The following Memorandum of Law, submitted in support of my Motion to Suppress all of the alleged "evidence" seized by IRS Special Agents in their raid on Freedom Books on February 11, 2003, clearly establishes that ***ALL*** such IRS raids are illegal on a ***variety*** of grounds. However there are numerous Americans now sitting in jail and others awaiting sentencing whose very convictions are based on "evidence" derived from such patently illegal, IRS searches and seizures. The following also clearly reveals how Justice Department lawyers ***openly lie*** in pleadings they file with our "courts" in order to justify searches and seizures ***they know are illegal***. What more proof does anyone need that the Justice Department's motto "Not to gain a conviction, but to see justice done," is a totally meaningless and empty claim – which also applies to a good deal of what passes for as "justice" in American courts.

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF LAS VEGAS**

| | | |
|---|---|---|
| UNITED STATES | ) | CRIMINAL INDICTMENT |
| | ) | |
| Plaintiff | ) | CR-S-04-0119-KJD (LRL) |
| | ) | |
| V | ) | MEMORANDUM TO |
| | ) | SUPPRESS EVIDENCE |
| IRWIN SCHIFF, CYNTHIA NEUN | ) | |
| And LAWRENCE N. COHEN, a/k/a/ | ) | |
| LARRY COHEN, | ) | |
| Defendants. | ) | |
| _____ | ) | |

COMES NOW the Defendant in this action and sets forth in this Memorandum of Law

the points and authorities that establish that all of the evidence gathered by the government and upon which all of the counts in this indictment are based, were all secured on the basis of an illegal search warrant and an illegal search and seizure based on that illegal warrant – all in violation of Defendant's 1st and 4th Amendment rights.

STATEMENT OF FACT

On February 11, 2003 at about 7:00 A.M., approximately 15-20 armed, Special Agents of the Internal Revenue Service entered, searched and seized some 14,000 documents from the business premises of Irwin Schiff, located at 444 E. Sahara Ave., Las Vegas, NV. Irwin A. Schiff is the owner of Freedom Books. Freedom Books publishes and distributes a number of books written by Irwin Schiff. These books deal largely with exposing the destructive nature of the federal income tax, how the tax is illegally extracted by the government in violation of the actual laws written by Congress, and the limitations placed on Congress' taxing powers by the Constitution. The books and other published material also offer the public procedures that hopefully might protect them from these illegal government activities. The agents served the attached warrant, EXHIBIT A on Irwin Schiff when he arrived at the premises at approximately 7:30AM and did not serve him with an affidavit, which was sealed The warrant was issued on application of IRS Special Agent David W. Holland who certified that the property sought to be seized was "concealed" on the premises and was needed since it allegedly concerned (as stated in attachment B) the "advice or assistance in the violation of income tax laws, including advice on hiding assets and ***income***, provided by Irwin Schiff, Cindy Neun or anyone affiliated with Freedom Books; showing the flow of money (in connection with) ***income*** generating activity …revealing the existence of ***personal income***…or showing the hiding or ***concealing of income***…." for the period January 1, 1991 to the present. Thus the "concealing" of taxable "income" and the making of false representations with respect to such "income" was fundamental to the issuance of the warrant. The agents remained on the premises until about 3:00PM and removed numerous documents, files, entire file cabinets (without identifying the file folders contained in those cabinets), papers, documents, rolodexes, appointment calendars, files on ongoing civil cases, service contracts on office equipment and other contracts, newspaper articles, all manner of research material, tax returns filed by Schiff, virtually every piece of paper, disc, tape, memo, note, fax, etc., in sight. In addition they downloaded the contents of several computers, rendered our entire phone system inoperable, and turned all of our surveillance cameras towards the wall. Special Agent Holland along with two or three Special

Agents physically restrained Schiff from entering the premises during the search and seizure and read him his Miranda rights while doing so. As the agents were leaving, Special Agent Holland handed Schiff an uncertified and unsigned (deficient) 25 page inventory of the documents seized. (Attached as Exhibit B)

## LEGAL ARGUMENT

### I

### The Search Warrant Was Applied For On the Basis of Fraud

Apart from Special Agent Holland having no authority to apply for and/or execute search warrants (as the following will show), the entire basis for the warrant was based on fraud. For one thing, Special Agent Holland represented to Magistrate Leavitt that the documents intended to be seized were "concealed" on the premises to be searched. Based on that assurance Magistrate Leavitt stated on the face of the search warrant that "I am satisfied that…..the…property so described is now *concealed* on…the premises described." (Emphasis added). ***That claim was totally false***. None of the documents seized were "concealed" in any way. A good portion of the documents seized were contained in large, three ring binders kept on open shelves in Freedom Book's shipping department, while all of the rest of the documents were in ordinary, office filing cabinets or on desktops, or in desks drawers, all of which were in plain sight. All of the documents seized were kept in the normal, business manner where all the documents were easily accessible to employees of Freedom Books and the raiding party. None of documents were kept under lock and key including checkbooks, banks statements and other financial documents. Therefore, none of the documents seized were "concealed" in any way. So the repeated claim in the warrant that the documents at issue were "concealed," was a ***total fabrication.***

In addition, as stated on page A 18 of House Report 1622, and page 168 of Senate Report 1622, 83rd Congress, 2d Session (attached as Exhibit C), "income", as used in Section 61 of the 1954 Code, is used in its "constitutional sense." However, "income" as used throughout "Attachment B" of the search warrant, is used in its "ordinary sense," not in its "constitutional sense" as mandated in those congressional reports. Consequently, the term "income" was used *erroneously and fraudulently* throughout the search warrant. Therefore, overlooking the numerous illegal aspects of the search and seizure (as will follow), the fundamental premises upon which the search warrant was based, **were also false**. None of the seized documents were

"concealed," and none of the "income" referred to in the search warrant was the type of "income" that was made taxable as "income" as shown in those congressional reports.

