Motion to Void the Contempt Convictions

The Ninth Circuit Appeal Court ruled in 2008 that Judge Dawson in Vegas must reconsider the 15 sentences he imposed in 2005 on Irwin Schiff for “contempt”, having failed to specify in a proper way the grounds on which each rested. The documents here show Irwin's attempt to have them canceled altogether.

Probably no symbol of “justice” is more widely used than the blindfolded lady with scales and sword. A lady, symbolizing compassion. A sword, symbolizing punishment (though true justice has nothing to do with punishment and everything to do with restitution.) The scales tell of meticulous weighing of hard evidence, and the blindfold says that true justice is absolutely impartial.

From that last it is abundantly obvious that in any case where government is involved as a litigant, government justice is impossible. There can in such a case never, ever be an impartial judge – openly paid by one protagonist. You can have government, or you can have justice, but you most certainly cannot have both.

The pages of this document show in detail how one government judge – Kent Dawson – ensured that his paymaster won the case against Irwin Schiff. Every time Irwin got close to making a valuable point in his defense, Dawson interrupted – *usually without even the prompting of the prosecutor* – and ruled him out of order or imposed a “sanction” for daring to mention relevant law.

The myth that the justice function of government has something to do with righting wrongs is powerful, but this Motion to Void the contempt convictions helps lay it to rest. The Judicial Branch is the *enforcement* arm of what Irwin has called “The Federal Mafia”, neither more nor less; and Kent Dawson is one of its most accomplished hit men - with judges like him, the government doesn't need prosecutors. This Motion serves not just to try to reduce Irwin's barbaric total sentence by 10% or so; it serves to expose the core of how Dawson maintained the appearance of a fair trial while systematically excluding its reality.

Reader Page 4 is the Las Vegas Review Journal's account of the video “hearing” of 6/24/2008. Dawson tried to reimpose the sentences which the 9th Circuit Appeal Court had thrown out, but Irwin refused to waive his right to be sentenced while in open court and so it resolved nothing; at an unspecified date soon, he is to go in person to Vegas and hopes to see some supporters again in court, and to make ever more public what Dawson is trying to pull.

Navigation note: because of this and the following three pages, which Adobe Reader numbers 1 thru 4, the Motion page numbers are out by 4. So for example, to go directly to its Page 20, you need to key in 24.

Irwin A. Schiff, 08537-
Federal Correctional Complex
P.O. Box 33
Terre Haute, Indiana 47808

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. **IRWIN SCHIFF**, CYNTHIA NEUN, and LAWRENCE COHEN, Defendants.	)	CR-S-04-119-KJD (LRL) MOTION FOR A CONTINUANCE AND FOR THE APPOINTMENT OF STAND-BY COUNSEL.

Defendant Schiff asks for a continuance with respect to the hearing scheduled for June 24, 2008 and for the appointment of stand-by counsel for the following reasons.

1) Yesterday, June 9, 2008 I received from TRial Attorney, Lori A. Henrickson, the 15 Orders of Judge Kent J. Dawson, imposing upon me sentences for allegedly committing contempt of court at the criminal trial at issue.

2) Schiff rejects completely Judge Dawson's claim that each of these contempt charges were imposed because Schiff sought, by the use of leading questions, "to elicit a speculative response from the witness as to what was (in SCHIFF'S mind)".

3) In reality, all of the contempt charges resulted from Judge Dawson's blocking ... Schiff's efforts to impeach Government (IRS) witnesses - by introducing either statutes, court decisions, or other government documents - which would reveal that such witnesses had: (1) either given false or inaccurate testimony; or (2) were engaged in unauthorized conduct as revealed by their testimony.

4) However,for Schiff to establish the mischaracterization and unwarranted nature of the charges at issue, Schiff would need the trial transcript pages showing the exact circumstances out of which each contempt charge emerged.

5) However, Schiff only received portions of the trial transcript, and because of the primitive and inadequate nature of the filing and storage facilities available to federal prisoners, a significant portion

of the transcript pages he did have are out of sequence or have been lost..

6) Therefore, Schiff is asking that the Court provide him with those transcript pages in which the 15 contempt charges were imposed, or allow Schiff sufficient time to get those pages from his prior appeal attorneys, who Schiff assumes, still have the complete trial transcript.

7) In addition, Schiff will be compelled to represent himself, since no attorney he believes will have the time to confer with Schiff (espcially since Schiff is incarcerated making such contact severely limited) concerning the factors - as explained above - that resulted in the contempt charges being imposed.

8) However, Schiff would need stand-by counsel to advise him on the procedures involved in this hearing and how he should conduct his defense.

9) Schiff, at this point, is totally at a loss to understand whether or not this is an adversarial proceeding, and, if so, who is his adversary?

10) To Schiff it would appear that Judge Dawson is his adversary, but if this is so, how can he exercise the impartiality a judge is required to have?

11) I will have to confer with a lawyer who needs to advise me in what manner I need to present my defense, since I have a lot of short comings in this area, as were revealed at my last trial.

WHEREFORE, based on all of the above, I could not possibly be prepared for a hearing on June 24, 2008 (or 14 days from now),therefore, I am requesting a continuance of a least 30 days from the time I receive all of the transcript pages at issue, which will also give me the time during this 30 day period to confer with stand-by counsel, to be appointed by the Court, since I have no funds to pay for my own.

Dated: June 10, 2008

_____

Irwin A. Schiff, pro se

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION FOR A CONTINUANCE AND APPOINTMENT OF STAND-BY COUNSEL WAS DEPOSITED THIS day in our unit mail box for deliviery to a U.S Post Office, addrresed to: Trial Attorney Lori A. Hendrickson, Dept. ofJustice, Tax Division, Western Criminal Enforcement Section, PO Box 972 Washington, DC 20044

Dated: June 10, 2008

_____

Irwin A. Schiff, pro se

Tax activist fights contempt charges

Schiff denies disrupting federal trial in 2005

By ADRIENNE PACKER
REVIEW-JOURNAL

Anti-income tax proponent Irwin Schiff's behavior during his federal trial three years ago could earn the 80-year-old felon an additional month in prison.

U.S. District Judge Kent Dawson slapped Schiff with 15 counts of contempt of court last month and scheduled a hearing June 24.

Schiff, who was found guilty of conspiring to defraud the Internal Revenue Service, tax evasion and filing false returns, was sentenced in 2006. He is scheduled to be released in October 2016. Schiff represented himself during the trial in Dawson's courtroom.

In his orders, Dawson claims Schiff repeatedly disrupted and delayed the 2005 trial proceedings.

Dawson said that on several occasions Schiff:

- Offered leading questions intended to make the witness speculate what Schiff was thinking.
- Asked questions to elicit irrelevant testimony.
- Offered testimony while he was questioning witnesses and not under oath.

Schiff "did argue with the Court over its ruling and did engage in theatrics and did describe the actions of the Court as 'silly' after numerous warnings to desist," Dawson wrote in his order.

On Friday, Schiff, who is incarcerated in Terre Haute, Ind., asked for additional time to prepare for the hearing. In his response, Schiff requested a full transcript of the trial and denied any wrongdoing or inappropriate behavior on his part.

Irwin Schiff
Income tax foe convicted of conspiring to defraud IRS, tax evasion and filing false returns

"For Schiff to establish the mischaracterization and unwarranted nature of the charges at issue, Schiff would need trial transcript pages showing the exact circumstances out of which the contempt charge emerged," Schiff wrote.

"Schiff, at this point, is totally at a loss to understand whether or not this is an adversarial proceeding, and, if so, who is his adversary?" he wrote.

During the trial, Schiff and his cohorts took to the radio airwaves to stir up other anti-tax proponents.

Dawson said this month that spectators at the trial would shout "objection" in the middle of proceedings, acid was poured on the vehicles of IRS agents, and court employees' tires were punctured.

Dawson was in fear of his life. For months a U.S. Marshal drove him and his wife around town and even on a trip to the mountains.

