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

PREMISES KNOWN AS FREEDOM)	CASE NO: MJ-S-03-0029-LRL-LRL
BOOKS LOCATED AT 444 E.)	
SAHARA AVENUE CITY OF LAS)	
VEGAS COUNTY OF CLARK)	
STATE OF NEVADA)	
)	
Movant)	MOVANT’S APPEAL
)	OF MAGISTRATES
)	ORDER
UNITED STATES OF AMERICA)	
Respondent)	
_____)	

Pursuant to LR IB 3-2 Petitioner Moves that a Judge review the actions of Magistrate Judge Lawrence R. Leavitt, in failing to provide Movant with a hearing pursuant to 41(e) and for his failure to issue a final order in response to Movant’s Motion for Reconsideration filed on May 6, 2003 and for his failure to compel the government to comply with his order of April 23, 2003. Since Movant has been under tremendous pressure to comply with, and responding to litigation involving a Temporary Restraining Order issued March 19, 2003 and a Preliminary Injunction issued on June 16th and a Motion by the government to hold Movant in contempt for allegedly violating the provisions of the Preliminary Injunction filed on or about August 4, 2003 all in connection with *United States v. Schiff*, et al CV-S-03-0281 – LDG –RJJ (while also trying to timely litigate *U.S. v. Schiff*, CV –S-01-0895-PMP LRL) left Movant little time to follow up on the search and seizure that took place on February 11, 2003.¹ Movant would remind the Court that in this action Movant has been acting pro se, and as such his pleadings should be liberally construed per *Haines v. Kerner*, 404 US at 520.

¹ In addition, Movant has been undergoing medical treatment for heart problems which has also sapped a good deal of his energy.

I

A SHORT HISTORY OF THIS CASE

At approximately 7:30 A.M. on 2-11-03, about 15-20 Special Agents of the Internal Revenue Service wearing guns, entered, searched and seized the business premises of Freedom Books, located at 444 E. Sahara Ave., Las Vegas NV. Freedom Books publishes and sells books related to economics and income taxes largely written by Irwin Schiff, the owner of the business, although Freedom Books also sells the Internal Revenue Code, 26 CFR, Title 28 and other books related to income taxes. Freedom Books also produces and sells video and audiocassette tapes related to these subjects. IRS Special Agent, David W. Holland, who had applied for the search warrant (Exhibit A) was in charge of the raid. When Movant arrived at his offices at approximately 8:00 AM and attempted to enter the premises to observe what the special agents were doing and what they were seizing, Mr. Holland, aided by two or three other special agents, physically prevented Movant from entering said premises. The agents remained in the premises until approximately 3:00 PM. When they left, they provided Movant with a 25-page inventory of what they had seized. As noted below the inventory (Exhibit G) was prepared in violation of Section 41(d) since it was not prepared “in the presence of the ...person from whose possession or premises the property was taken” nor was it “verified by the officer” responsible for taking the property.

I-A

MOVANT FILES TWO ACTIONS

As a result of the search and seizure Movant filed two actions. One action was a Motion to Unseal the Affidavit and the second was a Motion for the Return of the property seized under Section 41(e) of the Fed Rules Crim. Procedures – since the property was seized illegally on a variety of grounds as indicated below. On April 8, 2003 Magistrate Leavitt issued a “Minute Order” (Exhibit B) scheduling a hearing to be held at 3:00 PM on April 22, 2000 on Movant’s Motion to “Unseal Affidavit.” The Court made no mention that this hearing would also involve Movant’s motion for the return of the documents as provided by Rule 41(e); therefore, Movant was totally unprepared to argue this issue at the April 22nd hearing. The fact that the April 22 hearing was supposed to be confined to the issue of unsealing the affidavit is revealed by these statements of the Court as shown in the hearing transcript and which were quoted in “Movant’s

Reply to Respondent's Response With Respect to Movant's Motion for Reconsideration" filed on May 28, 2003.

Page 3, Line 21-23 THE COURT: "The matter before the Court today is the motion filed by Mr. Schiff...on March 17th...to unseal a search warrant affidavit."

Page 4, Lines 4-5: THE COURT: "Now, for the benefit of the parties you understand there's only *one issue before the Court this afternoon*, and that is *strictly* the question of whether or not the affidavit in question should be unsealed."

Page 4, Line 2 THE COURT "Let's focus on the unsealing of the evidence"

Page 26, Lines 11-13 MR. SCHIFF: "But the issue before us now, I think, has to do with the unsealing of the affidavit."