**B**

**THE SEARCH WARRANT AT ISSUE WAS ILLEGALLY APPLIED FOR, ILLEGALLY ISSUED, AND ILLEGALLY EXECUTED**

1.

Rule 41(a) of 18 U.S.C. provides that search warrants shall only be issued "upon the request of a federal law enforcement officer"; however, Special Agents of the IRS are not "law enforcement officers," as the following, numerous exhibits will prove. Attached, as Exhibit D is 26 CFR 1.274-5T(k)(6)(ii). It specifically states, in relevant part, that "The term 'law enforcement officer…does not include Internal Revenue Service special agents."[1] In addition, Rule 41(h) of Title 18 further requires that such "law enforcement officers" must be "within any category of officers authorized by the Attorney General to request the issuance of a search warrant." It was my contention when I had earlier filed for return of the documents at issue pursuant to Rule 41(e) (Freedom Books v. U.S., MJ-S-03-0029-LRL-LRL), that 1) Special Agents were not law enforcement officers and 2) would not be included in that Attorney General list. In its Reply Brief of March 28, 2003 (at page 4) the Government claimed that my claim that Special Agents were 1) not law enforcement officers and 2) would not be found on that Attorney General list was "a completely frivolous argument" and argued that Special Agents **were** law enforcement officers and fell "within the category of officers authorized by the Attorney General to request the issuance of a search warrant. Fed. R. Crim. P. 41(h); 28 C.F.R. 60.2." Therefore, it was the government's contention that Special Agents *were included* in 28 C.F.R. 60.2. In addition, the government also claimed that 26 USC 7608 "grants (special agents) authorization to execute search warrants, seize property, and carry firearms." As the following will show, *both claims* were blatantly false.

**2**

**28 C.F.R. 60.2 Does Not Authorize Special Agents to Apply for Search Warrants**

Exhibit E is a copy of 28 C.F.R. 60.2. It contains specific references to Special Agents of *nine* different government agencies, but Special Agents of the IRS *are not included in that list.* There is absolutely no suggestion in 28 C.F.R. 60.2 that Special Agents of the IRS fall within this regulation as should be apparent to anyone reading this regulation. The listing of numerous

Special Agents of other federal agencies but the omission of *any* reference to Special Agents of the IRS is self-evident proof that Special Agents of the IRS do not fall within the provisions of 28 C.F.R. 60.2. Therefore, the claim by AUSA Malissa Schraibman that Special Agents of the IRS Special Agents fall within this regulation can be seen to have been fictitious and an obvious violation of Rule 11. As stated by the 9th Circuit in *Murphy v. Lanier*, 98-5575 filed on 2/25/2000.

> The express reference to state court jurisdiction does not mean that federal jurisdiction also exists; *instead, the failure to provide for federal jurisdiction indicates that there is none.*

Similarly, 28 CFR 60.2's specific reference to Special Agents of nine other agencies but its failure to mention Special Agents of the IRS clearly means that IRS Special Agents do not fall within this Regulation. Therefore, the search warrant at issue was illegally applied for and illegally issued *just on this ground alone*. Therefore, if Defendant could make no other argument as to why all of the evidence derived from that warrant would have to be suppressed, Defendant has already made his case. There can be ***no argument*** but that the search warrant was illegally applied for and illegally issued in obvious violation of *Fed. R. Crim. P. 41(h)* to say nothing of 41(a). However the warrant and search and seizure were illegal on **numerous other grounds**. However, Defendant should not have to proceed beyond this point to establish why all of the evidence derived from the warrant must be suppressed. **It was illegally issued pursuant to the provisions of Rule 41(h).**

3.

**26 USC 7208 Does Not Authorize IRS Special Agents To Carry Firearms Or Execute Search Warrants**

In addition, AUSA Schraibman also claimed in her reply of March 28, 2003, that 26 USC 7608 "grants (special agents) authorization to execute search warrants, seize property, and **carry firearms.**" This too was also a false claim *on a variety of grounds* – as she also had to know.

Section 7608 (Exhibit F) is broken down into subsections (a) and (b). Subsection (a) clearly states it applies *only* to the "Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms." Subsection (a)(1) of section 7608 specifically provides that IRS agents

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[1] Therefore, Defendant should not have to proceed any further than this to establish that the search and seizure was illegal, since it was based on an illegally issued warrant. However, for a variety of reasons, he is compelled to prove this point overwhelmingly – which he will proceed to do.

who fall within that subsection can "carry firearms." Section 7608(b), specifically states that it pertains to the "Enforcement of laws relating to internal revenue *other than* subtitle E" – which could include subtitle A which pertains to income taxes. However, unlike subsection (a), there is no provision in subsection (b) that authorizes the "carrying of firearms." Therefore, no such authority can apply to IRS agents involved in enforcing the income tax, since all such agents (regardless of the additional limitations imposed on them by subsection (b)) must fall into subsection (b). They are precluded from falling into subsection (a).

Under the rules of statutory construction (as expressed in, *Murphy v. Lanier,* supra), statutory language and terms are given their plain meaning unless otherwise defined. (See American Tobacco Co. v. Patterson, 456 U.S. 63,58, 102 S.Ct. 1534, 1537, 71 L.Ed.2d 748 (1982), and Perrin V. United States, 444 U.S. 37,42, 100 S.Ct. 311, 314, 62 L.Ed.2dse 199 (1979). In this case, 7608 specifically grants agents enforcing liquor, tobacco, and firearms taxes the authority to carry firearms, but specifically omits granting similar authority to any category of IRS agents enforcing laws involving income taxes. Nowhere in this statute, or any other statute, are IRS agents of any description granted the authority to carry firearms in the enforcement of income taxes. Therefore, the IRS agents who raided Defendant's business were in clear violation of 26 USC 7608 and any contrary argument by the government will constitute an **obvious** Rule 11 violation.

4.

