

Irwin A. Schiff, 08537-014
Federal Correctional Complex
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

2:04-CR-00119-KJD-LRL

v.

IRWIN A. SCHIFF, et. al.,

Defendants.

DEFENDANT'S 2ND SUPPLEMENT TO HIS RULE 60(b)(a) MOTION
SEEKING RELIEF FROM THE COURT'S 15 CONTEMPT ORDERS

In Defendant's original and 1st supplemental Rule 60(b)(a) motions, he was able to analyze Contempt Orders 2, 5, 6, 7, 8, 14, 15, and 4 and show why they did not comply with the conditions set forth in Rule 42(b) of the Fed. R. Crim P. or with the Ninth Circuit's Order of 12/26/2007. Since he has located more relevant transcript pages he has been able to analyze Contempt Order No. 10.

1 CONTEMPT ORDER NO. 10

Contempt Order No. 10 came about as a result of Schiff calling as an adverse defense witness Special Agent David Holland. Mr. Holland was the Special Agent who (illegally) applied for, got, and executed the search warrant on Freedom Books, that resulted in the seizure of 14,000 benign documents, many of which were nevertheless ^{used} against Schiff at his criminal trial. ⁽¹⁾ And it was through Mr. Holland that the Governmen

1) As covered in footnotes 2 & 3 of Schiff's original Rule 60(b)(a) motion.

introduced the Zaritsky/Luckey Report as being "the law." In addition Mr. Hollaand testified twice before the grand jury, and his testimony was instrumental in securing an indictment for the Government. In addition he screened witnesses for the grand jury and was instrumental in preventing three witnesses with exculpatory evidence from testifying. In securing the search warrant and before the Grand Jury, it was Holland's claim that Schiff was engaged in an illegal enterprise.

His testimony begins on TP 4473 when Schiff asks him. "Mr. Holland, are you familiar with collection due process hearings?" Holland responds, "Not particularly, no. Vaguely I am..." Then Schiff asks Holland, "Do you know what the purpose of a collection due process hearing is?" The prosecutor objects on "Relevance." Schiff: "I just wanna know if he knows what the purpose of a collection due process hearing is." Holland then states, "I've heard testimony here in court," the implication of that statement being that if Holland had not heard such testimony "here in court," he would have little or no knowledgge concerning collection due process hearings, let alone their purpose. However, that's not what he told the grand jury, and Schiff is holding his grandjury testimony in his hand which contains the following dialogue between the Asst. U.S. Attorney and Mr. Holland:

U.S. Attorney: "Tell us a little bit about the collection due process hearing of the IRS. What is the purpose?" (Notice, before the Grand Jury Holland is a virtual "expert" on CDP hearings, but before the petit jury he indicates he knows virtual nothing about them.) Holland replies.

"A collection due process hearing is basically a hearing where a taxpayer owes the IRS money and they're having problems. They receive a lien or a levy or something to be --or something is about to be seized from them and it's an opportunity to come in and settle up with the IRS. I don't want you" - let me see- "I don't want you to seize my car or my bank account. This is how much money I make. Let's work something out."

Therefore, Schiff reminds Holland of his grand jury testimony

and says, "Isn't it fair to say you were asked before the Grand Jury what the purpose of a GDP hearing was?" (Obviously, the Justice Department rehearses its witnesses to say one thing before the Grand Jury and another thing before the petit jury). Schiff then asks, "Do you know what you told the Grand Jury?" "I can't recall." "You don't have the vaguest idea?" "I'd have to see my testimony to refresh my recollection." Schiff then shows Holland his Grand Jury testimony, and Holland says, "Would you like me to read it?," and Schiff says, "It's all right with me," and Holland reads what is quoted at the bottom of page two. The prosecutor then objects to the "relevance of this line of questioning." So the Court then says, "What is the relevance?" All through the trial Schiff has indicated that he is hard of hearing, and apparently does not make a cogent response. The transcript shows the following unintelligible response. Schiff, "Is that - is that the purpose of a - do you want- " The Court: "What is the relevance?" The Court: "What is the relevance? Sustained then." Schiff then says, "If I were to show - " but is cut off by the Court who says "If you can't give me a reason that is relevant, it is sustained. Move on. Next question." Finally Schiff says, "Your Honor, he gave the wrong (answer) - he - he misled the Grand jury." The Court, "No, he didn't. That is the correct answer. Mr. Schiff, you're not going to argue the law. Put it down (the relevant law, Section 6330, that Judge Dawson sees Schiff holding in his hand). Move on." Again as is his usual practice, Judge Dawson supports the misstatement of law as made by the Government's witness and prevents Schiff from impeaching Holland's testimony with the law itself.

