

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THE HON. KENT J. DAWSON, JUDGE PRESIDING

4
5 UNITED STATES OF AMERICA,)

)

6 Plaintiff,) Case No. CR-S-04-119-KJD(LRL)

)

7 vs.)

)

8 IRWIN SCHIFF, CYNTHIA NEUN,)

and LAWRENCE COHEN,)

9)

Defendants.)

10)

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12
13
14
15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 11)

16 Wednesday, September 28, 2005

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20 APPEARANCES: (See Page 2)

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22
23
24 Court Reporter: Felicia Rene Zabin, RPR, CCR 478
Federal Certified Realtime Reporter
25 (702) 676-1087

1 APPEARANCES:

2 For the Plaintiff:

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24 Also Present:

25 Adam Steiner, Special Agent, IRS
Sam Holland, Special Agent, IRS
Gary Modafferi, J.D.

I N D E X

| WITNESS: | Direct | Cross | Redirect | Recross | Further Redirect |
|----------|--------|-------|----------|---------|---------------------|
|----------|--------|-------|----------|---------|---------------------|

Government's:

| | | | | | |
|-----------------|-------|-------|-------|-------|----|
| Nancy Driscoll | -- | 2833S | -- | -- | -- |
| | | 2854B | | | |
| Gregory Cassidy | 2888N | 2908C | 2918N | -- | -- |
| | | 2913B | | | |
| Susan Gerecht | 2922I | 2938C | 2950I | 2952C | -- |
| Luddie Talley | 2953N | 3031S | -- | -- | -- |

EXHIBITS

| EXHIBIT NO.: | MARKED FOR IDENTIFICATION | RECEIVED IN EVIDENCE |
|--------------|------------------------------|-------------------------|
|--------------|------------------------------|-------------------------|

Government's:

| | | |
|-------------|------|------|
| 156 and 157 | 2899 | 2900 |
| 158 and 159 | 2899 | -- |
| 175 | -- | 2841 |
| 256 | -- | 2926 |
| 257 | -- | 2935 |
| 289A | -- | 2998 |
| 289 | -- | 3008 |
| 290 | -- | 3019 |
| 291 | -- | 2989 |
| 292 | -- | 2992 |
| 329 | 2896 | -- |

Defendant Schiff's:

| | | |
|------|------|------|
| 2059 | 3034 | 3035 |
|------|------|------|

1 LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 28, 2005; 9:09 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE CLERK: All rise.

5 THE COURT: Please be seated.

6 Any matters before we bring in the jury?

7 MR. CRISTALLI: Um, your Honor, the only issue that I
8 have is, uh, what we left off on last night, which is the --
9 which is Agent, uh, Holland's report, the redacted report, that,
10 uh, we received last night. The Court obviously had an
11 opportunity to review it last night as well, compare it to the
12 unredacted version.

13 The only concern I have with -- with regard to this --
14 I mean, there's -- there's just -- there's quite a bit of
15 redaction here. And, based on my knowledge pursuant to U.S. v.
16 Roviario, the only time that, um, a report has to be redacted is
17 if you're trying to protect, um, a declarant in the report's
18 identity as related to an ongoing investigation or if that
19 particular person, um, is -- his life's in danger.

20 And I don't know whether or not those two, um, factors
21 are relevant in this particular matter or, um, have been met in
22 this particular matter. And, if they haven't, I think we're
23 entitled to see the unredacted version.

24 THE COURT: Thank you.

25 MR. SCHIFF: I haven't seen any version.

1 THE COURT: Okay. Well, that's because you wouldn't
2 agree when we were in session to the conditions.

3 MR. SCHIFF: Am I going to see --

4 THE COURT: You'll get to see it eventually, yes.

5 MR. BOWERS: I -- I would join with Mr. Cristalli
6 but --

7 THE COURT: Okay.

8 MR. BOWERS: -- not Mr. Schiff obviously.

9 THE COURT: Government?

10 MR. IGNALL: I think the case -- Ninth Circuit case we
11 cited, Alvarez, is clear that the appropriate procedure in a
12 case like this is to provide both a redacted and an unredacted
13 copy to the Court in-camera so the Court can determine -- the
14 matter here is not trying to protect in informant's identify,
15 like in Roviario; the matter here is what portions of the Special
16 Agent's report relate to the substance of his testimony such
17 that the Special Agent's report would be discoverable under the
18 Jencks Act. It's not -- it's not otherwise discoverable; it's
19 only a matter of whether it's a prior statement of this witness
20 that's otherwise discoverable under the Jencks Act.

21 THE COURT: Yes. And I've reviewed both versions and
22 agree that the -- the redacted parts are not related to the
23 testimony that -- any testimony that would be offered by
24 Agent Holland. So --

25 MR. CRISTALLI: Your Honor --

1 THE COURT: -- I've looked --

2 MR. CRISTALLI: I'm sorry.

3 THE COURT: -- at it in detail. And, without going
4 into what it is that -- it's not anything that he'd be
5 testifying to.

6 MR. CRISTALLI: Well, I don't know what I would
7 cross-examine him about and whether or not there's any
8 contents --

9 THE COURT: Well, you can cross-examine him on anything
10 that is disclosed. But I'm not going to disclose to you what it
11 is that's been redacted because that would defeat the purpose of
12 redaction. I can just tell you that I'm confident that there's
13 nothing in -- that has been redacted that he would be testifying
14 to. And I'm happy to have the Ninth Circuit look at it
15 in-camera if they wish. I'm that confident that he's not going
16 to testify to those items.

17 MR. CRISTALLI: If we could make it part of the record,
18 I would appreciate it, your Honor.

19 THE COURT: Uh, it will be -- it will be sealed and not
20 available to -- to anyone other than the Court and, uh, Court
21 personnel and the Ninth Circuit.

22 MR. CRISTALLI: Thank you.

23 MR. IGNALL: I'm sorry. Is the Court going to order us
24 to turn it over to Mr. Schiff with the condition that -- because
25 it does contain both investigative material and material that

1 would otherwise be protected by Rule 6(e) of the Federal Rules
2 of Criminal Procedure -- that the Court order Mr. Schiff not to
3 disseminate it and only to use it in preparation for the
4 cross-examination of the Special Agent Holland?

5 THE COURT: It is so ordered. And the order will be
6 enforced with contempt.

7 MR. BOWERS: Judge, can I give my copy back to the
8 Government? I -- I don't like havin' a document like this. No.
9 I mean, I'd like --

10 THE COURT: Well, you know, I can appreciate your
11 concern --

12 MR. BOWERS: Yeah. I mean, I --

13 THE COURT: -- because you don't want to be blamed
14 for --

15 MR. BOWERS: I don't have any control over this thing.
16 I don't --

17 THE COURT: Yeah, that's right.

18 MR. BOWERS: Right. So let me give it back until
19 Mr. Holland testifies and the Court knows it's not my office.

20 MR. IGNALL: Yes.

21 MR. BOWERS: Well, I don't know what he's gonna do.
22 But I --

23 MR. IGNALL: So should I provide a copy now, your
24 Honor, to Mr. Schiff?

25 THE COURT: You may or you may after the testimony of

1 the witness. It's up to you.

2 MR. IGNALL: Okay.

3 THE COURT: It sounds to me like it's up to you.

4 MR. IGNALL: Well, in the interest of --

5 THE COURT: If you want to give it to him early, you
6 can.

7 MR. IGNALL: Yeah. In the interest of speeding things
8 up as long as we have that protective order in place.

9 THE COURT: It's in place.

10 (Pause in the proceedings.)

11 MR. SCHIFF: Can I ask --

12 MR. BOWERS: The witness isn't even called yet.

13 MR. SCHIFF: Well, can I ask -- he said I can't
14 cross-examine the witness with respect to this document?

15 MR. BOWERS: No. You can.

16 MR. CRISTALLI: Yeah, you can.

17 MR. BOWERS: That's why they gave it to you.

18 MR. IGNALL: That's the only thing --

19 MR. BOWERS: But you gotta sit down and read it and
20 wait till he's called.

21 MR. SCHIFF: Oh, I can use this then?

22 MR. BOWERS: To cross-examine him. You can't publish
23 it.

24 THE COURT: Can't use it for any other purpose. I want
25 you to -- I want to make sure you understand.

1 MR. SCHIFF: I won't use it for any other purpose.
2 I've got plenty of stuff I can use, but I don't have to use this
3 document.

4 THE COURT: Ready to bring the jury in?

5 MR. IGNALL: Yes, your Honor.

6 MR. NEIMAN: May we bring the witness in as well, your
7 Honor.

8 THE COURT: Yes, please.

9 (Nancy Driscoll retakes the witness stand.)

10 (Pause in the proceedings.)

11 THE CLERK: Come on in.

12 (Jury enters the courtroom at 9:16 a.m.)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. NEIMAN: Yes, your Honor.

16 MR. IGNALL: Yes, your Honor.

17 MR. CRISTALLI: Yes, your Honor.

18 MR. BOWERS: Yes, Judge.

19 MR. SCHIFF: I -- I agree, your Honor.

20 MR. CRISTALLI: Your Honor, I will defer to, uh,
21 Mr. Bowers. But I would reserve my right to cross-examination.

22 MR. BOWERS: I -- I was going to, uh, pick up what
23 Mr. Schiff didn't take care of, your Honor. So we -- we'd like
24 him to go first.

25 MR. SCHIFF: I'll be the first.

1 THE COURT: You want Mr. Schiff to --

2 MR. SCHIFF: Oh, I'm sorry.

3 THE COURT: -- lead out?

4 MR. SCHIFF: Yes.

5 MR. CRISTALLI: If he wants.

6

7 NANCY DRISCOLL,

8 called as a witness on behalf of the Government, having been
9 previously duly sworn, was examined and testified further as
10 follows:

11

12 CROSS-EXAMINATION

13 BY MR. SCHIFF:

14 Q. Ms. Driscoll --

15 A. Yes.

16 Q. -- as I understood your testimony yesterday, if I wrote it
17 down right, did you suggest that I advised you to file a zero
18 return?

19 A. I'm sorry. Can you repeat the question?

20 Q. I -- I -- if I heard your testimony correctly, did you say I
21 advised you to file a zero return?

22 A. Yes.

23 Q. How did I do that? Did I meet with you and advise you to
24 file it?

25 A. No, you did not. But you provided me the, um, material from

1 the books and, um, also I had some meetings with Carol.

2 Q. So, when -- when you read the book, did the book persuade
3 you that you can file a tax return and not pay any income taxes?
4 Did the book persuade you of that?

5 A. That I didn't have to pay income taxes --

6 Q. Yes.

7 A. -- is that the question? Uh, at that point, yes.

8 Q. Didn't I hear you correctly when you said you didn't read
9 the book?

10 A. No. I said I read a good portion of the book; I did not
11 read the whole book.

12 Q. Did you read the first chapter of the book?

13 A. Yes, sir.

14 Q. And, in the first chapter, did you recall seeing a lot of
15 documents in the first chapter, government documents, saying
16 income tax was voluntary? Did you recall looking at those
17 documents?

18 A. Yes, I did look at those documents.

19 Q. But those were government documents. They weren't my
20 documents.

21 A. That's not the documents, though, that we were talking about
22 yesterday, your frivolous letters and everything else.

23 Q. Yeah. But -- well -- but you -- the first thing you did is
24 you filed a claim for a refund. You amended your returns.

25 A. Yes.

1 Q. Was there anything in my book that, uh, said you could amend
2 your returns? I think your testimony was that -- you read
3 about -- in my book about filing amended returns. Is that where
4 you got your information from?

5 A. Um, I don't remember if it was on the radio or through your
6 book. I'm sorry. I really don't remember.

7 Q. Okay. Now, in the letter that you sent me you said that you
8 had listened to my radio show about six months.

9 A. Correct.

10 Q. But, in your testimony, you said you listened about four
11 times.

12 A. Reason being is you were on Thursdays at 4:00 o'clock. I
13 usually work. So I would listen to you maybe, you know, every
14 two, three weeks or whatever. So in that -- it was about a
15 six-month period.

16 Q. But on my radio show did you ever hear people call in and
17 discuss filing -- having -- when you listened to my radio show,
18 did people call in with problems they might be having?

19 A. Um, they -- yes, they were calling in with problems.

20 Q. Did you ever hear anybody call in discussing problems that
21 they might have had filing amended returns?

22 A. I really don't remember.

23 Q. Did you ever call in my radio show and discuss problems you
24 might have had with an amended return?

25 A. Um, I called in once, but I don't remember what I was

1 calling in about.

2 Q. So, when you said I recommended that you file a zero return,
3 I didn't tell you specifically to file it?

4 A. Of course not. I couldn't get ahold of you.

5 Q. Okay. Now, did you see the disclaimer in my book which said
6 that there's a danger in filing a zero return?

7 A. I really don't remember.

8 Q. Did you read -- you -- you read throughout my book where I
9 went to jail and, uh, where I had property seized from me? You
10 read that in my book?

11 A. Uh, yes, I did.

12 Q. So you knew that you could have problems if you don't pay
13 income taxes?

14 A. Uh, that's not what I got from you.

15 Q. Pardon me?

16 A. That's not what I got from you.

17 Q. That's not what you got from the book?

18 A. No. From you. From the book, yes.

19 Q. Well, did I ever discuss -- when you filed that zero return,
20 you -- you filed it without discussing it with me, didn't you?

21 A. Um, when I filed the returns, I did have a couple
22 appointments with Carol.

23 Q. Um, did you ever hear me on my radio show when people
24 called, did you ever hear me saying, look, you don't file this
25 stuff. You don't file a zero -- unless you understood every

1 paragraph?

2 A. I never heard you say that.

3 Q. Never heard me say that.

4 Um, okay. Um, you said you subscribed to Series 6 --

5 A. Series 5 --

6 Q. -- Series 6?

7 A. -- and 6.

8 Q. 6.

9 A. Um-hum.

10 Q. Did you listen to tape 6-2?

11 A. I'm assuming that I did. I really don't remember.

12 Q. Do you recall -- because I have the tape. I wanna save

13 time -- do you recall that in 6-2, which I've already played

14 already, I recommended not filing an amended return and seeking

15 a refund? Do you recall me saying that?

16 A. No, I do not.

17 Q. Okay. You -- you also said, I believe, that you paid

18 somebody in my office --

19 (Discussion between Mr. Leventhal and

20 Mr. Schiff.)

21 BY MR. SCHIFF:

22 Q. Do you recall in 6-2 that there were instructions, there --

23 there were specific instructions, if you wanted to file a zero

24 return -- oh.

25 THE COURT: Is that a question?

1 BY MR. SCHIFF:

2 Q. Do -- do you recall that in 6-2 there was specific

3 instructions that if you wanted to file amended returns how to

4 do it? Do you recall there was specific documents?

5 THE COURT: Mr. Schiff --

6 MR. SCHIFF: Yes.

7 THE COURT: -- you have asked the question now three

8 times.

9 MR. SCHIFF: Well --

10 THE COURT: Let her answer.

11 BY MR. SCHIFF:

12 Q. Do you recall?

13 A. I'm so confused. I need you to repeat the question. I'm

14 sorry.

15 Q. Okay. You filed an amended return; right?

16 A. Correct.

17 Q. And you testified that you paid somebody at Freedom Books to

18 do this.

19 A. Correct.

20 Q. Do you recall that -- there being exact copies of this in

21 6-2, so you could have prepared it yourself if you wanted to?

22 A. Correct.

23 Q. So there was? You recall there being examples --

24 A. Are you talking about in the book --

25 Q. Yeah --

1 A. -- or --

2 Q. -- no, no. In 6-2.

3 A. Okay. That somebody did for me that I had examples is what
4 you're asking?

5 Q. Yes. Were the sam- --

6 A. Yes.

7 Q. Okay. So you had samples of this. So you could have
8 prepared it on your own if you wanted to without paying us any
9 money to do it for you.

10 A. Well, except at that point, no, there was more information.
11 When I talked to your office, I could not do it myself until I
12 had that information so it could be amended.

13 Q. Well, you don't recall that the amended return that you
14 filed is -- is exactly like supplied to you --

15 A. Once I had --

16 Q. -- in 6-2?

17 A. -- Carol do the information for me, yes, I had that
18 information.

19 Q. Do you recall what you paid for 6-2?

20 A. Um, it was for, uh, two years and I think it was
21 approximately \$300. I think it was a hundred and fifty per
22 amendment.

23 Q. No. It was -- well, the fact is it was -- I have --

24 THE COURT: You can't testify.

25 MR. SCHIFF: Oh, I'm sorry.

1 BY MR. SCHIFF:

2 Q. I have a receipt here that the Government submitted in which
3 it shows what you paid. It's in here.

4 MR. BOWERS: 175.

5 MR. SCHIFF: You have it?

6 MR. BOWERS: Yeah, I have it.

7 MR. NEIMAN: Mr. Schiff, we can put it on the screen
8 for you if you want, Government's Exhibit --

9 (Discussion between Mr. Schiff and
10 Mr. Bowers.)

11 BY MR. SCHIFF:

12 Q. So --

13 THE COURT: Just a minute.

14 BY MR. SCHIFF:

15 Q. -- this is Government's --

16 THE COURT: No. Just a minute.

17 BY MR. SCHIFF:

18 Q. -- Exhibit 175.

19 THE COURT: Just a minute.

20 MR. SCHIFF: I think it was admitted.

21 MR. NEIMAN: Your Honor, Government Exhibit --

22 MR. SCHIFF: I'm not gonna admit it. I just --

23 THE COURT: 175 is a book -- or purchase order for
24 Series 5 and Series 6 reports.

25 THE WITNESS: Those are tapes.

1 MR. NEIMAN: I don't believe it's been admitted. But
2 the Government would not object to its admittance.

3 MR. BOWERS: I'd move for its admission, your Honor.

4 THE COURT: 176 or --

5 MR. SCHIFF: I just want to clarify.

6 THE COURT: -- 175 is received.

7 MR. BOWERS: Thank you, Judge.

8 (Government's Exhibit No. 175, received into
9 evidence.)

10 BY MR. SCHIFF:

11 Q. So you basically paid a hundred and seventy-six dollars.

12 THE COURT: Do you want -- let her see the exhibit.

13 Ms. Clerk, do you have the original?

14 THE CLERK: No, sir, I don't.

15 THE COURT: Has this one been marked yet? It should
16 have been marked already, 170- --

17 MR. BOWERS: It's marked and received and in, I
18 believe, your Honor.

19 MR. NEIMAN: Maybe it's to the right of Ms. Driscoll.
20 There are some documents.

21 THE COURT: Take a look --

22 MR. NEIMAN: -- next to --

23 THE WITNESS: Yes, I see it.

24 THE COURT: Take a look right --

25 THE WITNESS: Okay.

1 THE COURT: -- and see if you can find the hard copy.

2 THE WITNESS: (Reviewing documents.)

3 THE CLERK: Yes, she's found it.

4 MR. SCHIFF: She got it.

5 THE WITNESS: Oh, this is for Series 5 and 6. These
6 were tapes.

7 BY MR. SCHIFF:

8 Q. Yes.

9 A. Okay. I agree to that.

10 Q. So what did you pay for Series 5 and 6?

11 A. Hundred and seventy-six dollars.

12 Q. Okay. And I think you had purchased The Federal Mafia
13 separately.

14 A. Yes.

15 Q. And you paid --

16 A. It was approximately --

17 Q. -- do you recall what you paid --

18 A. It was --

19 Q. -- for The Federal Mafia?

20 A. -- like fifty -- I think, fifty -- 50 to 75 dollars. I
21 really don't remember.

22 Q. Well, we -- we sell it for \$38. Is that --

23 A. Well, by the time I ordered it over the phone with --

24 THE COURT: Testimony --

25 THE WITNESS: -- with tax --

1 THE COURT: Strike.

2 THE WITNESS: -- and shipping and -- it was -- I know
3 it was over \$50.

4 BY MR. SCHIFF:

5 Q. All right. So, if we add that in, so you paid about \$225
6 for the material.

7 A. For the materials, yes.

8 Q. That's the only material you had of mine.

9 A. Yes, except for the payments that -- to have the, uh, income
10 tax amended.

11 Q. Okay. Now, the Government introduced some documents that I
12 think you said you received and flyers from us. One of the
13 documents was Government Exhibit 174.

14 A. That is correct.

15 Q. Okay. And I believe you testified that you received this
16 document or something?

17 A. I'm sorry?

18 Q. Did you testify that you received this document?

19 A. Yes, sir.

20 Q. Okay. Now, when you received the document, did you look it
21 over?

22 THE COURT: Which one are you referring to, the
23 entirety or --

24 MR. SCHIFF: 174.

25 THE COURT: Well, there's several pages to 174.

1 MR. SCHIFF: Well, this is the one that says
2 "Seminar/Workshop [and] Schedule."

3 THE COURT: First page of --

4 MR. SCHIFF: Yeah. Whatever.

5 THE COURT: -- 174. Okay. Go ahead.

6 BY MR. SCHIFF:

7 Q. Did you look it over?

8 A. I looked over the seminar part. And, when I got to the
9 back, I had thought it was a joke. So, no, I didn't finish it.

10 Q. Okay. Now, could you look over some of the -- the items
11 that we -- we said we would be covering at that two-day seminar
12 workshop? Do you notice, uh, that there were questions-and-
13 answer periods?

14 THE COURT: Is this --

15 MR. SCHIFF: I'm sorry.

16 THE COURT: -- is this a seminar that you attended?

17 THE WITNESS: No, I did not.

18 THE COURT: Well, then why is this relevant?

19 MR. SCHIFF: Because --

20 THE COURT: She received it. What's the relevance of
21 what you did?

22 MR. SCHIFF: Its relevance [sic] because if she would
23 have noticed that one of the things we discussed is the
24 advantages and disadvantages of filing a zero return.

25 THE COURT: She didn't attend it; has --

1 MR. SCHIFF: Yeah --

2 THE COURT: -- nothing to do --

3 MR. SCHIFF: -- but she saw --

4 THE COURT: -- with her other than she received the
5 advertisement.

6 MR. SCHIFF: Well, your Honor, the importance is, is
7 that there's a lot of material here and she realizes she doesn't
8 know this information.

9 (Discussion between Mr. Leventhal and
10 Mr. Schiff.)

11 MR. SCHIFF: Okay. All right. Okay.

12 BY MR. SCHIFF:

13 Q. The point --

14 THE COURT: No. You don't make points.

15 MR. SCHIFF: All right.

16 BY MR. SCHIFF:

17 Q. Did you notice --

18 THE COURT: You just ask questions.

19 BY MR. SCHIFF:

20 Q. -- did you notice from this two-day seminar we were gonna
21 cover a lot of material?

22 A. At that point, it was not important to me.

23 Q. It wasn't important --

24 A. No.

25 Q. -- that you understand what we're doing?

1 A. No --

2 Q. Okay.

3 A. -- not going to --

4 Q. Okay.

5 A. -- the seminar.

6 Q. Okay. You also said that you received -- this was

7 Government's Exhibit -- I don't know. This is -- this is --

8 MR. SCHIFF: Can I put this exhibit up on the wall?

9 BY MR. SCHIFF:

10 Q. Did you notice this portion of the exhibit where my face is

11 on that bill? Did -- did you notice the offer I was making in

12 this flyer? Did you happen to notice it?

13 A. As I just repeated, I didn't read the back of this; I just

14 read the front.

15 Q. So you didn't, um -- you didn't see the, uh --

16 A. It didn't make any difference because I was not attending

17 the seminar.

18 Q. Did you notice on the flyer that I said that, uh, attendees

19 can bring their tax attorneys and accountants free of charge?

20 A. Sir, I will say it again. I did not --

21 THE COURT: Mr. Schiff --

22 THE WITNESS: -- look at this side.

23 THE COURT: -- she said she did not look at it.

24 MR. SCHIFF: But -- well, then how did the Government

25 put it in? I don't understand. If I --

1 THE COURT: Because she said she received it from you.

2 MR. SCHIFF: She -- but she didn't read it.

3 THE COURT: She said she -- her testimony is that she
4 received --

5 MR. SCHIFF: All right.

6 THE COURT: -- this Seminar/Workshop Schedule and this
7 was on the reverse, as I understand --

8 MR. SCHIFF: Okay.

9 THE COURT: -- her testimony.

10 BY MR. SCHIFF:

11 Q. Okay. Now, you -- also, the Government put in through you a
12 flyer announcing our jubilee. Is that correct? Did you read
13 this one?

14 A. No.

15 Q. You didn't come --

16 A. I -- I actually read -- I glanced over it.

17 Q. You didn't come to our jubilee celebration?

18 A. No. I'm not into poster painting and dancing and prizes
19 and --

20 Q. And dancing --

21 A. -- stuff like that.

22 Q. -- you're not into dancing and poster painting?

23 A. Not when it comes to, uh, professional natures like this.

24 MR. CRISTALLI: Your Honor, am I mistaken that she now
25 doesn't recognize an exhibit that was introduced by the

1 Government yesterday?

2 THE COURT: Yeah, you are mistaken. She said she does
3 recognize it. She received it.

4 MR. BOWERS: Incidentally, your Honor -- I -- I
5 apologize for interrupting -- but maybe --

6 THE COURT: Her answer is she didn't attend -- she
7 didn't attend the Freedom Jubilee or whatever it is.

8 BY MR. SCHIFF:

9 Q. Well, did I --

10 MR. BOWERS: Agent Steiner is very helpful, but maybe
11 he can only highlight the things that Mr. Schiff is --

12 MR. SCHIFF: Okay.

13 MR. BOWERS: -- addressing in particular.

14 MR. SCHIFF: I'm only...

15 BY MR. SCHIFF:

16 Q. Now, the next document the Government introduced was my
17 advertisement --

18 THE COURT: Your what?

19 MR. SCHIFF: My suggestion as to why they might apply
20 for Series 6. Could you put that on there?

21 BY MR. SCHIFF:

22 Q. You -- you applied for Series 6; is that correct?

23 A. Yes, I did.

24 Q. Did this flyer influence you as to why you applied for
25 Series 6? Did you -- did you read this?

1 A. Yes, I did read this.

2 Q. You did read it?

3 A. Yes.

4 Q. Um, you -- you -- you -- can you read the second
5 paragraph -- can you read the second paragraph?

6 A. "THE SUMMONS OF MR. SCHIFF BEFORE TWO IRS AGENTS IS WHAT
7 YOU'LL ENJOY ON THIS FIRST PAIR OF TAPES, WITH THE ADDITIONAL
8 BENEFIT OF HEARING IRWIN SCHIFF'S PERSONAL CRITIQUE ON THE
9 WAY ... CONDUCTED THIS MEETING THIS PIECE OF STUDY MATERIAL IS
10 POWERFUL AND EXCITING IN MANY WAYS - [YOU'LL] WANT TO LISTEN TO
11 IT AGAIN & AGAIN!"