**26 U.S.C 7608 Gives No Authority Whatsoever to IRS Special Agents**

But not only doesn't Section 7608 give any authority to Special Agents to carry firearms, Section 7608 does not give them any authority to execute search warrants or seize property as claimed by Melissa Schraibman in her response as referred to earlier.

It is clear that subsection (a) of Code section 7608 *only* deals with subtitle E. taxes. Subsection (b), on the other hand, only deals with, " any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue law (or) any other criminal provisions of law relating to internal revenue….which the Secretary has delegated investigative authority to the Internal Revenue Service." Therefore Section 7608(b) only gives authority (provided the Secretary of the Treasury, in a published delegation order, has delegated such authority) to the **Intelligence Division of the IRS** and not to the **Criminal Investigation Division (CID)**, the division to which Special Agents belong. The fact that the Intelligence Division of the IRS is

**separate** from the CID is shown by the attached Treasury Regulations 301.7623 & 7624 (Exhibit G). Section 301.7623(d) and (f) specifically refer to the "Director, Intelligence Division, Washington D.C. 20224" while Section 301.7624(b)(ii)(2) in examples 1, 3, & 4 refers to "the local IRS Criminal Investigation Division (CID) office." Therefore it is clear that Section 7608(b) by only referring to the Intelligence Division of the Internal Revenue Service is not referring to CID agents. In essence there is no mention of the CID (i.e. special agents) anywhere in 7608. Therefore, the government's claim that 26 USC 7608 grants Special Agents "the authority to execute search warrants, seize property, and carry firearms," is **totally false** and represents *another* Rule 11 violation. Clearly, no such authority appears anywhere in 26 USC 7608. In addition, the government will not be able to produce any, published, delegation order from the Secretary giving IRS Special Agents the authority to execute search warrants and seize property in connection with income taxes. Indeed, as the following will show, The Secretary has *never issued a regulation* giving Special Agents any such authority.

**5.**
**No Statute or Treasury Regulation Exists**
**Giving Special Agents Any Authority**
**To Carry Firearms and/or Execute Search Warrants In Connection With Income Taxes**

Attached, as Exhibit H is an excerpt from the Index of the Code of Federal Regulations. (Markings and arrows have been added). It shows that implementing regulations for 7608 are contained in CFR 27, regulations dealing with liquor, tobacco, and firearms taxes. The Index shows no implementing regulations for section 7608 as falling within CFR 26, regulations dealing with income taxes. This proves that 26 USC 7608 does not even apply to income taxes.

Exhibit I is Treasury Regulation 70.33 as referred to in the CFR Index referencing Section 7608. The regulation states it applies to the "Authority of enforcement officers" of the BATF, and specifically authorizes ATF officers to "(a) Carry firearms;" and (b) "Execute and serve search warrants." The fact that the Secretary has issued no *comparable regulation* for IRS Special Agents, is further proof that IRS Special Agents ***have no authority*** to "carry firearms" and/or "execute and serve search warrants" let alone *apply* for them as the government falsely claimed in all of its pleading in connection with MJ-S-03-0029-LRL-LRL. If the government can not provide this Court with a Treasury Regulation that provides the same authority to IRS Special Agents as Treasury Regulation 70.33 provides to BATF agents, then any government claim that IRS special agents have authority to carry firearms, and apply for and execute search

warrants will constitute an obvious violation of Rule 11. If the Government **cannot** produce such a regulation, the government's *only legitimate response* to this motion is "nole contendere."

**6.**
**Federal Statutes Specifically Grant Authority to Federal Agents To Carry Firearms and Execute Search Warrants**

18 USC 3052 provides in relevant part:

> The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may *carry firearms, serve warrants*…" (Emphasis added)

18 USC 3053 provides in relevant part:

> United States marshals and their deputies *may carry firearms* and may make arrests without warrant for *any offense against the United States committed in their presence* or for *any felony* cognizable under the *laws of the United States* if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

18 USC 3056 deals with the authority of the United States Secret Service and provides in subsection (c)(1):

> Under the direction of the Secretary of the Treasury, officers and agents of the Secret Service are authorized to:
> (A) execute warrants issued under the laws of the United States;
> (B) carry firearms;
> (C) make arrests without warrant for any offense against the United States…

18 USC 3061 which deals with the "Investigative powers of Postal Service personnel," provides in relevant part:

> (a) Subject to subsection (b)…Postal Inspectors…may –
> (1) serve warrants….
> (2) make arrests without warrant for felonies cognizable under the laws of the United States…
> (4) carry firearms…
> (5) make seizures of property…

18 USC 3063, which deals with the "Powers of Environmental Protection Agency" provides in relevant part:

> (a) Upon designation by the Administrator of the Environmental Protection Agency, any law enforcement officer of the Environmental Protection Agency…may -
> (1) carry firearms;

(2) execute and serve search warrants
(3) make arrests without warrant for….
(A) any offense against the United States….

18 USC 3107 provides:

> The Director, Associate Director, Assistant to the Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to make seizures under warrant for violation of the laws of the United States.

Thus, in all of the above statutes, F.B.I agents, U.S. Marshals, Secrete Service agents, Postal Inspectors, Environmental Protection agents are all given *statutory authority* to 1) carry firearms, 2) execute and serve search warrants, and 3) make arrest with respect to "any offense against the United States." No such authority is given to IRS Special Agents **in any statute**, and as pointed out previously, even Section 7608(b) does not even refer to Special Agents. In addition, the absence of any implementing regulation in 26 CFR with respect to 7608 (when at least three such regulations appear in 27 CFR) means that section 7608 *does not even apply* to the IRS. Even if we were to assume *arguendo* that Special Agents fall within 7608(b), section 7608(b) would limit their authority to "enforcing" those laws relating to "the criminal provisions of the internal revenue laws" and the seizing of property "subject to forfeiture under the internal revenue laws." However all of the agents described above are authorized by statute to make arrests without warrant for felonies "cognizable under the laws of the United States," while not limiting them to one single area of the law, as does the wording of 7608(b).

