

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
Plaintiff,

v.

Irwin Schiff, Cynthia Neun,
Lawrence N. Cohen aka Larry Cohen,
Individually and doing business as

FREEDOM BOOKS, et al.,
Defendants

CV-S-03-0281-LDG (RJJ)

FRCP Rule 144
Defendant's AFFIDAVITS
Supporting Imposition of
RULE

Come now the Defendants, Irwin Schiff, Cynthia Neun, and Lawrence Cohen, implementing FRCP Title 28 United States Code Rule 144 providing for relief to a party to any proceeding in a district court where there is sufficient evidence presented showing the bias or prejudice of a judge.

During the course of the Temporary Restraining Order Hearing On March 19, 2003, Federal District Court Judge George openly displayed his bias and prejudice against each defendant personally; in our association with each other; and, with regard to the material at issue that we sell.

Therefore, in order to preserve our right to a fair and impartial hearing on these matters, we submit this Affidavit where we swear in good faith to the following set of facts, which support our position that Judge Lloyd D. George should recuse himself from the above-entitled action:

The Record will show that prejudice and bias was the "theme" of this particular hearing where

the judge aided Prosecution from the bench as evidenced by the following facts

1) Noel Spaid, Irwin Schiff's Counsel, argued for a Continuance to prepare for these proceeding, since she (and as also argued by the two other Defense attorneys) had approximately only one day to prepare for this hearing. Despite the that fact that fundamental 1st Amendment rights were at issue, the court would not grant any sort of a continuance as requested by all of the attorneys representing defendants.

1. When the Government's Attorney, Evan Davis, accused Irwin Schiff of running one of the largest Tax Scams in U.S. history; Judge George asked the U.S. Attorney, "Let me ask you this, (and, I don't know if it relates to this case), but, any Federal judge deals with a number of similar kinds of cases – many- and I don't know if that's the case here, use, what I'll call a hokey statement that's been put together that misrepresents the position of a variety of United States Supreme Court cases, and it misrepresents them, there's no question about it – but, uh, at least several years ago when I tried one of these cases, IRS never responded to this statement that was an absurdity. . .and, are you now responding to those statements that have been copied – Somebody's given them to them and they recite positions by taking from various parts of the opinions. . .Are you now responding to those? – It seems to me that could save a great deal of time and trouble." Here, the Court, without having read or examined any of the material at issue, equates them with "hokey statements," thus revealing his preconceived bias.
2. Judge George displayed his bias towards the Government by not requiring the Government to identify any statement on Schiff's "zero" return that was false, misleading or not legally correct
3. The Court's bias towards the Government was indicated by the Court's failure to ask the Government to specifically explain or identify in what manner Schiff's book "The Federal

Mafia: How the Government Illegally Imposes and Unlawfully Collects Income Taxes,” constituted a “Tax shelter” or an unlawful and/or fraudulent “tax scam.”

4. It was an indication of the Court’s bias and an abuse of Court’s discretion not to have pointed out to the Government that in lieu of seeking a restraining order that had fundamental First Amendment violations, they could have charged all of the defendant’s criminally if they were united in a conspiracy to promote violations of tax law. The Court knew or should have known that since the Government had an adequate remedy at law (the Government could have prosecuted defendant’s criminally) they were estopped from seeking a restraining order.
5. The following statement made from the bench by Judge George indicates that he had a preconceived bias against the defendant’s and was operating merely as an extension of the Justice Department itself.
6. a) “This isn’t Mr. Schiff’s *first time* before the Court, and he has *never* been successful in his litigation in this.” Since Schiff has never been prosecuted or been subject to civil litigation for filing a “zero” return, this comment by Judge George was irrelevant and merely displayed the Court’s unwilling to consider the issue of the “zero” return separately from Schiff’s other litigation.
- b) Judge George stated during the hearing that there is a law making people liable for income taxes but he did not identify any such law. So here Judge George assumed as a fact one of the issues in contention. It is the position of defendants that no law exists making person’s ‘liable’ for income taxes.. So here Judge George *assumed as a fact* something that the Government had not yet established – that there is a law making person’s “liable” for income taxes.
- c) Further Judge George said, *“The people who follow Mr. Schiff and his cohorts should know better”*. Here, Judge George, without having read the book or other materials at issue,

unabashedly states, that people who might have been persuaded and influenced by this material “should have known better.” What greater evidence of bias did this Court have to present that would indicate that the Court had made up its mind in favor of the Government, without having been shown one bit of evidence that would support the Government’s position.

d) , Judge George then makes this statement *“I have to tell you that I have some sympathy for the people who are drawn into this.. uh, ..what really is nonsense,”*

So here Judge George has taken the position – without been given a shred of evidence and without examining any of the material at issue –that it is all “nonsense.”

Obviously, based on all of the above, it should be clear even to a blind man, that Judge George is so biased and prejudiced against defendant’s and so biased and prejudiced in favor of the Government, that he has already made up his mind on the issues being litigated here, and is thus incapable of conducting a hearing in accordance with the “due process of law” guaranteed to defendants by the 5th Amendment of the U.S. Constitution. By all the rules of justice and equity Judge George has amply demonstrated that he is unfit to serve as a judge in this case and so, in the interest of justice, he should recuse himself from his hearing this case.

Sworn to, under the penalty of perjury, further, your Affiants sayeth naught.

Pursuant to 28 USC 1746, I certify under the penalty of Perjury that the foregoing is true and correct. Executed on April 2, 2003

Irwin A. Schiff

Cynthia L. Neun

Lawrence N. Cohen

CERTIFICATE OF SERVICE

This is to certify that a copy of Defendant's Affidavit to Support Recusal of Lloyd D. George was sent to Evan Davis Trial Attorney, Tax Division, U.S. Department of Justice by faxing same on April 2, 2003 to the office of the United States Department of Justice to Evan J. Davis at 202-514-6770

Irwin A. Schiff

Cynthia Neun

Lawrence Cohen

This part, of course, was not a part of the filed document. It is for your information:

28 U.S.C.A. 144 Bias or prejudice of judge.

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."