THE COURT: Correct."

Page 31, Line 13 THE COURT "Now the question before me today is whether or not this affidavit should be unsealed."

Despite the fact that the sole issue before the Court on the April 22 hearing was the unsealing of the affidavit, Magistrate Leavitt issued an Order with respect to the Movant's 41(e) Motion involving the return of the seized documents. In that Order (Exhibit C) Magistrate Leavitt ordered the government to return "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 originals when they were seized."

On April 23, 2003, the day following the hearing of April 22, Movant filed a Motion for Reconsideration, explaining to the Court that:

This Court notified Movant that a hearing on his Motion to Unseal the Affidavit would be held at 3:00 PM on April 22, 2003. The Court made no mention that this hearing would also involve his motion for the return of the documents at issue. Therefore, Movant did not review the laws, papers, issues and arguments that were involved in his Motion for the Return of the documents at issue. He only reviewed the issues and arguments connected with his Motion to Unseal the Affidavit and was thus unprepared to effectively argue and rebut the Court's ruling with respect to the Return of the Documents.

Movant also pointed out that the Court's Ruling of April 22, 2003 was "contrary" to:

- 1) Rule 41(e),
 - 2) The Government's statements in its Opposition For the Return Property,
 - 3) All concepts of equity and common sense,
- and amounts to an abuse of discretion by this Court.

Since Movant filed this Motion for Reconsideration *before* he actually saw the Court's written order of April 23, 2003 he was unaware that the Court was basing its Order on Fed. R. Crim. P. 41(g) – despite the fact that Movant had invoked the Court's jurisdiction under Fed. Rules of Crim. P. 41(e), not 41(g). Therefore on May 6, 2003 Movant filed a "Supplement" to his Motion of Reconsideration in which he pointed out – among other things – that:

The Court, in denying the return of the documents at issue, based its Order of April 23 2003 on Fed. R. Crim. P. 41(g) – which has absolutely nothing to do with the Motion at issue. In doing so this court ignored the provisions of Rule 41(e), 41(d) and 41(h) and Movant's rights under them.

On May 16, 2003 the Government filed its Response to Movant's Motion for Reconsideration.

On May 28, 2003 Movant filed his Reply to the Government's Response; however as of this date Magistrate Leavitt has not ruled on Movant's Motion for Reconsideration.

In addition on June 4th Movant filed a Notice with the Court that "Respondent Is Not Complying With the Court's Order of April 23, 2003." As of this date the government has not returned copies of any of the documents requested by Movant in accordance with the Court's Order of April 23, 2003.

However, since Movant has been so preoccupied with the pressures created by the Restraining and Preliminary Injunctions Orders (as well as other litigation and medical problems as indicated above), he simply did not have the time or ability to follow up on the pleadings as described above. Movant is still suffering in many ways by the government's continued possession of thousands of Movant's original files and documents covering research material, court documents, bank records, contracts with third parties all of which were illegally seized and should be returned pursuant to Fed. Rules of Cr. P. 41(e). And the government's continued possession of these documents is impeding an ongoing civil case (Case No.CV-S-01-895-PMP-LRL,) in which the government is suing Movant for approximately \$2.5 million dollars and many of the seized documents are needed by Movant to fight this federal law suit and the attempt by the government to criminally indict him on grounds still unknown to Movant.

THE SEARCH AND SEIZURE AT ISSUE WAS ILLEGAL ON A VARIETY OF GROUNDS

FRCP Rule 41(e) provides, in relevant part, “A person aggrieved by an unlawful search and seizure ...may move ...for the return of the property,” and that “The court shall receive evidence on any issue of fact necessary to the decision of the motion.” In Movant’s original Memorandum for the Return of Documents Movant provided the Court with numerous grounds showing that the search warrant was illegally issued and illegally executed. These grounds were again recounted to this Court on April 09, 2003 in Movant’s Response to the Government’s Opposition for the return of the documents.

In its Opposition, filed on March 28, 2003, the Government did not even challenge, let alone deny or refute, Movant’s following claims:

1) 26 CFR 1.274-5T(k)(ii) (which was furnished to the Court as Exhibit C in Movant’s original Memorandum of Law to support his Motion for the return of his documents and attached hereto as Exhibit D) clearly stated that special agents, such as David W. Holland were not “federal law enforcement officers” and so he could not fall within the provisions of Rule 41(a) of 18 U.S.C. Since Mr. Holland had no authority to apply for the search warrant at issue, the court *was without authority* to have issued it.