Thus, it is obvious that "federal law enforcement officers" as identified in Rule 41(a) are officers who are authorized to 1) carry firearms, and 2) and who are both "engaged in the enforcement of the criminal laws and (fall) within any category of officers authorized by the Attorney General to request the issuance of a search warrant" as is *further* provided in 41(h). The fact that any IRS agent who fell into Code section 7608(b) would not be authorized to enforce "*any offense against the United States"* as are those agents identified above, provides further proof that Special Agents could not – on *any* basis - qualify as law enforcement officers within the provisions of 41(a) & (h). Thus, there is absolutely no basis that would allow the government to claim that Special Agents fall within the provisions of Fed. R. Crim. P. 41(a) & (h) and any attempt on the part of an AUSA to do so would constitute a clear-cut violation of Rule 11.

Therefore, Special Agent David W. Holland was clearly not authorized by any statute or regulation to apply for the search warrant at issue, nor was he and the rest of his raiding party authorized by **any law or regulation** to carry firearms or execute the search warrant at issue.

**7.**
**Even the Job Description of IRS Special Agents Shows They Have No Enforcement Authority Over Defendant**

And finally, attached as Exhibit J is the job description for Special Agents as it appears in the IRS "Organization and Staffing Manual." Note that it specifically states Special Agents of the IRS are only authorized to enforce "the criminal statutes applicable to income, estate, gift, employment, and excise taxes…involving *United States citizens residing in foreign countries* and nonresident aliens subject to Federal income tax filing requirements…" (Emphases added). Since Defendant is a not a "United States citizen residing in a foreign country," nor a "non-resident alien," IRS Special Agents have no legal authority *to interfere with him in any way!* This provides further proof (and the legal consistency of all the documentation discussed above) that Special Agent David W. Holland could not have any legal authority to apply for the search warrant at issue, nor he, and those in his raiding party, have authorization to execute the warrant at issue against the Defendant.[2]

**8.**
**In Addition to Everything Else, Even The Inventory Was Not Prepared According To Law.**

Subsection 41(d) provides "The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken….and shall be verified by the officer." In this case, Mr. Holland also violated both of these provisions. The inventory was not prepared in my presence and it was not even signed, let alone "verified by

[2] It is **also clear** from this job description that Special Agents such as "Sam" Holland are only authorized "to secure 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 U.S. attorneys and Chief counsel in the processing of criminal investigation cases, including the preparation for the trial cases." It is clear from this job description that Mr. Holland's only ***stated authority*** with respect to taxes is to "secure information from foreign countries," while his ***stated*** authority in connection with the "preparation for the trial of cases" is limited to those trials involving "racketeering, stock fraud and other illegal financial activity." It is clear that beyond seeking "information from foreign countries" Mr. Holland has no ***stated authority*** that would allow him to be involved in **income tax investigations** and **prosecutions** in connection with Americans who are not "residing in foreign countries and (who are not) nonresident aliens." It is also clear from their job description, that the Justice Department's extensive utilization of Mr. Holland's services and that of other Special Agents to screen witnesses for the grand jury and other prosecution services in connection with the instant prosecution were ***All UNAUTHORIZED AND ILLEGAL.***

the officer." At least Mr. Holland was consistent. He made sure he violated *every* provision of Rule 41.

**9.**

**The IRS Raiders Seized Documents Totally Outside the Scope of the Search Warrant**

Since all of the above prove **beyond doubt** that all of the documents at issue were illegally seized on a variety of grounds, it should be unnecessary for me to proceed any further to establish why all of the evidence derived from the warrant and search and seizure at issue must be suppressed. However, in the interest of consistency, this Defendant feels a further need to point out to this Court that, in addition to all of the above violations of law, overwhelming numbers of documents seized in the raid fell totally outside the scope of the search warrant both as to content and date. I have included in Exhibit K a representative sample of such documents.[3] These examples by no means provide a complete list of such documents, but merely show the unconstitutional, overbroad character of the search warrant which permitted the agents to seize documents that had nothing to do with the crimes alleged and the provisions of the warrant, and also reveal the callous disregard by the raiding party for the constitutional rights of the Defendants.

For example:

The agents took a *bound,* 1420 page transcript of Defendant's 1980 criminal trial. How could the raiding party have concluded that a bound, 1980 trial transcript fell within the provisions of a search warrant that authorized the gathering of evidence regarding the "concealing" of income, and the alleged defrauding the government of revenue that might have occurred after 1991?

Defendant has included in Exhibit K the following documents as examples of what the agents seized

[3] The documents included in Exhibit K are copies of some the documents that were seized. The government returned these copies to me after being informed (I believe) by the government attorneys who were conducting the civil lawsuit against me, that the documents seized would interfere with my ability to conduct discovery which was then underway. However the copies returned were largely useless since they were returned unsorted and unlabeled. (Exhibit L contains examples of how Schiff's files were maintained and how copies were returned) Subsequently the court issued an order (Exhibit M) ordering the government to "provide Mr. Schiff copies of all seized documents for which Mr. Schiff makes a particularized request in writing. The copies shall be organized and labeled in the same manner as the original were when they were seized." However, despite requests, the government has refused to comply with my requests made in compliance with the court's order.

1) 14 pages of letters, bills, and correspondence (of perhaps 30 that were taken) between me and various lawyers dating back to 1980. The letter I wrote to Alan Dershowitz (K-1-1) sought to make him aware as to why the district court that prosecuted his client Leona Helmsley had no jurisdiction to do so. In any case, how could those executing the search warrant believe that such legal correspondence going back to 1980 fell within the scope of the search warrant?

2) This is the 1st and last page of a 41-page transcript of a Probation Hearing that took place on May 31, 1991. There is no way that such a transcript fell within the scope of the warrant.