12 Q. So, um, I'm suggesting that I was going to --

13 THE COURT: No. Ask her a question.

14 MR. SCHIFF: All right.

15 BY MR. SCHIFF:

16 Q. So in there I was gonna, uh, uh, suggest that I was gonna
17 critique myself and that my subscribers might find that
18 informative.

19 MR. NEIMAN: Objection. The document speaks for
20 itself.

21 THE COURT: The document does speak for itself.

22 MR. SCHIFF: The document speaks for itself.

23 BY MR. SCHIFF:

24 Q. Can you just read the next three lines?

25 A. "AMONG OTHER IMPORTANT UPDATES AND INFORMATION, YOUR

1 QUESTIONS WILL BE ANSWERED AND INSTRUCTIONS WILL BE OFFERED
2 CONCERNING YOUR STATE INCOME 'TAXES.'"

3 Q. In other words, there's nothing in The Federal Mafia about
4 state income taxes, is there, as you recall?

5 A. As I recall, no.

6 Q. Well, when -- all right. So I tried to update the material
7 in my book with Schiff Reports; is that correct?

8 A. Correct.

9 Q. Providing my subscribers with information that was not even
10 in my books.

11 A. Correct.

12 Q. So the purpose of my Schiff Reports was not just to provide
13 information that I could charge money for but to provide new
14 information that's not in my book.

15 MR. NEIMAN: Objection. Speculation.

16 THE COURT: Speculation. Sustained.

17 BY MR. SCHIFF:

18 Q. And even to -- and even to critique myself in areas we never
19 had an opportunity to do before.

20 THE COURT: The objection was sustained.

21 MR. SCHIFF: Okay. This was a different question.

22 THE COURT: No. It was the --

23 MR. SCHIFF: All right.

24 THE COURT: -- same question.

25

1 BY MR. SCHIFF:

2 Q. So, from this material -- didn't I make an attempt from
3 this --

4 THE COURT: Speculation.

5 BY MR. SCHIFF:

6 Q. -- updated material in your view --

7 THE COURT: She doesn't know what your state of mind
8 is. Sustained. Sanctions.

9 THE WITNESS: Judge, may I --

10 BY MR. SCHIFF:

11 Q. When you filed --

12 THE WITNESS: -- make a comment?

13 THE COURT: No, you can't.

14 THE WITNESS: Okay.

15 THE COURT: Wait until the Government --

16 BY MR. SCHIFF:

17 Q. Hold on one second.

18 Now, when you filed a zero return, you got -- they told
19 you that your return was frivolous; is that correct?

20 A. Yes, sir.

21 Q. And you responded with one of the letters probably -- in
22 Schiff Report Series 5.

23 A. Um, I'm pretty sure it was in, uh, The Federal Mafia book.

24 Q. Okay. But, in any case, when you sent it in, did you agree
25 with what you sent in?

1 THE COURT: Mr. Bowers?

2 MR. BOWERS: I'm sorry. I thought --

3 THE COURT: That's all right.

4 MR. BOWERS: -- Mr. Schiff might be winding down.

5 THE COURT: I thought you --

6 MR. BOWERS: I apologize.

7 THE COURT: -- wanted to raise an objection.

8 BY MR. SCHIFF:

9 Q. All right. I just want to ask you: When you sent in the
10 letter, did you read the letter you sent in?

11 A. Of course.

12 Q. And did you agree with it?

13 A. To some extent.

14 Q. And the letter you sent in said you didn't believe that your
15 return was frivolous.

16 A. The purpose of sending that in was I thought I was getting
17 some advice from you guys and, uh, that you were gonna help me
18 so that we could go further and proceed with this.

19 Q. Well, didn't I help you by providing you with the letter?

20 A. Correct.

21 Q. What kind of help did you assume I was gonna provide you
22 with? What -- what more help?

23 A. Well, when I started getting the letters from the IRS, um,
24 with the penalties and telling me that, um, you know, it's not
25 [sic] frivolous, I expected help from you not to buy books or

1 tapes but to get me to the next level so that I could work with
2 the IRS.

3 Q. In other words, you expected me to sit down and advise you
4 personally --

5 A. Well, you --

6 Q. -- each time --

7 A. -- on the radio --

8 Q. -- you got a letter.

9 A. -- you told people that you would do that.

10 Q. That you heard me specifically say that?

11 A. Yes. You told everybody where your office was and that if
12 they needed help that they could call for an appointment. And I
13 called several times and I was always either encouraged to buy
14 another book, another tape, or I talked to someone else that
15 said you weren't available. Three or four times when I was in
16 there you were available.

17 Q. Did you ever hear anybody call my show and complain that
18 they weren't getting this kind of service from us that you --

19 A. No, because you'd probably cut them off.

20 Q. Did you ever hear me cut anybody off?

21 A. I don't know.

22 Q. You never heard anybody --

23 A. Well, I'm just saying radio time you can do that.

24 Q. But did you ever hear me do it?

25 A. No.

1 MR. SCHIFF: No further questions.
2 THE COURT: Mr. Bowers.
3 MR. BOWERS: Yes, thank you, Judge.
4 Could Madam Clerk get the witness 204?
5 THE CLERK: She might have it.
6 MR. BOWERS: I believe that's this.
7 THE CLERK: 204?
8 MR. BOWERS: 204A.
9 THE CLERK: No. That's 2004.
10 MR. BOWERS: Oh, I apologize.
11 THE CLERK: 204 is something totally different.
12 MR. BOWERS: You're right. I apologize.
13 (Exhibit handed to the witness.)
14 THE WITNESS: Thank you.

15

16 CROSS-EXAMINATION

17 BY MR. BOWERS:

18 Q. Good morning Ms. Driscoll.

19 A. Good morning.

20 Q. My name is Chad Bowers, and I represent Larry Cohen.

21 A. Okay.

22 Q. Uh, are you familiar with Mr. Cohen, uh, outside the context
23 of seeing him here in court today?

24 A. Um, just I think I talked to him once or twice on the phone.
25 That was basically it.

1 Q. Do you remember the substance of any of those conversations?

2 A. Um, if I -- one of 'em that I partially remember was, um, I
3 was very frustrated because I started getting the letters from
4 the IRS and wanted to talk to Irwin and he suggested I -- I
5 think it was Larry -- that, um, you do not need to talk to
6 Irwin; you need to purchase Series 5 and he might even have
7 suggested Series 6 and that would take care of everything that I
8 needed.

9 Q. Let me -- let me talk to you a second about that.

10 You, um -- do you recall -- well, yesterday afternoon
11 you -- you recall making -- you testified you made a phone call
12 to Freedom Books and spoke to a Larry or a Johnny.

13 A. Well, I've called more than one. So I -- I -- I know that I
14 talked to at least two or three different people. So...

15 Q. Okay. So is the -- the phone call you referenced that you
16 believe you had with Larry is that a separate phone call from
17 the Larry or Johnny call?

18 A. Yes. I had, like I said, two or three maybe more calls --

19 Q. Okay.

20 A. -- trying to get more information.

21 Q. Okay. So there's -- there's Larry and then there's Larry or
22 Johnny at another time?

23 A. There was a Larry and there was a Johnny.

24 Q. There's a Johnny.

25 A. I talked to someone else, but I don't remember their name.

1 Q. Okay. Do you recall having the opportunity to testify
2 before the Grand Jury in this matter?

3 A. You mean when I did testify?

4 Q. Yeah. Let me help.

5 A. Okay.

6 Q. At some point in the past -- and I -- I have it as August of
7 2003 -- you came to this building. There were Government
8 attorneys there --

9 A. Yes.

10 Q. -- there was room full of people. You took an oath. You
11 took the stand --

12 A. Yes.

13 Q. -- you offered some testimony. Do you recall that?

14 A. Correct, sir.

15 Q. Okay. Now, do you recall in that testimony the Government
16 attorney asking you, um, if you got any response to, uh,
17 Exhibit 173, which is your letter complaining to Irwin of
18 unauthorized or un- -- not unauthorized -- unethical business
19 practices?

20 A. Um, I did not get a response.

21 Q. Okay. So you do -- you do recall being asked about that?

22 A. Correct, um-hum.

23 Q. Okay. And you recall your testimony that you didn't get a
24 response --

25 A. No.

1 Q. -- correct?

2 A. Um-hum.

3 Q. Do you recall what you told the Grand Jury you did next?

4 A. To be honest, I don't remember.

5 Q. Um, would it refresh your recollection if the Grand Jury
6 testimony was that you called Freedom Books?

7 MR. NEIMAN: Objection. This is improper impeachment.
8 There's yet to be a denial.

9 THE COURT: It is.

10 MR. BOWERS: I'm not trying to impeach her.

11 THE COURT: You need to ask her -- you need it ask her
12 if she made the statement and then you use the --

13 MR. BOWERS: Well, okay.

14 THE COURT: -- if you're attempting to impeach.

15 MR. BOWERS: I'm just trying to move this along. But
16 that's fine.

17 BY MR. BOWERS:

18 Q. Did -- did you make the statement to the Grand Jury that you
19 called and talked to one of the sales managers?

20 MR. NEIMAN: Same -- same objection, your Honor.

21 MR. BOWERS: I'm sorry, your Honor. What is it that...

22 THE COURT: The -- the Government is objecting to
23 your -- your method of impeachment.

24 MR. BOWERS: I understand. And the Court's --

25 THE COURT: It has to be --

1 MR. BOWERS: -- sustaining that.

2 THE COURT: -- I am sustaining it --

3 MR. BOWERS: Right.

4 THE COURT: -- because it has to be an inconsistent
5 prior statement.

6 MR. BOWERS: Well, it is inconsistent prior statement.
7 Would you like me to show it to the witness? Would you
8 like me to...

9 THE COURT: Well --

10 MR. NEIMAN: Maybe if you could refer me to a page
11 where he's referring and then --

12 MR. BOWERS: Page 11. How about page 11. She offers
13 testimony inconsistent with what she's offering here.

14 (Pause in the proceedings.)

15 MR. BOWERS: So is the objection withdrawn?

16 THE COURT: Well --

17 MR. NEIMAN: I --

18 THE COURT: -- I haven't heard from him yet.

19 MR. NEIMAN: -- I think the objection still stands that
20 there has yet to be a contradiction to her prior testimony.

21 MR. BOWERS: Well --

22 THE COURT: Well, what was the question you asked her
23 that you contend is contradicted by her Grand Jury testimony?

24 MR. BOWERS: The -- the question that I asked this
25 witness is what -- what it was that she did in response to, uh,

1 not receiving a response from Mr. Schiff's office about this
2 letter. Okay?

3 THE COURT: Okay.

4 MR. BOWERS: And her testimony here is today --
5 yesterday her testimony was that she made a call and spoke to
6 Larry or Johnny. Uh, her testimony today is that she's made
7 numerous calls and spoke to Larry as well as Larry or Johnny and
8 other people.

9 THE COURT: I don't --

10 MR. BOWERS: And, before the Grand Jury, she testified
11 she made a single call and spoke to a gentleman named "Dan."

12 So I'm trying to reconcile or allow the witness an
13 opportunity to reconcile these various statements with various
14 people. I mean, this is -- this is the first we've heard this
15 morning that Larry ever had any conversation of substance with
16 her. And she -- she's had an opportunity to testify about this
17 before. So I'm -- I'm curious why these things are changing now
18 several years after the fact.

19 MR. NEIMAN: Your Honor, I'm gonna object, one, to
20 Mr. Bowers's mischaracterization -- mischaracterization to some
21 extent of the testimony. She testified as to one phone call to
22 a person named Dan, not that this was the only phone call she
23 had.

24 THE COURT: Yeah. And -- and -- and you said this
25 morning that this is her first testimony about someone other

1 than Dan. She testified yesterday afternoon she spoke to
2 Johnny --

3 MR. BOWERS: Or Larry.

4 THE COURT: -- and Larry.

5 MR. BOWERS: Right.

6 THE COURT: Well, you can ask her a question. But it
7 doesn't sound to me like she's contradicted herself. But go
8 ahead with your next question.

9 MR. BOWERS: Well, I'm just trying to figure out how
10 many phone calls she made.

11 THE WITNESS: I have no problem answering that.

12 BY MR. BOWERS:

13 Q. Okay.

14 A. Um, the -- I made phone calls before -- for example, and
15 talked to different people to get The Federal Mafia, to get the
16 tapes.

17 Q. Uh-huh.

18 A. Okay? So that's why the several phone calls. The last
19 phone call was when I was upset, um, because I couldn't get
20 ahold of, you know, Irwin. And then that's when -- I wrote the
21 letter, um, after I got Series 5 and 6, um, and --

22 Q. Wait. I'm sorry.

23 A. -- called again --

24 Q. You wrote the letter after you got Series 5 and 6?

25 A. Yeah, I'm pretty sure it was after --

1 Q. Okay.

2 A. -- I got --

3 Q. You're pretty sure of that?

4 A. Yeah.

5 Q. Okay. Thank you.

6 Go ahead. I'm sorry, ma'am. I didn't mean --

7 A. No. But that's -- I did make several phone calls 'cuz you

8 had to order the products.

9 Q. Right.

10 Okay. Um, let me -- let me ask you this: You -- you

11 testified in the Grand Jury you called Dan --

12 A. Um-hum.

13 Q. -- and he talked to you about 5 and 6. Does that sound

14 correct to you?

15 A. I'm sorry? Can you --

16 Q. Your testimony to the Grand Jury was --

17 A. Yes.

18 Q. -- after you sent the letter and you got no satisfaction,

19 you called Freedom Books and said I'd like to talk -- what am I

20 gonna do? This is not helping me. I need some help. And Dan

21 said, hey, buy some more tapes. Does that sound --

22 A. Actually --

23 Q. -- fair?

24 A. -- everybody told me to buy more tapes.

25 Q. Okay. And so your -- your testimony was then you made one

1 call and your testimony now is you made several. Do you rely
2 more on your memory as it is today or as it was then?

3 A. No. What I'm saying is I made several calls to order the
4 products. I made one phone call after I was upset with Irwin.

5 Q. Okay. Thank you.

6 And that was to Dan, not -- not the phone call to Larry
7 or -- or, Johnny and Larry. That was to Dan?

8 A. No. Excuse me. John and Larry were the ones that were
9 actually selling me the tapes and things. Dan was the last
10 person, I'm pretty sure, that I talked to that said, you know,
11 you need to just keep ordering things -- he also told me the
12 same thing too.

13 Q. So did you talk to Dan before or after you ordered Series 5
14 and 6?

15 A. I really don't remember at this point.

16 Q. Okay. Um, now, you've worked in the business world for some
17 period of time, I assume --

18 A. Yes, sir.

19 Q. -- right?

20 Ten years at Invention Submission Corporation?

21 A. Um-hum.

22 Q. "IC" is what you're callin' it?

23 A. Yes.

24 Q. Okay. Just for shorthand.

25 A. That's okay.

1 Q. And you were -- your position there again?

2 A. I'm a regional director.

3 Q. Okay. Which is not, you know, an entry level line position;

4 right? I mean --

5 A. No.

6 Q. So you have some experience with commercial matters and

7 business practices --

8 A. Yes.

9 Q. -- is that correct?

10 A. Um-hum.

11 Q. Okay. Um, now, if I understand your testimony correctly,

12 Carol was available to -- to help you -- whether it was for a

13 fee or not I'm -- I'm not concerned about right now -- but Carol

14 was available for you at Freedom Books with some regularity;

15 correct?

16 A. Yes.

17 Q. And is it -- is it a fair characterization that Carol sort

18 of walked you through this process of filing the amended

19 returns?

20 A. Yes.

21 Q. Um, was -- was Carol -- what exactly did Carol do for you?

22 She filed -- she prepared a zero return? Was that your

23 testimony?

24 A. Um, any time I had a question, um, she would basically, uh,

25 answer my questions and, um, we would set up appointments and,

1 you know, sit down and she would try to help me.

2 Q. Did she actually at some point hand you a return that had
3 been prefilled out with all zeros and said, "You need to sign
4 here to file this"?

5 A. She -- yeah. She filled it out, gave it to me, and then I
6 took it home and -- and signed it.

7 Q. Per her instructions and mailed it and so forth?

8 A. Correct.

9 Q. Okay.

10 A. Um-hum.

11 Q. So it's fair to say Carol was your primary contact in -- in
12 getting those zero returns filed; is that correct?

13 A. Uh, Carol and I also talked to Cindy too.

14 Q. Okay. And, if I understand, do you know whether Carol's
15 last name was Branigan? Does that ring a bell for ya?

16 A. I have no idea what her last name is.

17 Q. Could you describe her to the best of your ability?

18 A. Um, she was an older lady, as I remember.

19 Q. Maybe mid 50's?

20 A. Possibly. Maybe a little older. Mid 50's.

21 Q. Okay.

22 A. Um, if I remember right, reddish curly hair.

23 Q. Nice lady?

24 A. She's a very nice lady.

25 Q. Yeah.

1 A. Um-hum.

2 Q. Would you -- you don't see her with these defendants here,
3 do you? Not in the courtroom?

4 A. Uh, no.

5 Q. Okay. Um, now the other thing I want to talk to you about,
6 you in making your decisions to file returns, uh, did -- did you
7 ever have a conversation with Mr. Cohen, uh, about OMB numbers?

8 A. I don't even know what that is.

9 Q. Never heard of OMB numbers --

10 A. No.

11 Q. -- correct?

12 So that didn't influence your decision to file a zero
13 return; right?

14 A. No.

15 Q. Okay. How about, uh, did you ever look at the instruction
16 manual -- and I should probably -- give me just a moment. I
17 could probably show you what I'm talking about so you don't get
18 confused. I apologize for not having this prepared.

19 This is what I mean, Ms., uh, Driscoll, by instruction
20 manual.

21 A. Okay.

22 Q. The regular people get these with their taxes; right?

23 A. Correct.

24 Q. Was any of the theories that you relied on in filing these
25 zero returns -- do you recall looking at this -- some portion of

1 this manual and making that decision?

2 A. I'm sorry. Please ask the question again.

3 Q. Do -- do you recall in making your decision to file zero
4 returns looking at some definition in this book and relying on
5 that?

6 A. No.

7 Q. Okay. All right. And do you recall in part of your
8 decision to file nontraditional tax returns, or zero returns,
9 any discussion with Mr. Cohen about not liable, writing "not
10 liable" in big letters on that return somewhere? Is that part
11 of what you relied on in making your decision?

12 A. I don't think I ever even talked to Mr. Cohen --

13 Q. Okay. Certainly --

14 A. -- about any of that.

15 Q. -- not about that though.

16 A. Not -- not -- not anything even close --

17 Q. Right.

18 A. -- I don't think to that --

19 Q. All this --

20 A. -- no.

21 Q. -- stuff sounds a little weird to you --

22 A. Correct.

23 Q. -- or at least you haven't heard it before; right?

24 A. No.

25 Q. You didn't rely on it in filing your returns; correct?

1 A. I don't -- we didn't even talk about that type of
2 information.

3 Q. Perfect.

4 Um, is it -- is it your testimony that you relied on
5 the fact that Irwin's got seminars and radio shows and this
6 public forum where he's airing these ideas that that suggested
7 to you that there was some merit to his program? Is that your
8 testimony?

9 A. No.

10 Q. No, it didn't affect your opinion?

11 A. No.

12 Q. Okay. Now, when you signed your tax returns -- um, and
13 maybe we can pull one of those up. I'm sorry. Or I can -- I
14 can put it on the ELMO. Either way.

15 MR. IGNALL: Do you know which number, Chad?

16 MR. BOWERS: Um, just any of the amended returns, the
17 zero returns. Pick one.

18 MR. NEIMAN: 164.

19 BY MR. BOWERS:

20 Q. 164 is what we're gonna look at, Ms. Driscoll.
21 Agent Steiner's very helpful with this stuff.

22 (Document displayed in open court.)

23 MR. BOWERS: If you could blow up the signature line
24 for me, Agent Steiner -- Special Agent Steiner. Yeah, perfect.
25 Perfect.

1 BY MR. BOWERS:

2 Q. Okay. Hey, Ms. Driscoll, do you have this document?

3 A. Yes.

4 Q. Do you see there where it says -- and I can't read it very
5 well -- but I believe it says under penalties of perjury I sign
6 this document?

7 A. Correct.

8 Q. Right. Okay.

9 So you -- and you understand what perjury is; right?

10 A. Yes.

11 Q. Okay. So you didn't feel you were committing perjury when
12 you signed this document at the time, did ya?

13 A. No.

14 Q. So you believed what you signed?

15 A. At that time, yes.

16 Q. Okay. Did you -- did you test- -- and that includes any
17 attachments to these documents. Would you agree?

18 A. Correct.

19 Q. Did -- did I misunderstand you? I thought you testified
20 yesterday that you didn't understand it or you didn't believe
21 it. I may be wrong.

22 A. Didn't believe what?

23 Q. Well, any -- any of this stuff; that you never -- you never
24 really had a good handle on it and specifically the attachment
25 to this document.

1 A. No. I -- what I basically said was on some of the documents
2 and even in The Federal Mafia I did not understand, uh, you
3 know, a lot of the material.

4 Q. Okay.

5 A. I wouldn't sign my name if I didn't believe --

6 Q. I --

7 A. -- it at that time.

8 Q. -- I wouldn't think so.

9 A. Okay.

10 Q. Right. Yeah, you believed this. You wouldn't -- you
11 wouldn't sign something you thought was false.

12 And -- and Carol -- even if -- that's good. Thank you,
13 Agent -- even if, um, you felt like the general process at
14 Freedom was to sell you a product, Carol was available to talk
15 to you; right?

16 A. Yes, she was.

17 Q. So, if you had a question, you could go down to Freedom and
18 Carol would answer what -- what you needed to help you get the
19 best understanding you could; is that right?

20 A. Well, you had to set an appointment because she was really
21 busy. But, yes, she was very helpful.

22 Q. In part because she was so -- probably so helpful to people
23 I would imagine?

24 A. I'm sorry.

25 Q. She's probably busy 'cuz she's so helpful to people. She

1 didn't just --

2 MR. NEIMAN: Objection. Speculation.

3 MR. BOWERS: I'll withdraw --

4 THE COURT: Speculation.

5 MR. BOWERS: -- the question.

6 (Document displayed in open court.)

7 BY MR. SCHIFF:

8 Q. Now, if we could look real quickly at Exhibit 173,

9 Ms. Driscoll, this is the letter that you wrote to Irwin, um --

10 and, uh, I -- I don't --

11 MR. BOWERS: Maybe we can just blow up the three

12 paragraphs of text, Special Agent Steiner. Thanks.

13 BY MR. BOWERS:

14 Q. Okay. Very -- you know, drawing on your professional

15 background, you have exhibits and so forth. Very -- you start

16 out with a rather, you know, complimentary tone, but you're

17 clearly frustrated here. Is that correct?

18 A. Um-hum. Correct.

19 Q. Okay. And, uh, you're -- and, uh, you feel he's being --

20 he's not being ethical; is that right?

21 A. Absolutely.

22 Q. Right.

23 And is that because you got the frivolous letter and

24 felt it wasn't working or is that because you felt like he had

25 an obligation to answer your questions personally or not sell

1 you additional products? Or do you have -- do you have a
2 recollection with more accuracy what exactly bothered you about
3 the ethicalness of ths --

4 A. Could you please ask one question at a time and then I'll
5 answer it?

6 Q. Well, yeah. I apologize.

7 What -- do you have a recollection of what exactly it
8 was that you felt wasn't ethical? What --

9 A. Um, I felt that, um, I was doing what I was supposed to be
10 doing, getting the guidance. But at this point every time I
11 called for more information, uh, that, uh, I wasn't being -- I
12 wasn't being helped. I felt like I was being, you know, strung
13 along.

14 Q. Okay. So is it fair to say that you were doing what you
15 felt you were supposed to do based on the materials and it
16 wasn't working the way it was supposed to and you weren't
17 getting the help you wanted?

18 A. I would say that more that I was not getting the response or
19 the help that I needed.

20 Q. Okay. But you -- you were comfortable -- or you're saying
21 today that you felt you were comfortable at the time that you
22 had been following the teachings as you understood them; is that
23 right?

24 A. I felt comfortable with Carol.

25 Q. Okay. All right.

1 MR. BOWERS: Can we show the date on this here real
2 quick?

3 BY MR. BOWERS:

4 Q. This letter's dated July 7th, 2000. Do you have any reason
5 to believe that wasn't the date that the letter was written?

