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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES	)	
	)	
Plaintiff	)	CR-S-04-0119-KJD-LRL
	)	
V	)	DEFENDANT’S <i>AMENDED</i> OBJECTION
	)	TO MAGISTRATE JUDGE LAWRENCE R.
IRWIN SCHIFF, CYNTHIA NEUN )	)	LEAVITT’S INCONSISTENT CONCLUSION
And LAWRENCE N. COHEN, a/k/a/)	)	IN CONNECTION WITH HIS “REPORT AND
	)	RECOMMENDATION” REGARDING SCHIFF’S
	)	MOTION TO SUPPRESS
Defendants	)	

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COMES NOW, Defendant Irwin Schiff and would respectfully point out to this Honorable Court, that based upon Magistrate Judge Lawrence R. Leavitt’s “Report & Recommendation” Defendant’s Motion to Suppress *must* be granted. In addition, in accordance with his “Report,” the instant indictment must be dismissed in accordance with Defendant’s Motion filed on December 3, 2004 which requested such a dismissal because it was based on the “False & Unauthorized Claims of IRS Special Agent David W. Holland.” Based on Magistrate Judge Leavitt’s “Report,” IRS special agents are only authorized to enforce those laws pertaining to “*subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle.*” Since the taxes at issue have nothing to with such taxes all of the actions of the special agents who conducted the search and seizure at issue plus the extensive utilization of Special Agent David W. Holland in gathering evidence, screening witnesses, and assisting the prosecution were, as Magistrate Judge Leavitt’s “Report” acknowledges, all unauthorized (and thus illegal), as the following will show:

**A) Magistrate Judge Leavitt’s “Report” Acknowledges that Special Agents are Only Authorized To Enforce Those Taxes Contained In Subtitle E and Such Commodities Subject to Tax**

In lines 12 and 13 on page two of Magistrate Judge Leavitt's "Report" he acknowledges that all of the authority that IRS special agents might have is derived from the provisions contained in "26 U.S.C. 7608(a)(1)-(4)."

Schiff had specifically included Section 7608, as Exhibit F, in his Memorandum (in support of his Motion to Suppress) as *proof* that IRS special agents have *no enforcement authority at all* on a variety of grounds. In its Response, the government maintained that the authority of IRS special agents is derived from subsection (b) of section 7608. Defendant, in his Reply, contested the government's claim (as shown below) and claimed that if special agents fell into the provisions of section 7608 *at all*, it would have to be into subsection (a) and not subsection (b). In his "Report," Magistrate Judge Leavitt agreed with Schiff, and *rejected* the government's claim that special agents fall into subsection (b) and claimed that they fall into subsection (a) and not (b), as the government claimed. Section 7608 states, in pertinent part, as follows:

**7608. Authority of internal revenue enforcement officers**

**(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms**

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary is responsible --

- (1) carry firearms;
- (2) execute and served search warrants....
- (3) ...make arrests....
- (4) ...make seizures

**(b) Enforcement of laws relating to internal revenue other than subtitle E.**

- (1) 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 revenue laws...is... authorized to perform the functions described in paragraph (2).
- (2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are --
  - (A) to execute and serve search warrants.....
  - (B) to make arrests.....
  - (C) to make seizures of property....

Defendant respectfully requests that this Court take judicial notice of the fact that section 7608(a) specifically provides that all IRS agents who fall within that subsection (as Magistrate Judge Leavitt agrees they do) are only authorized to enforce those taxes that fall within “Subtitle E or (such taxes) pertaining to the commodities subject to tax” whom the “Secretary charges with the duty of enforcing” such taxes. Obviously, those agents who fall within Section 7608(a) can have no authority to enforce any law related to the income tax, which falls into Subtitle A, and not Subtitle E. This being the case, Special Agent David W. Holland *clearly*: (1) had no statutory authority to apply for the search warrant at issue; (2) Magistrate Judge Leavitt had no statutory authority to issue the search warrant to him; (3) none of the 15 agents who executed the search warrant had any *statutory authority* to do so; and (4) all 15 agents were all illegally armed, since section 7608(a) only authorizes IRS agents to “carry firearms” in the enforcement of Subtitle E taxes and those taxes “pertaining to the commodities subject to tax,” and, of course, income taxes falls into neither category.