3) This is a 19 page Amicus Brief filed by the U.S. on behalf of Simon & Schuster in Schiff *v. Simon & Schuster*, 780 F.2d 61 (1985), yet the search party believed that the government's brief fell within the scope of the search warrant

4) Numerous documents seized were in connection with Defendant's relationship and suit against Simon and Schuster. Included in Exhibit K-4 are: a) the first and last pages of our 12 pages, 1982 contract; b) a sample of misc. correspondence, dated February 1983; and c) the 31-page transcript of Oral Argument that took place on June 5, 1985. All of these documents fell totally outside the scope and time frame of the search warrant.

5) This document was Defendant Schiff's Reply to Judge Peter Dorsey's Request for a Protective Order in connection with Schiff v. Dorsey et al, filed 12/1/1994. How could the search party have believed that such a document fell within the terms of the search warrant?

6) This is the first page and last page of a 15 page transcript of Oral Argument held before the 2nd Circuit on Nov. 13, 1990 in connection with Schiff v. U.S, 919 F.2d 830 (1990). How could the search party have concluded that such a document fell within the scope of the search warrant?

7) These 14 documents are representative of miscellaneous correspondence between Defendant and the Supreme Court that were seized by the search party. How could these documents fall within the terms of the search warrant?

8) This document constituted the 1st and last page of the 12 page, 2nd Circuit decision in *Schiff v. U.S.* 919 F.2d 830 (1990) filed in September 1989. How could this document fall within the provisions of the search warrant?

9) A 33 page Petition for Habeas Corpus including 30 pages of Exhibits.

10) "Exhibit AA" filed with the government in connection with *U.S. v. Schiff*, Civil No. CV - S - 01- 0895- PMP-LRL, together with Exhibits A through R. How does this document

– which was needed by Schiff in connection with a current lawsuit brought against him by the government- fall within the scope of the search warrant?

11) Hundreds (if not thousands) of pages of research material used by Defendant for litigation and writing purposes were seized. For example: a) Material from "Mertens' Law of Federal Income Taxation," b) "The Criminal Code Reform Acts" of 1977, 1979, and 1981, c) the 1895 Pollock v. Farmer' Loan & Trust Co decision, d) the decision in Fuller v. United States, 615 F.Supp1054, showing Defendant's comments, as follows, "Great case use in Book, self-assessment," Phillip v. Commissioner, containing numerous emphasis markings by Defendant.

12) Defendant's Answer in Counterclaim in connection with U.S. v. Schiff, CV- S-01-0895-PMP-LRL, a suit brought against the Defendant by the government and being currently litigated.

13) Defendant's "Judgment and Probation/Commitment Order" dated 6/24/1980

14) 10 Docket Sheets from Defendant's 1978 - 1980 trial, showing entries from 6/1/1978 to 5/29/1980.

**C-1**
**THE WARRANT & SEARCH AND SEIZURE**
**VIOLATED DEFENDANT'S 4th AMENDMENT RIGHTS**

Since all of the documentation supplied to this point has already proved beyond any doubt that the Warrant and Search and Seizure at issue were illegal on a variety of grounds – they automatically violated Defendant's 4th Amendment rights with respect to "unreasonable searches and seizures." A warrant and search and search, illegal on so many grounds would automatically be "unreasonable." However Defendant would be derelict if failed *also* to address how – in this instance - the government displayed a callous disregard for a number of Defendant's constitutional rights in connection with the overbroad nature of the warrant itself, and the lawless and cavalier manner in which it was executed. It is merely indicative of how far down the road to fascism America has traveled since the Supreme Court's 1896 ruling of Boyd v. Untied States, 116 U.S. 616, in which the Supreme Court held:

> Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of a crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Forth and Fifth Amendments run almost into each other. (P 630)

And further:

> (A)ny compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of a crime, or to forfeit his property ***is contrary to the principles of a free government.*** It is abhorrent to the instincts of an Englishman; ***it is abhorrent to the instincts of an American.*** It may suit the purposes of a **despotic power;** but it cannot abide the pure atmosphere of political liberty and personal freedom. (P 632) (Emphasis added)
>
> We have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different ***from compelling him to be a witness against himself***. (p. 633, Emphasis added)

In this case, the Supreme Court held Boyd's civil fine unconstitutional because it was based on **one (1) compelled document** extracted from him. But now a "despotic" United States feels no longer constrained by the 4th and 5th Amendments. In the instant case, the government forcibly seized 14,000 personal documents[4] belonging to Defendant and embarked on a gigantic fishing expedition hoping to find in them some evidence of crimes committed by Schiff alone, and/or in conjunction with others.

Schiff's 5th Amendment "right" to remain silent, as read to him by Agent Holland, was obviously meaningless. If the Government could legally seize a truckload of Schiff's personal records for use against him, what verbal testimony could Schiff withhold, that the Government could not get from his seized, personnel records and the downloading of 5 or 6 of his computers? The total absurdity of Agent Holland reading Schiff his Miranda rights in the midst of what was going on, should be apparent. If the Government can get away with these kinds of "searches and seizures" then the protections afforded Americans by the 4th and 5th Amendments no longer exist; and anyone who can't see that should be declared legally blind.

The 4th Amendment states in material part:

> **(N)o Warrants shall issue but upon probable cause . . . and particularly describing…the things to be seized.**

Federal courts have issued countless opinions discussing the importance, history, and scope of the 4th Amendment, and this Court should note those opinions, which deal directly with the issues in the present case. In U.S. v. Perez-Vega, 250 F. Supp 429, 431 (1966), the court stated

[4] These were personal documents, albeit relating to Defendant's business and to his book writing and publishing On Schiff's computer were six chapters of his forthcoming book which deals with how the federal government illegally enforces the income tax. **The government had no right to see a preview of that book.** However, it has to be rewritten, to include the instant search and seizure and my latest indictment.

that the 4th Amendment is to be construed liberally in order to safeguard the rights of individuals to privacy of their homes **and their place of business as well.** In G.M. Leasing Corp v. U.S., 97 S.Ct 619, 630, 429 U.S. 339 (1977), the Supreme Court held that one of the primary evils intended to be eliminated by the 4th Amendment was the **massive intrusion on privacy undertaken in the collection of taxes.** Further, the essential purpose of the 4th Amendment's prohibition of unreasonable searches and seizures is to safeguard the privacy of individuals against arbitrary invasions conducted solely at the unfettered discretion of government officials. (See, State v. Medley, 898 P.2d 1093, 1096, 127 Idaho 182 (1995)).