6 A. No.

7 Q. Pretty sure about that?

8 A. Yeah, because I'm sure I typed it on my computer.

9 Q. Okay. All right. All right. Now, let's go to Exhibit 175.
10 All right.

11 (Document displayed in open court.)

12 MR. BOWERS: Maybe -- can we -- can we highlight this
13 address area here real quick? Yeah, perfect. Thanks, Special
14 Agent.

15 BY MR. BOWERS:

16 Q. This -- this you agree is your order form for Series 5 and

17 6. Did you live at that address at the time?

18 A. Yes, except they have, uh, Lavender spelled wrong.

19 Q. Okay. But this -- I mean, this is -- this is your order
20 form you believe?

21 A. Correct.

22 Q. Okay. 'Cuz it says 5 and 6 and it says 176 and, you know,
23 we don't need to show your credit card numbers. But this
24 personal information looks correct to you; right? You --

25 A. Yes.

1 Q. -- you appear to be the Nancy Driscoll referenced here in
2 this -- this document; right?

3 A. Correct.

4 Q. Now, if I understood your prior testimony correctly, uh, you
5 stated you bought Series 5 and 6, uh, shortly after that that
6 letter; right?

7 THE COURT: No.

8 THE WITNESS: No.

9 THE COURT: She said she didn't remember.

10 THE WITNESS: I did not remember. It was either before
11 or after the letter. I said I did not remember.

12 BY MR. BOWERS:

13 Q. Before or after. But if --

14 A. Correct.

15 Q. -- it was after the letter, it was fairly close in time
16 to -- to -- after writing the letter?

17 A. I really don't remember.

18 Q. I thought just this morning -- we -- we didn't do that just
19 a few minutes ago?

20 THE COURT: She said she didn't remember.

21 BY MR. BOWERS:

22 Q. Okay. Does --

23 MR. BOWERS: If you could highlight the date there,
24 Agent Steiner.

25

1 BY MR. BOWERS:

2 Q. This -- this document indicates you purchased Series 5 and 6
3 two years after your letter.

4 A. That did not happen.

5 Q. What didn't happen?

6 A. This -- that date -- uh-huh. It wasn't two years
7 afterwards.

8 Q. This document's wrong?

9 A. The date's wrong.

10 Q. Date's wrong. Hold on a second.
11 The Government's exhibit's wrong; correct?

12 A. I'm not saying that. I'm --

13 MR. NEIMAN: I'm gonna object to the --

14 THE WITNESS: -- just saying --

15 MR. NEIMAN: -- characterization.

16 BY MR. BOWERS:

17 Q. I'm sorry. Let me be clear. The date on the Government's
18 exhibit is wrong. I apologize.

19 Now, I -- you know, what are you gonna say? I mean,
20 the -- the document speaks for itself. The date's there and
21 it's wrong. It's okay. What are we gonna do?

22 Now, I guess I understood. You're pretty sure you
23 bought it after the letter. You said you may have bought it
24 before or after the letter. Are you -- are you now pretty sure
25 that this date's wrong?

1 A. What I am saying, sir, is that I bought this series of
2 tapes; I wrote the letter. There was not a two-year
3 discrepancy.

4 Q. Oh, oh, the letter came after the tapes.

5 A. Sir, I'm gonna repeat myself again. It was --

6 Q. Okay. 'Cuz I --

7 A. -- it was either before or after. I don't remember. But I
8 know that there was not a two-year discrepancy.

9 Q. How -- how long could there have been?

10 A. I don't know, sir.

11 Q. But not two years?

12 A. No.

13 Q. A year?

14 A. I don't know, sir.

15 Q. Any time less than two years?

16 A. I do not know.

17 Q. Okay.

18 A. I know it was less than two years. I know that.

19 Q. No idea how much less though; right? You don't know. I
20 understand.

21 MR. BOWERS: Um, your Honor, could -- could we -- has
22 the witness been handed The Federal Mafia which is --

23 THE WITNESS: It's right here.

24 BY MR. BOWERS:

25 Q. Okay. Great.

1 And we've talked a lot about this book here. I want to
2 show you somethin' if I could make this machine work.

3 MR. BOWERS: Is there -- is there any way to make this
4 show more, like not so focused?

5 MR. IGNALL: There's a zoom --

6 THE CLERK: Zoom --

7 MR. IGNALL: -- in.

8 THE CLERK: -- zoom out, Chad.

9 MR. NEIMAN: All the way to the right.

10 MR. BOWERS: Not very good at this.

11 THE CLERK: You're doing fine.

12 MR. BOWERS: I'm trying.

13 (Document displayed in open court.)

14 BY MR. BOWERS:

15 Q. Okay. So is this -- it didn't have the blue tabs -- but
16 does this substantially represent, uh, the, uh, Federal Mafia
17 that you relied on?

18 A. That I remember. It's been a long time --

19 Q. Yeah.

20 A. -- since I've --

21 Q. But more --

22 A. -- seen it.

23 Q. -- or less.

24 A. Uh-huh. Correct.

25 Q. Something like that. Yeah, okay.

1 Now, you testified you read a good portion of this.

2 A. Correct.

3 Q. And you relied on it in formulating your opinion, uh,
4 regarding Mr. Schiff's teachings and -- and the practice of zero
5 returns; is that correct?

6 A. Correct.

7 Q. Okay. Let me -- let me just -- I wanna show you a cover
8 here just for a second. Um, Irwin Schiff, The Federal Mafia.
9 It's got some guy holdin' money and a machine gun with a capitol
10 on his head. "How Anyone Can Stop Paying Income Taxes." "HOW
11 AMERICANS CAN FIGHT BACK."

12 Do you recall when you -- when you -- like, when you
13 physically got this book, do you recall if you had any reaction
14 or what your first thought was to this?

15 A. No, I do not.

16 Q. Okay. All right. Is it -- is it fair to say you did more
17 than -- you spent more than five or ten minutes with it you
18 think?

19 A. Through the whole book?

20 Q. Yeah, yeah.

21 A. Absolutely.

22 Q. Yeah. It's been a while; right?

23 A. Um-hum.

24 Q. Okay. 'Cuz here's what I -- what I did -- I wanna ask
25 you -- I spent five or ten minutes just marking some things in

1 here. I wanna ask you if maybe you remember 'cuz these -- these
2 kinda jumped out at me.

3 As you open up the book, you come to this dedication
4 here. Okay? It's like the second page. And -- and it
5 immediately says this book is dedicated to a guy who got killed
6 by bandits after he fled the country over tax issues; uh, talks
7 about a couple who killed themselves, uh, after the IRS
8 illegally seized their home; another guy who shot himself
9 apparently in Tax Court for raising frivolous arguments.

10 Do you recall reading this?

11 A. No, I do not.

12 Q. Well, let me ask you somethin'. Maybe you could reread that
13 and take a look at it now.

14 MR. NEIMAN: I'm gonna object. If she didn't read it
15 then or doesn't recall reading it now I -- what her --

16 MR. BOWERS: Well, let --

17 MR. NEIMAN: -- impression --

18 MR. BOWERS: -- let's let her --

19 MR. NEIMAN: -- is now is --

20 MR. BOWERS: -- reread it and --

21 MR. NEIMAN: -- irrelevant.

22 MR. BOWERS: -- see if it refreshes her recollection.

23 THE COURT: I'll allow her to read it.

24 THE WITNESS: (Reading.)

25 THE COURT: Your question.

1 BY MR. BOWERS:

2 Q. Does rereading that refresh your memory of having read it
3 before maybe?

4 A. No, it does not.

5 Q. No, you've never -- never seen that?

6 A. I can't say either way.

7 Q. Doesn't --

8 A. It's been a long time.

9 Q. -- doesn't recall?

10 A. Um-hum.

11 Q. Don't have any recollection of how that passage may have
12 struck you?

13 A. Not at all.

14 (Document displayed in open court.)

15 BY MR. BOWERS:

16 Q. Okay. Let's try somethin' else here. This is the other
17 side. We're on the first page now. And it says -- do you
18 recall reading this?

19 A. (Reading.)

20 I do not recall.

21 Q. You don't -- don't recall any reference --

22 A. No, I do not.

23 Q. -- to the fact that there are certain risks in adopting
24 these views?

25 A. No. I'm saying I don't know if I read it or not.

1 Q. Do you have a general recollection of -- associated with
2 your readings from the IR- -- from The Mafia [sic] that there's
3 some risks involved with this?

4 A. Uh, no, I did not get that information.

5 Q. Okay. Um, do -- do you recall in there where Mr. Schiff,
6 uh, talks about him -- his legal battles?

7 A. I remember some -- I remember something of that, yes.

8 Q. Well, is it -- and go ahead and look at the book if you
9 need -- but is it a fair character -- characterization to say
10 probably two-thirds of this book involves -- is written in the
11 context of some battle Irwin's involved in, either civilly or
12 criminally?

13 A. Uh, no, I did not feel that.

14 Q. You didn't feel that?

15 A. Not -- not -- not two-thirds of the book, no.

16 Q. Well, how much did you feel was involved with Irwin's legal
17 battles?

18 A. Um, sir, I really don't remember. When I read a novel, you
19 know, maybe I'll remember it for six months after that. Unless
20 I read it again, I don't remember the information --

21 Q. Right.

22 A. -- so I really can't answer that question.

23 Q. Well, this -- this isn't a novel, though.

24 A. No. But -- but I'm saying that's the whole point. I -- I
25 cannot -- I can only answer fairly and I don't remember.

1 Q. Do you recall reading, uh, the transcript from his probation
2 hearing or some criminal indictment that goes on for pages and
3 pages?

4 A. I remember something about that, but I don't remember the
5 details, sir.

6 Q. Do -- do you recall if it struck you as -- Mr. Schiff's
7 behavior struck you as odd or bizarre in any way in reading that
8 transcript?

9 A. I really don't remember.

10 Q. Did -- do you recall that the book references court
11 proceedings that Irwin goes back 20 years on?

12 A. That I remember, yes.

13 Q. Yeah.

14 Do you recall that, as near as I can tell, Irwin was
15 never successful in any of these, except -- I don't even know if
16 he talked about this reward lawsuit? Did you -- did you have
17 the impression he wasn't successful?

18 A. I didn't have an impression either way.

19 Q. Uh, at one point in the book -- and I can, if it would help
20 refresh your recollection -- and -- and maybe, um, I -- before
21 everyone gets upset, maybe we should have a brief sidebar 'cuz
22 I -- I don't want this passage to -- I think the Court might be
23 afraid of what it is I'm trying to do.

24 THE COURT: I'm afraid of what?

25 MR. BOWERS: Well, I -- I'm not going to -- there's

1 portions of this passage that I would like to have the witness
2 talk about. I...

3 THE COURT: Well, pass it up.

4 MR. BOWERS: It's --

5 THE COURT: Hand it to the clerk and I'll take a look
6 at it.

7 MR. NEIMAN: What page, Mr. Bowers?

8 MR. BOWERS: It's on page 266 at the top.

9 And -- and, your Honor, it starts at just the sentence
10 after the bold. It's not any of the stuff prior to that.

11 (Document handed to the Court.)

12 MR. BOWERS: Judge, just that one sentence there I'd
13 like to ask the witness about.

14 THE COURT: You want to have her read an instruction of
15 law?

16 MR. BOWERS: No, absolutely not.

17 THE COURT: Which -- which -- you say "after the bold."

18 MR. BOWERS: There's a sentence that begins with the
19 word "however." And I'd like to ask her if she recalls that
20 sentence.

21 THE COURT: You're on page 266?

22 MR. BOWERS: Yes.

23 THE COURT: Column?

24 MR. BOWERS: At the top of the right there.

25 THE COURT: Oh.

1 MR. NEIMAN: Your Honor --

2 THE COURT: Yes.

3 MR. NEIMAN: -- the Government wouldn't object to that
4 entire paragraph being read. I just -- we just have concern
5 that one sentence could be taken out of context.

6 MR. BOWERS: Well, I -- I think the whole paragraph is
7 even better, Judge. I'll throw that on the ELMO and we'll talk
8 about the whole thing. That's great. I was concerned. But if
9 the Government doesn't object...

10 THE COURT: Government has no objection.

11 MR. BOWERS: Great.

12 THE COURT: I don't see --

13 MR. BOWERS: Sorry to --

14 THE COURT: -- a problem with it.

15 MR. BOWERS: -- have made this difficult. All right.

16 Thank you.

17 BY MR. BOWERS:

18 Q. Okay. So the paragraph we've talking about here is, uh --
19 it talks about the importance of the Cheek decision. Do you
20 recall reading anything like that?

21 A. No, I do not.

22 Q. Okay. Did you have a chance to look at it here just now?

23 A. I'm not even sure where you are. So that's...

24 Q. Oh, I'm sorry. I'm on -- I'm on page --

25 THE COURT: You're in a --

1 BY MR. BOWERS:

2 Q. -- 266 --

3 THE COURT: -- different spot than where you told me
4 you were --

5 THE WITNESS: That's --

6 THE COURT: -- going to start.

7 THE WITNESS: -- exactly what I was looking at too.

8 THE COURT: Yeah.

9 If you want to go into the Cheek decision, you risk me
10 instructing --

11 MR. BOWERS: Well, I don't want --

12 THE COURT: -- right now.

13 MR. BOWERS: -- that's why the Government said they
14 want the whole paragraph.

15 THE COURT: No. That's where you --

16 THE WITNESS: No.

17 THE COURT: -- directed my attention. You directed my
18 attention to --

19 MR. BOWERS: Well, I -- I don't want to. I --

20 THE COURT: -- something else.

21 MR. BOWERS: -- just wanna talk about the sentence that
22 says "however."

23 THE COURT: Well, then do that.

24 MR. BOWERS: All right.

25 THE COURT: But don't try to go into the Cheek

1 decision --

2 MR. BOWERS: Well, I don't want to.

3 THE COURT: -- or it'll --

4 MR. BOWERS: But the Government said they wanted me to.

5 BY MR. BOWERS:

6 Q. However --

7 THE COURT: -- it'll bite you.

8 BY MR. BOWERS:

9 Q. -- do you recall -- here's where -- let me read you the
10 sentence. This is what I wanna know:

11 "However, you should still be prepared to put on an
12 intelligent defense if the federal mafia decides" -- and -- and
13 it says in quotes or -- or, actually, those are hyphens. I
14 don't remember from law school. There's some technical name for
15 'em, but -- "to prosecute you."

16 Do -- do you read that there?

17 A. Yes, I do, sir.

18 Q. Okay. Do -- do you recall reading that before?

19 A. Of course not, not this long a time.

20 Q. Okay. So you -- you don't recall being troubled that you're
21 following a book who's advice is prepare a good criminal
22 defense?

23 A. I'm sorry. I -- I can't hear you.

24 Q. You -- you don't recall when you read this book before
25 thinking I'm being told to have a good criminal defense ready

1 that -- that maybe there's some controversy surrounding this
2 book when the author is giving that advice? You don't recall
3 having that thought?

4 A. Well, that's not the advice that I got from the book.

5 Q. But you're not denying this was in the book.

6 A. Yes, sir.

7 Q. Okay. You are denying that?

8 A. No. I'm saying I'm agreeing with you.

9 Q. All right. And -- and, just real quick before we go on,
10 um -- lost the page here -- uh, it -- it also indicates that the
11 author, Mr. Schiff, has -- has prepared a trial memorandum as
12 part of this book; right?

13 A. Okay.

14 Q. Okay. And -- and -- and that doesn't refresh your
15 recollection that, you know, maybe when the author is tellin' ya
16 how to litigate a criminal case it's -- it's controversial? You
17 didn't recall that?

18 A. No. At that time, no.

19 Q. Okay. All right. Um, if you could hold on just one moment,
20 Ms. Driscoll. I may be done.

21 (Discussion between Mr. Bowers and
22 Mr. Modafferi.)

23 MR. BOWERS: All right. Thank you. Have a nice day.
24 I appreciate that.

25 THE WITNESS: Thank you.

1 THE CLERK: Mr. Bowers --

2 MR. BOWERS: Yes, ma'am.

3 THE CLERK: -- turn the light --

4 MR. BOWERS: I'm sorry. Yeah, yeah, yeah.

5 THE CLERK: -- turn the light off, please.

6 MR. CRISTALLI: No questions, your Honor.

7 THE COURT: No questions.

8 Government redirect?

9 MR. NEIMAN: No, your Honor.

10 THE COURT: The witness is excused.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: Thank you.

13 Government's next witness.

14 MR. NEIMAN: Your Honor, the United States would call

15 Gregory Cassidy to the stand.

16 (Pause in the proceedings.)

17 (Gregory Cassidy takes the witness stand.)

18 THE CLERK: Please remain standing. Raise your right

19 hand.

20 You do solemnly swear that the testimony you shall give

21 in the cause now pending before this court shall be the truth,

22 the whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated.

25 Please state for the record your full name and spell

1 your last name.

2 THE WITNESS: Uh, Gregory Lee Cassidy, C-a-s-s-i-d-y.

3

4 GREGORY CASSIDY,

5 called as a witness on behalf of the Government, having been

6 first duly sworn, was examined and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. NEIMAN:

10 Q. Good morning, Mr. Cassidy.

11 A. Mornin'.

12 Q. I'm gonna ask if you could please speak up and into the

13 microphone so that everybody --

14 THE COURT: Pull it right down.

15 BY MR. NEIMAN:

16 Q. -- in the courtroom can hear you.

17 THE COURT: Yank it toward you. Slide up. There you

18 go. Thank you.

19 BY MR. NEIMAN:

20 Q. Mr. Cassidy, uh, which city do you live in?

21 A. Las Vegas.

22 Q. How long have you lived in Las Vegas?

23 A. Uh, uh, seven years.

24 Q. Where did you live prior to living in Las Vegas?

25 A. Um, Los Angeles, California.

1 Q. Mr. Cassidy, if I could, please, ask you to speak up a
2 little louder so that --

3 A. Los Angeles, California.

4 Q. And how are you employed here in Las Vegas?

5 A. I work for a builder.

6 MR. SCHIFF: I couldn't hear his answer.

7 BY MR. NEIMAN:

8 Q. Mr. Cassidy, again, one more time if we could ask --

9 A. I work for a builder. I'm sorry. I work for a builder.

10 Q. Okay. And what do you do for the builder?

11 A. Uh, I work as a builder. I build homes.

12 Q. Uh, have you heard of Irwin Schiff prior to today?

13 A. Yes.

14 Q. How did you first hear of Mr. Schiff?

15 A. Um, I think I seen him on TV.

16 Q. Do you remember where you saw him on TV?

17 A. Um, "Howard Stern" -- I don't know -- "Tonight Show."

18 Somethin' like that.

19 Q. What was Mr. Schiff saying on television?

20 A. That there's no law that you have to pay income tax.

21 Q. Did he elaborate any more on that?

22 A. Uh, yeah, he did. They had an interview. I don't remember
23 the interview exactly. It was his view or his teachings that
24 you didn't have to pay income tax.

25 Q. And on the --

1 A. And he had -- he had a list of rules and -- and some
2 documentation to prove, so...

3 Q. On the radio, did Mr. Schiff say whether or not he was
4 offering for sale any books?

5 A. I don't remember.

6 Q. After seeing him on the television, did you purchase any of
7 Mr. Schiff's materials?

8 A. No, not at that time.

9 Q. Did you ever visit his store in -- in Las Vegas?

10 A. Yeah, down on -- it's like Sahara, Charleston. One of the
11 two.

12 MR. SCHIFF: Pardon me. I can't hear. I would
13 appreciate you speaking a little louder.

14 THE WITNESS: I'm sorry. I got a cold.

15 BY MR. NEIMAN:

16 Q. Uh, where was the store located in Las Vegas?

17 A. I want to say I think it's Sahara. It might be Charleston.

18 Q. What was the name of the store?

19 A. I don't know. There's a big sign outside that says "Why Pay
20 Income Tax" or somethin' like that.

21 Q. Does the name "Freedom Books" sound familiar?

22 A. Yeah, that's the name of it, Freedom Books.

23 Q. When you went into the bookstore, do you remember
24 approximately what year it was?

25 A. Uh, 2001.

1 Q. Who did you meet when you went into the store?

2 A. Um, Cynthia Neun.

3 Q. Do you see Ms. Neun in the courtroom today?

4 A. Um, yeah, I guess. She doesn't look the same, but...

5 Q. How -- how does she look any different from when you
6 remember?

7 A. She just looked -- I don't know -- younger. I haven't seen
8 her in a few years.

9 Q. All right.

10 MR. NEIMAN: Will the record reflect that the witness
11 has identified Defendant Neun?

12 THE COURT: What's she wearing?

13 THE WITNESS: I'm sorry? What's she wearing?

14 THE COURT: Where is she seated; what is she wearing?

15 THE WITNESS: She's wearin' a black-and-white blouse
16 with a black blouse.

17 THE COURT: The witness has identified Ms. Neun.

18 MR. NEIMAN: Thank you.

19 BY MR. NEIMAN:

20 Q. Uh, what did you see Ms. Neun doing when you walked into
21 Freedom Books?

22 A. Um, she was standing talking to somebody -- or she was
23 sitting talking to somebody on the couch. There's a couch
24 that's right there inside the building.

25 Q. And what did you talk -- did Ms. Neun approach you?

1 A. Yeah. I walked in and asked her what it was about.

2 Q. And what did she tell ya?

3 A. Um, basically that you don't have to pay income tax. There
4 is no law that says you have to.

5 Q. Did she offer you any literature or books or tapes at this
6 point?

7 A. She had some stuff that I could read, yeah. Some tapes, a
8 book, some other things.

9 Q. Was this stuff available for purchase or was it free?

10 A. No, you have to purchase it.

11 Q. Did you buy anything at this time?

12 A. Um, I don't remember if I bought it at that time or if I did
13 when I came back.

14 Q. So you returned to Freedom Books?

15 A. Yes, I did.

16 Q. About how much longer after that first visit?

17 A. I couldn't say. Maybe a month, two months. Somethin'
18 like --

19 Q. Was -- was Defendant Neun there when you returned to Freedom
20 Books?

21 A. Yes, she was.

22 Q. And what -- did you have a discussion with her?

23 A. Yeah. We talked about, uh, my tax situation and...

24 Q. What was your tax situation?

25 A. I'm payin' income tax.

1 Q. And did she offer you any products --

2 A. Yeah.

3 Q. -- at that point?

4 A. I bought some tapes and a book and...

5 Q. Do you remember what the name of the book you bought was?

6 A. Um, The Mafia [sic].

7 Q. Do you remember what tapes you bought?

8 A. I can't remember the name of 'em. I did listen to 'em,

9 though.

10 Q. Do you remember how much you approximately spent for the

11 purchase of the books and the tapes?

12 A. I don't know. Maybe a hundred and a half.

13 Q. Did you read the book?

14 A. Not right away.

15 Q. Did you eventually read the book?

16 A. Yes, I did.

17 Q. Did you read the entire book?

18 A. Uh, yes.

19 Q. Did you see the warning in the front of the book?

20 A. No, I don't think so. I don't remember.

21 Q. You said you listened to the tapes. Did you listen to the

22 entire set of tapes?

23 A. I don't recall, sir.

24 Q. Did you talk to Defendant Neun about having tax returns

25 prepared?

1 A. Um, yes, I did.

2 Q. And what did Defendant Neun tell you about getting --

3 MR. CRISTALLI: Objection. Foundation. Time.

4 THE COURT: This -- he's already given --

5 MR. CRISTALLI: I'm sorry. I may have --

6 THE COURT: -- the time.

7 MR. CRISTALLI: -- I may have missed it.

8 THE COURT: Yeah. It was a month -- a month after he

9 first went into the store.

10 BY MR. NEIMAN:

11 Q. And the first visit was in -- what time in 2002 [sic]?

12 A. In 2001 sometime.

13 Q. Early part? Middle part? Latter part?

14 A. I don't remember, sir. I just remember goin' there.

15 Q. What did Defendant Neun tell you about having tax returns

16 prepared?

17 A. Uh, she said I could do it myself. Very simple to do. Just

18 fill it -- how to fill it out. Um, I don't think I ever filed

19 my own income tax or filed income tax of any kind on my own. I

20 always went to somebody and they prepared it for me.

21 Q. Who -- who -- did you -- did you have an accountant prepare

22 your returns for you prior to these years?

23 A. I would go to H & R Block, whatever, or hire one of those

24 services.

25 Q. And did Defendant Neun send you anywhere to get documents in

1 order to prepare yourself for filing your tax returns?

2 A. Yeah. I went to the IRS and --

3 Q. And what --

4 A. -- asked 'em for an update.

5 Q. What did you get from the IRS at that point?

6 A. Um, they gave me an update of -- a printout of basically all

7 the taxes I've paid over the last five years.

8 Q. Did you get any W -- W-2 or 1099 information from the IRS?

9 A. Yeah. They -- it's basically a printout of, as I said, all

10 the taxes that I paid; my wages that I earned and taxes that

11 were paid.

12 Q. Once you got this information from the IRS, did you return

13 to Freedom Books?

14 A. Yes, I did.

15 Q. And who did you give that information to?

16 A. Cynthia Neun.

17 Q. And what did you say to Ms. Neun when you gave her this

18 information?

19 A. This is, uh, the printout of what I've made, what I've made

20 and what I've paid.

21 Q. And what was the purpose of giving her this information?

22 A. Um, so I knew where I stood, basically, on my taxes.

23 Q. And was she going to prepare tax returns for you?

24 A. I asked her to, yeah.

25 Q. Did she prepare tax returns for you?

1 A. Uh, yes, she did.

2 Q. Did she charge you to have these tax returns prepared?

3 A. You know, I don't remember if she did or if she didn't, one
4 way or another. I'm not sure. I would -- I would imagine. Not
5 many people do things for free.