The laws establishing CDP hearings (26 USC 6320 & 6330) arose following the 1998 Senate hearings regarding IRS activities. These televised hearings revealed such wide scale abuse of taxpayer rights by the IRS, that the acting Commissioner publicly apologized to the Senate Committee (and indirectly to the American public) for the IRS's conduct. So to protect the American public from the type of IRS abuse as was revealed in these hearings, CDP hearings emerged. Before a citizen's property could be levied, or immediately following the imposition of a lien, the individual had to be offered a CDP hearing, in which he could challenge the amount of taxes the IRS claimed he owed on various grounds. Some relevant provisions in the statute were: "The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy"; The person may also raise at the hearing "challenges to the existence or the amount of the underlying liability"; he could also "challenge the appropriateness of the collection action"; and "The appeals officer^{shall} at the hearing obtain verification from the Secretary that the requirement of any applicable law or administrative procedure have been met" - however, such verification was never furnished. In addition, the person also could "offer collection alternatives," but this was a minor aspect of the provisions contained in the statute; and was contained in subsection (c)(2)(A)(iii). However based on Holland's Grand Jury testimony, the Grand jury was lead to believe that Code sections 6320 & 6330 consisted solely of ^{subsection} 6330(c)(2)(A)(iii), and the U.S. Attorneys conspired with Mr. Holland to mislead the Grand jury in this manner. And when Mr. Holland read his fraudulent testimony at the trial proper, and Judge Dawson stated that his Grand Jury testimony concerning the "purpose" of a CDP hearing was "A correct answer," than Judge Dawson became a part of that conspiracy to mislead

the petit jury in a similar manner, since he would not let Schiff
(2)
confront Holland with the actual law he was misrepresenting.

Since Mr. Holland was the only person I knew who testified twice before the grand jury, his testimony had to be extremely significant in enabling the Government to get an indictment, and it was his sworn affidavit that secured the search warrant that allowed the Government to misrepresent documents secured by that search warrant, at trial. Therefore one would assume that Mr. Holland would have strong, clear cut beliefs regarding how Schiff was violating our tax laws, and since the Government did not allow Mr. Holland to testify along those lines, Schiff felt he should give Mr. Holland an opportunity to do so. Therefore on TP page 4477 Schiff asks: "Do you regard Freedom Books - as running an illegal operation." You would think his answer would be, "Absolutely." Instead, his tepid answer is "We didn't charge that in the Indictment. But that's certainly debatable. You give false and misleading information to the public." Schiff, therefore asks for a copy of "The Federal Mafia" which has been put in evidence. The Federal government had already gotten a permanent injunction enjoining Schiff from selling the book. So with "The Federal Mafia" in his hand, Schiff asks Holland "Have you read 'The Federal Mafia?'" With all the investigation of Schiff Holland has been involved in, how could he not have read it? Had he said "yes," to this question, Schiff would have handed him the book and asked him to find some passage in it that was "false and misleading," and, of course, he would not have been able to do so. So what does he say, "No, I have not." So the Government's number one investigator of Schiff's ^{alleged criminal activities} claims he never read the one book that Schiff wrote that the

2. Schiff is now in prison, so he does not have Holland's actual Grand Jury testimony regarding CDP hearings. However, he recalls that his testimony was that Schiff and those associated with him, interfered in these CDP hearings - which presumably meant that he interfered with the IRS's ability to secure payment agreements - when, in reality, Schiff's services were sought to help people get the documents and verifications the laws entitled them to get, but which they never got.