In the instant case, the language on the face of the search warrant is extremely and overly broad, giving the IRS agents who raided Defendant's business unfettered discretion as to what to rummage through and seize. The language of the warrant is as follows.

> From the period January 1, 1991(?) to the present **all records** of IRWIN SCHIFF, CINDY NEUN, FREEDOM FOUNDATION, AND FREEDOM FOUNDATION, INC. relating to the federal offenses set forth in this supporting affidavit, showing aid or assistance in the preparation of federal income tax returns…; relating to advice or assistance in the violation of income tax laws, including advice on hiding assets and income,…; showing the flow of money realized and expended in the operation of FREEDOM BOOKS, FREEDOM FOUNDATION, FREEDOM FOUNDATION, INC., or any other business **or any other income-generating activity engaged in by Irwin Schiff and/or CINDY** NEUN**,** or showing the hiding of income and assets from the IRS." (See Exhibit A)

Clearly, the broad-brush language of this warrant gave IRS agents discretion to search through and seize anything and everything – **all records** – contained in Appellant's book store and offices. Further, the language of the warrant gave the IRS agents discretion to search for whatever they deemed important, and left the ultimate decision of what things to seize in *their* hands. It is as if the magistrate issuing the warrant stepped aside and gave the IRS agents *cart blanche* to search through and seize whatever they pleased as long as it was *in their minds*, relevant to demonstrating violation of income tax laws. There are **no specific documents or client files listed by name**, no actual titles of books or material described, and no specific limitations given on what not to seize, or what would be evidence of violation of tax laws.

The language in the warrant is clearly in violation of the requirement outlined by the Supreme Court in Berger v. State of NY, 388 U.S. 41 (1967) that search warrants must **specifically direct** officers so that they do not possess a great deal of discretion as to what to

seize. Further, in the landmark case of Marron v. United States, 48 S.Ct.74, 76 (1927) the Supreme Court plainly held, "…nothing must be left to the discretion of officers executing the warrant as to what is to be taken."

The warrant in the present case continues with an expansive list of items, which will be included in the search (Exhibit A). At first glance, the list may appear to qualify or narrow the initial broad grant of discretion. However, the list provides no narrowing guidelines since it describes virtually every printed or electronically stored item located at Appellant's business, and is prefaced with the phrase, "These records will include." Therefore, the list is merely a description of what **could be included,** but provides no limitations of what **must not** be included, or just when or where the IRS agents must stop searching and seizing. Indeed, the inclusion of the list does not alter in the least the warrant's general grant of unfettered discretion to the IRS agents.

This type of warrant language has been held to be unconstitutionally broad in Application of Lafayette Academy, Inc., 610 F. 2d 1 (C.A. 1, 1979). In that case, approximately 30 IRS agents seized a substantial percentage of the records on the searched premises under the authority of a warrant, which authorized the search of:

> Books, papers, rosters of students, letters, correspondence, documents, memoranda, contracts, agreements, ledgers, worksheets, books of account, student files, file jackets and contents, computer tapes/discs, computer operations manuals, computer tape logs, computer tapes printout, Office of Education (HEW) documents and forms, cancellation reports and directives, reinstatement reports or forms, Government loan registers, refund ledgers, reports and notes, administrative reports, financial data cards, lesson and grading cards and registers, registration (corporations) documents, student collection reports, financial documents (corporations), journals of accounts and student survey data, which are and constitute evidence of the commission of violations of laws of the United States, that is violations of 18 U.S.C., Section 286, 287, 371, 1001, and 1014…."

The court held that the warrant **"is framed to allow seizure of most every sort of book or paper at the described premises, limited only by the qualification that the seized items be evidence of violations of 'the laws of the United States, that is violations of 18 U.S.C., Section 286, 287, 371, 1001, and 1014'"** and that this language **"does not describe the 'things to be seized' with the particularity required by the fourth amendment."** Id, at 2 (emphasis added)

The court in that case went on to reason "the requirement that the warrant itself particularly describe the material to be seized is not only to circumscribe the discretion of the executing officers but also to inform the person subject to the search and seizure what the officers are entitled to take." Id., at 5. When the government argued that, despite the warrant language, it did not exercise overly broad discretion, the court stated:

> (S)elf-restraint on the part of the instant executing officers does not erase the fact that under the broadly worded warrant expellees were subject to a greater exercise of power than that which may have actually transpired and for which probable cause had been established. **The particularity requirement is a check for just this sort of risk.** (Id., at 5, Emphasis added)

**The facts of the present case are nearly identical.** The present warrant granted IRS agents unfettered discretion to rummage through Defendant's business premises at will for up to seven (7) hours, searching through anything and everything, and seizing whatever they wanted. Exhibit K is irrefutable proof of this. The present warrant "**is framed to allow seizure of most every sort of book or paper at the described premises, limited only by the qualification that the seized items be evidence of violations of…**" "the federal offenses set forth in the supporting affidavit…relating to advice or assistance in the violation of the income tax laws…" (Id, at 2, emphasis added, see also Exhibit A). Clearly the agents involved in the search would have seized Defendant's personal diary, if he kept one and they found it.

Further, even if we assume that the IRS agents exercised self-restraint in their search (which was obviously not the case here), the warrant language in and of itself is overly broad, and constitutes on its face a violation of Defendant's 4th Amendment rights. Therefore, it must be held illegal, even if it were issued legally on other grounds – which it was not.