This, of course, proves that the entire search and seizure at issue was illegal just on these grounds alone, and while the search and seizure was illegal on a number of other grounds, Defendant is not even obliged to go there, since Magistrate Judge Leavitt’s concurrence that special agents must fall into 7608(a) alone establishes that the search and seizure was: (1) *fundamentally* illegal on a *variety* of grounds; and (2) Special Agent Holland had no authority to get involved in the income tax affairs of Schiff and the other defendants. Therefore, based on Magistrate Judge Leavitt’s acknowledgment that all of the special agents involved in the search and seizure at issue were only authorized to enforce laws in connection with Subtitle E taxes and “commodities subject to tax”: (a) all the evidence derived from that unauthorized (and thus illegal) search and seizure must be suppressed; and (b) the indictment dismissed, because of the unauthorized (and thus illegal) extensive utilization by the Justice Department of the services of Special Agent David W. Holland (and other special agents) to secure that indictment.

#### **B. Defendant Claims the Protection of Code Section 7608(a)**

Section 18 U.S.C 241 makes it a crime for “Two or more persons (to) conspire to injure, oppress, threaten, or intimidate, any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.” Under the “laws of the United States,” David W. Holland, and the other special agents who conducted the search and

seizure at issue, were clearly barred by the provisions of Section 7608(a) from doing so. Therefore, if this Court, in conjunction with the U.S. attorneys bringing this action on behalf of the government, were to deny Schiff the protection afforded him by section 7608, but were, instead, to “injure“ and “oppress” him by not granting him the relief requested *as mandated by this statute*, then this Court, together with said U.S attorneys, would be collectively in clear violation of the provisions of 18 U.S.C 241.

### **C. Are Magistrate Judge Leavitt’s “Reports and Recommendations” Reliable?**

Despite Magistrate Judge Leavitt having concluded that IRS special agents derive their authority from a statute that only authorizes them to enforce liquor, tobacco, and firearms taxes (assuming they were *further charged* by the Secretary to do so), he, nevertheless, concludes that: “Contrary to Schiff assertion, IRS special agents are ‘law enforcement officers’ for the purpose of Rule 41 and are authorized to request a search warrant. Moreover, IRS special agents are authorized to execute search and arrest warrants and carry firearms,” but obviously not in connection with income taxes, since the provisions of 7608(a) clearly bars them from having any such authority in connection with income taxes. Despite this, Magistrate Judge Leavitt, nevertheless, further concludes that: “Accordingly suppression is not warranted. Based on the foregoing, it is the recommendation of the undersigned Magistrate Judge that Schiff’s Motions to Suppress (#43) should be denied.” Obviously, his latter conclusion is *totally inconsistent* with his earlier conclusion that special agents derive their authority from 7608(a). Obviously, pursuant to that statute, IRS special agents (besides not being law enforcement officers) cannot have *any* of the authority claimed for them by Magistrate Judge Leavitt in connection with income taxes. Therefore, how could he have come to such an incongruous conclusion, based on his earlier conclusion that special agent’s fall into subsection 7608(a)? Obviously, Magistrate Judge is so determined to render a “Report” favorable to the government that he is *incapable* of making recommendations that are consistent with the law, even as he knows the law to be. Therefore, his obvious bias in favor of the government makes it impossible for him to issue “Reports” to this Court consistent with judicial objectivity and “due process of law.” This, of course, was obvious to Defendant when Schiff filed his objections (on December 30, 2004) to Magistrate Judge Leavitt’s prior “Report & Recommendation, with respect to Schiff’s four motions to dismiss based on the Court’s alleged lack of subject matter jurisdiction. However, Magistrate Judge Leavitt’s total lack of logical *consistency* as is evidenced in this “Report”

clearly indicates that this Court cannot give any credibility to *any* of his “Reports & Recommendations.”<sup>1</sup>

However, not only did Magistrate Judge Leavitt’s instant “Report and Recommendation” ignore and misrepresent the clear provisions of section 7608(a), but in order to render a Report favorable to the government, he also ignored *numerous* other documents and provisions in the law, in addition to those shown above - as the following will show.