Contact reporter Adrienne Packer at apacke@reviewjournal.com or 702-384-8710.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Petitioner,

vs. 2:04-CR-00119-KJD-LRL

IRWIN A. SCHIFF, et. al.

Defendants.

Per Rule 60(b)(4) seeks relief from 15 Contempt Orders

Defendant Schiff, pro se, respectfully moves this Court to vacate its 15 Contempt Orders issued as of May 27, 2007 because they are void, in that they did not comply with Rule 42(b), and the Ninth Circuit's Judgment issued on December 26, 2007, in US vs. Cohen, et al. 510 F3d 1114.

The Ninth Circuit vacated all of defendant's comtempt Convictions because this Court did not comply with Rule 42(b) of the Fed. R.Crime P., since that Rule and Ninth Circuit case law "establishes that the district court must file a contempt order setting forth in detail the factual basis of the contempt conviction and certifying that the district Judge personally witnessed the conduct giving rise to the conviction." (page 1119). However, as the following will show , this Court did not do that. Instead of setting forth in detail the factual basis of the contempt convictions, this Court provided a fictional account of how the contempt sanctions arose. For example:

1) Contempt Order Number 2

Sanction number two was imposed as a result of Revenue Officer, Luddie Talley testifying at transcript pages 3056 & 3057, (here and after referred to as TP). that persons are required to turn over their books and records to the IRS in response to an IRS Summons. He makes this claim twice, on page 3057 (lines 2&21). Schiff then asks Talley,"Are you aware of the resent decision uh..." but before Schiff can even identify the decision, the prosecutor interrupts and says, "objection to relevance." Schiff replies, "Well, its relevent. It shows that he (the witness) just made a false statement..." Schiff then identifies the case as US vs. Schulz, 395 Fsd 463, and asks the Court if it wants to see a copy. The Court doesn't respond. The Second Circuit held in that case, that "absent an effort to seek enforcement through a Federal Court, IRS summonses apply no force to taxpayers, and no conseuence what so ever can befall a taxpayer who refuses, ignores, or otherwise does not comply with an IRS summons until that summons is backed by a Federal Court order." Thus this decision impeaches Tally's testimony, that individuals are required to turn over their books and records in response to an IRS Summons. Again the Government's prosecutor says, "The Government doesn't understand the relevance either of--" Schiff interrupts and says,"The relevance is the witness just made a false statement--." The Court interrupts and says, "No, he didn't." Schiff tries to explain why Talley made a false statement, but the Court interrupting again, says --"he didn't," Thus the Court twice supports the witnesses false testimony, while declining to look at the decision itself.

Then the Court said, "Mr. Schiff, this is going nowhere. You're just arguing with the witness, making another speech on a false statement of the law on your part." All of these statements were false. The reason the issue was "going nowhere" is that the Court didn't want it to go anywhere. And I hadn't argued with the witness at all. All I asked was whether people had to turn over their books and records in response to an IRS Summons and he said twice that they did. I then sought to ask him if he was familiar with the Schulz decision, but I was not allowed to. Therefore, I didn't argue with the witness and I certainly didn't make "another speech," and I hadn't made any statements about the law. I than offered to read from the decision saying, "Can I read---," but the Court interrupts me and said, Stop it." However, verbal momentum impeled me to finish the sentence, and I say, "--from the Second Circuit opinion." In response, the Court said, "**Sanctions**."

After being sanctioned, Schiff asked the Court, "Do you want to see the Second Circuit (decision)." The Court says, "I don't need to see it. It's not the Ninth Circuit. It has nothing to do with this case." Schiff replies, "well it has to do with his testimony." The Court says, "It does not. I have found it so."

In describing the basis for Contempt Order Number two, Judge Dawson states that, after be(ing) warned repeatedly to desist from such conduct, (Schiff) did wilfully disregard the lawful orders of the Court, --to wit: The defendant did persist in offering questions intended to elecit irrelevant testimony and offering false statements of the law after numer-

ous warnings from the Court to cease and disist. In so doing, defendant delayed and disrupted the trial and obstructed the Court from its administration of Justice."

This totally misrepresents what had occurred. Judge Dawson did not "repeatedly" warn Schiff about anything, except tell him to "Stop it" when he was in the middle of a sentence, and then sanctioned him for finishing it. In addition, Schiff had not tried to "elicit testimony" from anyone. It arose soley as a result of Schiff conversing with the prosecutor and the Court. In addition, Schiff didn't offer any statements on the law. He merely sought to explain to the Court why the Schulz decision was relevant. And there were no warnings from the Court to "cease and desist," and Schiff did not "delay and disrupt" the trial, by seeking to introduce the Schulz decision. Therefore, based on above, Judge Dawson's Contempt Order Number two **is void**, since it was issued in violation of Rule 42(b) and the Ninith Circuit's ruling that Judge Dawson in his contempt orders "set forth in detail the factual basis of the contempt conviction." Judge Dawson did not do that; what he "set forth" was pure fiction.

2) Contempt Order Number 8

This Order is similar to Contempt Order Number two. It arose as a result of Schiff's efforts to introduce an IRS document that would impeach a Government witness. Schiff was cross-examining Clint Lowder, the Government's summation witness, who testified (on direct) that Freedom Books maintained no books

and records. His testimony would obviously influence the Jury to believe that Freedom Books was breaking the law, since it would assume that: 1) Freedom Books was required by law to keep books and records; and 2) turn them over to the IRS when requested to do so. So on TP 4147, Schiff asks Lowder, "Were you aware that the Courts have ruled taht you have no legal obligation to turn over books and records to the IRS?" The prosecutor immediately objects and says, "Objection. The Jury has the right to hear an accurate reflection of the law, not Mr. Schiff's misinterpretation;" promting the Court to immediately say, "you will refrain from interjecting your view of the law." Schiff then attempts to introduce an excerpt from the IRS's "Handbook for Special Agents." He has the handbook in Court with him, but since the excerpt is also shown on page 33 of his book, "The Federal Mafia,"(which has already been admitted as an Exhibit,) he asked the Clerk to hand the book to Lowder. Schiff then asks, "Is that an excerpt from the Handbook For Special Agents?" The prosecutor objects stating, "we're going back to the books and record issue..." (There seems to be an omission between TP 4148 & 4149, since the dialogue does not follow). TP 4149 records the prosecutor as saying "--or in the book." Schiff now says, (appearing to respond to the prosecutors last remark) "You just said that my characterization is wrong. I am just reading from the IRS's own handbook." At this point the Court says, "Mr. Schiff, I warned you. Again, you are not going into this. You have ignored my ruling. You are apperently attempting to go in to

the same area. Let me see the page he's directed you to. -- Don't say anything until I rule." The transcript now shows that the document was handed to the Court. (I have included as Exhibit A, the document from the IRS's Handbook.) Judge Dawson now sees that the document cites no less than 3 Court decisions which held that "An individual taxpayer may refuse to exhibit his/her books and records..." to the IRS, since if they do so, the taxpayer will have waived his forth and fifth Amendment rights. And the Handbook states that one does not have to turn over their books and records even in response to an IRS Summons, which is what the Second Circuit, Schulz decision also said. Despite reading the document and knowing that Schiff's question to Lowder was correct, Judge Dawson says, "You are sanctioned, stop." Judge Dawson sanctioned Schiff without "ruling" as he just promised to do.

In explaining the factual basis for the contempt conviction, Judge Dawson writes in Contempt Order Number Eight:

"After be(ing) warned repeatedly to desist from such conduct, Schiff did wilfully disregard the lawful orders of the Court... Concerning: Did persist in interjecting his views as to the applicable law, thus usurping the authority of the Court, despite numerous and repeated warnings from the Court to cease and desist such conduct. In so doing, Defendant delayed and disrupted the trial and obstructed the Court in its administration of Justice."