Moreover, the 9th Circuit in U.S. v. Spolotoro, 800 F.2d 959 (C.A., Nev. 1998) held similar warrant language to be in violation of the specificity requirement of the 4th Amendment. In that case, the warrant directed a search as follows:

> Certain property, namely notebooks, notes, documents, address books and other records; safe deposit box keys, cash, gemstones and other items of jewelry and other assets; photographs, equipment including electronic scanning devises, and other items and paraphernalia, which are evidence of violations of 18 U.S.C. 1084, 1952, 1955, 892-894, 371, 1503, 1511, 2314, 2315 1962-1963, and which are or may be: (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense." Id., at 961.

The court held that such language, which is also strikingly similar to the warrant language in the present case, did not "describe the items to be seized with sufficient particularity, and we cannot conscientiously distinguish this case from others in which we have held warrants invalid because of their general terms."

In *U.S. v. McGrew*, No. 96-10342 (09/12/1997)), the 9th Circuit held that a search warrant must be "sufficiently particular and not overbroad, and must be specific enough to enable the person conducting the search reasonably to identify the things authorized to be seized." (Citations omitted). Proof of the pudding is in the eating. The fact that all of the items shown in Exhibit K were seized, none of which fell within the scope of the search warrant, is proof that the search warrant at issue was so overbroad, that it allowed the agents to conclude that they could seize *anything*. What more proof is needed that the warrant was unconstitutionally overbroad and issued in violation of *McGrew* and all the other cases cited?

Therefore, the warrant in this case cannot simply be "cured" from its lack of particularity merely because it contains a long list of items to be included in a search. In this case, despite the expansive list of items, indeed, also *because* of the all-encompassing

list, the warrant is grossly overly broad, and grants enormous discretion to the executing agents to seize "all records" which they conclude demonstrate "assistance in the violation of the income tax laws."

2.

**Defendant's 4th Amendment Rights Were Violated In the Manner In Which the Warrant Was Applied For and Executed**

In Vonderahe v. Howland, 508 F.2d 364 (9th Cir. Cal. 1974), IRS agents overtook the plaintiff's business for five (5) hours pursuant to a search warrant which contained an expansive list of items to be seized. The warrant language in that case is nearly identical to the warrant language in the present case. The court stated, in that case, that upon arrival, IRS agents "proceeded to search or, more accurately, to ransack both office and home and to asport practically every piece of paper they could lay their hands on." Id., at 365. As a result Vonderahe's business was severely disrupted financially, and his prestige damaged.

Therefore the court held.

> Important as it is to enable the government to obtain information to assure itself of the correct reporting of taxes, it is difficult to believe that the draftsmen of the Fourth

> Amendment did not insert "unreasonable" to avoid just such an in terrorem state as the Agents created and wreaked here. Moreover, just as "unreasonable" can be applied to the breadth of the warrant, so much more can be applied to the manner of execution because it is the "manner" which is vividly illustrated by the facts of this case, can create and constitute the prohibited invasion.

The facts of the present case are uncannily similar to Vonderahe. In this case approximately 15-20 **illegally armed** agents entered and ransacked Defendant's business for roughly 7 hours. The agents removed numerous files, whole file cabinets (without identifying the file folders in the cabinets), papers, documents, rolodexes, appointment books, and case documents in their entirety regarding ongoing civil cases between Defendant and the government and between Defendant and a private party, and virtually every other piece of paper, disc, tape, memo, note, fax, etc. in sight. The agents disconnected Defendants telephone lines (which they did not reconnect upon departure) preventing Defendant's business from functioning, and they also turned all of the surveillance cameras towards the wall so the agents could insure that they could not be observed while they ransacked Defendant's offices. And when Defendant attempted to enter his business to observe what was being taken,[5] he was physically prevented from doing so by two or three **illegally armed** agents.

The 9th Circuit in Vonderahe as stated above, held that the 4th Amendment might be violated purely through improper execution of a warrant. In this case, the IRS agents who raided Defendant's business, as has already been proven, were **illegally armed**, had no authority to **apply for** or **execute the warrant** on a variety of grounds – all of which also represented a blatant violation of Defendant's 4th Amendment, to say nothing of the violations of his 1st and 5th Amendment rights as well.

Thus, the warrant in this case is invalid on its face, and both the warrant and its execution represent a blatant violation of Defendant's 4th Amendment rights. Thus the "evidence" gathered through the execution of this warrant must be suppressed even if the warrant and search and seizure were legal on all other grounds, which is hardly the case.

D-1

## THE WARRANT, SEARCH AND SEIZURE VIOLATED APPELLANT'S 1ST AMENDMENT RIGHTS

In, Zurcher v. Stanford Daily 98 S. Ct. 1970, 1981 (1978), the Supreme Court held:

[5] Defendant believes the agents took a coin collection which was not on the inventory.

> It is true that the struggle from which the Fourth Amendment emerged "is largely a history of conflict between the Crown and the press," and that in issuing warrants and determining the reasonableness of a search, state and federal magistrates should be aware that "unrestricted power of search and seizure could also be an instrument for stifling liberty of expression." (Citing Stanford v. Texas, 379 U.S. 476, 482, 85 S. Ct. 506, 510 (1965) and Marcus v. Search Warrant, 367 U.S. 717, 729, 81 S. Ct. 1708 (1961)).

The Court went on to state that:

> Where the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with **"scrupulous exactitude."** (Citing Stanford v. Texas, supra, 379 U.S., at 485, 85 S. Ct., at 511).