2) Rule 41(h) of Title 18 provides 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." Movant informed the Court that, “at the forthcoming hearing, Schiff demands that the United States produce the Justice Department document that designates the category of officers who are authorized to make application for search warrants.” However Magistrate Leavitt issued his Ruling of April 23, 2003 without requiring the Government to produce the “Justice Department document that designates the category of officers who are authorized to make application for search warrants” pursuant to Rule 41(h). Movant submits that special agents of the IRS will not appear on that Justice Department list for a variety of reasons. Therefore Magistrate Leavitt issued his ruling of April 23, 2003 in obvious violation of Rule 41(h).

3) Schiff provided the Court (as Exhibit F in his Memorandum), the official job description of special agents as it appears in the IRS “Organization and Staffing manual.” It shows (attached hereto as Exhibit E) that special agents 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...” This document alone clearly established that neither Mr. Holland, who applied for the warrant at issue, nor any of the 15 special agents who joined him in enforcing it, had any authority to do so.

4) Movant pointed out (supported by Exhibits D & E in his original Memorandum) that 26 USC 7608 which provides for the “Authority of internal revenue enforcement officers” shows, in the Parallel Table of Authorities, that any such enforcement authority is delegated only to BATF agents pursuant to 27 CFR 70, 170, and 296- and no such comparable, enforcement regulations are shown for 26 CFR as applying to IRS agents. This provided the Court with additional proof that special agents are without authority to apply for, and enforce, search warrants in connection with income taxes.

5) In addition, Movant pointed out that all of the special agents who took part in the search and seizure were armed. Movant further pointed out that Section 7608(a)(1) clearly only authorizes IRS agents to “carry firearms” in the “Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms.” Therefore IRS agents are precluded – by law - from carrying firearms in the enforcement of subtitle A taxes. Therefore all of the special agents who took part in the search and seizure were **ILLEGALLY ARMED**. And this is not even debatable. The law – section 7608 – only allows IRS agents to carry firearms if they happen to be enforcing a federal tax falling within subtitle E.

Since special agents are not authorized to carry firearms in connection with subtitle A taxes, they are obviously not “law enforcement officers” when it comes to income taxes. How can special agents qualify as “law enforcement officers” with respect to income taxes, when they are specifically precluded from “carrying firearms” in connection with such a tax? Who ever heard of law enforcement officers who are precluded from carrying firearms?

In addition Section 7608(b)(2)(C) limits special agents to making “seizures” only with respect to “property subject to forfeiture under the internal revenue laws.” And such property is described and identified in Code Sections: 26 USC 7301, 7302, 7303, 7304, and 7321

Obviously, federal law enforcement officers would be authorized to make seizures in connection with all federal laws, and would not be limited to only *five* statutes as contained in the Internal Revenue Code. Since special agents of the IRS have no such *general* seizure authority, they cannot be federal law enforcement officers as contemplated by Rule 41(a) & (h).

6) Movant also provided the Court with a copy of Treasury Regulation 27 CFR 70.33 (as Exhibit L in his Memorandum and attached hereto as Exhibit F)) which specifically authorizes BATF agents to “execute and serve search warrants” and pointed out to this Court that, “Unless the United States can produce at the hearing a similar regulation that not only authorizes Special Agents of the IRS to ‘Execute and serve search warrants’ but to apply for them as well, the application and enforcement of the instant Search Warrant will be seen to have been illegal from beginning to end just on this basis alone.” However, this Court issued its Ruling of April 23, 2003 without requiring the Government to produce any such comparable Regulation.

7) Movant also pointed out that the inventory at issue “was not made in the presence of the applicant for the warrant and the person whose possession or premises the property was taken” and that the inventory was not signed or “verified” by the officer, both of which are required by Rule 41(d). Movant pointed out to the Court that Movant was actually barred from entering his own office to observe what the agents were taking, as provided by this Rule. So the records at issue were illegally taken, just based on Rule 41(d) alone.

8) Schiff also pointed out to the Court that the IRS agents who seized the records at issue are only authorized to “seize” (if they are authorized to seize anything at all, which they have yet to prove) - as provided in Code Sections 7608(a)(4) and (b)(C))- “property subject to forfeiture,” and that Schiff’s books and records did not fall within the category of “property subject to forfeiture,” as defined in Code Sections 26 U.S.C 7301 and 26 U.S.C. 7302.