#### **D. With Respect To the Overall Authority of IRS Special Agents.**

One of the documents in Schiff’s Memorandum (Exhibit J) was the official job description of special agents, and as noted by Schiff in his Memorandum:

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.<sup>2</sup>

In its Response to Schiff’s Memorandum, the government did not challenge **in any way** Schiff’s claim that the very job description of special agents precluded them from having any “legal authority to interfere with (Schiff) in any way” and 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

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<sup>1</sup> Magistrate Judge Leavitt’s lack of judicial impartiality is obviously influenced by his need to justify the granting by him of the search warrant at issue, as applied for by Special Agent David W. Holland, which all of the evidence, as herein provided, shows was issued in violation of law.

<sup>2</sup> 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.**

his raiding party, have authorization to execute the warrant at issue against the Defendant.” Since in its Response the government **did not deny** Schiff’s claim on this issue, Schiff stated the following in his Reply to the government’s Response:

Defendant devoted a whole segment of his Motion to Suppress (B 7, page 9) to his claim that the job description of Special Agents precluded them from “interfering” in any way with defendant, let alone conduct a search and seizure of his offices. Defendant stated:

(As shown in the 11 line paragraph and footnote reproduced above, on page 5, so he does not need to reproduce it here again)

In its Response the Government failed to address this issue, let alone refute it, as contained in the paragraph above and in the footnote as contained below. The Government in its Response **failed to deny** that the job description which was included as Exhibit J in Defendant’s Memorandum of Law *correctly* stated that the authority of Special Agents, with respect to income taxes, was limited to those criminal statutes “involving United States citizens residing in foreign countries and nonresident aliens subject to Federal income tax filing requirements...” and that based on that job description “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”

Since the Government did not deny Defendant’s above claim, this Court, pursuant to Fed. R. Civ. P. 8(d) must deem Defendant’s claim, as stated above, as admitted *by the Government*. Therefore it is clear that neither Mr. Holland nor any of the Special Agents that took part in the search and seizure at issue had any authority to do so. This also means that Mr. Holland had no authority to apply for the search warrant at issue, or to testify before the grand jury, or to screen witnesses, or gather evidence for the grand jury with respect to this defendant, nor could his services be utilized in any manner with respect to the charges at issue – yet his services were extensively utilized by the Government in securing the indictments at issue. Based upon this admission by the Government (since it did not deny Defendant’s claim with respect to this issue) not only does all the evidence gathered as a result of the search and seizure at issue have to be suppressed, but all of the seized documents have to be returned since they were illegally seized on a variety of grounds as shown above. In addition, all of the charges have to be dismissed because of the unlawful involvement of Mr. Holland in securing and gathering the (fraudulent) evidence pursuant to which the indictment was secured.

Magistrate Judge Leavitt, therefore, knew - since the government did not even challenge Schiff on this issue - that all of his claims with respect to the alleged authority of special agents in connection with the income taxes at issue were false - based on their job description *alone*. And nowhere in his “Report and Recommendation” does he mention this “job description” or how it applied, or didn’t apply in the manner alleged by Schiff. So, obviously, in rendering his “Report and Recommendation” he was compelled to ignore this “job description,” since it alone invalidated his ultimate conclusion as stated in his “Report.”

## E. With Respect to the Authority of Special Agents to Apply for Search Warrants as Special Agent Holland Did In This Case

We already know just by his job description alone, that Special Agent Holland could not have any authority to apply for the search warrant at issue. But he was *precluded* from applying for the search warrant based on other grounds, all of which were known to Magistrate Judge Leavitt, since Schiff also pointed this out, both in his Memorandum of Law and in his Reply to the Government's Response. As pointed out by Schiff, in order to apply for a search warrant:

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"; ... (and) ... 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."

In addition, Schiff pointed out, in pertinent part:

It was my contention when I had earlier filed for return of the documents at issue pursuant to Rule 41(e) that: ... 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.

Therefore in Schiff's Memorandum, he included, as Exhibit E, a copy of 28 C.F.R. 60.2 which showed that there was no reference to Special Agents in 28 C.F.R. 60.2 - as the government had previously claimed. Thus the government had **falsely represented this regulation** when it opposed Schiff's prior Motion for a Return of the Documents Seized. (Magistrate Judge Leavitt denied Schiff's prior motion without giving Schiff a hearing on the various issues raised by Schiff in that motion).<sup>3</sup> In that Memorandum, Schiff also included (as Exhibit D), Treasury Regulation 1.274-5T(k)(6)(ii) which specifically stated that, "the term law enforcement officer...does not include Internal Revenue Service special agents." In Schiff's

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<sup>3</sup> Magistrate Judge Leavitt only scheduled a hearing on Schiff's motion to *unseal* the affidavit, but not on Schiff's motion for the return of the documents pursuant to his claim under Rule 41(e). Based on all of the information contained herein, it is obvious that Magistrate Judge Leavitt should have granted Schiff's Rule 41(e) motion, since it was based on a number of the same documents that were submitted here, which proved that the search and seizure was illegal on a variety of grounds.