In the present case, the warrant was hardly executed "with scrupulous exactitude" Therefore, not only was the warrant overly broad under the 4th Amendment, it also violated Appellant's 1st Amendment rights of freedom of speech and of the press due to language which allowed IRS agents to rummage through, in this case, for up to seven (7) hours, and make judgments regarding the content of Appellant's books, publications, legal files, and research material – to say nothing of downloading numerous chapters from Defendant's next book which the government had **no legal right and/or authority to preview and copy.** The Court in Zurcher further stated:

> A seizure reasonable as to one type of material in one setting may be unreasonable to another kind of material. (Citations omitted) Hence, in *Stanford v. Texas*, the Court invalidated a warrant authorizing the search of a private home for all books, records, and other materials relating to the Communist Party, on the ground that whether or not the warrant would have been sufficient in other contexts, **it authorized the searchers to rummage among and make judgments about books and papers and was the functional equivalent of a general warrant, one of the principal targets of the Fourth Amendment. Where presumptively protected materials are sought to be seized, the warrant requirement should be administered to leave as little as possible to the discretion or whim of the officer in the field.**

In this case, the warrant language clearly gave wide discretion to the IRS agents to rummage through and make judgments about Appellant's books, papers, research material, legal files and even newspaper articles and decide for themselves which of those books, papers, research material, legal files and newspaper articles gave advice or assistance in violation of federal income tax laws. The Stamford court held warrant language invalid under the 1st Amendment, which authorized the search of "all books, records, and other materials relating to the Communist Party." Id. In the present case, the warrant language gives identical authorization

to rummage through **"all records…relating to advice or assistance in the violation of income tax laws,…"** (See Exhibit A). Therefore, not only is the warrant a general warrant under the 4th Amendment, it also violates Defendant's 1st Amendment rights by giving IRS agents wide discretion to rummage through and make judgments about the content and purpose of Appellant's records, research material, legal files, accumulated newspaper articles, papers and a substantial portion of a yet unpublished book.

It is self-evident, that whether Defendant's records, materials, books, publications, legal files and research material **do or do not** relate to advice or assistance in the violation of income tax laws **is a question of law** which must be **determined by a judge in a court of law** – not by an IRS agent who, at that moment he reaches for it during a raid, makes an *ad hoc* decision as to the legality of Defendant's printed material.

The Supreme Court held in Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46, 63, 109 S.Ct. 916, 927 (1989) that "(W)hile the general rule under the Fourth Amendment is that any and all contraband, instrumentalities, and evidence of crimes my be seized on probable cause…, it is otherwise when material presumptively protected by the First Amendment are involved" – which is obviously the case here. The Supreme Court also stated in Lo-Ji Sales, Inc v. New York, 422 U.S. 319, 326, n.5, 99 SCt.2319, 2324 n.5 (1979) that the First Amendment imposes ***special constraints*** on searches for, and seizures of, presumptively protected materials. Since all of the documents at issue were primarily connected to Defendant's writing, publishing, and lecturing activities - all of which are protected by the 1st Amendment - he was obviously entitled to these "special constraints," which is *something else* the government *ignored* in connection with the search warrant and seizure at issue.

Further in Marcus v. Search Warrant, 367 U.S. 717, 731-733, 81 S.Ct. 1708, 1716-1717 (1961), the Supreme Court invalidated a mass pretrial seizure of allegedly obscene publications achieved through a warrant that was vague and unspecific. The constitutional defect there was that the seizure was imposed without safeguards necessary to assure non-obscene material the constitutional protection to which it was entitled. In the present case, the warrant is likewise constitutionally defective under the 1st Amendment in that it is vague and unspecific as to what material found in Defendant's bookstore and associated with his lecturing, writing, and publishing activities do not "relate to advice of assistance in the violation of income tax laws." That decision was abdicated by the magistrate, and was left up to the discretion of IRS agents who raided, ransacked, and rummaged through ALL of Appellant's books, records, publications,

research and legal files; and in each case, made judgments as to the content and purpose of each item. Such a warrant provides none of the protections provided by the 1st and 4th Amendments, and therefore, should be held invalid just on these grounds alone, overlooking all of the other areas in which they were illegal on other grounds.

**E**

**CONCLUSION**

It is hard to conceive how a search warrant and its execution could be more illegal then the ones at issue here. As has been amply established herein:

1) The warrant at issue was based on the fraudulent premises, that a) the documents sought were "concealed" on the premises of Freedom Books, which was not the case, and 2) that they involved the receipt of "income" that was taxable under our revenue laws, when that **too** was not the case.

2) The search warrant at issue was applied for by Special Agent David (Sam) Holland who had no authority to apply for the search warrant.

3) The search warrant was executed by IRS special agents who had no authority to execute the search warrant and seize documents at issue.

4) The special agents who conducted the search and seizure were **illegally armed.**

5) The Defendant was illegally prevented by **armed** special agents from entering his own offices and observing what was being taken, and seeing to it that the agents stayed within the bounds of the warrant.

6) The inventory was not signed or certified to as required by law.

7) The agents vandalized Defendant's office in connection with his phone service and surveillance cameras and Defendant also discovered that a coin collection was missing a month or so after the raid.

8) The search warrant was unconstitutionally overly broad and gave the agents *discretion* **to make legal judgments** concerning what they could and could not seize.

9) As a consequence of numbers 1-8 as enumerated above, the warrant and search and seizure violated Defendant's 1st and 4th Amendment rights, to say nothing of his rights under the 5th Amendment.

Based on all of the above it is clear that ***not one* aspect of the warrant and search and seizure at issue complied with any law**. Therefore, Defendant request that this Court:

1) Order that all of the evidence derived by the government from this illegal warrant and illegal search and seizure be suppressed; and,

2) Order the government to immediately return all of the illegally seized documents to Defendant.

Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed June 7, 2004

_____
Irwin A. Schiff, pro per

**ORAL ARGUMENT REQUESTED**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was hand delivered to Daniel G. Bogden, United States Attorney at 333 Las Vegas Blvd. South, Suite 5000, Las Vegas, Nevada, 89101 on April 7, 2004:

_____
Irwin Schiff