6 MR. NEIMAN: Your Honor, if I may have a moment,
7 please?

8 THE COURT: You may.

9 (Pause in the proceedings.)

10 MR. NEIMAN: If I may approach the witness --

11 THE COURT: You may.

12 MR. NEIMAN: -- your Honor?

13 Can you mark this one? I'm sorry. Thanks.

14 (Pause in the proceedings.)

15 (Government's Exhibit No. 329, marked for
16 identification.)

17 MR. NEIMAN: Your Honor, if I may please approach the
18 witness?

19 THE COURT: You may.

20 MR. NEIMAN: I'm approaching the witness with what's
21 been marked for identification purposes only as Government
22 Exhibit 329, Mr. Cassidy's Grand Jury testimony.

23 BY MR. NEIMAN:

24 Q. Mr. Cassidy, do you remember appearing before a Grand Jury?

25 A. Yes, I do.

1 Q. Did you testify before the Grand Jury?

2 A. Yes, I did.

3 Q. If you could take a look at your Grand Jury testimony and
4 see if that refreshes your memory whether or not Defendant Neun
5 charged you for the preparation of your tax returns.

6 MR. CRISTALLI: Date? Date?

7 THE WITNESS: Um, yeah. As I said before, I wasn't
8 sure. But, yeah, I think she did charge me a couple hundred
9 dollars.

10 MR. NEIMAN: Your Honor, if I may approach the witness
11 again?

12 THE COURT: You may.

13 BY MR. NEIMAN:

14 Q. How did you pay that couple hundred dollars to Defendant
15 Neun, if you recall?

16 A. I think I wrote her a check. Maybe a credit card.

17 Q. Did she prepare returns for you?

18 A. Yes, she did.

19 Q. When were they ready?

20 A. Uh, couple weeks, week. Somethin' like that.

21 Q. And did you go back to the store to pick up the returns?

22 A. Yes, I did.

23 Q. Did you meet with Defendant Neun at that point?

24 A. Yes, I did.

25 Q. What did you discuss at that meeting?

1 A. That she completed my returns. Um, they were ready. All I
2 had to do was mail 'em in.

3 Q. Did you review the returns with her?

4 A. Yes, I did.

5 Q. Did you agree with all the language on the returns?

6 A. Not necessarily.

7 Q. What did you ask, if anything, of Ms. Neun with regards to
8 the language you didn't agree with?

9 A. It was just all new to me. I didn't -- I just didn't
10 understand some of it. The statements were kind of bold and
11 direct, I felt.

12 Q. And did you express that concern with Defendant Neun?

13 A. Yes, I did.

14 Q. And how did she respond?

15 A. Um, well, she explained to me that, um -- I think it was I
16 needed to be -- or that the statements need to be direct and
17 precise. At the time, I didn't understand it much.

18 Q. Was it your -- did you seek a refund in these tax returns
19 that she prepared?

20 A. Yes, I did.

21 Q. Was it your understanding that you were going to receive a
22 refund?

23 A. Yes, it was.

24 Q. Did Defendant Neun ever tell you that people -- that you may
25 encounter difficulty in receiving your refund?

1 A. Um, I don't recall exactly all the conversation.

2 Q. Did Defendant Neun ever mention anything to you about, uh,
3 receiving a frivolous letter of any sorts?

4 A. Yeah, she said I'd receive a frivolous letter. Um...

5 Q. Did she say when that letter would come?

6 A. No. Over a period of time, which I never received a
7 frivolous letter.

8 Q. You did or did not?

9 A. I did not.

10 MR. NEIMAN: Your Honor, if I may approach the witness?

11 THE COURT: You may.

12 MR. NEIMAN: For the record, I'm approaching with
13 what's been marked as Government Exhibits 156, 157, 158, and 159
14 for identification purposes.

15 (Government's Exhibit Nos. 156, 157, 158, and
16 159, marked for identification.)

17 BY MR. NEIMAN:

18 Q. Mr. Cassidy, if I could direct your attention to Government
19 Exhibit 156 and 157, do you recognize those exhibits?

20 A. Uh, they look like the returns that were filled out for me.

21 Q. Filled out by who?

22 A. Cynthia Neun.

23 Q. Are those your tax returns?

24 A. Uh, I believe so.

25 MR. NEIMAN: Your Honor, at this time, the United

1 States would move into evidence Government's Exhibits 156 and
2 157.

3 MR. CRISTALLI: No objection.

4 MR. BOWERS: I have no objection.

5 MR. SCHIFF: No objection.

6 THE COURT: 156 and 157 are received.

7 MR. NEIMAN: Thank you.

8 (Government's Exhibit Nos. 156 and 157,
9 received into evidence.)

10 MR. NEIMAN: May we publish 156 to the jury, your
11 Honor?

12 THE COURT: You may.

13 (Document displayed in open court.)

14 BY MR. NEIMAN:

15 Q. Mr. Cassidy, looking at the top portion of your 1040, is
16 this for tax year 2000?

17 A. Uh, that's correct.

18 Q. Is that your handwriting up there?

19 A. No, it's not.

20 Q. Whose handwriting is it?

21 A. It's Cynthia Neun's.

22 Q. Looking at line 7, "Wages" -- "Wages, salaries, tips, etc,"
23 what number did you put?

24 A. Zero.

25 Q. Did you in fact have wages or salary on your Form W-2 for

1 the year 2000?

2 A. Um, wages, yes.

3 Q. Did you provide your Form W-2 to Defendant Neun prior to
4 preparing your 2000 tax return?

5 A. Um, I gave her the printout that I got from the IRS.

6 MR. NEIMAN: If we can go to the fourth page of the
7 return. If we can blow up one of the W-2's, please.

8 (Document displayed in open court.)

9 BY MR. NEIMAN:

10 Q. Is this your -- are these your three W-2's on this page for
11 the year 2000?

12 A. (Reviewing document.)

13 Yeah, I believe so.

14 Q. Did you provide these W-2's to Defendant Neun prior to
15 preparing your return?

16 A. You know, I don't remember providin' her with 'em. I may
17 have --

18 Q. Well --

19 A. -- at the time.

20 (Noise in the courtroom.)

21 THE WITNESS: It's a cell phone.

22 BY MR. NEIMAN:

23 Q. Is that your cell phone, Mr. Cassidy?

24 A. It's not mine; it is a cell phone.

25 Q. Mr. Cassidy --

1 THE COURT: What is it?

2 THE CLERK: I don't know.

3 THE COURT: There it goes.

4 BY MR. NEIMAN:

5 Q. Mr. Cassidy, did you mail these -- this return to the IRS or

6 did Defendant Neun mail them for you?

7 A. I don't remember if I did or if she did. I think I did.

8 Q. You believe --

9 A. It was --

10 Q. -- you did?

11 A. -- already in an envelope and all I had to do was mail it.

12 Q. She gave it to you in an envelope?

13 A. I believe so. I had to sign it and mail it.

14 Q. Going back to the third page of the tax return, is that your

15 signature down at the bottom?

16 A. Uh, yes.

17 Q. What's the date that you signed this return?

18 A. Um, 10-2-2002.

19 Q. Whose signature is that underneath your signature as the

20 paid preparer?

21 A. Uh, Cynthia Neun.

22 Q. Did she sign the day before you did?

23 A. I believe so.

24 Q. Did you attach anything to your 2000 1040 besides your

25 Form W-2's?

1 A. I don't believe so. No, I don't...

2 (Document displayed in open court.)

3 BY MR. NEIMAN:

4 Q. If I could direct your attention, if you can look inside
5 Government Exhibit 156, it's a document entitled, "Cassidy Page
6 3 of 4." Do you recognize this document?

7 A. Uh, yes, I guess so.

8 Q. Well, did you write this document?

9 A. No.

10 Q. Who wrote this document?

11 A. It was provided for me.

12 Q. By who?

13 A. By Cynthia.

14 (Document displayed in open court.)

15 BY MR. NEIMAN:

16 Q. Going to the page 4 of 4 of the attachment of the tax
17 return, is that your signature on the bottom?

18 A. Yes, it is.

19 Q. And is that Defendant Neun's signature on the bottom?

20 A. Yes, it is. Or I believe it is.

21 Q. If we can go to the note on the bottom, what does that note
22 say?

23 A. It says, "Attached are W-2's showing taxes paid that must be
24 refunded!"

25

1 (Document displayed in open court.)

2 BY MR. NEIMAN:

3 Q. Going back to the second page of the tax return, what was
4 the amount of the refund that you requested for year 2000?

5 A. (Reviewing document.) 8501.62.

6 Q. Did you get that refund?

7 A. No, I didn't, sir.

8 Q. Did Defendant Neun at the time she prepared this return tell
9 you whether -- did Defendant Neun at the time you -- let me
10 rephrase the question.

11 Were you aware at the time you prepared this return or
12 had this return prepared for you that Defendant Schiff had been
13 convicted of tax crimes?

14 A. No, I didn't know that.

15 Q. Did Defendant Neun volunteer that information to you?

16 A. Um, I don't believe so, no.

17 Q. Did Defendant Neun tell you whether or not people who had --

18 MR. CRISTALLI: Objection. Leading. So was the
19 previous question.

20 THE COURT: Well, let me hear the question first
21 that -- let him finish the question and then I'll rule on the
22 leading objection.

23 BY MR. NEIMAN:

24 Q. Did Defendant Neun tell you at the time she prepared this
25 tax return that people who had filed similar returns were being

1 prosecuted or had been prosecuted?

2 A. No, she didn't tell me that.

3 MR. CRISTALLI: I had an --

4 THE COURT: Oh --

5 MR. CRISTALLI: -- objection.

6 THE COURT: -- okay. I didn't hear you repeat it. I
7 thought he had asked a different question.

8 The objection is leading. The question does not
9 actually suggest the answer. It can be answered either yes or
10 no. Overruled.

11 BY MR. NEIMAN:

12 Q. If I could direct your attention to Government Exhibit 157.

13 A. (Complies.)

14 Q. Is this your 2001 1040?

15 A. That's correct.

16 Q. Who prepared this return?

17 A. Cynthia Neun.

18 Q. On line 7 you report zero as -- did you report zero as
19 income?

20 A. Uh, yes.

21 Q. What was the amount of the refund you sought on the second
22 page?

23 A. Um, \$2,401.47.

24 Q. Did you get a refund in that amount for this year?

25 A. No, I did not.

1 Q. Looking at the signatures at the bottom, is that you
2 signature?

3 A. Yes, it is.

4 Q. Whose signature is that beneath yours?

5 A. Cynthia Neun.

6 Q. Were these returns -- was this return prepared on the same
7 day as the previous return that we just looked at?

8 A. Yes, it was.

9 Q. Are there attachments similar to the return we just looked
10 at for year 2001's return?

11 A. Yeah, I believe so. I see some...

12 THE REPORTER: I'm sorry?

13 THE WITNESS: I believe so, yeah.

14 BY MR. NEIMAN:

15 Q. If we can go to page 7 of the tax return --

16 A. (Complies.)

17 Q. -- do you see the document entitled, "Statement and
18 Affidavit of Nonliability"?

19 A. Yes.

20 Q. Did you prepare this Statement and Affidavit?

21 A. No, I did not.

22 Q. Who did?

23 A. Again, Cynthia Neun. I believe so.

24 Q. And is that your signature at the bottom on the second page
25 of that affidavit?

- 1 A. Uh, yes, it looks like it. Yes.
- 2 Q. Mr. Cassidy, did you ever receive any correspondences from
3 the IRS with regards to your year 2001 zero tax return, which we
4 just looked at?
- 5 A. Uh, yes.
- 6 Q. If I could direct your attention to Government
7 Exhibit 158 --
- 8 A. (Complies.)
- 9 Q. -- is that one of the correspondences you received from the
10 IRS?
- 11 A. (Reviewing document.)
- 12 I never received this letter.
- 13 Q. You never received this letter?
- 14 A. (Nods head.)
- 15 Q. Is that your address on the letter?
- 16 A. No. It was a previous address.
- 17 Q. Okay. Mr. Cassidy, did there come a time when you received
18 a subpoena to testify before the Grand Jury --
- 19 A. Yeah --
- 20 Q. -- investigating this matter?
- 21 A. -- Yes.
- 22 Q. After receiving the subpoena, did you make contact with any
23 of the defendants?
- 24 A. Um, yeah, I went over there to talk to 'em about it.
- 25 Q. Who did you talk to?

1 A. Um, I think I originally spoke with, uh, Cynthia and she
2 said she couldn't help me.

3 Q. Did she refer you to anybody else for help with regards to
4 your taxes, your tax situation?

5 A. Uh, no, she didn't. Somebody else -- I can't remember who
6 it was -- referred me to, uh, a gentleman in, uh, New Jersey.

7 Q. Was this person who referred to you to the gentleman in
8 New Jersey affiliated with Freedom Books?

9 A. Uh, in terms of -- yeah, I guess he would be affiliated with
10 'em or --

11 Q. To the gentleman in New Jersey?

12 A. -- he didn't work for 'em. He -- he was just, uh -- he was
13 practicing their concepts or...

14 Q. Mr. Cassidy, as a result of filing the 2000 and 2001 tax
15 returns that Defendant Neun prepared for you, were you -- did
16 you receive any fines or penalties or interest? Were you
17 penalized at all?

18 A. Um, yeah, totalling, uh, \$25,000.

19 MR. NEIMAN: I have nothing further, your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. CRISTALLI:

23 Q. Good morning, Mr. Cassidy.

24 A. Good morning.

25 Q. Uh, Mr. Cassidy, you first heard of, uh, the teachings of

1 Irwin Schiff on a television program, radio program, I believe,
2 "Howard Stern"?

3 A. Yeah, I think it was "Howard Stern" or -- I think he was on
4 "The Tonight Show" once too. I think I saw him there.

5 Q. Irwin was being interviewed on "The Tonight Show," he was
6 being interviewed on "Howard Stern"?

7 A. That's correct.

8 Q. And he was speaking with how there is no legal liability to
9 have to pay income tax; correct?

10 A. That's correct.

11 Q. And, uh, as a result of hearing that -- and during the
12 course of the con- -- the radio program and the television
13 program, um, I would assume that he would have, uh, referred to
14 certain court cases, documentation, IRS codes to support his
15 position as to why one does not have to -- one does not have a
16 legal liability to pay income tax; correct?

17 A. That's correct.

18 Q. So you went into Freedom Books and you had an opportunity
19 to, um, meet, uh, Cynthia Neun; correct?

20 A. That's correct.

21 Q. And I'm sorry. I think that was in what, 2001?

22 A. I believe that's what it was.

23 Q. Okay. And when you -- when you initially met Cynthia, she
24 was pleasant, polite, cooperative with you; correct?

25 A. Sure.

1 Q. And you began to gather information about the, uh -- you
2 know basically, um, no -- no legal liability to have to pay
3 income tax; correct?

4 A. That's correct.

5 Q. In fact, during the course of your conversations with her,
6 she urged you to learn the material. Wouldn't that be true?

7 A. That's correct.

8 Q. And, in fact, um, she in fact said to you that you shouldn't
9 start implementing, um, these methods or principles until you
10 have an opportunity to understand the material, i.e., take the
11 courses, read the books, get a grasp on the -- on the material;
12 correct?

13 A. That's correct.

14 Q. Okay. So she didn't just say to you, um, just give me your
15 money. I'll fill out the returns and we'll see what happens;
16 correct?

17 A. Um, that's correct.

18 Q. She urged you to educate yourself; right?

19 A. Yes, she did.

20 Q. Okay. Um, and, during the course of your interactions with
21 her, she tried to -- uh, she was -- she offered to give you
22 information as to her position as why, um, there was no legal
23 liability to have to pay income tax; correct?

24 A. That's correct.

25 Q. She referred you to certain, um, court documentation;

1 correct?

2 A. That's correct.

3 Q. IRS Code sections; right?

4 A. That's correct.

5 Q. Material provided by Freedom Books and written by Mr. Irwin
6 Schiff; correct?

7 A. That's correct.

8 Q. Okay. Um, when you went into Freedom Books, um, and when
9 you prescribed to the philosophy that you initially thought was,
10 I would assume, unconventional; correct?

11 A. That's correct.

12 Q. And you -- you recognized them as being unconventional when
13 you went in there; right?

14 A. That's correct.

15 Q. Okay. Um, however, you prescribed to the philosophy. Um,
16 and, when you prescribed into the philosophy, um, Mr. Cassidy,
17 at no particular time did you believe that you were going to
18 commit a crime against the government. True?

19 A. That's correct.

20 Q. And, at no time during the course of your interaction with
21 Cynthia Neun, did she ever do anything to suggest to you that
22 she was committing a crime against the United States government;
23 Correct?

24 A. That's correct.

25 Q. Now, the Government talked about the fact that, uh, Cynthia

1 Neun never told you about, um, Irwin Schiff being, um -- being
2 incarcerated years ago; correct?

3 A. I did find out that he was arrested --

4 Q. You did?

5 A. -- incarcerated.

6 Q. You found out during the course of -- during the course
7 of -- during the period of time that you were prescribing to
8 the -- the philosophy of Freedom Books, you found out that he
9 was incarcerated?

10 A. Yeah. It's in his book.

11 Q. Okay. So you -- you -- through your reading of the
12 materials that was provided to you by Irwin Schiff and Freedom
13 Books, you in fact did find out that he was incarcerated for his
14 philosophies and/or beliefs. True?

15 A. That's correct.

16 Q. Okay. And then they also asked you that when -- when --
17 when you went back, um, after you were subpoenaed to the Grand
18 Jury to talk about the, uh -- the situation that you were in
19 with Cynthia that she didn't talk to you about that; correct?

20 A. Um, I did ask her if she could advise me. She said she
21 couldn't help me in any kinda way.

22 Q. And --

23 A. She was ordered not --

24 Q. -- and at that --

25 A. -- not to say anything.

1 Q. Correct.

2 And, at that particular time, she was under
3 investigation. True?

4 A. That's correct.

5 Q. And she was also -- and she was represented by counsel and
6 counsel told her absolutely not to talk to anybody with regard
7 to this situation; correct?

8 A. That's correct.

9 MR. CRISTALLI: Court's indulgence.

10 (Discussion between Mr. Cristalli and
11 Mr. Modafferi.)

12 BY MR. CRISTALLI:

13 Q. Sir, you don't believe Cynthia Neun is a criminal, do you?

14 MR. NEIMAN: Objection to his belief on that matter.

15 THE COURT: Sustained.

16 MR. CRISTALLI: He testified before the Grand Jury.

17 THE COURT: Sustained.

18 MR. CRISTALLI: No further questions.

19

20 CROSS-EXAMINATION

21 BY MR. BOWERS:

22 Q. Good morning, Mr. Cassidy. My name is Chad Bowers. I
23 represent Larry Cohen. How are ya?

24 A. I'm good. How are you, Chad?

25 Q. Well, under the circumstances; right?

1 Do -- do you recognize this man sitting here in the
2 corner?

3 A. I really don't.

4 Q. Does Larry Cohen ring a bell to you?

5 A. I'm sorry?

6 Q. Larry Cohen --

7 A. Does he --

8 Q. -- that name mean --

9 A. -- ring a bell to me?

10 Q. Yeah.

11 A. I seen his name, on, uh, um, the subpoenas.

12 Q. Other than that?

13 A. I don't know him.

14 Q. Uh, you -- when you filed your zero returns through Freedom
15 Books, in whatever form or shape, you never, uh, came across
16 anything relating to OMB numbers; is that correct?

17 A. An OM what?

18 Q. OMB numbers.

19 A. I don't know what you're talking about, sir.

20 Q. Okay. How about, uh, the income portion of the 1040 manual?
21 Do you recall anything along those lines?

22 A. Did I recall reading them?

23 Q. Nah. That your decision to file had somethin' to do with
24 some portion of the 1040 instruction book, this newsprint thing
25 here. Do you recall anything like that?

1 A. No, I don't remember anything like that.

2 Q. Okay. How about not liable written in big letters on your
3 return? Do you recall anything like that?

4 A. Yeah, I remember.

5 Q. Not liable. Not zero but big not liable --

6 A. Not liable.

7 Q. -- on your return?

8 A. That's correct.

9 Q. Okay. All right. Thank you, Mr. Cassidy.

10 THE COURT: It is correct you did see it?

11 THE WITNESS: I did see it, yeah.

12 THE COURT: You did?

13 THE WITNESS: Yes, I believe so, yes.

14 THE COURT: Okay. Thank you.

15 MR. BOWERS: Oh, you mean -- I'm sorry. That's a
16 different question --

17 THE COURT: No.

18 MR. BOWERS: -- than I asked him.

19 THE COURT: It's the --

20 MR. BOWERS: I asked --

21 THE COURT: -- same question.

22 MR. BOWERS: -- him if he recalled anything about it.
23 You said did he see it. If you're saying he see -- he saw it, I
24 wanna ask him another question. If he recalled something about
25 it, I can't --

1 THE COURT: "How about not liable written in big
2 letters on your return? Do you recall anything like that?

3 "Yeah, I remember.

4 "Not liable. [On]" -- "Not liable. Not zero but not
5 liable" -- not liable on your return.

6 "A. ... correct."

7 MR. BOWERS: He recalls it or he saw it though.

8 THE WITNESS: I recall it. I remember seein' it.

9 BY MR. BOWERS:

10 Q. Somewhere?

11 A. I'm lookin' through this now to see if I can...

12 Q. Take a minute to look at your tax returns and see if it's on
13 there.

14 A. (Reviewing document.)

15 I don't see that it says "not liable" on here. Are you
16 referring to the 2001 1040's?

17 Q. Any -- any -- any tax return you filed through Freedom
18 Books.

19 A. I don't recall.

20 Q. So --

21 A. I guess I'm getting lost here. I don't --

22 Q. Well, that's fine. I mean, I'm just -- is your answer,
23 then, that you don't recall anything about the not liable after
24 having reviewed your returns?

25 A. I don't see where it says it on here.

1 Q. Okay. So is your answer, then, you don't recall? I mean...

2 A. Um, I thought I saw it somewhere that it said not liable.

3 Q. Well, people are afforded an opportunity to review documents
4 to refresh their recollection. So, if that changes your answer,
5 that's fine. If not, it's okay.

6 THE COURT: He says he remembers seeing it; he doesn't
7 see it on his returns.

8 MR. BOWERS: Correct.

9 THE WITNESS: I remember seein' it somewhere where it
10 said not liable --

11 BY MR. BOWERS:

12 Q. That's fine.

13 A. -- and then --

14 Q. But not on the returns.

15 A. -- and I don't see it on this return, no --

16 Q. Okay. Thank you --

17 A. -- where --

18 Q. -- Mr. Cassidy.

19 A. -- it's written here I don't see it.

20 Q. I'm sorry. What was that? Somewhere in the materials you
21 may have seen it but not on the return. Is that fair?

22 A. That's correct.

23 Q. Thanks.

24 A. That's --

25 Q. Have a nice day.

1 A. -- that's correct.

2 THE COURT: Any redirect -- oh, Mr. Schiff. I'm sorry.
3 Mr. Schiff, do you have any questions?

4 MR. SCHIFF: Nothing.

5 THE COURT: No questions.

6 MR. NEIMAN: Just very briefly, your Honor. I realize
7 we're pushing our break.

8

9 REDIRECT EXAMINATION

10 BY MR. NEIMAN:

11 Q. If I could direct your attention, Mr. Cassidy, to your tax
12 return, Government Exhibit 156, page 9.

13 MR. BOWERS: Hey, your Honor, that's outside the scope
14 of redirect [sic].

15 MR. NEIMAN: No, it's not. We're going into the not
16 liability, where it is on his tax return, your Honor.

17 THE COURT: It's outside the -- we're having redirect
18 now. You mean --

19 MR. BOWERS: I'm sorry. Of cross, your Honor.

20 THE COURT: Cross.

21 MR. BOWERS: I misspoke.

22 THE COURT: Let me see what -- what are we referring to
23 in 156?

24 MR. NEIMAN: Uh, the "STATEMENT AND AFFIDAVIT OF
25 NON-LIABILITY" attached to his tax return.

1 THE COURT: Oh, yeah. Okay. No, that -- you went into
2 that, Mr. Bower [sic]. You opened the door.

3 MR. BOWERS: Okay. That's fine.

4 BY MR. NEIMAN:

5 Q. Mr. Cassidy, is this the attachment to your tax return that
6 you were just referring to where you may have seen nonliability
7 with regards to your 2000 1040?

8 THE COURT: Can you -- are you finding the affidavit?

9 THE WITNESS: Oh, here it is. Here it is. I found it.

10 THE COURT: Okay.

11 THE WITNESS: Okay. Um, yeah, I guess this is where I
12 saw it.

13 BY MR. NEIMAN:

14 Q. And was this attached to your tax return?

15 A. I guess it was, yeah.

16 Q. And is this same Statement and Affidavit of Nonliability
17 attached to Government's Exhibit 157, your 2001 tax return?

18 A. (Reviewing document.)

19 Oh, yes, it is.

20 Q. And did you have these returns prepared at Freedom Books?

21 A. Yes, I did.

22 MR. NEIMAN: Nothing further.

23 MR. CRISTALLI: I have no questions, your Honor.

24 MR. BOWERS: Nothing.

25 THE COURT: Mr. Schiff?

1 MR. SCHIFF: No questions.

2 THE COURT: The witness is excused.

3 THE WITNESS: I'm sorry?

4 THE COURT: You are excused, sir.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 Okay. We'll take our mid-morning break. We'll be in
8 recess for 15 minutes.