Thus, there is not one accurate statement in that account. Judge Dawson said, "You ignored my ruling" He never warned me

that I could not introduce an IRS document that reflected adversely on Lowder's testimony. And I never sought to "inject my views" as to the applicable law. I was hoping the IRS document would do that. Judge Dawson gave me no "repeated warnings" to "cease and desist" attempting to introduce IRS documents into the trial; nor was Schiff delaying or disrupting the trial, in seeking to do so.

As a result of the above, the Court's Contempt Order Number Eight **is void**, since it was issued in violation of Rule 42(b) and the Ninth Circuit's ruling that Judge Dawson in his contempt orders "set forth in detail the factual basis of the contempt conviction." Judge Dawson did not do that; what he set forth was fictional.

3) Contempt Order Number 9

Schiff had been charged with filing "false and fraudulent" returns for several years, because he had reported "zero" income on them. However, he did so based on the holding of the Supreme Court, who in Merchant's Loan and Trust vs. Smietank/[a]255 US 509, 518, 519 (and other cases) held that "income" as used in our revenue laws means the same thing that "income meant in the Corporate Excise Tax Act of 1909" and in that Act, "income" meant corporate profit. Also by reporting "zero" income, Schiff was reporting his income, not in the ordinary sense, but in the "constitutional" sense, in accordance with House Report 1337 and Senate Report 1622 (Exhibit B) and "income" which was separated from its source, which the Supreme Court had ruled had to be done so as to avoid the constitutional requirement of apportionment.

However, the Government's summation witness, Mr. Lowder, testified on direct that he determined Schiff's income to be far greater than "zero" - of course, he determined it in the "ordinary" sense (in the same manner as Judge Dawson charged the jury) in violation of those Congressional Reports and Supreme Court decisions.

On TP 3975 Lowder states that the purpose for keeping books and records is so "the proper income can be calculated," presumably by the IRS. On page 3975 Lowder testified that he conducted "between 1500 and 2000 examinations in my career," to determine if there was an "additional tax owing" If the IRS determines there is "an additional tax owing," and it cannot be resolved before the IRS, the taxpayer is allowed to litigate the difference in Tax Court. Therefore, based on his testimony, I asked Lowder,(TP 4150) "Are you familiar with the U.S. Tax Court?" The Government immediately objects on "relevance." Following which, the Court says, "What is the relevance?" Of course, the relevance should have been obvious to both the prosecutor and the Court, presuming they know anything at all concerning income taxes. Lowder had already testified that he did examinations to determine if an "additional tax" was owing. This additional tax is known as a "deficiency" and are litigated in Tax Court. So obviously, my question directly relates to his testimony, and I am laying a fondation. However, because of my lack of legal skills, I am unable to give a cogent explanation of its relevance. However I do say, "Well, its relevant to the whole inquiry here. It's relevant to being audited. The U.S. Tax Court is very relevant and you will see its relevance in a moment." The Court says, "I'm not going to trust you;" and then the prosecutor

says, "Mr. Lowder did not conduct an audit here. He conducted an examination to determine income for the purpose of trial, nothing more." Therefore, the Court sustains the objection. Schiff then asked Lowder, "After doing your audit, did you ever send me a deficiency notice showing I didn't.." The Court interrupts and says, "--he did not do an audit. He did not testify to doing an audit." However he testified about doing an "examination," which even the prosecutor admitted to. So the prosecutor's objection was sustained because he claimed that an "examination" was not an audit, and this claim was adopted by the Court. However, on TP 3975, lines 7 & 8, the prosecutor asks Lowder, "When I say "examination," is that a nice word for "audit"? And Lowder says, "Yes, it is." (So much, therefore, for the honesty of the prosecutor, and the validity of the Court's sustaining his objection on this question.)

Shortly thereafter Schiff says, "Do you know if anybody took your figures and told me that I had more income than what I reported on my return?" Lowder replies, "I don't believe a report was ever given to you - with a tax deficiency." While the jury hears Lowder say that I never got a report showing a tax deficiency - they obviously do not know what that means, which I then sought to clarify for them by eliciting additional testimony on deficiencies from Lowder. However, Judge Dawson prevented me from doing so. Normally when a person commits a crime, the Government does not have a civil option. However, there is such a thing as civil tax fraud, and I had a right to extract that information from Lowder, who had already testified on certain aspects of this civil option.

However, the Government by raising fraudulent and unwarrented objections (which were **always** sustained by the Court), prevented me from doing so.

The Court also sought to undermine Schiff's examination of witnesses by constantly interrupting his examination of them, by accusing Schiff of "testifying." For example, on TP 4154, Schiff asks Lowder, "The fact is the Government could have come after me civilly, and I could have litigated it. And the jury should know that. And that's what they are trying to keep from the jury. The fact is the Government"-- At this point Judge Dawson interrupts and says, "All right, You've done enough, **you've testified enough.**" I then claim, "I'm not testifying," and the Court says, "I've warned you about blurting out."

Obviously, I hadn't testified. What I had done was simply to refer to myself in the first person, instead of in the third person; because no one, including the Court (and my ineffective, stand-by counsel), advised me any differently. And I never understood, (during the whole course of the trial) why the Court kept accusing me of "testifying." However, since I was a pro se litigant, with no formal legal training or practice, the Court was duty bound to correct what I was doing. The Court only needed to say, "Mr. Schiff, refer to yourself as the defendant and in the third person, and not in the first person." I would have corrected the error. However, the Court did not do that, but allowed Schiff to make this error throughout the entire trial.

Subsequently, I say to the Court, "The questions are relevant. He did an audit. He went to my bank account. And I'm saying to him, what did the Government do with this information?" And the Court says, "Yor're testifying again," because I said, "my bank," instead of "defendant's bank," the Court again accuses me of"testifying." This, of course, is the basis of the Court's accusing me of "testifying" throughout the trial. Schiff then says, "I'm asking what does the Government normally do when they get information that the person has more income then he reported. That's a simple question." Schiff then says, "How is that irrelevant?" and the Court replys, "Because I said it's irrelevant." However, for reasons already stated, these questions were not irrelevant. Later the Court would allow the Government to cross-examine me with respect to Tax Court decisions that were totally outside the scope of my direct testimony, but do to my ignorence and my inexperience, I didn't object -- nor did my ineffective, stand by counsel. I then say, "Could the Government have sent me a deficiency notice?" The Govenment objects, and Schiff says, "It's a different question." The Court says, "It's the same thing....Sustained." Then Schiff says, "All right...Did I ever get a deficiency notice --" Before I could finish my question, the Court says, "**Sanctions**." I then complete my question, by saying, "--for any of my tax returns," and the Court again says, "**Sanction**." (Since I have two Contempt Orders indentified as "Number nine, I am not sure if these two orders have been merged into one order.)

Supposedly, "in setting forth in detail the factual basis of

Contempt Order Number Nine, Judge Dawson writes:

> "(That Schiff) having been **warned repeatedly to desist** from such conduct, did **wilfully** disregard the **lawful orders** of the Court... cocerning:
>
> Did persist in **offering testimony** while not under oath, and in offering questions intended to elicit irrelevant teatimony after numerous warnings from the Court to cease and desist.
>
> In so doing, Defendant delayed and disrupted the trial and obstructed the Court in its administration of justice.

First of all, all the Court's statements that Schiff "offered testimony while not under oath," was based upon Schiff referring to himself in the first person, instead of in the third person, a natural mistake for a lay person with no courtroom experience.[1] The Court was duty bound, in this situation to sdvise Schiff, a pro se, non-lawyer, of what he was doing wrong, and allow hin to correct it, which he could have easily done. How could Schiff have believed that by using the wrong pronoun, he was suddenly "testifying"? In order for Schiff to be guilty of this allegation, he would have had to testify "wilfully." Wilfully as charged in criminal statutes means "knowingly" and "intentional." How could Schiff have testified "wilfully" when he didn't even know he was "testifying?" On TP 4154, lines 14-16, Schiff says to the Court, "I'm not testifying," obviously believing that he was not testifying. So any claim that Schiff was "wilfully" "testifying" is totally without foundation.

