.

13 THE COURT: 19th?

14 COURTROOM DEPUTY: 18th.

15 MR. BELL: 18th.

16 THE COURT: Anything further, gentlemen, on
17 either side?

18 MR. DAVIS: Nothing further, Your Honor.

19 THE COURT: Mr. Bell, anything further?

20 MR. BELL: Not at this time.

21 THE COURT: Okay. We'll take a good hard look
22 at your written submissions after November 18th when
23 they are due, and we will close these proceedings
24 with respect to the motion for preliminary
25 injunction. I would like counsel and Mr. Bell to

1 stay for a second with respect to other pending
2 matters. I have a motion to strike a supplemental
3 document that was filed by Mr. Bell, and I have I
4 think a motion to compel, but was that ruled upon by
5 Judge Kane?

6 MR. DOWIE: No, Your Honor.

7 THE COURT: Okay, so you have a pending
8 outstanding motion to compel, and Mr. Bell, you
9 have a pending outstanding motion to strike?

10 MR. DAVIS: Your Honor, I thought the motion to
11 strike had been ruled on, but which motion to
12 strike? I know at the very least one has been ruled
13 on. I don't know if he did more than one. May I
14 take a look at the docket?

15 THE COURT: Okay. Mr. Bell, has your motion to
16 strike been ruled upon?

17 MR. BELL: I believe so, but I cannot affirm
18 that at this time.

19 THE COURT: All right. We'll take a look to see
20 if there's an order outstanding on that, and your
21 motion to compel has not been ruled on?

22 MR. DOWIE: That is correct, Your Honor.

23 MR. BELL: I believe the motion, Your Honor, the
24 motion to compel was possibly pending in the review
25 of the documents.

1 THE COURT: That's pending the in camera review,
2 yes. Any other pending motions that you need to
3 bring to the court's attention?

4 MR. DAVIS: None for the government, Your Honor.

5 THE COURT: Mr. Bell?

6 MR. BELL: No, Your Honor.

7 THE COURT: Okay. Very good. The record is
8 closed. We'll await Mr. Bell's submissions, and I
9 would like to close the record with Mr. Bell's
10 submissions to bring these proceedings to its
11 logical conclusion so that I can rule. I'm not
12 going to allow the government to respond to
13 Mr. Bell's reply. We have too many briefs as it
14 is, and so that will be the last document that I'll
15 review before ruling on your motion.

16 MR. DAVIS: Understood.

17 THE COURT: Okay? Thank you. We are adjourned.

18 (Thereupon, at 11:11 a.m. the proceedings were
19 adjourned.)
20
21
22
23
24
25

I N D E X

Preliminary Injunction Hearing

USA vs. Thurston Paul Bell

1:01-CV-2159

4 November 2002

7	Argument:	Page:	
8	Mr. Davis	3	
9			
10	Response:		
11	Mr. Bell	16	
12			
13	Rebuttal		
14	Mr. Davis	50	
15			
16	Surrebuttal		
17	Mr. Bell	53	
18			
19			
20			
21	<u>Exhibits:</u>	<u>Description</u>	<u>Page:</u>
22	Defendant's 1	Video tape by Lancken Rose	36
23			
24			
25			