9 (Jury leaves the courtroom at 10:48 a.m.)

10 THE COURT: Okay. We're in recess.

11 (Recess from 10:49 a.m. to 11:06 a.m.)

12 THE CLERK: All rise.

13 THE COURT: Ready to bring the jury in?

14 THE CLERK: Okay. Mr. Ignall needs to be back here.

15 THE COURT: Oh.

16 MR. NEIMAN: He's just right outside with the next
17 witness.

18 MR. CRISTALLI: Where's Cindy?

19 MR. MODAFFERI: She's in the ladies' room.

20 MR. CRISTALLI: Okay.

21 THE COURT: Okay. Well, get them lined and --

22 THE CLERK: I will.

23 THE COURT: How long ago did Ms. Neun go? Has she been
24 out there?

25 MR. MODAFFERI: She's in --

1 THE COURT: She's about ready?

2 (Pause in the proceedings.)

3 THE CLERK: Are you ready?

4 THE COURT: We're ready.

5 (Jury enters the courtroom at 11:08 a.m.)

6 THE COURT: Please be seated.

7 Will counsel stipulate to the presence of the jury?

8 MR. IGNALL: Yes, your Honor.

9 MR. CRISTALLI: Yes, your Honor.

10 THE COURT: Thank you.

11 Government may call its next witness.

12 MR. IGNALL: Government calls Susan Gerecht.

13 (Susan Gerecht takes the witness stand.)

14 MR. IGNALL: Be careful. Watch your step up there.

15 THE COURT: Right here, please.

16 THE CLERK: Please remain standing and raise your right

17 hand. You may set your stuff down.

18 You do solemnly swear that the testimony you shall give

19 in the cause now pending before this court shall be the truth,

20 the whole truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do swear.

22 THE CLERK: Please be seated.

23 Please state for the record your full name and spell

24 your last name.

25 THE WITNESS: Which microphone am I talking?

1 THE COURT: It's the small one there.
2 THE WITNESS: The small one.
3 THE COURT: Yes. There you go.
4 THE WITNESS: Okay.
5 Susan K. Gerecht.
6 THE COURT: Spell.
7 THE WITNESS: What else? S-u-s-a-n, G-e-r-e-c-h-t.
8 THE COURT: Thank you.
9 Now, go ahead and put your purse down out of the way.
10 THE WITNESS: Okay.
11 THE COURT: Thank you.
12 Go ahead --
13 MR. IGNALL: All right.
14 THE COURT: -- Mr. Ignall.

15

16

SUSAN GERECHT,

17 called as a witness on behalf of the Government, having been
18 first duly sworn, was examined and testified as follows:

19

20

DIRECT EXAMINATION

21

BY MR. IGNALL:

22

Q. Good morning, Mrs. Gerecht.

23

A. Good morning.

24

Q. What do you do for a living, Mrs. Gerecht?

25

A. I'm a real estate broker. More or less semiretired at this

1 point.

2 Q. Do you have your own firm?

3 A. Uh, yes, I do. But there's no other people with me now.

4 Q. But did you have your own firm --

5 A. Yes, I did.

6 Q. -- the last few years?

7 A. Um-hum.

8 Q. What's the name of that firm?

9 A. Sunshine Realty.

10 Q. How long have you had Sunshine Realty?

11 A. Uh, for about 28 years.

12 Q. And what business was Sunshine Realty in?

13 A. I did and still do some selling of real estate. But we had

14 some other people, Gordon Hancock and Steve Nicklon (phonetic)

15 and my husband and they did property management.

16 Q. When you -- does that -- does that include leasing property?

17 A. Yes.

18 Q. All right. Do you know someone named Cynthia Neun?

19 A. Yes, I do.

20 Q. How do you know Cynthia Neun?

21 A. Uh, Cynthia came into our office. I think it was in the

22 early '90s. And she was a very lovely person with two little

23 kids. And there was a townhouse/condo in Heritage Square that

24 Bill Patton was the owner and it was one of Sunshine Realty's

25 accounts and she applied to rent it and it was rented to her.

1 And she was a long-term tenant.

2 Q. What was your responsibility with respect to this property?

3 A. Well, I'm the broker of Sunshine Realty. So you might say
4 the buck stops here. But, um, I'm trying to remember whether my
5 husband, Harold, was the property manager of that property at
6 the time or whether it was Gordon Hancock, who passed away of
7 cancer.

8 But, um, it was our duty to collect the rent, you know,
9 for the owner; come out and check the condo if there was
10 problems or things that had to be fixed. And that's what we
11 did. And also keep in contact with the Association if there
12 were problems.

13 Q. Where was this property located?

14 A. It was Heritage Circle. And I can't remember the --

15 Q. Was that --

16 A. -- address.

17 Q. -- here in Las Vegas?

18 A. Yes.

19 Q. Okay.

20 A. Across from K-Mart --

21 Q. All right.

22 A. -- I think.

23 Q. And what type of a structure is this property?

24 A. It's, uh -- was a one-story condo. I think around 1700
25 square feet. I'm trying to remember whether it was two or three

1 bedrooms. It was a -- had nice-size rooms and worked well for
2 Cindy because Cindy was an artist -- or is an artist.

3 Q. I'm sorry. I missed...

4 A. Cindy was an artist or is an artist.

5 Q. Okay.

6 MR. IGNALL: May I approach the witness, your Honor?

7 THE COURT: You may.

8 MR. CRISTALLI: Is that an exhibit? Is that an
9 exhibit?

10 (Discussion between Mr. Ignall and
11 Mr. Cristalli.)

12 MR. IGNALL: I'm gonna hand, uh, Mrs. Gerecht what
13 we've marked for identification as Exhibits 255, 256, and 257.

14 MR. CRISTALLI: Thank you.

15 (Discussion between Mr. Ignall and
16 Mr. Cristalli.)

17 BY MR. IGNALL:

18 Q. Mrs. Gerecht, if I could turn your attention to, uh,
19 Exhibit 256, do you recognize Exhibit 256?

20 A. Take it out of the binder?

21 Q. Yeah. You can take your time and look at that --

22 A. Okay.

23 Q. -- and tell the jury if you recognize it.

24 A. Yes, that would be Cindy's application to rent at the time.

25 Q. And did you accept that application?

1 A. Uh, I --

2 Q. I meant did she give it to you or to your firm?

3 A. You know, I don't remember. I think she probably gave it to

4 my husband.

5 Q. Okay.

6 A. I was in the office at the time she gave it to him though.

7 Q. And when was this? Do you know what -- what the date was?

8 A. Uh, well, it says right here November 9th, 1991.

9 MR. IGNALL: United States moves into evidence

10 Exhibit 256.

11 MR. CRISTALLI: No objection.

12 MR. BOWERS: We don't have any objection, your Honor.

13 MR. SCHIFF: No objection.

14 THE COURT: 256 is received.

15 (Government's Exhibit No. 256, received into

16 evidence.)

17 MR. IGNALL: If we can publish Exhibit 256 to the jury.

18 MR. CRISTALLI: I'm sorry. The date -- the testimony

19 was the date was what again?

20 THE COURT: November 9th, '91.

21 THE WITNESS: Excuse me. I just have to get my

22 glasses --

23 THE COURT: Oh, yes. Go ahead.

24 THE WITNESS: -- so I can see up there.

25 MR. CRISTALLI: I think it's incorrect. I mean, it's

1 not that -- are we lookin' at -- I'm lookin' at the second page
2 of that particular exhibit. It says 11-5-91. Am I --

3 BY MR. IGNALL:

4 Q. Mrs. Gerecht, if you look at the second page --

5 MR. CRISTALLI: Just so we're correct.

6 THE WITNESS: That would have been the date she signed
7 it.

8 BY MR. IGNALL:

9 Q. What date does that say?

10 A. 11-5-91.

11 Q. All right.

12 MR. CRISTALLI: 11-5-91.

13 THE WITNESS: Um-hum.

14 BY MR. IGNALL:

15 Q. And is that around the time that Ms. Neun moved into the
16 unit that you were managing?

17 A. Um-hum.

18 Q. I'm sorry. You need to give a "yes" or "no" or an audible
19 answer for the court reporter.

20 A. Oh. Um, when did it start? (Reviewing document.)

21 Yeah, she -- she moved into it in November of, uh --
22 the 9th of '91 --

23 Q. All right. Thank you.

24 A. -- I think.

25 Q. And is -- is the address listed on this rental application

1 the address she was living in?

2 A. Yes.

3 Q. All right. How long did Ms. Neun live at that address --

4 A. She --

5 Q. -- while you were managing the property?

6 A. Oh. She -- she was there until I sold the property.

7 Q. And when did you --

8 A. And that officially closed, uh -- what does that say? -- was

9 March 19th, 2004.

10 Q. I'm sorry. Were you referring to a note that you made

11 yourself?

12 A. Yeah, which --

13 Q. Okay.

14 A. -- I can give you.

15 Q. All right. Did you make some notes to yourself at some

16 point earlier?

17 A. Yes.

18 Q. Okay.

19 A. Last night I made some -- a couple notes about the sale of

20 the property.

21 Q. All right.

22 MR. IGNALL: And if defense --

23 MR. CRISTALLI: I don't have an objection --

24 MR. IGNALL: -- counsel wants to --

25 MR. CRISTALLI: -- I don't have an objection --

1 MR. IGNALL: -- look at those, we don't object to --

2 MR. CRISTALLI: I have no objection to that particular

3 testimony.

4 THE WITNESS: Okay.

5 MR. CRISTALLI: But, I mean, I don't know if there's...

6 BY MR. IGNALL:

7 Q. Just so we're clear, so everyone on the jury knows, if for

8 some reason you don't remember something, there's a note you

9 want to refer to, maybe you could let us know and then we'll --

10 A. Okay.

11 Q. -- all be on the same page. Thanks.

12 All right. And, when you say you sold the property, it

13 was on behalf of the owner?

14 A. Yes.

15 Q. All right.

16 A. Bill Patton was the owner. He lives out of state.

17 Q. All right. While Ms. Neun was living there and you were

18 the -- your firm was a property manager, did -- did she pay rent

19 to you?

20 A. She paid it to Sunshine Realty.

21 Q. Okay. And did you collect the -- the -- those rent

22 payments?

23 A. Not personally. She would -- you know, I really don't

24 remember whether she mailed it in or brought it in. But, you

25 know, when it was due, she would pay the rent; we would disburse

1 it to the owner.

2 MR. IGNALL: If we could, uh -- Ms. Vannozzi, I believe
3 Exhibit 258 has already been admitted. Uh, thank you.

4 (Document placed before the witness by the
5 clerk.)

6 BY MR. IGNALL:

7 Q. Uh, Mrs. Gerecht, I've had the courtroom deputy hand you
8 Exhibit 258. Do you recognize the documents contained in
9 Exhibit 258?

10 A. Should I put these back in this --

11 Q. Yeah --

12 A. -- vial?

13 Q. -- that's probably good. Thank you.

14 MR. IGNALL: 258's been admitted, has it not?

15 THE CLERK: Yes, it has.

16 MR. IGNALL: Okay. Thanks.

17 THE WITNESS: I'll figure it out in a moment. Okay.

18 BY MR. IGNALL:

19 Q. Do you recognize the documents contained in Exhibit 258?

20 A. Um-hum.

21 Q. Do they look familiar?

22 A. There's -- oh, there's the money orders.

23 Q. Yeah. Why don't we... The first one's kind of unclear --

24 A. Yeah.

25 Q. -- I have to admit. But maybe we could skip to the third

1 page. There might be one that's a little easier to read.

2 A. (Complies.) Yes.

3 Q. All right. What is this that we're looking at on the third

4 page of Exhibit 258?

5 A. Uh, on page 3, that's what her rent was at that time.

6 Q. How much was that?

7 A. Uh, it was seven sixty --

8 Q. And what --

9 A. -- a month.

10 Q. -- are there two separate payments on that page?

11 A. Yes, it was two separate money orders.

12 Q. All right. And do you know whose handwriting is on the

13 money order?

14 A. It's Cindy Neun.

15 Q. Do you recognize her handwriting?

16 A. Um-hum.

17 Q. I'm sorry?

18 A. Yes. Yes. I'm sorry.

19 Q. Yeah.

20 A. Yeah, she has very arty handwriting --

21 Q. Okay.

22 A. -- in calligraphy.

23 Q. Did Ms. -- did Ms. Neun typically pay her rent with money

24 orders?

25 A. Um-hum. I'm sorry. Yes.

1 Q. Do you know if she ever paid with a check from a bank
2 account with her name on it?

3 A. I don't remember. But I don't think she ever had a bank
4 account that she paid it through.

5 Q. Did Ms. Neun pay her rent every month on time?

6 A. Yes, she did. She was basically on time except for maybe --
7 I can't remember when. There was a couple times that she was
8 late. But it was back when she had her back surgery --

9 Q. All right.

10 A. -- and we knew that it was coming in late then.

11 Q. Yeah.

12 So -- I'm sorry. You said that you sold the property.

13 What -- what was the date that your owner sold it?

14 A. Uh, it officially closed escrow on March -- excuse me --
15 19th, 2004.

16 Q. All right. So let's say for the five years before that, did
17 Ms. Neun pay her rent on time?

18 A. Yes, she did.

19 Q. All right. Did you visit with Ms. Neun at all while she was
20 living in that property?

21 A. Uh, yes, we did. "We," meaning my husband and myself. We
22 would occasionally go over to check out the property, if there
23 was a problem that needed to be repaired or there was a problem
24 with the driveway or whatever the -- the problem might be, and
25 then we would get, um, the appropriate people out to fix it.

1 Many times it was the owner himself that would come in and take
2 care of the problem.

3 Q. And did you speak to Ms. Neun on more than one occasion?

4 A. Yes.

5 Q. All right. Did you ever talk to her about what she did for
6 a living?

7 A. Uh, yes, I did.

8 MR. CRISTALLI: Foundation. Time.

9 THE COURT: Sustained.

10 THE WITNESS: I'm sorry. What?

11 THE COURT: The -- there was an objection. I sustained
12 the objection. The attorney will ask you another question now.

13 THE WITNESS: Oh, okay.

14 BY MR. IGNALL:

15 Q. Well, at any point, did you discuss with Ms. Neun what she
16 did for a living?

17 A. Yes, we did when she -- she was applying to rent the --

18 Q. Okay.

19 A. -- condo and she stated she was an artist and I think she
20 also did some calli- -- I'm sorry -- I can't pronounce it --
21 calligraphy.

22 Q. Okay. But, while she was living there, did you have any
23 further discussions about what she did for a living?

24 A. Uh, basically we got invitations, which we didn't go to,
25 when she would do an art show. And then I believe it was -- and

1 I can't remember exactly -- but around the last couple years
2 that she was there she had let us know that she was, uh, at
3 Freedom Book store at that point.

4 Q. Did she say what she was doing at Freedom Books?

5 A. No, that she -- I think she was working there or that was
6 another -- we had to have an additional work number if her work
7 number changed.

8 Q. If I could turn your attention to what we marked as
9 Exhibit 257.

10 A. (Complies.) Yes.

11 Q. Do you recognize Exhibit 257?

12 A. Yes, I do.

13 Q. Without reading it, what is Exhibit 257? Without reading
14 it --

15 A. Oh, it -- it was a statement that Cindy mailed to us saying
16 that she was --

17 Q. Well --

18 A. -- working --

19 Q. -- let's -- let's go into that quite yet.

20 A. Okay.

21 Q. And do you recognize the handwriting?

22 A. Yes.

23 Q. And when did you get this document?

24 A. I wouldn't remember unless I just looked here.

25 Q. But, looking at it, does that refresh your recollection?

1 A. Yes.

2 Q. When?

3 A. It was September of '99.

4 MR. IGNALL: At this point, Government moves into
5 evidence Exhibit 257.

6 MR. CRISTALLI: No objection.

7 THE COURT: Any objection?

8 MR. CRISTALLI: No objection.

9 MR. BOWERS: No objection, your Honor.

10 MR. SCHIFF: No objection.

11 THE COURT: Thank you. 257 is received.

12 (Government's Exhibit No. 257, received into
13 evidence.)

14 MR. IGNALL: May we publish Exhibit 257 --

15 THE COURT: You may.

16 MR. IGNALL: -- to the jury.

17 (Document displayed in open court.)

18 BY MR. IGNALL:

19 Q. So I think I asked you if you recognized the handwriting,
20 but I didn't ask the follow-up.

21 Whose handwriting is this?

22 A. It was Cindy's.

23 Q. All right. And could you read what this says?

24 A. Yes. It says:

25 "Dear Harold & Susan,

1 "For your records -
2 "[I'm] working at Freedom Books
3 "544 East Sahara" -- what is it? -- "Avenue
4 "89104."
5 And the phone numbers were 385-6920 and 1-800-829-6666.
6 "(My children, Michelle & Shamus work there, too.)"
7 Q. All right. Thank you.
8 If I could turn your attention to what we've marked for
9 identification, another -- it should be Exhibit 255 in front of
10 you, Mrs. Gerecht.
11 A. (Complies.) Okay.
12 Q. Do you recognize what's contained in Exhibit 255?
13 A. Yes, I do.
14 Q. What -- what are -- what do we have contained in
15 Exhibit 255?
16 A. Uh, these would be the rental management reports that, uh --
17 well, "HG" is my husband. Okay? -- and this would be the
18 management report that he would send to Bill Patton along with
19 his portion of the rent.
20 Q. Are these -- are these reports that Sunshine Realty
21 maintained in the ordinary course of business?
22 A. Yes. The management reports would be sent to the owners.
23 Q. Did you maintain those every month in the ordinary course of
24 business?
25 A. You know what? I honestly don't know because I didn't get

1 involved in the management at all other than I was there, you
2 know.

3 Q. But, as a matter of practice at Sunshine Realty, do you
4 know?

5 A. I think so. I really don't know.

6 MR. IGNALL: May I have one moment, your Honor?

7 THE COURT: You may.

8 (Discussion between Government counsel.)

9 BY MR. IGNALL:

10 Q. I'm sorry. You said that the person you represent sold this
11 house where Ms. Neun was living?

12 A. Yes.

13 Q. Do you know to whom?

14 A. Yes. It was sold to Angela -- Angela Stark --

15 Q. All right. Do you know --

16 A. -- from California.

17 Q. -- if Ms. Neun still lived in the house?

18 A. I really don't know. It closed.

19 Q. Okay.

20 A. I think she bought it as a place to have in Vegas to live
21 in.

22 Q. All right. All right. Thank you.

23 MR. IGNALL: No further questions.

24 THE WITNESS: Okay.

25 THE COURT: Cross-examination.

1 MR. CRISTALLI: Thank you, your Honor.

2

3

CROSS-EXAMINATION

4 BY MR. CRISTALLI:

5 Q. It's Ms. Gerecht?

6 A. Gerecht, that's fine.

7 Q. Gerecht?

8 A. Gerecht or Gerecht. Whatever.

9 Q. Gerecht. Okay. I want to say it right, if I can.

10 According to your testimony, Ms. Neun moved in around
11 1991; correct?

12 A. Correct.

13 Q. And, um, she was a single mom with two small children.

14 True?

15 A. Right.

16 Q. At that particular time, based on your observations and your
17 interactions with her, she didn't have, um -- there wasn't a
18 husband and there wasn't a man living on the property with her;
19 correct? At that time, the early '90s.

20 A. I'm -- her husband, I believe, was ill or she had just
21 recently separated from her husband.

22 Q. Right.

23 A. And at one period I think there was a friend that was
24 helping her out.

25 Q. Okay. So, um, it would be safe to say for a period of time

1 she was a single mom trying to support two children; correct?

2 A. Exactly.

3 Q. Now, the property that she resided at, um -- I mean, it
4 would be safe to say that it was a relatively modest property;
5 correct?

6 A. Right.

7 Q. There's uh, no Lamborghinis pulling up to it or Ferraris;
8 correct?

9 A. Not that I know of.

10 Q. Okay.

11 A. I don't know.

12 Q. Um, and, based on your interactions with Ms. Cynthia Neun
13 and your familiarity with her, um, it would be safe to say that
14 her lifestyle was relatively modest as well; correct?

15 A. Yes.

16 Q. In fact, during most of the period of time that you knew
17 her, um, she struggled to make a living, to survive; correct?

18 A. And support her two children.

19 Q. And it would be also safe to say that that got a little bit
20 harder when she, um -- when she was injured; correct?

21 A. Yes.

22 Q. And you, um -- and you're familiar with that period of time;
23 um, you're familiar with the fact that she did have, um, serious
24 back surgery; correct?

25 A. I think there was about three times that she had some

- 1 serious back surgery.
- 2 Q. And that caused her to not be gainfully employed; correct?
- 3 A. You know, at that time, I don't know. She had -- she may
4 have had some artwork that she was selling. She's a good
5 artist.
- 6 Q. But it's -- it's safe to say that, um, based on your -- your
7 testimony on direct examination that during that period of time
8 she had some difficulties making the rent payments?
- 9 A. She always met the rent payment though.
- 10 Q. Okay.
- 11 A. There was, you know, maybe a couple times that she'd get on
12 and say, well, I'm going to be a little bit late; you know, I
13 was in the hospital or what have you.
- 14 Q. She, um -- she tried to do -- she always -- she was the type
15 of person that would always do what she could to make sure that,
16 um, you as the property manager knew what her situation was and
17 knew that she was going to make the payment?
- 18 A. She was very good about that so that I could keep Mr. Patton
19 informed or Harold -- I'm sorry -- could keep Mr. Patton, the
20 owner, informed of what was happening.
- 21 Q. And you would work with her with regard to the payment?
- 22 A. Yes, because she was -- had proven herself a good tenant.
23 She was the kind that would take care of little things herself
24 or have someone do it.
- 25 Q. In fact, she would redoc- -- repaint the property?

1 A. Sure did.

2 Q. Do improvements to the property?

3 A. Um-hum.

4 Q. Okay.

5 A. Her original goal when she came in, or -- or her dream, was
6 to eventually own the property.

7 Q. And she wasn't able -- never owned the property; correct?

8 A. She tried, but couldn't.

9 Q. Okay.

10 A. The year before, uh, it closed escrow she had tried to buy
11 the property.

12 Q. She wasn't successful in doing that. True?

13 A. No.

14 Q. Okay.

15 A. There wasn't enough income to qualify for a loan.

16 Q. Now, on the applications, uh, initially she put down that
17 she was employed as an artist; correct?

18 A. Um-hum.

19 Q. She was employed at Mission Linens; correct?

20 A. Um-hum.

21 Q. Um, she never, um, left those particular sections blank and
22 refused to answer what she was doing for a living; correct?

23 A. No. That's right.

24 Q. And then, in 1999, she, once again, she didn't -- she could
25 have just -- she could have just not said anything in terms of

1 what she was doing, uh, for a living. But she took the
2 initiative to write you guys and to tell you that she was, um --
3 she was participating at Freedom Books. Correct?

4 A. That she was working there --

5 Q. Right. She was --

6 A. -- right.

7 Q. -- she was working at Freedom Books.

8 Uh, you don't know -- you have no -- no direct
9 knowledge as to how she may or may not have been compensated
10 from Freedom Books; correct?

11 A. No, none.

12 Q. Are you aware that she had a romantic relationship with the
13 owner of Freedom Books, Mr. Irwin Schiff?

14 A. I don't know that it was a romantic relationship. I know
15 that she took care of Mr. Schiff when he had his heart attack
16 and --

17 Q. And Mr. -- I'm sorry. Let me let you finish.

18 A. No, that's okay. That was the one time that I was over at
19 the condo checking some work that needed to be done --

20 Q. And Mr. --

21 A. -- and he was there. But she was, I think, physically
22 taking care of him when he got out of the hospital.

23 Q. So, she, um, cared -- so Mr. Schiff was residing at the, uh,
24 homestead when -- when he was recovering from his -- his heart
25 surgery; correct?

1 A. I -- I think so. I don't really know.

2 Q. But he was -- he was at --

3 A. He was --

4 Q. -- the property?

5 A. -- yeah, he was there and she was watching after him.

6 Q. And, um, based on your observations, it appears -- it

7 appeared that he was residing at the property; correct?

8 A. You know, I don't know. I didn't look in the closets or

9 anything.

10 Q. Okay. That's fair enough.

11 Um, but you don't know how she was being financially

12 compensated at that particular time; correct?

13 A. No, I don't.

14 Q. You don't know whether or not, uh, Mr. Irwin Schiff was

15 giving her, um, um -- just giving her money, paying her rent,

16 uh, paying for, um, clothes, paying for groceries? You don't

17 know any of that information. True?

18 A. No, I don't.

19 Q. You don't know what types of services she was performing for

20 Irwin in terms -- other than seeing her care for him --

21 A. Um-hum.

22 Q. -- right?

23 A. Right.

24 Q. Okay. Um, and -- and that -- when you saw her with Irwin at

25 the house, that was around what period of time? It was

1 subsequent to 1999 I would assume. Correct?

2 A. Uh, yes -- oh, wait. I'm -- you know what? I really can't
3 remember exactly when it was. I could remember why I was there.
4 The driveway was heaving and --

5 Q. Sure.

6 A. -- and we had had a lot of work done in the condo. But I
7 can't remember when it -- exactly when it was.

8 Q. Okay. You never saw Ms. Cynthia Neun, um, driving around in
9 fancy cars, did ya?

10 A. No, I can't even remember the car she had.

11 Q. You never saw her -- I'm sorry. Go ahead.

12 A. No. I think it was the original one that she had when she
13 rented the condo. But I don't know.

14 Q. Do you know what kind of car it was?

15 A. No. It's on the application.

16 Q. So your testimony, though, it would be -- the car that she
17 drove when she first rented the apartment was the same car that
18 she had 14 years later?