courts enjoined him from selling. Is that believable? Undoubtedly the prosecutors told him to deny having read the book, so he wouldn't have to answer any questions concerning how and where it advised people to violate our revenue laws. Since Mr. Holland denies ever having read Schiff's most infamous book Schiff asks him, "Have you ever gone to any of my seminars?" Answer: "No." Therefore Schiff asks, "So how do you know I give false and misleading information?" At this point the prosecutor objects saying "I am not sure what the relevance of this is. We're perfectly happy to let Agent Holland answer that -- But the area he's going into allowing Holland to relay hearsay as part of his investigation--if Mr. Schiff wants to go into that, that's fine. But I'm not sure its an efficient use of the Court's time." There seems to be no limit to the Government's ability to raise egregious, ^{and deliberately disruptive} objections to questions posed by Schiff. The relevance of Schiff's question is obvious. Holland testified at great lenth before the grand jury a s to Schiff's allegedly disseminating "false and fraudulent information," yet here he claims not to have read Schiff's major work on the subject, not having attended any of his seminars, so Schiff wants to know on what basis he concluded that Schiff was providing "false and fraudulent" information with respect to income taxes. And if the Government was "perfectly happy to let agent Holland answer that," why didn't the prosecutor remain silent and let Holland do that? And if by suggesting that Schiff would be "allowing Agent Holland to relay hearsay as part of the investigation," he meant that Holland would not be able to testify that he had any first hand knowledge of Schiff's alleged criminal activities, but that he was told about them by others, this would mean of course, that all of Holland's testimony before the grand jury was also hearsay. And as far as getting this information from Holland being an "inefficient use of the Court's time" is concerned, one of the witnesses the Government used against Schiff was an employee of the

sales tax department of the State of Nevada, to offer testimony concerning Schiff's objecting to having to pay sales taxes on his books, since Schiff viewed such a tax as a violation of his state constitutional right to be able to "freely publish" without being beholden to the State. And this issue had nothing to do with any of the charges at issue.

In any case Schiff ignored the interruption (but unfortunately Holland was able, because of the interruption, to avoid answering the question), and asks Holland, "Wasn't it your testimony that I haven't filed a legitimate return in 15 years?" Answer, "If not more." After some confusion in getting a "zero" return in front of Mr. Holland, Schiff Says (on TP 4482) "Now, looking at that return, I reported zero income; is that correct?" "That's what you reported." Then Schiff says, "Will you just look at the attachment (to the "zero" return) and tell me any statement on it that you consider to be false and fraudulent." At that point the prosecutor, Mr. Ignall, objects and states, "Objection, your Honor. I think as a matter of consistency. It's appropriate for the Court to be the only one to opin^e on what parts may be an accurate or inaccurate statement of the law. We've objected when Mr. Schiff tried to bring that up other witnesses. I think it's appropriate that no witness on either side go into that. We leave that to the Court." The Court immediately sustains the objection, without hearing from Schiff, so now Schiff Says, "But your Honor, he told the Grand Jury that - I haven't filed a legitimate return in 15 years. I would like to know what's illegitimate about this return." The prosecutor continues raising specious objections, prompting Schiff to say, "Your Honor, I was charged with filing a false return largely based on the testimony of Mr. Holland." The Court now says, "The jury will decide the issue of your innocence

or guilt. And you are not going into this." Therefore Schiff asks, "How could they make that decision unless he explained to them why the document is fraudulent?" The Court then says, "The Court instructs on the law, Mr. Schiff. The Court has already addressed the attachments or will will address them later if I haven't addressed them already"⁽³⁾ The miscarriage of justice being orchestrated here is obvious. It was Special Agent Holland who testified before the Grand Jury that Schiff filed false and fraudulent returns and persuaded others to do the same, and this charge appeared in numerous counts in Schiff's indictment. However, when Schiff placed a "zero" return in front of him, and asked him to identify what statements on it were false - neither the Government nor the Court would let him answer the question. When the Government stated that only the Court "can opine" on what statements

3. This is a false statement. Judge Dawson had not as yet addressed the issue of Schiff's "zero" returns, nor would he do so during the balance of the trial. In reporting "zero" income, the attachment to Schiff's returns explained that he was doing so, because:

In Merchant's Loan & Trust v. Smietanka, 255 U.S. 509, 518,519, the Supreme Court held that "The word (income) must be given the same meaning in all the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act of 1909." Therefore, since I had no earnings in 2002 (using that year as an example) that would have been taxable as "income" under the Corporation Excise Tax Act of 1909, I can only swear to having "zero" income in 2002.