---

1) Though some 25 years previously, Schiff did represent himself at a criminal trial and examined witnesses, while referring to himself in the first person, and ha had no recollection of the Court interrupting his examing of them and chastising him for "testifying."

Also the claim that Schiff "**intended** to elicit irrelevant testimony" is also without foundation. Schiff was seeking to "elicit" from this witness, who had already testified on direct that his job was to audit returns to see if "there is an additional tax owing," what 1) the IRS normally did in those cases; 2) how such discrepancies are normally resolved; and 3) how they were resolved in Schiff's case.

To prevent Schiff from eliciting such relevant testimony, both the Government and the Court would falsely claim that an "examination" was not an "audit," even though the prosecutor had already elicited from the witness that they both meant the same thing.

In addition, Schiff was not "warned repeatedly to desist." Schiff believed by rephrasing his questions he sought to elicit testimony that was directly related to a defense with respect to those counts charging him with filing "false and fraudulent" returns, because of his having reported "zero" income on them. In those cases, the Government could have litigated the difference by allowing Schiff to Petition the Tax Court, with or without charging him with civil tax fraud, since in reporting "zero" income, Schiff set forth the legal basis for his having done so. He did not, therefore, mislead the government by reporting "zero" income. And at that point in his trial, Schiff had the right to raise this as a defense to those charges. A defense the Government and the Court cut off.

Therefore, as in Contempt Orders 2 and 8, Comtempt Order 9 is also **VOID**, since this Order does not "set forth **in detail** the factual basis of the contempt conviction, "as required by Rule 42(b) and the Ninth Circuit's Order of December 26, 2007. What the Court's

Contempt Order 9 "sets forth" are false, conclusionary allegations as shown above.

4) Contempt Order Number 5

Contempt Order Number 5 involved Schiff's cross-examination of IRS, Special Agent Sam Holland. Mr. Holland was the Special Agent who applied for the search warrent pursuant to which 20 other special agents raided Freedom Books and seized some 14,000 documents, many of which, though benign, were misrepresented and used against him at trail. Mr. Holland, who lead the raid, testified against Schiff at great length before the grand jury.[2]

Upon cross-examination (TP 3820), Schiff asks Holland, "...you were the one who...applied for the search warrant (of Freedom Books)," and Holland answers, "That's correct." Then Schiff asks, "Isn't it a fact that in order to apply for a search warrant you have to be a Law

---

2) All of Holland's activities with respect to Schiff and the income tax were all illegal. All IRS special agents carry firearms, as they all did on their raid of Freedom Books. However, only Code section 7608(a) authorizes IRS agents to carry firearms, but only with respect to taxes involving, liguor, tobacco, and firearms, and such other taxes that fall in subtitle E. Only agents that fall into section 7608(b) are authorized to enforceincome taxes (assuming other criteria are met), but agents who fall into section 7608(b) are not authorized to carry firearms. In addition, Schiff attaches hereto (as Exibit C), the offical job description of special agents. They are only authorized to enforce the criminal statutes applicable to income taxes, "involving United States citizens residing in foreign countries and nonresident aliens subject to Federal income tax filing requirements..." Since Schiff falls into neither catagory, the special agent raid on Freedom Books was illegal on a variety of grounds, while none of the four or five special agents who testified against Schiff were authorized to do so, nor perform the functions about which they testified. However, when Schiff raised these two issues (and numerous others) in a Motion to Suppress the documents special agents illegally seized, Judge Dawson denied the motion without permitting oral argument and without comment, only days before the criminal trial was to start, while having had the motion for over a year. In addition, Judge Dawson would not allow Schiff to confront the special agents who testified against him with the provisions of section 7608 and their job descriptions, for the purpose of impeachment.

Enforcement Officer under law?" The prosecutor immediately objects and says, "Irrelevant and beyond the scope of direct and -- potentially misstating the law." The Court follows with its own statement that the question was irrelevant.[3]

The Court then says, "The Court has already ruled on these matters, Mr. Schiff; you know that." -(referring to the Court's previous denial of Schiff's Motion to Suppress, and its refusal to allow Schiff to impeach special agents with Code section7608 and their job descriptions.) The Court then says, "Sustained," and Schiff says, "Okay."

Then Schiff asks Holland, "--how many thousand documents did you take from Freedom Books?" "We took 50 boxes." Then Schiff identifies specific items. "Did you take my appointment book?" "Yes." "My Rolodex." "Yes." "You downloaded all the information in about seven computers?" "That's right." In addition to these specific items, the raiders took: Trial transcripts, legal correspondance, research material, and if Schiff kept a diary, they would have taken that too. Since Freedom Books was not a corporation, all of these documents were the personal property of Irwin Schiff.

Subsequently Schiff asks, "When...I tried to enter my office, you and about two or three other agents physically restrained me; isn't that correct? Holland answers, "That's correct." "So I couldn't see what you were taking?" "That's right." Do you remember reading me my Miranda Rights?" "Yes I do." "What did you tell me?" "I...told you, you were under criminal investigation." Schiff then says, "...didn't

---

3) However, Schiff had not misstated the law - "potentially" or otherwise. Rule 41(b) of Title 18 states, "(b) **Authority to Issue Warrant.** At the request of a **federal law enforcement officer** or an attorney for the Government:" - the section then listed various circumstances in which search warrants can be issued. In Schiff's Motion to Suppress he had supplied the Court with at least two Treasury Department regulations that stated, "Special Agents are not law enforcement officers."

you tell me more? You said anything I said can be used..(against me)." Schiff then asks Holland to read the Miranda warning he gave Schiff at that time, though not using these exact words; and Holland says, "You want me to read your rights right now?" - indicating he has the card he uses for this purpose with him, so Schiff says, "...read it again." Thenthe Court says, (without having gotten any objection from the Government) "What is the relevance of this?" "Its very relevant, your Honor." The Court replies, "Well, you can't just say -- its relevant." Schiff then says, "The relevancy will be apparent in a moment." The Court then says, "You've said that before." Finally Schiff says to Holland (TP 3823, line 6) "You told me that anything I said could be used against me?" "That's correct." Then Schiff says, "Well, you were taking 14,000 documents to use against me. What could I have told you that could be any more incriminating than all the documents you were taking out of my office?" and Holland says, "I could think of a lot of things." Then Schiff says, "It was a little silly to read me my rights - in other words, I didn't have any--," and the Court interrupts with, "Oh, come on." The Court again says (Still without hearing any objection from the Government), "It is not relevant." Schiff replies, "Well your Honor, its a little silly to read me my --." The Court interrupts before I can finish the sentence , which would have been, "my alleged right to remain silent, while removing from my office 14,000 documents to use against me." I was only able to get some fragments of that out, before the Court said, "Mr. Schiff, enough of the theatrics." Schiff, "All right. But I think its very significant. He read me my rights." The Court, "I said, leave it alone." Schiff, "I'm leaving it alone." The Court, "No, you're not." Schiff, "All right.

I'm not because I think it's a little silly." The Court, "All right, **SANCTION.**" Schiff then says, "All right," and the Court again says, "**SANCTION.**" During that discourse, that took up more than four pages of trial transcript, the Government had not uttered a word. Who than was my adversary?

In allegedly "setting forth in detail the factual basis of the contempt conviction," the Court states:

> Schiff....after having been warned repeatedly to desist from such conduct did wilfully disregard the lawful order of the Court...Concerning:
>
> Did argue with the Court over its ruling and did engage in theatrics and did describe the actions of the Court as "silly" after numerous warnings to desist.
>
> In so doing, Defendant delayed and disrupted the trial and obstructed the Court in its administration of justice.