Movant pointed out in his Reply to the government’s Response that:

The government did not even address any of Movant’s above claims, let alone refute them. All the Government did is to repeat two of the above claims, without denying that the provisions had been disregarded. For example, the Government stated, (page 4) “Schiff first argues that the search was illegal because IRS 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. This is a completely frivolous argument. A ‘federal law enforcement officer’ is any government agent who is engaged in the enforcement of the criminal laws and is

within the category of officers authorized by the Attorney General to request the issuance of a search warrant.” However, the Government did not produce the Justice Department document it referred to, and as requested by Movant. Nor did the Government contest the validity of 26 CFR 1.274-5T(k)(ii) which stated that Special Agents of the IRS are not “law enforcement officers” on any basis. Nor did the Government produce any Government document or regulation comparable to Treasury Regulation 27 CFR 70.33, which specifically authorizes BATF agents to “execute and serve search warrants.”² Further on the Government states, “Special Agent Holland complied with the procedures outlined in Rule 41(d) for a search warrant inventory.” This claim was false, as the Government had to know. The inventory was not made “in the presence of ...the person from whose possession or premises the property was taken,” nor was the inventory signed or “verified,” conditions required by Rule 41(d). Apparently the Government believes that it makes no difference to this Court whether its representations are true or false.

In issuing it’s ruling of April 23, 2003, Magistrate Leavitt disregarded Rule 41(e), 41(d) and 41(h). Since Movant filed his Motion For the Return of Documents pursuant to 41(e), this Rule does not provide for the mere return of “copies” if it can be shown that the search and seizure was “unlawful.” And Movant, as shown above, proved that the search and seizure was “unlawful” on a variety of grounds.

SEARCH WARRANT WAS UNCONSTITUTIONALLY OVERBROAD

In addition to all of the above, Movant proved from the number of documents the special agents took that were totally outside the scope of the search warrant, that the search warrant was so overbroad that it allowed the special agents to believe they were authorized to seize anything. The warrant was supposed to cover (in condensed part) “ All records documents relating to (Schiff, Neun, Freedom Books the Freedom Foundation, and Freedom Foundation, Inc.) relating to federal offenses set forth in this supporting affidavit ...relating to advice or assistance in the violation of income tax laws, including advice in hiding assets and income ... showing the flow of money realized and expended in the operation of FREEDOM BOOKS ...or any other business...showing the hiding or concealing of income and assets from the IRS. And, in addition, such records were limited to “The period January 1, 1991 to the present.”

However, as listed (with samples attached) to Movant’s Supplement to his Motion for Reconsideration, the agents took such records as:

² The mere fact that the Government was able to find a district court judge who erroneously claimed in *Fallacora v. Richardson*, 965 F. Supp 87 that Special agents have such authority is irrelevant. The IRS does not consider itself bound by lower court decisions, and neither is this court and neither is Movant.

- A) A bound volume of the 1420 page trial transcript of Movant's 1980 trial, a document clearly outside the boundaries of both the subject matter and time frame of the search warrant.
- B) A number of bills and letters Movant received from various lawyers going back to 1980.
- C) The 41-page transcript of Movant's Probation Hearing that took place on May 31, 1991.
- D) A 19 page Amicus Brief filed by the U.S. in 1985 in connection with *Schiff v. Simon & Schuster*.
- E) Numerous documents taken in connection with Movant's relationship and suit against Simon and Schuster, including their 12 page 1982 contract; misc. correspondence dated 1983; and the 31-page transcript of Oral Argument that took place on June 5, 1985 in connection with this litigation.
- F) Schiff's Reply to Defendant's Request for a Protective Order filed on December 1, 1994 in connection with "Schiff v. (Judge) Peter C. Dorsey et al."
- G) The 15-page transcript of Oral Argument held on Nov. 13, 1990 in connection with *Schiff v. U.S.*
- H) Miscellaneous 1991 correspondence between Movant and the Supreme Court, in connection with Movant's Petition for a writ of certiorai.
- I) The 12 page 2nd Circuit decision in *Schiff v. U.S.* decided November 13, 1990.
- J) A 33 page "Petition for Habeas Corpus Pursuant to 28 U.S.C. 2255" (plus 30 pages of Exhibits) filed by Movant around 1990.
- K) An Exhibit filed by Movant in connection with *U.S v. Schiff*, CV –S-01-0895-PMP-LRL entitled "**EXHIBIT AA AFFIDAVIT AND MEMORANDUM TO SUPPORT SCHIFF'S REPLY AND COUNTERCLAIM**" including some 18 Exhibits.
- L) Extensive excerpts from Merten's "The Law of Federal Income Taxation."
- M) Congressional Reports covering the "Criminal Code Reform Act of 1977," 1979, and 1981.
- N) The entire Supreme Court case of *Pollock v. Farmers Loan and Trust Co* covering some 50 pages.

