

FILED
 ENTERED
 RECEIVED
 SERVED ON
 COUNSEL/PARTIES OF RECORD
 DEC 22 2004
 CLERK US DISTRICT COURT
 DISTRICT OF NEVADA
 BY: _____

FILED
 ENTERED
 RECEIVED
 SERVED ON
 COUNSEL/PARTIES OF RECORD

2004 DEC 21 A 10:46

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

IRWIN SCHIFF,)

Defendant.)

CR-S-04-119-KJD-LRL

Motion to Suppress (#43)

REPORT & RECOMMENDATION

On February 10, 2003, the undersigned issued a search warrant authorizing the search of Freedom Books. Defendant Schiff owns and operates the establishment. During the execution of the search warrant, IRS special agents seized over 50 boxes of records, along with two file cabinets full of client files. On June 15, 2004, Schiff filed a Motion to Suppress All of the Evidence Derived from the IRS Search and Seizure of February 11, 2003 Since it was Conducted Illegally on a Variety of Grounds (#43). Having considered the motion, Schiff's Supplement (#44), the government's Opposition (#76), and Schiff's Reply (#87), the court submits the following Report and Recommendation.

First, Schiff challenges the search warrant application. Each of his arguments are without merit. Schiff contends that in obtaining the search warrant, IRS Special Agent Holland falsely represented that the documents to be seized were "concealed" on the premises when, in fact, they were not. Schiff has failed to make a showing that the use of the term "conceal" on the face of the warrant was false or misleading. *See, e.g., Franks v. Delaware*, 438 U.S. 154, 170 (1978). SA Holland's use of the term "income" was also proper. The undersigned has

1 previously addressed and rejected this frivolous argument. *See* Report & Recommendation #85.
2 Similarly, Schiff's argument that the inventory conducted by the government violated Fed. R.
3 Crim. P. 41(f)(2) has previously been rejected by this court in a related civil matter. *See* Case
4 No. CV-S-03-1030-KJD-LRL, Order (#5) at 5 ("The procedures for the execution and return
5 of a search warrant contained in Rule 41 are ministerial only, and failure to comply with such
6 statutes does not void an otherwise valid search."). Finally, the court rejects Schiff's contention
7 that the search warrant is overbroad. The warrant provided a specific, detailed, and limited list
8 of items to be seized. *See* Mot. (#43), Exh. A at 3-5 (Attachment B).

9 Schiff also challenges the government's authority to request and execute search warrants.
10 Contrary to Schiff's assertion, IRS special agents are "law enforcement officers" for the
11 purposes of Rule 41 and are authorized to request a search warrant. Moreover, IRS special
12 agents are authorized to execute search and arrest warrants and carry firearms. *See* 26 U.S.C.
13 § 7608(a)(1)-(4). Additionally, the failure of the government to obtain approval from the
14 Department of Justice for the search warrant does not void an otherwise valid search warrant.

15 Lastly, Schiff contends that the manner in which his business was searched was
16 unreasonable. The contention is without merit. That the agents may have disconnected
17 telephone lines does not constitute "vandalism" or a callous disregard for Schiff's constitutional
18 rights. Moreover, rather than taking "every piece of paper in sight," agents limited their seizure
19 of items to 50 boxes and two file cabinets. The items seized were within the scope of the
20 warrant. The court also finds that it was not unreasonable for agents to restrict Schiff's access
21 to the premises during the execution of the warrant. *See, e.g., Michigan v. Summers*, 452 U.S.
22 692, 702-03 (1981). Finally, Schiff's argument that his First Amendment rights were violated
23 is without merit and does not serve as a basis for suppression. Accordingly, suppression is not
24 warranted.

25 ...

26 ...

1 **RECOMMENDATION**

2 Based on the foregoing, it is the recommendation of the undersigned United States
3 Magistrate Judge that Schiff's Motions to Suppress (#43) should be denied.

4 DATED this 20th day of December, 2004.

5 

6

LAWRENCE R. LEAVITT
7 **UNITED STATES MAGISTRATE JUDGE**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26