(Not one phrase of that account is accurate)

For one thing, Schiff had not been warned once, about questioning the witness regarding the absurdity of his reading Schiff his rights to remain silent, less he should say something incriminating to the special agents who were in the process of removing some 14,000 of his personal documents for use against him. The last ruling the Court made was TP 3820, line 10, when the Court sustained the Government's objection with regard to Schiff raising the issue of who was authorized to apply for search warrants. Hoever from that line to TP 3824, line 23 - when Judge Dawson imposed two sanctions, he had issued no orders. During those 4½ pages the Government raised no objections; in fact it didn't even speak. Obviously, Schiff never argued over its "ruling," since the Court never made one. Neither did Schiff "engage in theatrics." In addition, Schiff never described the actions of the Court, as being "silly." Schiff clearly used that term in referring to the

Government informing Schiff of his constitutional right to remain silent while removing 14,000 documents from his office to use against him.

As far as his "delaying and disrupting the trial", it was the Court that did, not Schiff. If the Court had allowed Holland to read the Miranda warning he had admitted reading to Schiff at the time of the IRS raid, from the card he admitted having

with him (and which the Government had not objected to); Schiff would have then asked, " Isn't a little silly to read somebody their alleged rights to remain silent less they say something incriminating to Government agents who, at that moment, are removing 14,000 personal papers to be used against them?" If the Government objected to the question, and it was sustained, that would have ended the issue, and saved 2 ½ pages of trial transcrip. But the question was needlessly prolonged because of the unnecessary rulings and interference by the Court - and the question never got asked!

Therefore, based on the facts as described above, Contempt Order No. 5 is **void**, since the Order does not "set forth **in detail** the factual basis of the contempt conviction," as required by Rule 42(b) and the Ninth Circuit's Judgment of December 26, 2007. What the Court did "set forth" were false statements and false conclusionary allegations, as cited above.

5) Contempt Order Number 6

Contempt Order No. 6 was imposed simply because Schiff said, "All right." Nothing except, "All Right" was said between contempt sanction 5 imposed on line 21 and sanction 6, imposed on line 23 (p. 3824).

In allegedly "setting forth **in detail** the factual basis of this contempt conviction," the Court states:

> Defendant Irwin A. Schiff...after having been warned repeatedly to desist from such conduct. did wilfully disrerard the lawful order of the court...concerning:
>
> Defendant persisted in testifying not withstanding earlier warnings of the Court that he could not testify while acting as as his own counsel and not under oath.

How could all of this have happened in just one line of trial transcript?

Obviously the Court's account of what led to the sanction is a total fiction. Therefore, Contempt Order 6 is also **void,** for reasons previously explained.

6) Contempt Order Number 7

In Schiff's attempt to cross-examine Special Agent, Sam Holland, the Court said (TP 3837), "You can't cross-examine this witness on what someone else said." (4) Schiff then says, "What he just said contradicts another statement by another Government witness. Can I impeach his testimony based on what another Government witness said?" The Court says: "You can impeach his testimony, but this was not gone into on direct." I then say to Mr. Holland, "You've heard of Tax Court; is this correct? "Yes, I have." "What is the function of Tax Court?" The Government objects to the question as, "Beyond the scope of direct," and the Court sustains.

Then Schiff asks Holland, "You said you heard my (radio) show; right?" "You tuned in almost every week; right?" "Most weeks." Schiff then asks, "Now, you heard me continually offer $5,000 to anybody who would call the show and site any statute that stated you had to pay income taxes, didn't you?" "Yes." "Okay. Why didn't you call in?" "Believe me, I wanted to." (This colloquy took place on TP 3838, and on TP 3841 Holland explains why he didn't call in.) He said, "I am a criminal investigator, Mr. Schiff. My job is to investigate criminal violations of the Internal Revenue Code."

4) However the Court allowed the Government to cross-examine me based upon the derogatory things Federal judges had said about me, in decisions that had never been raised on direct.

Schiff then asks, "Well wouldn't you want to stop me from misleading the public?" Answer: "That's why we are here."

On pages 3838-3840, I question Holland about whether he heard me call the U.S. Attorney's office to offer anybody there the $5,000. Holland says that he heard me call the U.S. Attorney's office, but "couldn't recall specifically what you said." However he did say, "I do recall you calling the U.S. Attorney's office on --a couple of occasions." Further on Schiff asks, "In any case, a lot of IRS people listened to my program, didn't they?" "That's correct." On page 3842 I question Mr. Holland as to why he never called into my radio show, if only to prevent me from misleading thepublic. My indictment accused me of disseminating "false and fraudulent" income tax information. If this were so, why would I make such an offer on a radio show heard regularly by numerous IRS agents who could claim the reward while at the same time exposing me as a fraud?

On page 3842, the Court says (without getting an objection from the Government), "I've ordered you to stop this nonsense." First of all, the Court had issued no such "order," and secondly, my questions were not "nonsense," since they went to the heart of the trial --the issue of "wilfullness." The Government claimed I didn't believe what I said about the income tax. But here I was establishing through a key Government witness that while on the air I call the U.S. Attorney's office, and make an offer about their being no law requiring the public to pay income taxes, and though the offer is heard repeatedly by numerous IRS agents, nobody calls in to refute me,and claim the reward.

Then the Court says. "I've ordered you to stop testifying." (Schiff still can't figure out that, because he refers to himself in the first person and not in the third person, according to Judge Dawson, he is

"testifying." Still bewildered by the Court's claim that he is "testifying," Schiff says: "I'm not testifying...I think he had a duty to call my show." The Court then says, "You just did. You made another theatrical speech. **Sanctions.**"

In allegedly "setting forth **in detail** the **factual basis**" of this contempt conviction, the Court states:

> Defendant Irwin A. Schiff...having been warned repeatedly to desist from such conduct, did wilfully disregard the lawful orders of the Court...concerning:
>
> Persisted in testifying while not under oath after being warned by the Court numerous times.

"Wilfull" in criminal statutes means something done "knowingly" and "intentionally." Schiff kept insisting that he wasn't "testifying." Why didn't the Court inform SChiff that by refering to himself in the first person (instead of in the third person), in the eyes of the Court, he was "testifying." All the Court had to do when Schiff said, "I'm not testifying," is to say, "When you refer to yourself in the first person you are, so stop doing that." (But then the Court would not have had an excuse to disrupt Schiff's cross-examination of witnesses.) Therefore, Schiff could not have been testifying "wilfully," since he did not know in what way he was "testifying" and Judge Dawson wouldn't tell him on what basis he was doing so.

In addition, the Court did not "repeatedly" order Schiff to stop testifying. And the Court's reference to Schiff's cross-examination of Special Agent Holland as "nonsense" and / constituting "theatrical speech" was the Court's partisan way of belittling and demeaning Schiff's pro se effort's to defend himself, while sending a message to the jury that they did not have to give much credence to Mr. Holland's / rather significant, cross-examination testimony.

Based on all of the above, the Court's Contempt Order No 7 **is void**,

since it did not "set forth **in detail the** factual basis of the contempt conviction, " as required by Rule 42(b) and the Ninth Circuit's Judgment. What the court set forth were false, conclusionary allegations.

7) Contempt Order Number 14

Sanction 14 was imposed as a result of Schiff's asking the jury,in his final summation,to look at page 227 of his book, "The Federal Mafia," which had been entered as a full exhibit at his trial. On that page, Schiff had reproduced Judge Peter Dorsey's supplemental, jury instruction (given after the jury had declared itself "hung," and sent out again pursuant to an "Allen" charge) in which he instructed the jury that they could find Schiff guilty of tax evasion even if the Government did not prove the act of evasion - concealing his income - as charged in his indictment. On the next page , Schiff reproduced excerpts from an article that appeared in the "Journal of Taxation" (February, 1987), which pointed out that the supplemental instruction, "Was clearly wrong, because it permitted the jury to convict...the defendant of the felony of tax evasion, even if it found that he had not committed any affirmative acts. This result flatly contradicts the Supreme Court's oft-cited, unanimous decision in **Spies**, 317 U.S. 317 U.S. 492 (1943), never questioned since it was handed down." These pages also contained excerpts from Second Circuit and Fifth Circuit decisions, in which those appellate courts reversed convictions because no affirmative act of tax evasion had been proven. My conviction fell into the exact same catagory. But the Second Circuit did not want to reverse my conviction because of my views on the income tax.