In addition, on some returns, Schiff pointed out that he was reporting his income in accordance with House Report 1337 and Senate Report 1622 (included as Exhibit B in the original Rule 60(b)(4) Motion), which stated that only income received in the "constitutional sense" (i.e. income separated from its source) could be taxed absent apportionment. And since Schiff believed he received no income in the "constitutional sense," he believed he could report "zero" income on this basis as well. At no time during the trial did Judge Dawson Rule that such claims that appeared on Schiff's "zero" returns were "false and fraudulent" Nor did Judge Dawson ever rule that Schiff reliance on the Merchant's Loan & Trust decision or House Report 1337 and Senate Report 1622 were misplaced. Nor did Judge Dawson ever rule that Schiff received income in the "constitutional sense," as opposed to his claim that he received no such "income." Nor did Judge Dawson ever explain to the jury the difference ^{between} income received in the "ordinary sense" and income received in the "constitutional sense" And the Justice Department lawyers conducting the Grand jury proceedings fraudulently and criminally allowed Mr. Holland to mislead the Grand Jury into believing that when Schiff and others reported "zero" income, they were reporting income in the "ordinary sense" when the returns themselves clearly showed this was not the case.

on Schiff's "zero" return might be false, it wasn't a federal ^{judge} who went before my Grand Jury and "opined" that Schiff's "zero" returns were false and fraudulent, it was Special Agent Holland. However, at an ex parte Grand Jury proceeding, Justice Department lawyers could get Holland to committ wherever perjury they thought necessary to get the indictments they wanted, but they wouldn't allow him to make the same claims at trial because such perjury could have been easily exposed by Schiff on cross-examination, something Justice Department lawyers don't have to worry about in Grand Jury proceedings. So reasons had to be fabricated to prevent Holland from having to testify at trial in the manner he did before the grand Jury. In any case, shortly thereafter the Court says, " I have sustained the objection, Mr. Schiff. Move on to your next area of inquiry," so Schiff was never able to get Holland to explain on what basis he told the grand jury that my "zero" returns ~~were~~ were false and fraudulent - but no other Government witness did either.

Moving on, Schiff then asks Holland, if he was aware that "The indictment accused me of misleading the public by getting them to file fraudulent W-4's," and he responds, "If that's what the Indictment said, yes." Schiff then asks Holland, "Didn't you state in your sealed affidavit, in order to get a search warrant, that I teach people how to file fraudulent W-4's? Didn't you say that?" However, before Holland is compelled to answer "yes" to that question, the prosecutor immediately says, "Objection, your Honor, to relevance again." The Court now says, "It's not relevant. The Court has already ^{ruled} on the search warrant and the search. You know they (meaning Judge Dawson) ruled against your position. Now move

on." Of course, I never raised this specific issue in my attack on the search and seizure, because I had far stronger issues to raise. In addition, the Court ruled against me on that matter without rendering an opinion, so it never addressed any of the issues I raised in connection with that matter. However, the indictment also accused me of persuading people to file false W-4's, and since Holland had made the exact same claim in his affidavit, I simply wanted to give him the opportunity to explain the basis for his making that claim. In addition, the Government had completely/neglected to cover this element of my charged offenses during its case in chief, so I thought I would/help them out by giving their number one investigator an opportunity to do that, even as my witness. But the Government, by clamping a hand over Holland's mouth, refused to take advantage of my offer. (4)

So, despite the fact that Schiff is repeatedly charged in the indictment/of/filing false "zero" returns and advising others to do likewise, and advising others to file false W-4's, at trial not one Government witness testified concerning how and on what manner Schiff did any of this.