19 A. I think so. You know, if there was another car that was
20 there, it could have been her son, Shamus, at that point. But I
21 don't know that he had a car either.

22 Q. Safe to say that she wasn't drivin' around in a spankin'
23 band new car?

24 A. No.

25 Q. She didn't -- she didn't run around with lots of diamonds on

1 her hands, did she?

2 A. No, she didn't.

3 Q. She didn't throw around a lot of cash, did she?

4 A. No.

5 Q. Basically, it appeared that she was doing whatever she
6 needed to do to survive and support her family; correct?

7 A. Exactly.

8 MR. CRISTALLI: Court's indulgence.

9 (Discussion between Mr. Cristalli and
10 Mr. Modafferi.)

11 BY MR. CRISTALLI:

12 Q. And, ma'am, in terms of, uh, the rental -- the rental
13 payments, um, there appears to be a time, based on the exhibits
14 that you had in front of you, that, um, the rent checks began to
15 not -- not come from Cynthia directly but began to come from,
16 uh, Freedom Books; correct?

17 A. Right. And I believe that was about the last couple of
18 years or so. I'd have to check that.

19 Q. And those checks were, um -- were signed off by Mr. Irwin
20 Schiff; correct?

21 A. I don't know whether it was signed off by Mr. Irwin Schiff
22 or, um, the secretary.

23 (Discussion between Mr. Cristalli and
24 Mr. Modafferi.)

25

1 BY MR. CRISTALLI:

2 Q. Do you have Government's Exhibit 258 in front of you?

3 A. Um, yes, I do.

4 Q. Okay. Can we just together go through, um, that exhibit

5 if -- if we could?

6 Um, first of all, it appears that the entirety of 258

7 is, uh, payments made for her rent. Would that be an accurate

8 statement?

9 A. Yes. I'm still trying to --

10 Q. Okay. Take your time.

11 A. -- find --

12 Q. Just kind of peruse through there.

13 A. (Reviewing document.)

14 So far I'm seeing money orders.

15 Q. Okay. And those money orders are basically money orders to

16 Sunshine Realty signed off by Cynthia Neun; correct?

17 A. Correct.

18 Q. Okay. So I think we're gonna have to -- and the -- and the

19 amount pretty much stayed consistent, if I'm not mistaken. And

20 that was approximately what, \$760 a month?

21 A. Correct.

22 Q. Okay. And I'm gonna continue to go through there and all

23 the way to, uh -- let's see. Okay.

24 A. There --

25 Q. Okay.

1 A. -- I just came across one here --

2 Q. Okay. Is that --

3 A. -- that was signed by Irwin Schiff [sic].

4 Q. All right. I want to direct your attention -- because I

5 think I found out where they start -- to, um -- it says "BO-107"

6 on the right-hand corner.

7 A. I see 3420.

8 THE COURT: She's there.

9 BY MR. CRISTALLI:

10 Q. Yes, 3420. That's correct.

11 So It appears, based on my review of Exhibit 258, that

12 the checks, uh, to Sunshine Realty from Irwin Schiff's Freedom

13 Books began at Check No. 35- -- 3420 on about October 1st, 2003;

14 correct?

15 A. Uh, that's correct.

16 Q. And prior to October 1st, 2003 -- I'm sorry.

17 THE COURT: Oh, okay. Hold on.

18 Do you need to take a break?

19 THE CLERK: She's got a problem. Yes.

20 THE COURT: Okay.

21 MR. BOWERS: Your Honor, could we have a quick sidebar

22 unless the Court's gonna call lunch.

23 THE COURT: Let's wait.

24 MR. BOWERS: Okay.

25

1 (Pause in the proceedings.)

2 (Discussion between the clerk and the Court.)

3 THE COURT: Okay. Mr. Cristalli, go ahead.

4 MR. CRISTALLI: Thank you, your Honor.

5 BY MR. CRISTALLI:

6 Q. So, ma'am, we left off on Check No. 3420, which was dated
7 October 1st, 2003. It appears that that is, um, the first check
8 that we can recognize in Government's Exhibit 258 that was
9 written from Irwin Schiff's Freedom Books to Sunsine [sic] --
10 Sunshine Realty and it appears that it's signed by Mr. Irwin
11 Schiff; correct?

12 A. Um, no. As I went through these checks --

13 Q. Okay.

14 A. -- excuse me -- I just saw one right here that I'm looking
15 at that is April 1st, 2002 --

16 Q. Okay. Where --

17 A. -- signed by, uh, Mr. Schiff.

18 Q. Okay. Where -- um, could you tell me what -- is that, uh --
19 is that subsequent to the, uh, 3420 check number or is it before
20 the 3420 check number, according to your --

21 A. That would be before. This would be Check No. 2316.

22 Q. Okay. 2316.

23 Okay. I'm just trying to get an accurate start date --

24 A. Um-hum.

25 Q. -- if I could.

1 So you -- you say that the first check that you can
2 recognize from Freedom Books is, um, what again? Could you
3 testify to that again? I'm sorry.

4 A. Uh, the first check that was signed by Irwin Schiff was in
5 April, April 1st, 2002.

6 Q. Okay. And that was signed by Mr. Schiff; correct?

7 A. Right.

8 Q. And that was from Freedom Books?

9 A. Yes, it was.

10 Q. Now, going through those checks that were sent from, uh,
11 Freedom Books to Sun- -- Sunshine Realty, they -- they appear
12 all to be either signed or there's a signature -- signatory
13 stamp of Mr. Irwin Schiff; correct?

14 A. Let me see. (Reviewing document.)

15 Q. I guess --

16 A. Except for the very first one that was signed by Cynthia
17 Neun.

18 Q. Okay. And that is -- could you tell me what the check
19 number is on that?

20 A. 2 -- 2226.

21 Q. Okay.

22 A. And it was at the bottom.

23 Q. Okay. And then the remaining portions of those checks
24 appear to be signed off by Mr. Irwin Schiff; correct?

25 A. Yes, correct.

1 Q. Okay.

2 MR. CRISTALLI: Court's indulgence.

3 THE COURT: Yes.

4 MR. CRISTALLI: Your Honor, I don't have any further
5 questions.

6 Thank you, ma'am.

7 THE COURT: Mr. Bowers, any questions?

8 MR. BOWERS: Actually not, Judge. Thank you.

9 THE COURT: Mr. Schiff, any questions?

10 MR. SCHIFF: No questions.

11 THE COURT: No questions?

12 Redirect?

13 MR. IGNALL: Um, briefly perhaps. May I have one
14 moment to see if we can...

15 (Pause in the proceedings.)

16 MR. IGNALL: We'll do it the old-fashioned way.

17 AGENT STEINER: Dave, we got it.

18 MR. IGNALL: You do?

19 AGENT STEINER: Yeah.

20 MR. IGNALL: Okay. We'll do it the old-fashioned way.

21

22 REDIRECT EXAMINATION

23 BY MR. IGNALL:

24 Q. Briefly, Mrs. Gerecht, the earliest check you said you saw
25 from Freedom Books is that the -- well, that's not it. I'm

1 gonna ask you if that's the check that we...

2 A. That's a money --

3 Q. That's not it.

4 A. I'm sorry. That's a money order.

5 Q. There we go.

6 (Document displayed in open court.)

7 BY MR. IGNALL:

8 Q. If we blow this one up, is that the check we see on the
9 screen there?

10 A. I -- well, what is it? 2276?

11 Q. Yeah, it looks like -- well...

12 THE COURT: 2226.

13 THE WITNESS: 22...

14 BY MR. IGNALL:

15 Q. I think Mr. Cristalli was just asking you and you pointed
16 out a check signed by Ms. -- Ms. Neun?

17 A. Um-hum.

18 Q. I just want to see if that's indeed the same check.

19 A. 22... Yes, it is.

20 Q. All right.

21 MR. IGNALL: No further questions, your Honor.

22 THE WITNESS: Okay.

23 MR. CRISTALLI: Just one follow-up question, if I may.

24

25

1 RE-CROSS-EXAMINATION

2 BY MR. CRISTALLI:

3 Q. Out of all of the checks that were sent from Freedom Books,
4 at least a couple years' worth of 'em, I would assume --

5 A. Right.

6 Q. -- um, based on my review of the exhibit, there appears to
7 be only one check signed off by Ms. Cynthia Neun; correct?

8 A. That's correct.

9 MR. CRISTALLI: No further questions.

10 THE COURT: Any recross?

11 MR. BOWERS: Nothing. Thank you, Judge.

12 THE COURT: Schiff?

13 Okay. The witness is excused.

14 MR. IGNALL: Thank you, your Honor.

15 THE WITNESS: Okay. Did you want this?

16 THE CLERK: No, ma'am. You can take that.

17 THE COURT: Be careful going down. There's a step --
18 several steps, ma'am.

19 Government's next witness.

20 MR. NEIMAN: Your Honor, the United States would call
21 Luddie Talley to the stand.

22 (Pause in the proceedings.)

23 (Luddie Talley takes the witness stand.)

24 THE CLERK: Go on up, please, to the witness stand.

25 Please raise your right hand.

1 You do solemnly swear that the testimony you shall give
2 in the cause now pending before this court shall be the truth,
3 the whole truth, and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please be seated.

6 Please state for the record your full name and spell
7 both your first name and your last name.

8 THE WITNESS: My name is Luddie Talley, L-u-d-d-i-e,
9 T-a-l-l-e-y.

10 THE COURT: You may proceed.

11 MR. NEIMAN: Thank you very much, your Honor.

12

13

 LUDDIE TALLEY,

14 called as a witness on behalf of the Government, having been
15 first duly sworn, was examined and testified as follows:

16

17

 DIRECT EXAMINATION

18 BY MR. NEIMAN:

19 Q. Good morning, Mr. Talley.

20 Mr. Talley, who are you employed by?

21 A. I'm employed by the Department of Treasury, Internal Revenue
22 Service.

23 Q. And for how long have you been employed by the IRS?

24 A. 20 years this month.

25 Q. And, prior to working with the IRS, how were you employed

1 way back when or...

2 A. Oh, I spent over 25 years in the Air Force.

3 Q. How are you employed with the IRS?

4 A. I'm employed as a revenue officer.

5 Q. And what does that mean in layman's terms to be a revenue
6 officer with the IRS?

7 A. Oh, okay. The short version of it would be I'm a collector.
8 Uh, whatever debts that are owed to the Internal Revenue Service
9 generally a revenue officer would collect them. I see it also
10 as a great part of my work to try and bring people back into
11 compliance that kind of fall out.

12 MR. BOWERS: Your Honor, I'm having a very difficult
13 time hearing his --

14 MR. SCHIFF: I can't hear him.

15 THE COURT: Would you just pull that microphone a
16 little closer to you? The other one.

17 THE WITNESS: The other one.

18 THE COURT: The other one. Yeah. Just give it a hard
19 yank and get it a little closer to you. There you go.

20 THE WITNESS: That should do it.

21 THE COURT: Thank you.

22 BY MR. NEIMAN:

23 Q. Mr. Talley, why don't we try that explanation one more time.

24 A. Okay.

25 Q. What does it mean to be a collection -- or revenue officer

1 with the IRS?

2 A. Okay. That would be to collect debts that are owed, income
3 tax that are owed, to the Internal Revenue Service; uh, to
4 collect the delinquent returns; promote compliance.

5 Q. Which field office are you assigned to?

6 A. The Las Vegas post of duty.

7 Q. And have you been a revenue officer your entire 20 years
8 with the IRS?

9 A. I have.

10 Q. Are you an accountant?

11 A. No, I am not.

12 Q. Are you a CPA?

13 A. No, I am not.

14 Q. Can you explain when a case gets to the desk of -- your desk
15 as a collection officer -- or a revenue officer?

16 A. Um, cases generally come from the Service Center after, uh,
17 several efforts have been made to contact the taxpayer and get
18 them to resolve it. If they are unable to get it resolved via
19 the notices and phone calls, it's sent to me as a field officer.

20 Q. Well, let's talk a little bit about these initial notices
21 sent, uh, to the taxpayer. How many notices are sent prior to
22 the case coming to collection?

23 A. Uh, generally four.

24 Q. And can you explain, I guess, what the first of these four
25 letters says or...

1 A. Okay. The first notice is a -- a notice to -- excuse me --
2 we have your tax return. It's been assessed, that is, it's been
3 processed. You owe this amount. Please pay it within 10 days.

4 Q. And if the taxpayer doesn't respond to the first letter --

5 A. He'll get a second --

6 Q. -- is a second letter --

7 A. He'll get a second notice that --

8 MR. BOWERS: I'm sorry, your Honor. I need to make a
9 foundational objection. This -- this gentleman, as I understand
10 it, isn't involved with this process. These letters are sent
11 out from the IRS Service Center.

12 THE COURT: Correct.

13 MR. BOWERS: Um, would -- are these letters included in
14 the file? Can I take him on voir dire? Is there some reason
15 why a witness at the Service Center who generates those letters
16 isn't explaining this process to us and Mr. Talley is?

17 MR. NEIMAN: Your Honor, Mr. Talley is familiar with
18 this process; he's familiar with these letters. And we're
19 laying a foundation in order to establish how a case gets to
20 collection prior to, uh -- IRS collection activities prior to
21 forced collection.

22 MR. BOWERS: And I understand that's what the
23 Government's doing. I just don't know that it's the proper
24 witness to do it with.

25 THE COURT: Well, he's familiar with the process and

1 he's discussing it now. So the objection's overruled.

2 BY MR. NEIMAN:

3 Q. Can you --

4 A. I could answer that in this manner. If those notices aren't
5 sent, I have to ensure that at least one of them is.

6 Q. Okay. And why do you need to ensure at least one is?

7 A. Because there are certain rights that are afforded a
8 taxpayer that has to be offered to 'em and it's offered to 'em
9 in writing.

10 Q. And is one of those rights that they need to receive notice?

11 A. That is correct.

12 Q. If the taxpayer doesn't respond to this first letter sent
13 out to the, uh, taxpayer, can you explain what the second letter
14 sent out by the Service Center is?

15 A. I would describe that as just a gentle reminder that you
16 still owe the tax; you should pay it.

17 Q. And, if they don't respond to the second reminder, is there
18 a third letter generated?

19 A. There is a third letter and it's a little bit harsher. We
20 start telling them what could happen to them.

21 Q. And what -- what -- does it layout or things that may happen
22 to a taxpayer if they don't respond to these notices?

23 A. Right. The fourth notice actually sets out the fact that we
24 can file a lien against ya, uh, and that we can take levy action
25 against ya.

1 Q. What is a lien?

2 A. A lien, uh -- there are two types of lien. The general lien
3 is created at the time the tax is assessed and then -- I'm
4 sorry -- the statutory lien. And at the time that, uh, the
5 field officer get the case and determines it's necessary to file
6 a lien to protect the government's interests, we file the lien.

7 Q. Mr. Talley, I'm gonna --

8 MR. SCHIFF: Excuse me.

9 Can you speak a little louder? I cannot hear him.

10 MR. BOWERS: Yeah, it's hard.

11 MS. NEUN: This is very important to us.

12 MR. SCHIFF: Can you get closer to the mic or
13 something?

14 THE COURT: Just give that a hard yank.

15 MR. SCHIFF: Could I hear that answer again?

16 THE WITNESS: Okay.

17 The lien actually arises at the time that the tax is
18 assessed.

19 MR. NEIMAN: Your Honor, if we could have Mr. Schiff...

20 BY MR. NEIMAN:

21 Q. Explain what a lien is again, please, Mr. Talley.

22 A. Okay.

23 The statutory lien arises at the time that the tax is
24 assessed. No one knows about that lien except people that are
25 concerned at that point. The lien that I file, the general

1 lien, is to put the public on notice that there is government
2 interest in whatever property/assets that taxpayer has.

3 Q. And if you can explain practically how the government would
4 collect on a lien if one is placed on someone's -- on a
5 taxpayer's assets?

6 A. Well, it establishes the Government's position insofar as
7 creditors of that particular taxpayer goes. Um, sometimes we're
8 first; sometimes we're not.

9 Q. Uh, and if the house or the proceeds of -- if the house is
10 sold what happens to the proceeds of the sale of the house if
11 the IRS has a lien and let's say they are first in priority?

12 A. And it's a regular sale of the house, you mean?

13 Q. Yes.

14 A. Oh. Then the -- then the title company is required to honor
15 our lien and pay over whatever our lien interest is.

16 Q. And is that amount of money collected from the lien applied
17 to the taxpayer's outstanding tax liability?

18 A. It is.

19 Q. You also mentioned the word "levy." What is a levy?

20 A. A levy is a -- it's a document that we use to take assets
21 from the taxpayer. It's an involuntary payment.

22 Q. Is a lien also a form of involuntary payment or not so much?

23 A. Um, not so much as to establish our position and to put
24 others on notice.

25 Q. Getting back to the -- the notices sent out by the Service

1 Center, if a taxpayer fails to respond to any of the four
2 notices, what is the next step in the process?

3 A. I will send out what we call a final notice --

4 Q. And --

5 A. -- and that is the last notice that they are gonna get. The
6 next thing is gonna be a knock on the door.

7 Q. And what -- what information is included in this final
8 notice?

9 A. That we can file a lien, that we can levy, and that you have
10 certain appeal rights that you can take at this time if you
11 disagree.

12 Q. And do you attempt to make contact with the taxpayer? Do
13 you shortly thereafter attempt to make contact with the
14 taxpayer?

15 A. If there's no response to that notice, yes, I do.

16 Q. And can you explain the purpose or why you're trying to make
17 contact with the taxpayer?

18 A. To afford that taxpayer every opportunity to get that tax
19 matter resolved before I have to resort to enforced collection
20 actions.

21 Q. If you make contact with the taxpayer, is this the time
22 where you would make, uh -- or suggest payment options?

23 A. I certainly would.

24 Q. Do all taxpayers cooperate with the collection arm of the
25 IRS?

1 A. Absolutely not. Some of 'em don't even let me get those
2 options explained to 'em.

3 Q. And what would happen if a taxpayer refused to cooperate
4 with the collection side of the house?

5 A. Then I'm kinda pushed into taking those actions.

6 MR. SCHIFF: Pardon me? What was the answer?

7 THE WITNESS: Then I'm forced into taking those
8 actions, uh, uh -- enforcement actions to collect the debt.

9 BY MR. NEIMAN:

10 Q. And, by "those," are you referring to the liens and the
11 levies?

12 A. That's correct.

13 Q. What is the first step you would take if you are required to
14 use these forced collection measures?

15 A. Uh, once I found a levy source, I would file a levy.

16 Q. Well, how do you find a levy source?

17 A. Various means that are available to us. Uh, we -- we have
18 available to us, um, income data on practically every taxpayer,
19 uh, to include the employer if they are employed and generally
20 that's where I would start.

21 Q. And what type of information data are you talking about?

22 A. Um, I affectionately refer to it as the IRPTA Program. It's
23 Income Reporting -- I don't remember. We've got so many
24 acronyms. I...

25 Q. Is this where a Form -- if someone received a Form W-2,

1 would it be reported in this database, the information?

2 A. It would.

3 Q. And would -- what other -- and how about a 1099?

4 A. Yes, it would.

5 MR. SCHIFF: A what? I still don't understand what he

6 just said.

7 THE WITNESS: Yes, it would. It would be included.

8 BY MR. NEIMAN:

9 Q. Can you explain maybe a little better what IRPTA -- what is

10 in this database or what this database does?

11 A. It would be a listing of payments made to a person with that

12 Social Security number.

13 Q. And -- and is that -- a levy source I believe is what you --

14 A. That would be a levy source.

15 Q. Can you explain what a levy source is?

16 A. That would be someone that would owe the taxpayer money. It

17 could be a bank. It could be an employer. Uh, we --

18 practically anyway that a person get paid it's reported to the

19 Internal Revenue Service and that's in that database. In

20 addition to that, we use credit reports. Um, I think you're

21 probably familiar with a company called "Choice Point," uh, that

22 was recently in the news. We use that also.

23 Q. And what is Choice Point?

24 A. Uh, Choice Point is a company that, uh, accumulate data on

25 people.

1 Q. What type of data?

2 A. You name it; they pretty much have it.

3 Q. Okay.

4 A. Uh, anything from home ownership to vehicle ownership to
5 addresses, phone numbers.

6 Q. All right. If we can shift gears a bit, if a taxpayer is
7 cooperative after receiving this final Notice of Levy, can you
8 explain what you -- what options you would discuss with that
9 taxpayer?

10 A. Sure. I explain to a taxpayer of the different options that
11 they have and kinda leave it to them to select one. We start
12 off, of course, with can you full pay, that is --

13 Q. And how do you --

14 A. -- payment in full.

15 Q. I'm sorry to talk over you.

16 A. Um-hum.

17 Q. How do you know whether or not they could afford to pay?

18 A. We ask them for financial information. We have a form
19 that -- well, we have lots of forms. But we have one designed
20 especially for that. And, once they give us that information,
21 we can make a determination, then, on what their, uh, ability to
22 pay is.

23 Q. All right. And how -- how does that impact, uh, their
24 ability to pay in discussing their options with -- for
25 payment -- payment options?

1 A. Okay. If -- if the financial information shows that they
2 cannot full pay the account, it's possible that they can make
3 payments over period of time. So we will work out a payment
4 agreement. And it is just that, an agreement between the two.
5 It would do no good to insist that the taxpayer pay a certain
6 amount that, uh, they are not gonna be able to. So it's an
7 agreement between the two of us as to what they would pay.
8 That's one of the other -- that's one of the options.

9 Q. What is another option?

10 A. Another option would be to file what we would refer to as an
11 offer and compromise. That is --

12 Q. What -- if you can explain offer and compromise.

13 A. That is a program designed for a person that cannot pay the
14 debt in full. It's -- whereby they offer a sum to settle the --
15 the entire tax debt.

16 Q. And is this offer and compromise an alternative to filing
17 for bankruptcy sometimes?

18 A. It is. That's, uh, pretty much what it was designed for.

19 Q. Do you actually -- are you the one who actually handles
20 whether or not to accept an offer and compromise or is that done
21 by somebody else?

22 A. No. That's done by a specialist.

23 Q. What is your role, if any, with regards to offer and
24 compromises?

25 A. I explain the program to the taxpayer, provide them the

1 necessary packet of forms that they would need; give 'em
2 whatever assistance they might need in putting it together. And
3 I just pass it on to the Offer Program.

4 Q. All right. What is a third option that you discuss with a
5 cooperating taxpayer about the collection alternatives?

6 A. There are times when a taxpayer absolutely cannot pay the
7 debt. That, again, is based on that financial statement that we
8 get. If we decide that this taxpayer cannot pay the debt,
9 cannot make meaningful payments -- after all, they've still
10 gotta live so that they get their necessary living expenses --
11 we put the account in what we call "currently not collectible
12 status." It does not go away. It's just in suspense.

13 Q. And does that toll all interest and penalties and all that?

14 A. No. The penalties and interest continue accruing.

15 Q. Have you ever conducted any meetings or face-to-face
16 conversations with taxpayers where Defendant Irwin Schiff
17 represented them?

18 A. I've conducted interviews where Mr. Schiff was in the room.

19 Q. Okay. Approximately how many of these meetings did you have
20 where Mr. Schiff was in the room?

21 A. Humm. I'm not sure, but I will take a guess at 10.

22 Q. Did you have a meeting where Mr. Schiff was in fact a
23 taxpayer himself?

24 A. Oh, yes.

25 Q. Well, what were the purposes of these meetings -- or what

1 was the purpose of the meeting when you met with Mr. Schiff or
2 another time where Mr. Schiff was in the room?

3 A. I met with Mr. Schiff when I was handling his collection
4 case. Uh, that was sometimes in late '94, early '95.

5 Q. And what was the purpose of this meeting?

6 A. To try and collect a tax debt.

7 Q. And were you planning on discussing collection alternatives
8 like we just described to Mr. Schiff?

9 A. Yes, sir, I did intend to do that.

10 Q. Did Mr. Schiff cooperate during that meeting?

11 A. No, sir.

12 Q. How about the meetings where you had Mr. Schiff present in
13 the room with other taxpayers, did those taxpayers cooperate in
14 that meeting?

15 A. No.

16 Q. What type of arguments would Mr. Schiff or one of his, uh --
17 or someone else who he was with make to you during these
18 meetings?

19 MR. BOWERS: Your Honor, I'm gonna object to that as
20 being hearsay with respect to anyone but Mr. Schiff unless --
21 well, I'll let the Government explain why it's not.

22 MR. NEIMAN: Your Honor, we would argue that it's a --
23 yet another statement in furtherance of the conspiracy.

24 MR. BOWERS: And we have no idea who these people are,
25 where this was, or what -- what relationship they may or may not

1 have to the conspiracy.

2 MR. NEIMAN: If I could establish when maybe, we may be
3 able to --

4 THE COURT: Go ahead.

5 MR. SCHIFF: Can I raise an objection?

6 MR. BOWERS: All foundational elements, Judge: when,
7 where, and who, time, place, and circumstance, please.

8 THE COURT: Mr. Schiff.

9 MR. SCHIFF: I was derelict, your Honor, in asking: Is
10 he being put on the stand as an expert in tax law? Because
11 he's --

12 THE COURT: No. No, he's not.

13 MR. SCHIFF: Not an expert?

14 THE COURT: He's not being tendered as an expert.

15 MR. SCHIFF: He's not an expert.

16 THE COURT: He is not being tendered as an expert.

17 He's not being offered as an expert witness. He's offered as a
18 percipient witness.

19 BY MR. NEIMAN:

20 Q. Mr. Talley, during what time period did you meet with
21 Mr. Schiff himself?

22 A. It would have been sometimes in early 1995.

23 Q. And what did Mr. Schiff or what -- what did Mr. Schiff say
24 to you at this meeting or what types of arguments was he making?