Therefore, in his final summation (TP 5198-5201) Schiff pointed

out to the jury, in pertinent part:

> Judge Dawson's Jury Instruction 18...pointed out that (a defendant) cannot [be convicted] unless [the jury] finds that the government has proved each element. (Brackets included in the transcript)
>
> Now, when you go in the jury room, you can look at page 227. I was charged (in 1985) with evading taxes by failing to file, failing to pay, and concealing my income. Those are all the elements constituting my crime. So, in order to be convicted, the jury would have had to find ---

However, before I could finish saying, "all three elements proven, but the jury did not," the prosecutor enters an objection and says, "I think Mr. Schiff is trying to relitigate a case that was introduced purely for notice about his tax position being rejected."

First of all, it could not have been notice to me of anything, except that America's system of justice allows a defendant to be found guilty and punished for crimes the Government never proved they committed. Secondly, in 1985 I was charged with failing to file tax returns, so to avoid that possibility, I now filed and reported my income as "zero" basing that claim on a number of Supreme Court cases, Congressional Reports and the wording of Code Section 61. So my "tax position" had not been "rejected" as a result of that alleged conviction, since my "tax position" was different (though both were legally correct) from what it was in 1985. Thirdly I did not intend "to relitigate" the case. I merely wanted to focus on one, supplemental jury instruction - since that's all it would take for anyone of average intelligence to recognize how I had been fraudulently and illegally convicted in 1985 for crimes the prosecutor never proved I committed. And forthly, the Government introduced this case when it cross-examined Schiff after he had testified on his own behalf. Schiff did not raise this case on direct, so it was outside the scope for cross-examination purposes - as both the Government and the Court knew. (See page 20) However the Government got it in, capitalizing on Schiff's ignorance and inexperiance, and the distraction of his being on the stand at the time.

In any case, the Court sustains the Government's objection and also says, "You will not attempt to relitigate this case." Schiff then says (TP 5200),"Well, the Government brought up the case (wanting to use it against me.)" The Court says, "They brought it up for notice to you, sir." Then Schiff immediately points out, "It's not notice to me when I was illegally convicted." Judge Dawson then says, "That's is your opinion." However, Judge Dawson also knew it was the opinion of the "Journal of Taxation," since he would not allow me to bring up the case and the article on direct. And he also knew that it had to be the opinion of anyone who claimed to know anything at all about criminal law.

Therefore, in response I said, "No, it's not only my opinion ---," but before I can finish the sentence with, "--it's also the opinion of the "Journal of Taxation," Judge Dawson cuts me off, and again says "That's your opinion," again misleading the jury into thinking that only I, a disgruntled, convicted felon, could believe my 1985 conviction could have been illegal. Struggling against the prospect of being framed again, Schiff says, "For those of you, when you take my book back into the--," but before I can say, "jury room," the Court says, "Mr. Schiff, I have sustained--" interrupting, Schiff says, "Well my case was written up in the 'Journal of Taxation'---." THE COURT:"I sustained--." SCHIFF: "--and even--." THE COURT: "--the objection--." SCHIFF:"--they said I wasn't convicted." THE COURT: "Your view of what it's about is irrelevant." If my "view" of what the case is "about" is"irrelevant" --how could it be "notice" to me? Totally frustrated by the Covernment and the Court's blatant attempt to use against me an illegal conviction (which had been egrgiously introduced), and without

allowing me to point out to the jury on what basis the Government got that conviction (since it might help them understand on what basis the Government was trying to get this one). Therefore, I say to thejury, "Go to page 228 and see what the 'Journal of Taxation' had to say about my conviction. Even they said I wasn't convicted." The following dialogue, in relevant part, then ensues. THE COURT: "Mr. Schiff--" SCHIFF: "All right." THE COURT: "--**sanctions**--." SCHIFF:"Sanctions." THE COURT: "--for disregarding the ruling of the Court." SCHIFF: "How many days is that?" (Since the Court had been doubling the penalty with each sanction.) THE COURT: "**Sanctions again.**" SCHIFF: "The Government is bringing up cases, and you will not let me show (the jury) why these cases are invalid. Okay." THE COURT:"You will give closing argument - and respect the rulings of the Court."

In allegedly "setting forth **in detail** the factual basis of the contempt conviction," the Court states:

> Defendant Irwin A. Schiff...having been warned repeatedly to desist from such conduct, did wilfully disregard the lawful orders of the Court...concering:
>
> Did persist in arguing with, interrupting, and disregarding the rulings of the Court and testifying while not acting in the capacity of a witness.
>
> In so doing, the Defendant delayed and disrupted the trial and obstructed the Court in its administration of justice.

However, in "setting forth" the "details" of this contempt conviction Judge Dawson does not mention that it occurred while Schiff was making his final summation to the jury, in which he sought to put his 1985 tax evasion conviction - which the Government egregiously now sought to use against him - into its proper perspective.

Schiff mentioned to the jury that they could turn to page 227 of his book - which had been entered as a full exhibit and which would be with them in the jury room- and read Judge Dorsey's supplemental, jury instruction, in which he instructed Schiff's 1985 jury, that it could convict Schiff of tax evasion, **even** if it found that the Government did not prove that act of evasion he was charged with committing.

Schiff also sought to direct the jury to page 228, to see how the prestigious "Journal of Taxation" regarded Schiff's 1985 conviction. However, Judge Dawson's Contempt Order does not mention how the Court prevented Schiff from pointing out both of these facts to the jury, while, at the same time, trivializing what the "Journal of Taxation" said in its article, even though the Court was allowing the Government to use this alleged , criminal conviction against Schiff. On what legal basis could he do so?

Instead, the Court was allowing the Government to use against Schiff a "conviction" that it had to know was unlawful - since the supplemental, jury instruction clearly **violated** Judge Dawson's own Jury Instruction 18, which

was that the Government had to prove each element of the crime, which the Government did not do,in obtaining Schiff's 1985 conviction. All of these facts were relevant in explaing why Schiff received the 14th sanction - yet they were all omitted from that contempt order. Therefore Judge Dawson's Contempt Order No. 14 is void, since he did not comply with Rule 42(b) and the Ninth Circuit's ruling, as has been previously explained.

8) **Contempt Order Number 15**

As covered on page 26 sanction 15 was imposed immediately after sanction 14. They were actually separated by only five lines on TP 5201. All Schiff said before being sanctioned was: "Sanctions"; "That's another 20--"; and "How many days is that?."

In allegedly setting"forth **in detail** the factual basis of the contempt order";Judge Dawson states, in relevant part:

> Defendant Irwin A. Schiff...having been warned repeatedly to desist from such conduct, did wilfully disregard the lawful order of tge Court...concerning :
>
> Did continue to disregard the rulings of the Court, argue with, and interruptthe Court with continued outbursts.

Defendant Schiff alleges that none of the above happened in only five lines of transcript. In any case, the Contempt Order "sets forth"no "details" in explaining how the contempt order arose, and, as such, Judge Dawson did not comply with Rule 42(b) and the Ninth Circuit's Ruling, rendering Contempt Order No. 15 void, for reasons previously covered. (6)

II

LEGAL ARGUMENT

In addition, the Court's Order of June 20, 2008 materially and significantly misstates what the Ninth Circuit said in its Judgment of December 26, 2008. This Court stated that the Ninth Circuit stated in its judgment that Schiff...

> Should be aware that the fifteen contempt orders filed by the Court on May 27, 2008 were for the limited

---

6) Defendant Schiff has only addressed 7 of the 15 contempt orders at issue, because he has not,as yet, been able to locate the transcript pages for the other 8 orders. To the extent that he finds them, he will supplement this motion. However, Schiff suggests that there is enough bias and mischaracterization reflected in these 7orders to render all the rest suspect and void. **Falsus in uno, falsus in omnibus.**

> ministerial purpose of allowing this Court to file criminal contempt orders in accordance with Federal Rules of Criminal Procedures Fed.R. Crim.P. 42(b) and "**to then** reinstate the contempt convictions and reimpose punishment....." (d.at 1117)

However, the Appellate Court said the following on page 1119:

> We remand to the district court to allow it to file the requisite fifteen contempt orders. (citations omitted) On remand, the district court **may reinstate** the contenpt convictions...