Since the Zaritsky/Luckey Report was introduced through Mr. Holland, Schiff asks Holland to read (at TP 4489) the headline from the Report concerning the Court holding the income tax to be an excise. Holland now reads, "WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX IS IN THE NATURE OF AN EXCISE TAX?"

4. It is not often at a criminal trial that the defense graciously offers the prosecution an opportunity - during the defense's portion of the trial - to prove elements of the crime it had overlooked proving during its own case in chief; and the prosecution turns them down!

Then Schiff ask, "When it refers to 'the Court,' what court are they referring to?" The prosecutor objects, stating that while it is appropriate for the witness ^{to read} /from the Report, he didn't thing it was appropriate "for the witness to comment on it." Schiff's reply is that , "the jury may not know who the court is." Since the Court did not rule, Schiff again asks Holland, "Do you know who the Court is there?" And Holland answers, "This Court." So after reading that line from the Zaritsky/Luckey Report, Holland claims that "the Court" as referred to in that Report means Judge Dawson's Court. Either that answer is an outright lie, or Sam Holland knows so little about tax law, that he shouldn't be allowed to testify about any aspect of it, before a grand jury. Schiff is so nonplused by his answer, that he incredulously asks again, "What court?" At which point, the Government says, "The jury can read it and then make its own determination," and the Court sustains the objection. Schiff then asks Holland, "Do you agree that the income tax is imposed as the excise tax the Supreme Court ruled it to be?" The Government objects to the question, and it's immediately sustained, and Schiff says, "Well, this is the Government's exhibit. I'm asking if he agrees with what's in the Government's exhibit." The Court says, "It's not his exhibit. He did not introduce it except to say that he found it in your office. " The Court's statement is incongrous. Of course, the exhibit in not "his" exhibit, it was the Government's exhibit, introduced through him. But even that is unimportant. The exhibit was submitted by the Government as being notice to Schiff "as to what the law actually is," and as being , "an accurate statment of the law"^e (both statements appearing at TP 3713.) And it was admitted by the Court on that basis. So Schiff merely asked Holland if he agreed with the law as contained in the document that that both the Government and the Court claimed was an "accurate statement of the law," and both the Government and the Court objected to his answering the question.

Further on Schiff asks Holland, "Are you familiar with the laws pursuant

to which the income tax is imposed?" And Holland answers, "I am familiar." Then Schiff asks, "Do you know the difference between direct taxes and excises?" The Government objects, stating, "Again, it's a waste of time - and invades on the province of the Court to instruct the jury on what the law is." The Court sustains the objection, and then says to Schiff; "Mr. Schiff, I have ordered you to - abandon this line of questioning - Schiff, "All right." The Court, "You continue to do it. Sanctions. Sanctions." Following which Schiff says, "But your Honor, they introduced the Report." The Court, " I have sustained the objection Move on."

Allegedly, "In setting forth in detail the factual basis" of Contempt Order No. 10 as required by Rule 42(b) and the Ninth Circuit's order as contained in its Judgment of December 26, 2007, Judge Dawson states (in relevant part):

Defendant Irwin A. Schiff...having been warned repeatedly to desist from such conduct, did wilfully disregard the lawful orders of the Court on October 11, 2005, concerning:

Did persist in falsely testifying as to the applicable law in the presence of the jury thus invading the exclusive province of the Court to instruct the jury on the applicable law, and did persist/in offering irrelevant testimony, despite numerous warnings to cease and desist.

In so doing, Defendant delayed and disrupted the trial and obstructed the court in its administration of justice.

This account merely reflects the Court's continued policy of preventing, whenever possible, Schiff's ability to extract testimony from witnesses that could help his defense. Prior examples, of course, was the Court's verbal support of Holland's perjurious testimony before the Grand Jury when he falsely testified regarding the alleged "purpose" of collection due process hearings; and when the Court protected Holland from having to answer on what basis he claimed that Schiff was advising people to file false W-4's as he

perjuringly charged in his affidavit to secure the search warrant which produced the documents that the Government could misrepresent at trial and before the Grand Jury.