25 A. Um, simply that there's no law that requires him to file

1 any -- file and pay an income tax.

2 Q. And how would you respond, if at all?

3 A. Well, I've asked Mr. Schiff on numerous occasions if he was
4 an attorney, if he was a CPA, if he was an accountant.

5 Q. And did he respond to these questions?

6 A. Well, he would tell me that he was the world's foremost
7 leading authority on taxes.

8 Q. And did you ever discuss with him whether or not the IRS
9 disagreed with his position on the tax laws?

10 A. On numerous occasions.

11 Q. Approximately how many times had you discussed this
12 disagreement over the tax laws?

13 A. Um, I'd say about 10 times.

14 Q. Did you ever discuss with Mr. Schiff court cases that have
15 disagreed with his positions?

16 A. Including his own. Yes, sir.

17 Q. And approximately how many times did you discuss with
18 Mr. Schiff the courts disagreeing with his position on the
19 taxes?

20 A. In a formal setting, several times.

21 Q. How did he respond after your providing him with this
22 information?

23 A. Well, I didn't know what I was talkin' about.

24 Q. That's what he would tell you?

25 A. Yeah.

1 Q. How long did your meeting with Mr. Schiff, uh, in, I guess,
2 1995 when he -- referring to his collection activities take
3 place? How long did that last?

4 A. Not very long.

5 Q. How did it end?

6 A. Uh, my telling him that I, uh, was now after whatever assets
7 I could find.

8 MR. SCHIFF: Can I hear the answer to that?

9 THE COURT: Repeat the answer, please.

10 THE WITNESS: That I would start taking whatever assets
11 I could find to apply to your tax debt.

12 MR. SCHIFF: That was in 1995?

13 THE WITNESS: Yes, sir.

14 BY MR. NEIMAN:

15 Q. And by that you mean levy sources? You were gonna look
16 for --

17 A. That is --

18 Q. -- levy sources?

19 A. That is correct.

20 MR. BOWERS: Your Honor, I'm sorry. Maybe -- I -- I'm
21 confused. And I guess if -- we can did it on cross, but I think
22 the Government wouldn't mind clearin' this up. The witness said
23 levy sources were payments. Are they also assets? I'm just --
24 I'm --

25 THE WITNESS: Yes.

1 MR. BOWERS: Any asset's a levy source?

2 THE WITNESS: Any asset.

3 MR. BOWERS: Thank you.

4 THE WITNESS: Yes, sir.

5 MR. BOWERS: I'm sorry to interrupt your testimony
6 [sic], Government.

7 BY MR. NEIMAN:

8 Q. Did you ever have any meetings where -- with taxpayers where
9 Defendant Cynthia Neun was present?

10 A. Very few times.

11 Q. Approximately how many?

12 A. Uh, not more than a couple, three.

13 MR. CRISTALLI: Just objection. I would want some
14 clarification. Present during whose, uh, meetings?

15 MR. NEIMAN: I'm getting to that --

16 MR. CRISTALLI: Okay.

17 MR. NEIMAN: -- your Honor.

18 BY MR. NEIMAN:

19 Q. When --

20 THE COURT: Premature.
21 Go ahead.

22 BY MR. NEIMAN:

23 Q. When did these meetings take place?

24 A. I really can't remember because those cases did not belong
25 to me but rather to another revenue officer that was

1 accompanying.

2 Q. And was it custom to have two -- two revenue officers at
3 meetings with taxpayers?

4 A. Um, on that caliber of taxpayer, yes.

5 Q. What do you mean by "that caliber of taxpayer"?

6 A. Well, generally they would notify us in advance that they
7 would be recording the interview. And, whenever an interview is
8 recorded, we're required to have two employees present and
9 record also.

10 Q. Did all taxpayers ask to have these meetings recorded?

11 A. Generally the ones that Mr. Schiff, Ms. Neun, and Mr. Cohen
12 came in with, yes.

13 Q. Did there ever come a time when Mr. Cohen came into the IRS?

14 A. I know that he was in, but I never sat in on one of his.

15 MR. BOWERS: Time, place, and circumstance? I object.

16 Move to strike. You know --

17 MR. CRISTALLI: Yeah. I --

18 MR. BOWERS: -- if he's there, he's there. But, I
19 mean, I don't know when.

20 MR. CRISTALLI: I have foundational problems myself on
21 this testimony.

22 THE COURT: Okay. Well, he's attempting to establish
23 foundation. He has done so with everything except the last
24 statement.

25 MR. NEIMAN: Uh, I'm sorry, your Honor. If I may?

1 THE COURT: Go ahead.

2 BY MR. NEIMAN:

3 Q. Uh, when did you have reason to know that Mr. Cohen was at
4 the IRS?

5 A. Because of the way the interview rooms were structured in
6 the building that we were in at that time. We -- the Internal
7 Revenue Service office was located at 4750 West Oakey. All the
8 interview rooms were on the first floor and anyone walking down
9 the hallway could see into the interview rooms.

10 Q. And what time period was this that you saw Mr. Cohen in an
11 interview room at the IRS? You don't need to be specific as far
12 as date. But, generally speaking, how many years ago?

13 MR. BOWERS: I'm --

14 THE WITNESS: Oh --

15 MR. BOWERS: -- I'm gonna request to take this on voir
16 dire with this issue, Judge.

17 THE COURT: The question is: "And what time period was
18 this...? You don't need to be specific as far as the date. But
19 generally speaking."

20 THE WITNESS: Generally, I would say sometimes during
21 the year 2001, 2002, maybe even 2003.

22 BY MR. NEIMAN:

23 Q. In the meetings you had -- and when did the meetings with
24 Defendant Neun take place?

25 A. Same time frame I would think.

1 MR. CRISTALLI: Your Honor, I need to object to
2 foundational -- on a foundational basis in terms of is she -- is
3 she there on somebody's behalf? on her behalf? I...

4 MR. NEIMAN: Your Honor, I think he's testified she was
5 there as a -- or with some other tax --

6 MR. CRISTALLI: No, he didn't though. That's my
7 problem.

8 THE WITNESS: I have never -- I have never interviewed
9 her myself, no.

10 BY MR. NEIMAN:

11 Q. But were you -- who was she with when you had these
12 meetings?

13 A. Other taxpayers.

14 Q. And what was the purpose of those meetings -- what was the
15 purpose of the meetings in which she was with other taxpayers?

16 A. She was the taxpayers' representative or spoke on their
17 behalf.

18 THE COURT: We're gonna take our lunch break. We'll be
19 in recess until 1:30. The admonition is a continuing one.

20 (Jury leaves the courtroom at 12:12 p.m.)

21 THE COURT: Okay. Did we have something we needed
22 to --

23 MR. BOWERS: I need to inform the Court outside the
24 presence of the witness --

25 THE COURT: Okay.

1 MR. BOWERS: -- of one brief thing that --

2 THE COURT: Mr. Talley --

3 MR. BOWERS: -- I don't think should be a problem.

4 THE COURT: -- watch your step as you go down. There
5 are a couple of steps there that you have to watch right in
6 front of you.

7 MR. NEIMAN: Mr. Talley, thanks for coming on such
8 short notice. I apologize.

9 (Witness leaves the courtroom.)

10 THE COURT: Mr. Bowers.

11 MR. BOWERS: Uh, the Exclusionary Rule is still in
12 effect; right, your Honor?

13 THE COURT: Pardon?

14 MR. BOWERS: The Exclusionary Rule is in effect here?

15 THE COURT: They are.

16 MR. BOWERS: Yeah.

17 I'm comin' into court this morning I've got, like, all
18 this, you know, stuff and you got to run it through the metal
19 detector, it spills out everywhere, the Marshals are kind enough
20 to pick it up, and there's a guy in front of me with some other
21 stuff. And, you know, he makes some kind of comment about --
22 which I don't think it was negative or positive -- made some
23 sort of comment about my stuff. You know, it's only just papers
24 and so forth. Didn't think anything of it. And -- and then,
25 during this morning's testimony, I realized it was Juror No. 10.

1 I don't think it's a problem. But I thought, you know,
2 that I would just bring it to the Court's attention.

3 THE COURT: Oh, okay.

4 MR. BOWERS: I mean --

5 THE COURT: Thank you.

6 MR. BOWERS: -- in my experience as an attorney, this
7 is not really an issue. But I thought better --

8 THE COURT: Okay.

9 MR. BOWERS: -- to bring it to the Court's attention.

10 THE COURT: Okay. As long as you didn't think it was a
11 problem and reflect on any bias or prejudice.

12 MR. BOWERS: No. I -- no. I -- I think it was --

13 THE COURT: You're just reporting a contact.

14 MR. BOWERS: Yeah.

15 THE COURT: Okay.

16 MR. BOWERS: I'm just indicating that, you know -- that
17 the guy said something to me and I said something back not
18 realizing --

19 THE COURT: Okay.

20 MR. BOWERS: -- it was him and that I think the whole
21 thing oughta be classified as neutral --

22 THE COURT: Okay.

23 MR. BOWERS: -- but I wanted the court to be aware of
24 it.

25 THE COURT: All right. Thank you. We're in recess

1 until 1:30.

2 (Lunch break, 12:14 p.m. to 1:40 p.m.)

3 THE CLERK: All rise.

4 THE COURT: Ms. Clerk, will you bring in the jury?

5 THE CLERK: Yes, sir.

6 (Pause in the proceedings.)

7 (Jury enters the courtroom at 1:41 p.m.)

8 THE COURT: Please be seated.

9 Will counsel stipulate to the presence of the jury?

10 MR. BOWERS: Yes. Certainly, Judge.

11 MR. NEIMAN: Yes, your Honor.

12 MR. CRISTALLI: Yes, your Honor.

13 THE COURT: Thank you.

14 MR. SCHIFF: Yes.

15 THE COURT: Go ahead.

16 MR. NEIMAN: Thank you very much, your Honor.

17 BY MR. NEIMAN:

18 Q. Mr. Talley, I think before we broke for lunch we were
19 discussing, uh, meetings you had with Defendants Neun, Schiff,
20 and -- and other taxpayers discussing collection activities. Do
21 you recall that's what we were discussing?

22 A. Yes, sir.

23 Q. Uh, did you -- from your perspective, what was the purpose
24 of meeting with these taxpayers?

25 A. To afford them an opportunity to resolve their tax issues.

1 Q. And what type of -- or how could they respond to you or what
2 information were you seeking from them in order to assist them
3 in resolving their tax issues?

4 A. Normally it would be financial information so that we could
5 make a collection determination, can they pay the tax or
6 couldn't they.

7 Q. All right. Um, and, if they refused to provide any of this
8 information -- or I should ask this question first: Did the
9 taxpayers who you dealt with who were associated with Defendant
10 Schiff and Neun, did they refuse or did they comply with your,
11 uh, request to provide financial information?

12 A. They would not be forthcoming with the information.

13 Q. And what would the next step be from your side of the house
14 to handle one of these taxpayers?

15 A. To warn them of pending enforcement action.

16 Q. And what -- and the types of pending enforcement action are
17 what we discussed earlier?

18 A. That is correct, lien and levy.

19 MR. SCHIFF: What was that? What was the enforcement
20 action?

21 THE WITNESS: Lien and levy.

22 MR. SCHIFF: Lien and levy.

23 THE WITNESS: Yes, sir.

24 MR. SCHIFF: Okay.

25

1 BY MR. NEIMAN:

2 Q. If -- if you were forced to go down this lien and levy road,
3 can you explain what the first step you would take in order to
4 find what assets, if any, a taxpayer would have?

5 A. Well, once I determined that they are not gonna provide the
6 information, the very first step that I would take would be to
7 file the lien if it had not already been filed. At that point,
8 I would start searching our databases for asset information, uh,
9 levy sources, uh, could be a bank account, an employer.

10 Q. Would you also do a search on public records?

11 A. I would.

12 Q. Well, can you explain the type of search you would do on a
13 public record in order to determine a taxpayer's assets?

14 A. Okay. At one point, we would -- it would require a trip to
15 court -- to the county offices to review Assessor and Recorder
16 records. Now that it's online, we can do it from the office
17 there on our computers. We would, uh, search different ways.
18 If we suspected that they owned real property, we could look
19 under the name or an address. Uh, we would like to see what,
20 uh, documents had been recorded under their names. Uh,
21 sometimes that would lead you to assets.

22 Q. If a taxpayer didn't have -- didn't have the house in their
23 own name, would you as a collection officer of the IRS know that
24 the house was -- was associated with a specific taxpayer?

25 A. After spending some time checking on that, it could be

1 determined.

2 Q. Can you explain the -- the process that you would go through
3 in order to make that determination if --

4 A. Well, we'd have to come up with some kind of a connection
5 there. If the person that I have a case on resides in that
6 house and I don't find the name on the title or whatever but I
7 suspect that they are in fact, uh -- have ownership interest in
8 it, there are numerous and sundry things that I can check on it.
9 Uh, to begin with, I'd go back and research the chain of title
10 to see if it was ever in the taxpayer's name and trace it from
11 there forward.

12 Q. And, if the title was never in someone's name, would you
13 have any idea -- I guess what I'm trying to ask: If -- if
14 someone's house wasn't in their name, would that make your job
15 easier or more difficult to enforce collection activity?

16 A. Much more difficult.

17 Q. Uh, did the IRS -- or, in your capacity as a collection
18 officer, would you ever make a determination or try and find
19 someone's bank accounts?

20 A. Oh, yes.

21 Q. Can you please explain the process you would go through in
22 finding someone's bank accounts?

23 A. I would access a computer program that we have that I
24 referred to earlier as IRPTA and any account in a financial
25 institution that pays interest should be listed.

1 Q. And -- and what document, if any, does the IRS receive from
2 a bank related to an account that has interest in a taxpayer's
3 name?

4 A. I don't know the document. But, uh, the banks are required
5 to report that information to the Internal Revenue Service.

6 MR. SCHIFF: Let me hear your last answer. The banks
7 are -- what was that?

8 THE WITNESS: The banks are required to report that
9 information to the Internal Revenue Service.

10 MR. SCHIFF: With respect -- is it your testimony the
11 banks are required to report that information when you -- when
12 you summon it? Is that it?

13 THE WITNESS: No, sir, I did not say that.

14 MR. SCHIFF: Well, I don't know what you said. You
15 said the banks are required to report such information.

16 THE WITNESS: No, sir. I said required to report the
17 payment of interest.

18 MR. SCHIFF: Oh. Oh, I see. Okay. I'm satisfied.
19 Okay.

20 BY MR. NEIMAN:

21 Q. And, when you do this search in IRPTA, what is the primary
22 identification figure that you enter into the computer in order
23 to match up bank accounts to a taxpayer?

24 A. It would be the Social Security number.

25 Q. If a bank account is opened using a different -- someone

1 else's Social Security number, would that make your job as
2 collection -- a collection officer easier or more difficult in
3 order to find that account?

4 A. It would be more difficult.

5 Q. And can you explain how that impedes your ability to
6 collect -- or find these bank accounts?

7 A. Well, I'm gonna have to spend an awful lot of time to
8 collect -- to connect the taxpayer to that account or that
9 Social Security number whereas if it was shown under the
10 assigned Social Security number it would be real easy.

11 Q. In trying to find other assets as a collection officer,
12 would you ever do a search for cars?

13 A. Yes, I do.

14 Q. Can you explain that search and how you would find a car
15 associated with a specific taxpayer?

16 A. Our office get information from the Department of Motor
17 Vehicles and we can access the information, uh, either the name
18 or vehicle registration.

19 Q. If that car is titled in somebody else's name, would that
20 make your job in collection easier or ore difficult to find the
21 vehicle?

22 A. More difficult.

23 Q. And can you explain how that would make it more difficult?

24 A. Again, I'm going to have to find some connection that the
25 taxpayer would have with that vehicle.

1 Q. How about if that vehicle was titled in a state other than
2 Nevada?

3 MR. BOWERS: I'm sorry, Judge. That's an incomplete
4 hypothetical.

5 MR. NEIMAN: I --

6 MR. BOWERS: I think it assumes that the taxpayer one's
7 looking for is in Nevada and -- and it's not in the question.

8 THE COURT: Okay. Sustained.

9 BY MR. NEIMAN:

10 Q. Mr. Talley, if you were doing a search for a taxpayer's
11 vehicle that was titled in a state other than the state in which
12 the taxpayer lived, would that make your job or your search for
13 their vehicle more difficult?

14 A. It would make it more difficult, yes.

15 Q. Can the IRS, uh, levy a bank account?

16 A. Certainly.

17 Q. Can IRS, uh, seize vehicles or other real property --

18 A. Yes, sir.

19 Q. -- other property?

20 A. Yes, sir.

21 Q. And, if the IRS seizes property, can you explain the process
22 which the IRS goes through after seizing such property?

23 A. First of all, you ensure that the taxpayer has been warned
24 of all the rights afforded them and an opportunity to resolve
25 the -- the tax issues before that seizure is made. If none of

1 that -- if the steps to resolve the account are not taken, we
2 move on getting the various permissions that we need to make the
3 seizure.

4 Q. Mr. Talley, do you know what a nominee is?

5 A. Sure.

6 Q. What is a nominee?

7 A. Someone acting in another's place.

8 Q. And can you explain how if -- nominees are involved in
9 assets -- in concealing assets from the IRS?

10 A. Sure. The asset can be held in Mr. A's name but actually
11 controlled by Mr. B and Mr. B would get all of the, uh, uh,
12 benefit of it.

13 Q. And, if someone uses nominees, does that make your job more
14 difficult along the same lines as putting the car in someone
15 else's name or using a different Social Security number on the
16 bank account?

17 A. It certainly does make it more difficult.

18 Q. Would -- if -- the use of a nominee or using someone else's
19 name, would that show up in your computer databases that you
20 search?

21 A. No.

22 Q. Mr. Talley, how about the use of offshore bank accounts, can
23 you explain what effect, if any, that has on your ability to
24 collect, uh, taxes?

25 A. That has a very, uh, uh, negative impact. Uh, none of that

1 information is reported to us.

2 Q. Reported to the IRS?

3 A. That's correct. It's not in any of our systems.

4 Q. Would -- so would it show up in IRPTA?

5 A. No, it would not.

6 Q. Would it show up in Choice Point?

7 A. No, it would not.

8 Q. Mr. Talley, do you know what a warehouse bank is?

9 A. Uh, uh, I've heard the term. Somewhat familiar with it.

10 Q. What is a warehouse bank?

11 A. A warehouse bank is where a person, uh, take deposits from

12 several -- numerous people, put them together, and they -- a

13 system is used whereby only a select few can identify the

14 accounts --

15 Q. And would --

16 A. -- whose --

17 Q. I'm sorry. Were you...

18 A. -- whose -- whose money is what in that large lump sum.

19 Q. And what effect, if any, would the use of a warehouse bank

20 account have on your ability to collect taxes?

21 A. An extreme negative effect.

22 Q. Similar to the impacts we just discussed?

23 A. On the nominees, yes, sir.

24 Q. Mr. Talley, how long does the IRS have to collect a old tax

25 liability?

1 A. Currently the statute of limitations is 10 years from the
2 date of assessment.

3 Q. And can that -- when you say "statute of limitations," can
4 you explain, I guess, what -- what that concept means?

5 MR. SCHIFF: Objection, your Honor. He's testifying
6 about the law.

7 MR. BOWERS: Or he's about to.

8 MR. SCHIFF: Statute of limitations is -- is a law that
9 he must be familiar with.

10 THE COURT: Well, what's your objection, that he has to
11 be an expert --

12 MR. SCHIFF: Well, no objection.

13 THE COURT: -- to know what the statute of limitations
14 is?

15 MR. SCHIFF: Well, the point is, if he's testifying
16 with respect to the law, then I must be able to ask him
17 questions about the law.

18 THE COURT: Well, if you wish to ask him about the
19 statute of limitations, you may. He's --

20 MR. SCHIFF: But that's only one law.

21 THE COURT: Well, there are lots of laypeople who know
22 what the statute of limitations is, not all of them. But there
23 are a lot of laypeople who know. That's not a complicated issue
24 that would require expert testimony. Overruled.

25

1 BY MR. NEIMAN:

2 Q. What does it mean when you say you have statute of
3 limitations of 10 years to collect a tax?

4 A. Okay. From the date of assessment of the tax, we have 10
5 years in which to collect that tax. Otherwise, it's off the
6 books --

7 Q. Can that --

8 A. -- unless extended by an operation of law.

9 Q. And can you -- are you familiar with -- or do you know how
10 something could be -- that could be extended, that statute could
11 be extended?

12 A. Well, yes. There are several ways. Uh, uh, at one time,
13 the Offer and Compromise Program that I spoke about earlier
14 would extend the statute. Uh, if a person files for bankruptcy,
15 that would extend the statute. And we can also, uh, foreclose
16 our tax lien and that would do away with the statute.

17 MR. SCHIFF: I object. Your Honor?

18 THE COURT: Yes.

19 MR. SCHIFF: Is that something else that a person of
20 ordinary would know?

21 THE COURT: Well, that's part of his job.

22 MR. SCHIFF: Pardon?

23 THE COURT: That's part of his job.

24 MR. SCHIFF: To know the law?

25 THE COURT: Well, to know the statute of limitations

1 and the extensions. Again, it's something that could be known
2 by someone who is not a lawyer or an accountant or a CPA.

3 BY MR. NEIMAN:

4 Q. Mr. Talley, are you familiar with whether or not the IRS can
5 extend a statute of limitations or extend the period of
6 collection by reducing an old tax liability to a judgment?

7 A. Yes, there is a process called that.

8 Q. And can you explain, real generally, if you know what that
9 process entails or what that's about?

10 A. Well, the amount of money involved has to meet a certain
11 threshold. Excuse me. And we prepare a report and it goes to
12 the various, uh, uh, channels; finally get counsel to give us a
13 ruling as to whether or not we've got a basis for doing this.
14 If the documentation is adequate, they'll take it to a judge for
15 that purpose.

16 MR. NEIMAN: Your Honor, if I may approach the witness?

17 THE COURT: You may.

18 MR. NEIMAN: For the record, I'm approaching with
19 Government's Exhibit 291.

20 Your Honor, also at this time the United States would
21 move for the admission of Exhibit 291. It's a certified public
22 record of a complaint reducing Mr. Schiff's tax liability to a
23 judgment.

24 MR. SCHIFF: Um, well...

25

1 (Discussion between Mr. Schiff and
2 Mr. Leventhal.)

3 MR. SCHIFF: It's all right. Let it go in.

4 THE COURT: Any objection to 291?

5 MR. SCHIFF: Well, I have an objection, your Honor.

6 THE COURT: Okay. What is your --

7 MR. SCHIFF: That's on appeal before the Ninth Circuit.
8 That was a summary judgment. I never had a trial. And they're
9 trying to use a judgment in a civil matter in connection -- that
10 is total -- totally unrelated, uh, to a criminal trial because
11 that's based on a preponderance of the evidence and not beyond a
12 reasonable doubt.

13 MR. NEIMAN: Your Honor, if I may?

14 THE COURT: You may.

15 MR. NEIMAN: The United States would not object to a
16 curative instruction to the jury as to the different standards
17 of proof in a civil case versus a criminal case. The United
18 States is seeking to introduce this document to establish
19 Mr. Schiff's outstanding tax liability, uh, which is mentioned
20 in Count 17 of the Indictment.

21 MR. SCHIFF: Also, I object for a fact not in evidence.
22 Nobody has introduced a statute making me liable for the payment
23 of income tax. Now, as long as they are gonna throw around the
24 words "liability," I believe somebody should introduce a statute
25 making me liable.

1 THE COURT: Well, you -- you asked for it; you're gonna
2 get it.

3 MR. SCHIFF: As a matter of fact, I'll -- I'll offer to
4 plead guilty --

5 THE COURT: Your statement is out of order. And, as we
6 have pointed out to you many times before, your volunteering of
7 the law, as you have, is -- is going to provoke an instruction
8 from the Court.

9 MR. SCHIFF: I didn't --

10 THE COURT: Now, with --

11 MR. SCHIFF: -- I didn't --

12 THE COURT: -- now, with respect to 291, it is a
13 certified copy of a public record. The Complaint to Reduce
14 Assessments to Judgment, 291, will be received for the limited
15 purpose of demonstrating a tax liability on the part of
16 Mr. Schiff.

17 MR. NEIMAN: Thank you, your Honor.

18 (Government's Exhibit No. 291, received into
19 evidence.)

20 MR. NEIMAN: May I publish Government's Exhibit 291?

21 THE COURT: You may.

22 MR. SCHIFF: Do I have a copy of that?

23 MR. NEIMAN: Mr. Talley -- or Mr. Steiner, Special
24 Agent Steiner, would you blow up the caption?

25

1 (Document displayed in open court.)

2 BY MR. NEIMAN:

3 Q. Mr. Talley, looking at Government's Exhibit 291, who is this
4 matter between or who is this Complaint to Reduce Assessment to
5 Judgment between?

6 A. This is between the United States of America as plaintiff
7 and Mr. Irwin Schiff as defendant.

8 Q. And, if I could direct your attention to the final page of
9 the exhibit, page 5, I believe.

10 A. Yes, sir.

11 Q. If you could, uh -- what's the date of this Order?

12 A. This order is dated 31st of July, 2001.

13 (Discussion between Mr. Ignall and
14 Mr. Neiman.)