"May reinstate," is entirely different from "to then reinstate." "May reinstate" is not"mandatory," nor does it mean "automatic." It means "optional." But how can the imposition of the fraud penalties be automatic if their imposition is made subject to the issueance of contempt orders which are required to "set forth in detail the factual basis of the contempt conviction?" Suppose the contempt orders do not do that? Suppose the "requisite" contempt orders are false, fraudulent, misleading and deficient - can the contempt penalties be reimposed anyway? Then why were they required to be issued? What purpose do they serve? There is a Latin maxim that says, "Anything contrary to logic can not be unlawful," (or words to that effect). And it certainly is not logical to contend that fraud penalties, vacated for want of contempt orders, can automatically be reinstated ,even if the subsequent contempt orders do not meet the requirement of the law, but are false, fraudulent, misleading, as well as deficient, and reveal an abuse of discretion. Such a contention offends common sense and cannot be lawful.

The Ninth Circuit also pointed out in its Judgment (page 1119) , citing U.S. v. Marshall, 451 F2d. 472 (9th Cir. 1971) that "the function of the certificate [of contempt]...(was)...to permit an an appellate court to review the judge's action." Since there

were no certificates of contempt prior to May 27, 2008 the Ninth Circuit had no lawful basis "to review the judge's action."

In his Order of June 20, 2008, and at the video hearing held on June 24, 2008, Judge Dawson took the position that the fraud penalties were to be imposed automatically (regardless of what they contained), and the defendant was barred from challenging them in any way. If this is so, why did the Ninth Circuit require the district court to issue them, if it was never going to review or consider them? However the Ninth Circuit can never review or consider them, if the defendant does not make an appeal based on the insufficiency or false character of the orders. But first he would have to bring his claims to the attention of the trial court- which the trial court will not allow him to do, so the Ninth Circuit will never be able to"review(the validity, sufficiency, and lawfulness of) the judge's action."

In his Order of May 27, 2008, Judge Dawson takes the position that the contempt orders serve no material purpose, but were created for some (undefined) "limited ministerial purpose." However, the Ninth Circuit (again quoting US v. Marshall) pointed out that, the court in Marshall "emphasized that contempt orders are 'more than a formality'" and apparantly vacated the contempt orders then before it because it found, "the contempt orders at issue insufficient because they contained '[c]onclususory language and general citations to the record." The 9th Circuit also cited In re Contempt of Greenberg, 849 F2d 1251, 1254 (9th Cir. 1988) in which the court "rejected the government's argument that the district judge's failure to certify...could be cured by looking to the trial transcript...runs

contrary to the explicit language of Rule 42(b) as well as every case of which we are aware...holding that a contempt order must set forth the specific facts giving rise to the contempt." (at page 1119, citations omitted.) But suppose the contempt order doesn't do that? It makes no difference? The contempt penalties can be imposed anyway? And without opportunity for the defendant to show that the contempt orders are false and insufficient?

III

ADDITIONAL LEGAL ARGUMENT

A contempt criminal proceeding is an independant criminal action and must be conducted in accordance with priciples and rules applicable to criminal cases. U.S. v. Peterson C.A. Utah 1972, 456 F.. 2d 1135. In a criminal contempt proceeding, the accused is clothed with the presumption of innocense and the government has the burden of proving guilt beyond a reasonable doubt. Hood v. U.S. C.A. Tex. 1964, 326 F. 2d 33. See also, In re Van Meter, C.A. Iowa 1969 413 F.2d 536; and D.C.N.M. 1971, 331 F.Supp. 819. Criminal contempt proceedings must satisfy due process standards and other constitutional safeguards impressed on all criminal proceedings, including notice of criminal contempt and proof of guilt beyond a reasonable doubt. Hyde Const. Co., Inc. v. Koehring Co., D.C. Miss. 1974, 387 F. Supp. 702.

IV

CONCLUSION

The ninth Circuit vacated (i.e. "nullified,""cancelled," "made void") the contempt convictions imposed by this Court because the Court failed to impose them pursuant to law. The Court now seeks to reimpose them pursuant to contempt orders issued on May 27, 2008. Obviously to reimpose the contempt orders issued on that date, they would have to

comply with the provisions of 42(b) and the conditions as contained in the Ninth Circuit's Order of June 20, 2008, which Schiff has pointed out in this motion, that contempt Orders 2, 5,6, 7, 14,and 15 (and more to follow), do not, which is why they are void.

THEREFORE, in the interest of justice and due process of law this Court should:

1) vacate contempt orders 2, 5, 6, 7, 14, and 15, since they are void for the reasons stated herein;

2) vacate the orders not analyzed, since they would be void on the same basis as those orders listed above; or, in the alternative;

3) conduct a hearing in which each contempt order can be challenged - in accordance with the legal principles expressed in the court decisions identified above.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on: July 3 , 2008

Irwin A. Schiff

Contact Information
Irwin Schiff - 08537-014
Federal Prison Camp
PO Box 33
Terre Haute, IN 47808

individuals don't even have to turn over their records in response to an IRS summons!

Despite these acknowledgements, federal judges still order Americans to turn over books and records (especially if those summoned are unfamiliar with the above passages, and don't know how to claim their constitutional rights; though, even then, such claims are often ignored) to the IRS and often impose civil fines on those who don't. One individual told me that a New York district court judge fined him $150.00 per day for every day that he refused to turn over his private records to the IRS.

The point is that if there were any provision in the Internal Revenue Code that required Americans to turn over their private papers and records to the IRS, such a provision would render the Code unconstitutional, just as those IRS manuals say. But since no such provision is contained in the Code, it is not unconstitutional on this ground.

Incidentally, since the IRS' own manuals admit that Americans can not be compelled to turn over books and records, because the information can be used against them—the same reason also applies to income tax returns. If the government can't compel you to turn over books and records, obviously, it can't compel you to turn over a **summary of them,** which, after all, is what **an income tax return really is!**

How Surrendering One Right Compels You to Lose Another

It is possible (as the IRS manuals admit) to avoid audits completely. I have never been audited in my life (see Figure 2-10 for newspaper accounts of such IRS audit attempts). However, the government **punishes** those Americans who do not choose to be audited!

Once you file an income tax (waiving your Fifth Amendment right), swearing that you had a given amount of taxable "income" (you didn't, but were tricked into thinking so) less your related exemptions and deductions, the IRS takes the position that **unless you can prove your deductions,** they can re-compute your tax based only on the gross income you reported and can *disallow* all of your claimed exemptions and deductions! Thus if you refuse to submit to an audit on *constitutional grounds,* as those IRS manuals claim you have a perfect right to do, you are **punished for doing so** by having a higher tax (and additional penalties) levied against you. So, if the United States can fine you (by imposing higher taxes and other penalties) for claiming the constitutional rights *it claims you have*—then, obviously, you *don't* have those rights *at all!*

FIGURE 2-9

Handbook for Special Agents

342.12 *(1-18-80)* 9781
Books and Records of An Individual

(1) An individual taxpayer may refuse to exhibit his/her books and records for examination on the ground that compelling him/her to do so might violate his/her right against self-incrimination under the Fifth Amendment and constitute an illegal search and seizure under the Fourth Amendment. [*Boyd v. U.S.; U.S. v. Vadner*] However, in the absence of such claims, it is not error for a court to charge the jury that it may consider the refusal to produce books and records, in determining willfulness. [*Louis C. Smith v. U.S.; Beard v. U.S.; Olson v. U.S.; Myres v. U.S.*]

(2) The privilege against self-incrimination does not permit a taxpayer to refuse to obey a summons issued under IRC 7602 or a court order directing his/her appearance. He/she is required to appear and cannot use the Fifth Amendment as an excuse for failure to do so, although he/she may exercise it in connection with specific questions. [*Landy v. U.S.*] He/she cannot refuse to bring his/her records, but may decline to submit them for inspection on constitutional grounds. In the Vadner case, the government moved to hold a taxpayer in contempt of court for refusal to obey a court order to produce his/her books and records. He refused to submit them for inspection by the Government, basing his refusal on the Fifth Amendment. The court denied the motion to hold him in contempt, holding that disclosure of his assets would provide a starting point for a tax evasion case.