The Court's claim that Schiff, at this time, "testified as to the applicable law" is totally erroneous, but even if Schiff did (which he did not do) such testimony could not have been "false" as was further claimed by the Court. This particular questioning of Holland started out with Schiff asking Holland to read from the Government's own exhibit, which he had done to a far greater extent when called as a Government witness, and even the Government admitted that this was "appropriate." What he read was the caption of that portion of the Report that explained that in Brushaber v. Union Pacific RR, 240 U.S. 1, the Supreme Court ruled that "an income tax is in the nature of an excise, entitled to be enforced as such." Therefore, Holland read the caption, which was "WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX IS IN THE NATURE OF AN EXCISE TAX?" Therefore, Schiff never claimed that an income tax is an excise tax, Holland did - or more accurately, the Government's exhibit, which it claimed to be an accurate statement of the law, did. Schiff then merely asked Holland if he agreed with what he just read - that the Supreme Court ruled the income tax to be an excise. He could have answered "yes," "no," or "I have no opinion." So after the Court sustained the Government's objection, Schiff asks Holland, "How long have you been with the IRS?" "18 years." "Are you familiar with the laws pursuant to which the income tax is imposed?" "I am familiar." Then Schiff asks, "Do you know the difference between direct taxes and excise taxes?"; and the sanction immediately followed. First of all, Holland testified that he was familiar with how

income taxes were imposed, and there was ^{no} objection made by the government. And since Holland had just read from a Government document which the Government claimed "was what the law actually is" and which the Court admitted as "notice to Schiff" as to what the law is ; and since he admitted knowing how the income tax was imposed; and since he just read from "the law" that the income tax was held to be an excise tax; and since direct taxes are imposed differently from excise taxes - I asked him if he knew the difference between these two types of taxes. Certainly when he testified against Schiff before the Grand Jury, the Justice Department presented him not only as an expert in the law, but also an expert on how Schiff was breaking it. But in front of the petit jury, he suddenly ^{is presumed to} know nothing.

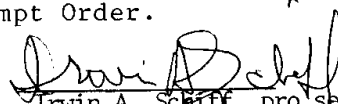
In any case, all Schiff did was question Holland. Schiff did not make one declarative statement, so how could he have "testified falsely as to applicable law." And in any case, the applicable law being discussed is the Report's claim that the income tax was held to be an excise. And since both the Court and the Government claimed that the Report reflected the applicable ^{law}, the Court is estopped from now claiming that it does not. And since the Report claimed the income tax ^{was held, by the Supreme Court, to be} an excise, the only way that Schiff could have testified falsely, ^{is} if he claimed that the Report was wrong, and that the income tax was a direct tax, and not an excise but Schiff did not do this.

In addition, the Court did not give Schiff "numerous warnings to desist," Schiff was proceeding to question Holland on a line in which no such warnings were made. And certainly Schiff's questions did not "delay or disrupt the trial." As far as the Court's

claim that it is the "exclusive province of the Court to instruct the jury on the applicable law," Schiff respectfully suggests that the Court abandoned that position when it allowed the Government to instruct the jury on the law by way of allowing Special Agent Holland to read extensive portions of the Zaritsky/Luckey Report as being "the law." (At TP 3724, 3728, 3729, 3730, & 3731)

Considering the fact that not one of the allegations in Contempt Order No. 10 allegedly "setting forth the factual basis of the contempt conviction" is accurate, Schiff, therefore, claims that Contempt Order No. 10 is void, and that no contempt conviction can be imposed on the basis^{of a} void Contempt Order.


Date: August 18, 2008


Irwin A. Schiff, pro se

CERTIFICATE OF SERVICE

This is to certify that on August , 2008 a copy of this 2nd Supplement to Defendant's Rule 60(b)(a) Motion Seeking Relief From the Court's 15 Contempt Orders, was deposited in our units mail box for delivery to a U.S. Post Office, addressed to Christopher S. Strauss, 333 Las Vegas Blvd. South, Suite 500, Las Vegas, Nevada, 89101.

Date: August 19, 2008


Irwin A. Schiff