Reply to the Government's Response, he included **yet another** Internal Revenue document (which he attached as Exhibit E) which defined a "Law enforcement officer," and stated, in pertinent part: "The term law enforcement officer...does not include Internal Revenue Service special agents." So while Magistrate Judge Leavitt claimed that IRS special agents "are law enforcement officers," Schiff had already supplied the Court in his prior pleadings, two Treasury Department documents that stated otherwise.

In its Response to Schiff's instant Motion to Suppress (unlike the government's earlier Response to Schiff's Motion for the Return of the Documents) the government did not claim that: (1) special agents were law enforcement officers; or (2) that they were included in that Justice Department list; or (3) that they had any authority to apply for search warrants. Schiff pointed out in his Reply, how the government even changed the nature of Schiff's argument, in order to avoid having to address it. For example, in its Response the government stated: "Defendant argues that Special Agents of the Internal Revenue Service do not have authority to **seek** and execute search warrants. This argument is frivolous." In his Reply Schiff pointed out:

However, the Government's statement was blatantly false. Defendant argued that Special Agents do not have the authority to "**apply** for ...and execute search warrants" not that they didn't have the authority to "seek" for them – whatever that means. It is obvious that the Government changed Defendant's argument, so it could avoid having to address it.

When Defendant made this same argument in a prior motion seeking the recovery of the seized documents pursuant to Rule 41(e), the Government stated, (See Exhibit A): "Defendant's argument that Special Agent Holland is not a 'law enforcement officer' authorized to request a search warrant pursuant to Rule 41(a) of the Federal Rules of Criminal Procedure...is a completely frivolous argument." The Government also claimed at that time that Special Agents are contained "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." However, since Defendant in his Memorandum supporting the instant motion, included 28 C.F.R 60.2 (as Exhibit 4) which revealed that IRS Special Agents of the IRS **are not** included in that Regulation, the Government realized it couldn't make *the same false claim* in Response to this motion as it had done in the past. Therefore IRS Special Agents cannot fall into Rule 41(h), since being on that Attorney General's list is a prerequisite for falling within Rule 41(h), and the Government has not denied in its Response that IRS Special Agents *are not included* in that list.

Since Special Agents cannot not fall into Rule 41(h), they obviously cannot fall into Rule 41(a) either, proving that Special Agent Holland had no authority to apply for the search warrant at issue, pursuant to Rules 41(a) and (h), as Defendant claimed. Since the Government realized it could no longer make its false claim that Special Agents fell within the list of those parties included in 28 C.F.R. 60.2, it obviously substituted to "seek" for a search warrant, rather than to "apply" for one, in order to avoid having to address this issue.

Therefore, pursuant to Rule 8(d) of the Fed. R Civ. P., this Court has to deem as admitted Defendant's claim that Special Agent David W. Holland had no authority to apply for the search

warrant at issue, since the Government made no attempt in its Response to even address this issue, let alone deny or refute Defendant's claim with respect to it. Therefore this Court also has to hold that the search and seizure at issue was carried out pursuant to a search warrant that was unlawfully applied for and unlawfully issued.

Therefore, even though Schiff submitted with his pleadings: (1) two government documents that specifically state that IRS special agents "are not law enforcement officers"; and (2) three additional documents which specifically deny to IRS special agents any authority to apply for search warrants ((a) their job description, and (b) 28 C.F.R. 60.2, (c) plus a third document as discussed below); and (3) despite the fact that even the government in its Response did not claim that IRS special agents were law enforcement officers and were authorized to "apply" for search warrants (claims it had made in a prior litigation), Magistrate Judge Leavitt still maintained in his "Recommendation" that: (1) special agents are "law enforcement officers"; and (2) are authorized to "request... search warrants" (by this Schiff assumes he meant "apply"). Obviously, Magistrate Judge Leavitt was wrong with respect to both claims.