342.15 *(1-18-80)* 9781
Waiver of Constitutional Rights

(1) The privilege against self-incrimination must be specifically claimed, or it will be considered to have been waived. [*Lisansky v. U.S.*] In Nicola v. U.S. the taxpayer permitted a revenue agent to examine his books and records. The taxpayer was indicted for income tax evasion and invoked his constitutional rights under the Fifth Amendment for the first time at the trial, by objecting to the revenue agent's testimony concerning his findings. The court said, on the question of waiver:

"But he did not refuse to supply the information required. Did he waive his privilege? The constitutional guarantee is for the benefit of the witness and unless invoked is deemed to be waived. Vajtauer v. Commissioner of Immigration (supra). Was it necessary for the defendant to invoke it in the first place before the revenue agent or could he wait until his trial on indictment for attempting to evade a part of his income tax? (Cases cited) *** It was necessary for him to claim immunity before the Government agent and refuse to produce his books. After the Government had gotten possession of the information with his consent, it was too late for him then to claim constitutional immunity."

(2) A taxpayer who makes verbal statements or gives testimony to agents during an investigation, or at a Tax Court trial, may still rely upon his/her constitutional privilege and refuse to testify at trial of his/her indictment for tax evasion. [*U.S. v. Vadner*] However, any statements inconsistent with his/her innocence may be used against him/her as admissions. [4 Wigmore, *Evidence,* (3d Ed.), Sec. 1048]

(3) If a witness has testified at a trial and voluntarily revealed incriminating facts, he/she cannot in the same proceeding avoid disclosure of the details. [*Rogers v. U.S.; Ballantyne v. U.S.*] However, waiver of constitutional rights will not lightly be inferred, and no specific language is required in asserting them. [*George Smith v. U.S.; Quinn v. U.S.; Emspak v. U.S.*] In the language of the Quinn case:

"It is agreed by all that a claim of privilege does not require any special combination of words. Plainly a witness need not have the skill of a lawyer to invoke the protection of the Self Incrimination Clause. *** As everyone agrees, no ritualistic formula is necessary in order to invoke the Privilege."

EXHIBIT A

Union Calendar No. 1635

83D CONGRESS
2d Session

SENATE

REPORT
No. 1622

INTERNAL REVENUE CODE OF 1954

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

TO ACCOMPANY

H. R. 8300

A BILL TO REVISE THE INTERNAL REVENUE LAWS OF THE UNITED STATES

JUNE 18, 1954.—Ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1954

EXHIBIT B

Excerpt, p. 83

But the limitations in subsection (d) provide that this amount must be reduced as follows:

Retirement income	$1,200
Less railroad-retirement pension	600
	600
Less earned income in excess of $900	400
	200
	×20%
Retirement income credit	40

Therefore, the correct tax is $205.20 less $40, or $165.20.

This section will not apply if the taxpayer elects to use the "short form" return and have the tax computed by the Commissioner under section 6014.

Section 38. Overpayments of tax

This section, which is identical with section 39 of the House bill, contains a cross-reference to section 6401, relating to credit against tax imposed by this subtitle for overpayments of tax.

SUBCHAPTER B—COMPUTATION OF TAXABLE INCOME

PART I—DEFINITIONS

Section 61. Gross income defined

This section corresponds to section 61 of the bill as passed by the House, except that one clarifying change has been made in section 61 (a) (13) in order to conform that section with section 702 (c), which provides that in any case where it is necessary to determine the gross income of a partner, such amount shall include his distributive share of the gross income of the partnership.

This section corresponds to section 22 (a) of the 1939 Code. While the language in existing section 22 (a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61 (a) is as broad in scope as section 22 (a).

Section 61 (a) provides that gross income includes "all income from whatever source derived." This definition is based upon the sixteenth amendment and the word "income" is used as in section 22 (a) in its constitutional sense. It is not intended to change the concept of income that obtains under section 22 (a). Therefore, although the section 22 (a) phrase "in whatever form paid" has been eliminated, statutory gross income will continue to include income realized in any form. Likewise, no change is effected by the elimination of the specific reference to compensation of the President and judges of courts of the United States, and the compensation of such individuals will continue to be taxed in the same manner as that of other taxpayers. In view of the fact that certain types of income are excluded from gross income by other sections of the income tax subtitle of the new code, section 61 (a) contains a clause excepting such income from the general definition of gross income.

After the general definition there has been included, for purposes of illustration, an enumeration of 15 of the more common items constituting gross income. It is made clear, however, that gross income
169 is not limited to those items enumerated. Thus, an item not named specifically in paragraphs (1) through (15) of section 61 (a) will nevertheless constitute gross income if it falls within the general definition in section 61 (a).

First, the taxpayer must compute his tax before the credit, as follows:

Adjusted gross income	$2,600
Less standard deduction	260
Less personal deduction	2,340
	1,200
Taxable income	1,140
	×20%
Tax before any credit	228
Less dividends received credit under sec. 34	35
Tax before retirement income credit	193

Next, the taxpayer must compute his retirement income credit, as follows:

Retirement income includes—	
Dividend income	$700
Rental income	600
Total retirement income	1,300

But the limitation in subsection (d) provides that this amount must be reduced as follows:

Retirement income	$1,200
Less railroad retirement pension	600
	600
Less earned income in excess of $900	400
	200
	×20%
Retirement income credit	40

Therefore, the correct tax is $193 less $40, or $153.

This section will not apply if the taxpayer elects to use the "short form" return and have the tax computed by the Commissioner under section 6014.

Section 39. Overpayments of tax

Section 38 of the bill contains cross reference to section 6401, relating to credit against tax imposed by this subtitle for overpayment of tax.

SUBCHAPTER B—COMPUTATION OF TAXABLE INCOME

PART I—DEFINITIONS

Section 61. Gross income defined

This section corresponds to section 22 (a) of the 1939 Code. While the language in existing section 22 (a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61 (a) is as broad in scope as section 22 (a).

Section 61 (a) provides that gross income includes "all income from whatever source derived." This definition is based upon the 16th Amendment and the word "income" is used in its constitutional sense. Therefore, although the section 22 (a) phrase "in whatever form paid"

EXHIBIT-B2

Excerpt, p. 82

83d Congress, 2d Session House Report No. 1337

INTERNAL REVENUE CODE OF 1954

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H. R. 8300

A BILL TO REVISE THE INTERNAL REVENUE LAWS OF THE UNITED STATES

MARCH 9, 1954.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
44140° WASHINGTON : 1954

1132.75 *(12-21-87)*
Criminal Investigation Division

The Criminal Investigation Division enforces the criminal statute applicable to income, estate, gift, employment, and excise tax laws (other than those excepted in IRM 1112.51) involving United States citizens residing in foreign countries and nonresident aliens subject to Federal income tax filing requirements by developing information concerning alleged criminal violations thereof, evaluating allegations and indications of such violations to determine investigations to be undertaken, investigating suspected criminal violations of such laws, recommending prosecution when warranted, and measuring effectiveness of the investigation processes. Assists other Criminal Investigation offices in special inquiries, secures information from foreign countries relating to tax matters under joint investigation by district offices involving United States citizens, including those involved in racketeering, stock fraud and other illegal financial activity, by providing investigative resources upon district and/or the Office of the Assistant Commissioner (Criminal Investigation) requests; also assists the U.S. attorneys and Chief Counsel in the processing of criminal investigation cases, including the preparation for the trial of cases.

EXHIBIT C