- O) Numerous other court decisions, containing notes, comments, and underlining by Movant.
- P) Movant’s “Counterclaim” in *U.S. v. Schiff* CV- S-01-0895-PMP-LRL
- Q) Movant’s “JUDGEMENT AND PROBATION/COMMITMENT ORDER dated June 23, 1980.
- R) 10 pages of docket sheets from Movant’s 1980 trial showing entries from 6/1/1978 to 5/29/1980.

Clearly, none of the above documents were authorized to be seized by the search warrant - yet **these documents still remain in the hands of the government.** And Magistrate Leavitt has to know that these documents were illegally seized just on this ground alone, yet he has not ordered the government to return these documents to Movant. Yet this list is a mere sampling of the type of unauthorized documents that the special agents took in connection with the search warrant at issue.

In addition to all of the above, Movant again attaches to this Motion the inventory at issue (Exhibit G) which show the following entries – all of which identify documents that were seized but which were not authorized to be seized based on the provisions of the search warrant. Despite this, these documents still remain in the possession of the government even though they were clearly not authorized to be seized, just based on the provisions of the search warrant alone – and overlooking all other considerations.

- Control 5 “Framed Newspaper Article 3x5”
- Control 9 “News Stories”
- Control 10. “Court papers for Courtade”
Hard Disks – *Court cases*
- Control 11 “IRS/History of Irwin Schiff 1991- Present. (Filings, Pleadings, Transcripts, Tax Returns, Court Records)”
- Control 12 “IRS/History of Irwin Schiff 1991- Present (Filings, Pleadings, Transcripts, Tax Returns, Court Records.”
- Control 13 “IRS/History of Irwin Schiff 1991- Present (Filings, Pleadings, Transcripts, Tax Returns, Court Records.”
- Control 20 “News Articles
- Control 29 “Copy of Schiff’s 1995 Tax Return.”
- Control 32 “Legal Info (Summons-copy. Copy of Court Records)”
- Control 37 “Newspaper Articles”
- Control 42 “Various Court Documents”
- Control 46 “Tax Returns for Various Years (1975-1998)”
“File Relating to Grand Larceny”

- Control 48 “Court Documents Relating to Swan Lawsuit”, (This is a lawsuit currently in litigation and the agents took Movant’s entire file!)
- Control 54 “Copies of News Articles”
- Control 57 “Copies of Newspaper Articles”
- Control 61 “Newspaper Articles”
- Control 63 “Social Security File”
- Control 70 “CRS Report for Congress,” “Frequently Asked Questions Covering the The Federal Income Tax,” (both government documents) “Zero Return Research,” “IRS Procedures” (research on “IRS procedures”) Misc. News Articles, (file on) Bankruptcy.”
- Control 72 “Research material on ‘How to Set Up Trusts.’”
- Control 73 “Newspaper Articles”
- Control 74 “Copy of Newspaper Articles”
- Control 75 “Newspaper Articles, Schiff Cases” (Court decisions involving Schiff)
- Control 88 “B of A File” [This file contained court documents and pleadings in connection with Schiff’s lawsuit against the “Bank of America”]
- Control 92 “Newspaper Articles”
- Control 95 “Newspaper Clippings”
- Control 97 “Newspaper Articles”
- Control 104 “ADP and IDRS Information”
- Control 114 “Newspaper Articles by Schiff”
- Control 132 “Social Security Administration Communication”
- Control 151 “Articles/Supreme Court/Folder of 1040’s”
- Control 153 “Irwin Schiff writ of certiori”
- Control 160 “Portfolio Binder of Cindy Neun’s Paintings”
- Control 163 “Newspaper Article”
- Control 167 “Attorneys and Notaries Listing”

None of the above: “Filings, Pleadings, Transcripts, Tax Returns, Court Records,” research material, including “newspaper articles, and other research material (including government reports), were authorized to be seized by the search warrant at issue. Yet all of these obviously illegally seized documents (along with thousands of other documents which were illegally seized on other grounds) still remain in the possession of the government. How, therefore, is this search and seizure any different than what any totalitarian despotism might do? What does the seizure of so many unauthorized documents mean? It means, as Movant argued in his “Supplement to His Motion for Reconsideration, ”