**F. With Respect to the Alleged Authority of IRS Special Agents to Execute Search Warrants and Carry Firearms as Claimed in Magistrate Judge Leavitt's "Report"**

As Schiff previously stated, he included Section 7608, as Exhibit F, in his original Memorandum as proof that IRS special agents have no enforcement authority whatsoever with respect to income taxes (which their job description alone proves) on several grounds, and especially why they have no authority to carry firearms, which they customarily and illegally carry.

In its Response, the government claimed that special agents fell into subsection 7608(b), not subsection 7608(a), as Magistrate Judge Leavitt claims in his "Report." The government had to make that claim in order for it to claim that the special agents who took part in the search and seizure at issue had the authority to do so, since only those agents who fall into subsection (b) can be authorized to enforce laws involving income taxes, but could not have any such authority if they fell into subsection (a). In its Response, the government stated: "Defendant argues that Special Agents of the Internal Revenue Service do not have authority to seek and execute search warrants. This argument is frivolous." The government then proceeded to reproduce subparagraph 7608(b) in its *entirety*, and proceeded to state that, "Under U.S.C. 7608(b), Congress granted police powers to IRS criminal investigators." So here we have the

government claiming that the power of special agents is derived from section (b) of 7608, while Magistrate Judge Leavitt claims their authority is derived from subsection (a), and not (b) as the government contends. Who is right? The government or Magistrate Judge Leavitt? Obviously, they both can't be right. The answer is *they are both wrong*. As Schiff pointed out in his Reply brief, only those agents who are attached to the Intelligence Division of the IRS can fall into subsection (b), and since Special Agents are not attached to the Intelligence Division, they can not fall into subsection (b); therefore they must fall in to subsection (a) – if they fall into any subsection at all. However, if they fall into subtitle (a), they can have no authority to enforce laws involving income taxes, as has already been explained. In addition, as Schiff pointed out, if they fell into subsection (b) as the government claimed, they were given no authority in that subsection to carry firearms, as were those agents who fall in to subsection (a). Therefore, Schiff pointed out, what kind of law enforcement officers would they be if they were given no authority to carry firearms? However, Schiff further pointed out that IRS special agents could derive no authority from either subsection (a) or (b) for the following reasons as stated in his Reply brief:

*Before* Special Agents could have any enforcement authority under *either subsection (a) or (b)* they had to be specifically “charged” and or “designated” by the Secretary with such authority. To illustrate this, Defendant Schiff furnished to the Court (as Exhibit I, and furnished here again as Exhibit B) Treasury Regulation 70.33. On page 7 of his Memorandum, Schiff stated.

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 pleadings in connection with MJ-S-03-0029-LRL-LRL. If the government cannot 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 “nolo contendere.”

And sure enough, the Government failed to provide this Court with any comparable Treasury Regulation showing that “the Secretary” conferred any authority on IRS Special Agents to “execute search warrants,” or “carry firearms” either under 7608(a) or (b) as is required by *both* subsections. Therefore, any Government claim that IRS Special Agents derive any authority from either subsection (a) or (b), without having provided this Court with such a Treasury Regulation, is an example of how the Government *knowingly* makes false claims with respect to the *criminal charges* it has l

leveled against the defendants. The failure by the Government to provide this Court with such a Treasury Regulation *alone* establishes Defendant's claim with respect to these issues; however, Defendant will, nevertheless, address other claims made by the Government in order to more fully expose the totally fraudulent character of the Government's Response.

Therefore, as Schiff pointed out in his Reply brief, in order for an IRS agent to derive any authority from either subsection (a) of (b) that agent would have to have been specifically "charged" by the Secretary to carry out the duties enumerated in those subsections. Schiff provided documentation showing that BATF agents were "charged" by the Secretary to carry out such duties and challenged the government to produce similar authorization with respect to IRS agents, and both the government and Magistrate Judge Leavitt *failed to do so*. So, without such specific authorization from the Secretary, IRS agents cannot derive any authority from either subsection (a) or (b) of section 7608, as Magistrate Leavitt had to know, since Schiff devoted considerable space to this issue (plus providing the relevant Treasury Regulation) in both his Memorandum of Law and in his subsequent Reply brief.

As further proof as to why IRS special agents can derive *no enforcement authority* from section 7608, Schiff included, as Exhibit H in his Memorandum of Law, pages from the Index of the Code of Federal Regulations. They showed that the implementing Regulations for section 7608 were contained in CFR 27, "Parts 70, 170, 296," while showing that there were no similar Treasury Regulations implementing section 7608 in CFR 26. Therefore, Schiff claimed, that the absence of any implementing Regulations in 26 CFR (as were contained in 27 CFR) proved that the enforcement provisions contained in 7608 only applied to the enforcement of such taxes as liquor, tobacco and firearms and to such other taxes as contained in Subtitle E as are enforced by BATF agents, and did not apply to income taxes and/or to any alleged authority of IRS agents.<sup>4</sup> In its Response, the Government did not deny Schiff's claim on this issue, nor did Magistrate Judge Leavitt address this issue in his "Report & Recommendation" nor explain why there are no implementing regulations for Section 7608 in CFR 26 as there are in CFR 27.

Based on all of the above Schiff stated in his Reply brief:

Since all of the above proves that all of the documents secured as a result of the IRS search and seizure were illegally seized on the basis of: 1) an application that was unlawfully

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<sup>4</sup> This, of course, makes sense. Why should there be Regulations to enforce a "tax" for which no statute makes anyone "liable"? As Defendant has always said, there is nothing wrong with the laws themselves, if only the courts and the DOJ would obey them.

applied for and unlawfully issued; and (2) conducted by Special Agents who had no authority to execute the search warrant on a variety of grounds; (3) and who had no authority to “carry firearms,” but did so as a means of unlawfully intimidating those persons who were within Freedom Books when the raid took place. Many of the Special Agents had “IRS Police” stenciled on the back of their jackets, thereby fraudulently impersonating law enforcement officers. Therefore, all of the Special Agents who conducted the raid should be prosecuted pursuant to 18 U.S.C. 913 which makes it a crime (punishable by up to three years of imprisonment) for “Whoever falsely represents himself to be an officer...of the United States, and in such character...or in any manner searches the person, buildings, or other property of any person.”

Therefore, Defendant has to go no further then this to establish why all of the evidence gathered in the search and seizure at issue must be suppressed, all of the seized documents returned in their original form, and the indictments against the defendants dismissed because of the extensive, unauthorized and unlawful involvement of Special Agent David W. Holland in securing the indictment at issue.

Since Defendant believes that all of the above prove beyond a shadow of a doubt that the search and seizure at issue was unlawful on all of the grounds as covered above (and that the Special Agents who conducted the search and seizure were all engaged in committing felonies), he believes he has no need to demonstrate why the search and seizure was also unlawful on the additional grounds raised in his Motion to Suppress – especially since he has numerous other Government Responses to reply to and a limited time in which to do it.

WHEREFORE: Since Defendant has proven that:

- 1) Special Agent David W. Holland had no authority to apply for the search warrant at issue, which is uncontested by the Government;
- 2) Magistrate –Judge Lawrence R. Leavitt was, therefore, not authorized to issue the search warrant at issue;
- 3) None of the Special Agents who conducted the search and seizure were authorized to execute search warrants;
- 4) None of the Special Agents who conducted the search and seizure were authorized to carry firearms in the enforcement of income taxes, but were all armed;
- 5) None of the Special Agents were authorized by their job description to interfere with Defendant *in any way* in matters involving income taxes, which is a fact that is uncontested by the Government.

Therefore, based on all of the above, Defendant moves the court to:

- 1) Suppress all the evidence derived from the unlawfully seized documents as a consequence of the Government’s unlawful search and seizure;
- 2) Order the Government to return all of the documents in their original form as were unlawfully seized in that search and seizure;
- 3) Dismiss the indictment because of the extensive, unauthorized, and unlawful involvement of Special Agent David W. Holland in securing the indictment, screening and interviewing of witnesses, gathering evidence, and his testimony before the grand jury, all of which his job description and other lack of authorization from the Secretary barred him from doing.

While in his Memorandum of Law, in addition to claiming that:

- 1) The search warrant was illegally applied for;
- 2) The search warrant was illegally issued;
- 3) The search warrant was illegally executed;
- 4) Section 60.2 did not authorize special agents to apply for search warrants;
- 5) Section 7608 does not authorize IRS agents to carry firearms or execute search warrants;
- 6) Section 7608 gives no authority whatsoever to IRS special agents;
- 7) No statute or Treasury Regulation exists that gives special agents any authority to carry firearms, and/or execute search warrants in connection with income taxes; and
- 8) Their very job description precludes IRS special agents from interfering in any way in the income tax affairs of any of the defendants.