The point is how could the raiding party have believed that all of these documents were covered in the instant search warrant, if the warrant was *explicit and understandable*? All of the above documents, along with numerous others, fall totally outside of the scope of the search warrant. However, pursuant to the 9th Circuit’s holding in *U.S. v. McGrew*, No. 96-10342 (9th Cir. 09/12/1997)), 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). Obviously the instant search warrant at issue *did not do that*; otherwise all of the above documents would *not have been seized*. The proof of the pudding is in the eating. The fact that all of the above documents were seized is proof in and of itself, that the search warrant at issue was so overbroad, that it gave the agents conducting the search a belief that they could seize *anything*. What more proof is needed that the warrant at issue was unconstitutionally overbroad (and illegal on other grounds, as covered in *McGrew*, which Movant does not need to argue, since it would amount to beating a dead horse)? If the search warrant were not unconstitutionally overbroad, all the above documents would not have been seized.

The bottom line is this. Movant has proved beyond a shadow of a doubt that the warrant was illegally issued, illegally executed, and illegally “overbroad.” Thousands of documents were taken *which were totally outside the scope of the search warrant*, yet they still remain in the hands of the Government. Therefore, by all of the rules of law and equity all the documents that were taken in connection with the search warrant of 2/10/2003 must be *immediately* returned to Movant in the exact form in which they were seized. Pursuant to FRCP Rule 41(e), 41(d) and 41(h) Movant is entitled to get them all back.

In addition to all of the above, Movant pointed out to Magistrate Leavitt in his Reply to the Government’s Response regarding Movant’s Motion for Reconsideration, that the Agent’s disconnected Movant’s phone service while they conducted their raid by tampering with the phone cables. Consequently Freedom Books was without phone service until the problem was corrected at approximately 12:00 noon the following day at a cost of \$112.50, the bill for which Movant attached to his reply. This act of vandalism on the part of the special agents who conducted the raid was a criminal violation of 18 USC 2234.

Based on the ability of the government to get away with all of the above and still retain the illegally seized documents, is an indication that laws apparently do not apply to the federal government.

IN SUMMATION

Magistrate Leavitt’s by erroneously invoking Rule 41(g) in his Order of April 23, 2003 while ignoring Rules 41(e), 41(d) and 41(h) and disregarding the seizure of so many documents that clearly fell outside the parameters of the search warrant obviously abused his discretion. In addition Magistrate Leavitt abused his discretion by neglecting to rule on Movant’s Motion for Reconsideration, and seeing to it that the government, at least, complied with his Order of April 23, 2003 after Movant brought to his attention the fact that the government was not complying with that Order.

In addition to all of the above, Movant is alleging fraud in the application and issuance of the search warrant at issue, since Special Agent's have no authority to apply for search warrants and the government resorted to fraud when it allowed a special agent to do so in this case. "Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows*, 91 U.S 426. "Fraud vitiates everything," *Boyce v. Grundy*, 3 Pet. 210, "Fraud vitiates the most solemn contracts, documents and even judgments," *U.S. v. Throckmorton*, 98 U.S. 61. Based on the fraud involved in the issuance of the search warrant at issue, Movant alleges that the Magistrate's Order of April 23, 2003 is "invalidated" and "vitiating" based on the principle enunciated by the Supreme Court in the above decisions.

Therefore, in light of Magistrate Leavitt's:

- 1) Failure to rule on Movant's Motion for Reconsideration;
- 2) Failure to compel the government to comply with its Order of April 23, 2003;
- 3) Failure to require the government to produce the Justice Department document that shows that IRS special agents fall "within any category of officers authorized by the Attorney General to request the issuance of a search warrant" as required by Rule 41(h);
- 4) Failure to provide Movant with the hearing as required by Rule 41(e);

Movant asks that a Federal judge officially vacate Magistrate Leavitt's Order of April 23, 2003 and order the government to immediately return all of the property at issue, or, in the alternative, order that a hearing pursuant to Fed. Rules Crim. P. 41(e) be held. A hearing that Magistrate Leavitt never afforded to Movant.

Dated: August 25, 2003

Irwin A. Schiff

CERTIFICATION OF SERVICE

This is to certify that Movant has this day hand delivered a copy of the foregoing to Melissa Schraibman, (% Kurt P. Schulke, Chief, Criminal Division) Trial Attorney, U.S. Department of Justice, Tax Division at 333 Las Vegas Blvd. South, Suite 5000, Las Vegas, Nevada NV 89101.

Irwin A. Schiff