Schiff also claimed that:

- 1) The search warrant was applied for on the basis of fraud
- 2) The inventory was not prepared according to law;
- 3) The IRS raiders seized documents outside the scope of the search warrant; and
- 4) The search was unconstitutionally overbroad and therefore the search and seizure violated Schiff's 1st and 4th Amendment rights, and the search was illegal on a few other grounds.

However, Schiff pointed out in his Reply brief, that since (based upon the government's Response and its failure to contest and deny certain fundamental claims made by Schiff in his Memorandum of Law) he clearly established his first 8 claims, as shown above, which alone entitled him to the relief requested. Therefore, he had no need (also based on time constraints) to address those other issues which, he also believed proved the search and seizure illegal on yet additional grounds, but which he felt he no longer needed to address to establish his claim for the relief requested.

However, Magistrate Judge Leavitt devoted more space in his two-page "Report" to those issues, which Defendant stated in his Reply brief that he was not bothering to address, than to the issues that Schiff did address in his Reply brief. And naturally, Magistrate Judge Leavitt recommended in favor of the government on all of these other issues as well. However,

Defendant Schiff submits that the validity of Magistrate Judge Leavitt's "Recommendations" on these other issues is no more valid than were his prior claims in connection with the authority of IRS special agents to apply for and execute search warrants, and carry firearms, in connection with income taxes, when: (1) section 7608(a) (the section into which Magistrate Judge Leavitt also claimed that special agents fall) *obviously* precluded them from having *any* such authority, as did; (2) their job description; and (3) their lack of delegated authority from the Secretary; and (4) overlooking all of the other factors raised by Schiff that demonstrated their lack of authority in all of these areas.

However in his Memorandum of Law, Schiff noted:

Defendant would be derelict if he 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. United 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 Fourth 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 4<sup>th</sup> and 5<sup>th</sup> Amendments. In the instant case, the government forcibly seized 14,000 personal documents 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 5<sup>th</sup> 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 4<sup>th</sup> and 5<sup>th</sup> Amendments no longer exist; and anyone who can’t see that should be declared legally blind.

The question that should be asked is how could the Supreme Court in 1896 have held that a civil fine, based on one compelled document, was unconstitutional, but in this case, government agents can, constitutionally, seize and attempt to use against Schiff 14,000 documents including taking two whole filing cabinets containing the files relating to some 300 people **NONE OF WHOM WERE NAMED IN THE SEARCH WARRANT?** The answer to that question is easy. In 1896 the federal judiciary, as yet, had not had its integrity compromised by the need of having to protect, justify, and enforce a system of taxation that is blatantly unconstitutional on a variety of grounds (as any law student should have no trouble figuring out),<sup>5</sup> nor did federal judges at that time have to be concerned about possible IRS audits of their own tax returns.

Based on all of the above, defendant respectfully requests that this court:

- 1) Accept Magistrate Judge Leavitt’s “Recommendation” with respect to into what subsection of section 7608 special agents fall;
- 2) And because of that and other considerations, the Court reject the rest of his “Report and Recommendation”; and
- 3) For all of the reasons stated above: (1) suppress all of the evidence derived from a totally illegal search and seizure; and dismiss the indictment for reasons previously stated.

Date: January 4, 2005

**ORAL ARGUMENT REQUESTED**

Respectfully submitted:

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Irwin Schiff, pro per

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<sup>5</sup> However, the laws involving income taxes are not unconstitutionally written, what is unconstitutional is their enforcement by the IRS, with the help and protection of the courts and the DOJ.

**CERTIFICATE OF SERVICE**

I certify that I have this date hand delivered a copy of the foregoing Amended Objection to Magistrate Judge Lawrence R. Leavitt's "Report and Recommendation" in connection with Defendant's Motion to Suppress to:

MELISSA SCHRAIBMAN  
LARRY J. WSZALEK  
Trial Attorneys, Tax Division  
US Department of Justice  
333 Las Vegas Blvd., South, Suite 5000  
Las Vegas, Nevada 89101

And that I have this day mailed a copy of the foregoing by first class mail, to the following Attorney's of record.

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