15 BY MR. NEIMAN:

16 Q. I'm sorry. I'm gonna rephrase as to the Complaint.

17 Um, if I could direct your attention to Government
18 Exhibit 292.

19 MR. NEIMAN: Your Honor, at this time the United States
20 would move into evidence as a certified public record the actual
21 Order in the case just referenced.

22 MR. CRISTALLI: What's the exhibit number? I'm sorry.

23 THE COURT: 292.

24 MR. NEIMAN: 292.

25 MR. BOWERS: Your Honor, just a moment, please.

1 (Pause in the proceedings.)

2 MR. CRISTALLI: Your Honor, as far as I'm concerned,
3 with regard to Government's Exhibit 292, um, I have no -- I
4 don't have an objection other than requesting a, uh, curative
5 instruction limiting the, uh, scope of this particular document.
6 I mean, I don't think it's -- it's for the purposes of
7 establishing, I think, a financial liability as it relates to
8 Mr. Schiff and should not be, um, used in any way as evidence to
9 support a conviction in this particular case, as we have
10 discussed in the prev- -- previous curative instructions, I
11 think.

12 THE COURT: Well, the Court has already, in connection
13 with the admission of 291, stated that it is for the purpose of
14 showing a tax liability on the part of the defendant Schiff and
15 that that is the extent of the curative instruction.

16 Go ahead. Any other objections to 292? Hearing
17 none --

18 MR. BOWERS: I -- no, I -- I'd just join in
19 Mr. Cristalli's objection that this doesn't -- that's it.

20 THE COURT: 292? Hearing no objection, 292 is --

21 MR. SCHIFF: What's 292? Is that the Court's order?

22 (Discussion between Mr. Leventhal and
23 Mr. Schiff.)

24 MR. SCHIFF: Well, I -- put it in. Put everything in.

25 THE COURT: 292 is received.

1 (Government's Exhibit No. 292, received into
2 evidence.)

3 MR. NEIMAN: Thank you.

4 May we publish --

5 THE COURT: You may.

6 MR. NEIMAN: -- Government Exhibit 292?

7 (Document displayed in open court.)

8 BY MR. NEIMAN:

9 Q. Mr. Talley, is this caption identical to the caption you saw
10 in the previous exhibit?

11 A. It is.

12 Q. If we can, uh -- and what is the date on the bottom
13 left-hand corner that this order or this judgment was entered?

14 A. July 12th, 2004.

15 Q. All right. If we could blow up the portion saying "IT IS
16 ORDERED," please.

17 Mr. Talley, if you could please read what that
18 paragraph says.

19 A. Not from here, sir.

20 THE COURT: Look at your monitor --

21 MR. NEIMAN: The monitor or --

22 THE COURT: -- to your left, sir.

23 MR. NEIMAN: -- or the exhibit in front of you may be
24 easier as well. Whichever is easier. Sorry.

25 THE WITNESS: "IT IS ORDERED AND ADJUDGED that the

1 plaintiff's motion for Summary Judgment is GRANTED and the
2 income tax assessments are reduced to judgment. Judgment is
3 hereby entered in favor of the plaintiff, United States of
4 America and against the defendant, Irwin A Schiff in the amount
5 of \$2,651,187 51, plus interest and other statutory additions
6 accruing after June 14[th], 2004 pursuant to 26 U S C 6601, 6621
7 and 6622 and 28 U S C 1961 ... until paid."

8 Q. Thank you very much, Mr. Talley.

9 Mr. Talley, once the, uh, United States has a judgment,
10 are you involved in the collection process of collecting these
11 judgments or is that handled by somebody else?

12 A. That's handled by the Marshals.

13 Q. Prior to this lawsuit being brought, or this judgment being
14 entered, did the IRS or you try to collect any of this
15 outstanding tax liability?

16 A. I did --

17 Q. And --

18 A. -- and others.

19 Q. Who did you work with primarily in the collection efforts of
20 this -- of this matter?

21 A. You mean another revenue officer?

22 Q. Yes.

23 A. Revenue officer Jim Gritis. That's G-r-i-t-i-s.

24 Q. And, Mr. Talley, when did you first get assigned or were you
25 ever assigned to Mr. Schiff's case?

1 A. I was originally assigned Mr. Schiff's case in either late
2 1994 or early 1994.

3 Q. And can you explain how you became familiar with, uh,
4 Mr. Schiff's file?

5 A. Uh, Mr. Schiff's case, uh, file was assigned to me based on
6 the complaint of, uh, someone here in the community -- I don't
7 remember the name right now -- a financial --

8 Q. I'm not gonna get into what the other people told you.
9 That's it.

10 A. Okay.

11 The -- the case was brought into this district because
12 Mr. Schiff had moved here from out of district and, uh, the case
13 was assigned to me for collection.

14 Q. Were you working in a specific unit within the IRS
15 collection at this time?

16 A. Yes, sir, I was.

17 Q. What was the name of the unit you were working with?

18 A. Tax Protestor Unit.

19 Q. What is the -- what was the Tax Protestor Unit?

20 A. Tax Protestor Unit was a bunch of people that we would
21 describe as hard-core type that did not believe in the tax
22 system.

23 MR. SCHIFF: Objection. First -- objection.

24 Objection.

25 THE COURT: What is your objection?

1 MR. SCHIFF: Under the -- under the federal -- what was
2 that? The -- the law that was recently passed, they can't even
3 use the word "tax protestor." If I protest anything, it's the
4 government's illegal collection of taxes. I protest nothing in
5 the Internal Revenue Code. I sell it.

6 THE COURT: Well, that's not really an objection.

7 MR. SCHIFF: It's an objection because according to the
8 re- -- the Taxpayer Reconstruction Act he's not supposed to use
9 the word "tax protestor."

10 THE WITNESS: Sir, that act was...

11 MR. SCHIFF: He's not supposed to use it. We have a
12 mistrial. He specifically -- the Constitution -- that's a word
13 of -- shall not be -- what's the word that means -- tainted.
14 The Constitution -- he -- the law says he cannot use that
15 expression in connection with -- with trials.

16 THE COURT: Well, if you will cite me to the law, I
17 will take a look at it during the break. And, if you are
18 correct, I will order the comment --

19 MR. SCHIFF: Well --

20 THE COURT: -- stricken.

21 MR. SCHIFF: -- first of all, I object that there's no
22 law that I protest. I sell it.

23 MR. NEIMAN: Your Honor, we were -- I was just asking
24 him what group he was working in and what the group was about.
25 That...

1 THE COURT: Thank you. Go ahead with your question.

2 BY MR. NEIMAN:

3 Q. Now, when you first got assigned the Schiff case, how -- how

4 did you first -- did you hear Mr. Schiff on any -- on television

5 or radio when you moved out here?

6 A. I did. Uh, that was prior to the case being assigned to me.

7 Q. Okay. And, after hearing Mr. Schiff and the case being

8 assigned to you, did you make contact with Mr. Schiff?

9 A. Was that before or after the case was assigned?

10 Q. After the case was assigned to you.

11 A. After the case was assigned to me, yes, I contacted

12 Mr. Schiff in my official capacity at that point.

13 Q. And what was the purpose of this contact?

14 A. To try and get him to voluntarily resolve his tax liability.

15 Q. Are you also required to send a letter to the taxpayer, or

16 Mr. Schiff, after you were assigned to the case or shortly

17 thereafter?

18 A. In 1995, I think final notice had already been sent by the

19 Service Center. I recall sending Mr. Schiff a letter inviting

20 him into the office to discuss his tax matters.

21 Q. And if I could direct your attention to --

22 MR. NEIMAN: If I may have a moment, please, your

23 Honor?

24 THE COURT: You may.

25

1 (Pause in the proceedings.)

2 BY MR. NEIMAN:

3 Q. If I can direct your attention to what's been marked as
4 Government's Exhibit 289A, for -- for the binders, it's the very
5 end of, uh, the tab 289.

6 Do you have that exhibit in front of you -- or I think
7 I need to get it for you. Sorry about that.

8 MR. NEIMAN: Your Honor, if I may approach the witness?

9 THE COURT: You may.

10 BY MR. NEIMAN:

11 Q. For the record, I'm handing the witness what's been marked
12 as Government's Exhibit 289, 289A, and 290.

13 Do you recognize Government Exhibit 289A?

14 A. (Reviewing document.)

15 Yes, sir. It's a letter bearing my signature.

16 Q. And who was that letter sent to?

17 A. This letter was addressed to Mr. Irwin A. Schiff.

18 Q. What is the date the letter was sent?

19 A. The date of the letter was the 28th of March, 1995.

20 MR. NEIMAN: Your Honor, at this time the United States
21 would seek the admission of Government Exhibit 289A.

22 THE COURT: Any objection?

23 (Pause in the proceedings.)

24 MR. CRISTALLI: No objection, your Honor.

25 MR. BOWERS: I don't have any objection, your Honor.

1 MR. SCHIFF: No objection.

2 THE COURT: 289A is received.

3 MR. NEIMAN: Thank you.

4 (Government's Exhibit No. 289A, received into
5 evidence.)

6 MR. NEIMAN: May the United States publish
7 Exhibit 2- --

8 THE COURT: You may.

9 MR. NEIMAN: Thank you.

10 (Document displayed in open court.)

11 BY MR. NEIMAN:

12 Q. I realize this copy on the screen is not so great. The one
13 in front of you may be easier to read, Mr. Talley.

14 Uh, if we could just blow up the first paragraph. Or,
15 first, I guess who is this letter addressed to?

16 A. The letter was addressed to Mr. Irwin Schiff.

17 Q. And did you at this time send this letter -- did you have an
18 appointment scheduled with Mr. Schiff?

19 A. This letter sets forth an appointment time for him.

20 Q. All right. And is that indicated on the right-hand side?

21 A. It is.

22 Q. And what was the date your appointment was supposed to be
23 with Mr. Schiff?

24 A. April 6th, 1995.

25 Q. Okay. Can you explain generally what the purpose of sending

1 this letter was?

2 A. To advise Mr. Schiff that he had not responded to earlier
3 notices, uh, to resolve his tax issues and that he should come
4 in and address the same and get this resolved -- resolved or I
5 would be resorting to enforcement action.

6 Q. If we can go to the second page of the letter.

7 A. (Complies.)

8 Q. The -- for which years were you attempting to collect
9 Mr. Schiff's tax liability?

10 A. Mr. Schiff owed a 1040 liability for the years ending
11 December 31st, 1979, 1980, 1981, 1982, 1983, 1984, 1985, and
12 1986, and a civil penalty for 1993.

13 Q. Jumping back -- I apologize -- to Government Exhibit 291,
14 which was the Complaint to Reduce Assessments to Judgment,
15 directing your attention to the page 5, for which years was the
16 assessment reduced to a judgment?

17 A. (Reviewing document.)

18 For the -- for the years 1979 through 1985.

19 Q. So those were for some of the years in which you were trying
20 to collect --

21 A. Yes, sir.

22 Q. -- the tax?

23 Mr. Talley, as indicated in Government's Exhibit 289A,
24 Mr. -- Mr. Schiff had an appointment scheduled for April 6th,
25 1995?

- 1 A. Yes, sir.
- 2 Q. Did he show up to that appointment?
- 3 A. No, sir, he did not.
- 4 Q. What happened?
- 5 A. Uh, Mr. Schiff phoned me, uh, in the afternoon -- uh, the
6 time of his scheduled appointment was 9:00 a.m. in the morning.
7 He phoned me in the afternoon and said that he couldn't come in;
8 he had an appointment in California.
- 9 Q. Did he say what type of appointment he had in California?
- 10 A. He was going to do a seminar.
- 11 Q. Did he indicate whether or not this was one of his own
12 seminars or if he was appearing or just going to someone else's
13 seminar or --
- 14 A. No, it was his seminar.
- 15 Q. Uh, and how did you respond to Mr. Schiff once he -- he
16 indicated he wouldn't be able to make the appointment?
- 17 A. I asked him if he understood that enforced collection action
18 would be forth -- would be taken.
- 19 Q. And "enforced collection," you mean -- what do you mean?
- 20 A. It meant that whatever assets of his that I could find I
21 would be seeking to, uh, take them and convert them to a payment
22 on his tax liability.
- 23 Q. And how did Mr. Schiff respond?
- 24 A. Says, "If you can find anything, go for it."
- 25 Q. Did Mr. Schiff question your authority to do such, uh,

1 collection activity?

2 A. In that particular phone call, no.

3 Q. In subsequent conversations, did he?

4 A. He did.

5 Q. And how did you respond when he told you that?

6 A. I told him that I believed that I was following the law
7 that, um, permitted me to take those actions.

8 MR. SCHIFF: I --

9 BY MR. NEIMAN:

10 Q. That --

11 MR. SCHIFF: -- I just want to note that the prisoner
12 [sic] -- I'm sorry -- that Mr. Talley is following the law. So
13 he obviously -- his knowledge is within the law. No objection.

14 BY MR. NEIMAN:

15 Q. Uh, after having this conversation with Mr. Schiff in which
16 the appointment was cancelled, what action did you take with
17 regards to trying to locate Defendant Schiff's assets?

18 A. Well, he had told me at what time he was gonna be takin' a
19 flight out. So that indicated to me that he was probably at
20 home and would be for a bit of time. I prepared the necessary
21 paperwork to seize Mr. Schiff's automobile --

22 Q. Did you --

23 A. -- and I went out that afternoon and seized his automobile.

24 Q. Okay. Do you remember approximately when it was that you
25 seized the automobile?

1 A. It was in the afternoon, um, 3:00 -- between 3:00 and 4:00 I
2 would say.

3 Q. Can you explain what you encountered when you attempted --
4 or can you explain how you attempted to seize the automobile?

5 A. When I -- when I had the seizure documents prepared and took
6 them to my, uh, supervisor to have him sign them, he insisted
7 that I take an escort with me.

8 Q. "He" being...

9 A. My supervisor.

10 Q. Okay.

11 A. And, uh, if they weren't available, I were not to execute
12 seizure. Well, I was able to get an escort to go with me. And
13 we went to the, uh, housing complex that Mr. Schiff resided in.
14 As we went up the driveway, Mr. Schiff was driving out. Uh, we
15 turned around to follow him, but we lost him in traffic.
16 Thinking that he may, uh, be on his way to the airport, we
17 went -- we proceeded to the airport and --

18 Q. And did you find him at the airport?

19 A. No, we did not find him at the airport.

20 We decided to come back -- go back to the office. And
21 the escort that was with us had left the airport, uh, earlier
22 than we had. So they decided to go back by Mr. Schiff's housing
23 complex and apparently the car was there.

24 Q. And --

25 A. They called me on the radio and I proceeded to the apartment

1 complex and we did the seizure.

2 Q. And -- and did you encounter Mr. Schiff at this point?

3 A. Uh, Mr. Schiff was there, uh, quite belligerent.

4 Q. Can you explain what Mr. Schiff's reaction was to you coming
5 to try and seize his vehicle?

6 A. Had no -- he, again, told me I had no authority to do any of
7 this --

8 Q. And how did you --

9 A. -- and that --

10 Q. -- respond?

11 A. -- we were stealing his car.

12 Q. And how did you respond?

13 A. Well, actually, I didn't have to make any responses because
14 my escorts, uh, handled him and I just affected the seizure. My
15 only contact with him at that point was to give him a copy of
16 the necessary documents.

17 Q. And did you provide him with a copy of those documents?

18 A. I did.

19 Q. What were -- did you hear -- was Mr. Schiff saying anything
20 else during the seizure of this vehicle?

21 A. Um, he was quite belligerent and, uh, used some course
22 language.

23 Q. Being that we're in the courtroom, if you could generally
24 say what -- generally summarize what Mr. Schiff was saying
25 without using the, uh, course language.

1 A. Well, he accused one of the, uh, agents that was with me of,
2 uh, grabbing his private parts --

3 Q. And --

4 A. -- assaulting him.

5 Q. And what else was Mr. Schiff saying?

6 A. Um, Mr. Schiff --

7 MR. SCHIFF: Objection. This --

8 THE WITNESS: -- had a friend --

9 MR. SCHIFF: Your Honor, this is -- how long -- this
10 is -- all right. Never mind. I --

11 THE COURT: It's not hearsay. By definition, you made
12 the statement; you're in court. Overruled.

13 THE WITNESS: -- and that the other agent had, uh,
14 maced him.

15 BY MR. NEIMAN:

16 Q. Was that the case?

17 A. No, sir.

18 Q. Was the vehicle eventually seized?

19 A. The vehicle was seized.

20 Q. How long did this ordeal or how long did this seizure take
21 place? How long did it take to seize the vehicle, I should ask.

22 A. Once I got to the scene it was -- it was over in, I'd say,
23 about 30 or 40 minutes.

24 Q. What did you do once you seized the vehicle?

25 A. Had a tow truck to tow it to an impound lot.

1 Q. And was the vehicle eventually sold?

2 A. Eventually, yes, sir.

3 Q. And what did the IRS do with the proceeds of the sale of
4 Defendant Schiff's vehicle?

5 A. Applied it to his tax account.

6 Q. Did he still have a tax liability after the sale of the
7 vehicle was applied?

8 A. Yes, sir, he did.

9 Q. Do you remember approximately what his liability was at that
10 time in 1995 after the seizure of the vehicle?

11 A. 1.3 million.

12 Q. After the vehicle was seized, did you get a visit in the
13 office by Mr. Mr. Schiff?

14 A. Yes, sir, I did.

15 Q. Can you explain, uh, what Mr. Schiff said to you, if
16 anything, at this visit?

17 A. Mr. Schiff came to the office accompanied by a Mr. Joseph
18 Bower, who indicated that, uh, Mr. Schiff did not own the
19 automobile but rather he did. Um, I asked him if, uh, he could
20 give me, uh, some documentation to show that and never did.

21 Q. Were -- did he ever produce any documentation to show that
22 the car belonged to anyone other than Mr. Schiff?

23 A. None whatsoever. A few days after that conversation I
24 believe I -- I had another telephone call from Mr. Schiff
25 indicating that, uh, there was a lienholder on it.

1 Q. All right. And did that verify? Was that verified?

2 A. If there was a lienholder on it, it was never transferred to
3 the State of Nevada because the State of Nevada records showed
4 no lienholder at the DMV.

5 Q. What state was that vehicle in 1995 registered to?

6 A. It was registered here in Nevada.

7 MR. NEIMAN: If I may have a moment, your Honor?

8 THE COURT: You may.

9 MR. NEIMAN: I apologize again.

10 (Discussion between Mr. Neiman and

11 Mr. Ignall.)

12 BY MR. NEIMAN:

13 Q. Mr. Talley, around the same time of the seizure of
14 Mr. Schiff's vehicle in 1995, did you also attempt to levy any
15 bank accounts of Mr. Schiff's?

16 A. I did.

17 Q. Uh, do you remember where the bank account was that you
18 attempted to levy?

19 A. It was a bank in Arizona.

20 Q. How did you find the bank account?

21 A. I had summoned some documents, uh, to be exact, the rental
22 file for the apartment house that, uh, he had, and the file
23 contained bank statements from that bank.

24 Q. If I could direct your attention to Government's

25 Exhibit 289 --

1 A. (Complies.)

2 Q. -- do you recognize Government Exhibit 289?

3 A. I do.

4 Q. What are Government Exhibits [sic] 289?

5 A. Government Exhibit 289 is a Form 668-A which is entitled,
6 "Notice of Levy."

7 Q. And are there additional notice of the levies other than the
8 one that you're looking right there in Government's Exhibit 289?

9 A. (Reviewing documents.)

10 Yes, there are.

11 Q. Do all those Notices of Levy pertain to taxpayer Irwin
12 Schiff?

13 A. (Reviewing documents.)

14 Yes, sir, they do.

15 Q. Where they all issued by you?

16 A. (Reviewing documents.)

17 All these were, yes, sir.

18 Q. And is the taxpayer provided a copy of any Notices of Levies
19 or Liens prior to the IRS enforcing collection activity?

20 A. Yes, sir.

21 MR. NEIMAN: Your Honor, at this time, the United
22 States would move into evidence Government's Exhibit 289.

23 MR. SCHIFF: Excuse me. Putting in what, 289? All
24 right. Put it in.

25 THE COURT: Hearing no objection from Mr. Bowers.

1 MR. BOWERS: No, nothin'. I'm good. Thank you.

2 THE COURT: 289 is received.

3 (Government's Exhibit No. 289, received into
4 evidence.)

5 MR. NEIMAN: Thank you.

6 If we may publish the first page of Government's
7 Exhibit 289 --

8 THE COURT: You may.

9 MR. NEIMAN: -- one of the liens.

10 (Document displayed in open court.)

11 MR. NEIMAN: If we could blow up the top portion.

12 BY MR. NEIMAN:

13 Q. Mr. Talley, are the liens that you're looking at on real
14 paper or is it in the actual exhibit or is it colored paper
15 or -- how would you describe the paper which these are on?

16 A. This would be a packet of forms with carbon sets in 'em.

17 Q. All right. And who is the, uh, issuer of this levy?

18 A. Myself, Luddie Talley.

19 Q. On behalf of who?

20 A. The Internal Revenue Service.

21 Q. All right. And who was this levy actually, uh, sent to?

22 A. This levy was sent to Northwest Bank Arizona.

23 Q. And is that the bank that you were just referring to?

24 A. That is the bank, yes, sir.

25 Q. And, according to this levy, what was the date this levy was

1 issued?

2 A. This levy was issued the 31st of March, 1995.

3 Q. And, at that point, what was the tax liability that

4 Mr. Schiff owed the IRS?

5 A. \$1,371,296.

6 Q. And for which tax years was that?

7 A. 1040 taxes for the periods, uh, 1979 through 1986.

8 Q. Did the IRS collect any money from the bank in Arizona?

9 A. We did.

10 Q. And is that referenced on the next page or the back of

11 the -- uh, the levy?

12 A. It is.

13 Q. How much did the IRS collect from Mr. Schiff's bank account

14 in Arizona?

15 A. \$1,641.89.

16 Q. And was that applied to his tax liability?

17 A. It was.

18 Q. Directing your attention to the next page of Government

19 Exhibit 289, is this another levy issued by you on behalf of the

20 Internal Revenue Service?

21 A. (Reviewing document.)

22 Well, this is the same one. It's another copy.

23 Q. Let me ask another question.

24 Is there a levy issued to the Amalgamated Bank of

25 New York?

1 A. It is.

2 Q. And is that a levy issued by yourself?

3 A. It is.

4 Q. And what was the date of that levy?

5 A. I don't have it, sir. There is a staple hole through it. I
6 believe that's all April -- uh, uh, March 31st, 1995.

7 Q. And that's the same date as the previous levy that we
8 just --

9 A. Yes, it is. Yes.

10 Q. How did you find this bank account -- or these bank
11 accounts?

12 A. That bank was reported in our IRPTA Program, only it wasn't
13 called that then.

14 Q. Okay. Explain what you mean again by it being reported in
15 the IRPTA Program.

16 A. Okay.

17 MR. SCHIFF: I didn't hear that question. Can you
18 repeat that question?

19 THE COURT: The question was: Did you find -- how did
20 you find these bank accounts?

21 The answer was: The bank was reported in the IRPTA
22 Program, only it wasn't called that then.

23 The next question: Explain what you mean, it being
24 reported in the IRPTA Program.

25 Your -- that's when you said I didn't hear the

1 question.

2 THE WITNESS: And, again, whenever a financial
3 institution pays interest, it's reported to the Internal Revenue
4 Service and that's how this was reported.

5 BY MR. NEIMAN:

6 Q. Did you collect any money from this bank?

7 THE COURT: Amalgamated?

8 MR. NEIMAN: Yeah, and -- yes.

9 THE WITNESS: No, sir.

10 BY MR. NEIMAN:

11 Q. No? Why not, if you know?

12 A. The results are indicated as no funds.

13 Q. And meaning what?

14 A. There were no funds in the account.

15 Q. Can the IRS levy Social Security proceeds?

16 A. Yes, sir.

17 Q. Can you explain when the IRS is entitled to levy Social
18 Security proceeds?

19 A. Generally, when a taxpayer is quite uncooperative, that will
20 be our --

21 MR. SCHIFF: I didn't hear the answer. When the
22 taxpayer is what?

23 THE COURT: Uncooperative.

24 THE WITNESS: Is uncooperative.

25 MR. SCHIFF: Wait. Wait. Let me get that down.

1 So you can levy Social Security --

2 THE COURT: You're not asking him questions. It's not
3 your turn. You can ask him on cross.

4 MR. SCHIFF: I want to make sure I got the statement.

5 THE COURT: You got it.

6 Proceed.

7 MR. SCHIFF: The IRS can levy -- the IRS can levy
8 Social Security funds when the individual's uncooperative. Is
9 that the answer?

10 THE WITNESS: No, that is not exactly the way I'm
11 stating that, sir.

12 BY MR. NEIMAN:

13 Q. Mr. Talley, if you could please explain --

14 MR. SCHIFF: I didn't --

15 BY MR. NEIMAN:

16 Q. -- when the IRS --

17 MR. SCHIFF: -- I didn't hear the answer to that
18 question.

19 THE COURT: He's going to give the answer. Just let
20 him give the answer. Sit down.

21 MR. SCHIFF: I heard him say something about when
22 the --

23 THE COURT: He's going to --

24 MR. SCHIFF: -- individual is uncooperative.

25 THE COURT: -- he's going to repeat the answer.

1 MR. SCHIFF: Okay.

2 THE COURT: Sit down. Sit down.

3 MR. SCHIFF: All right.

4 BY MR. NEIMAN:

5 Q. Mr. Talley, when can the IRS levy a taxpayer's Social
6 Security?

7 A. Well, we can levy it whenever we find out that benefit
8 income is being paid to a taxpayer. It's just that the revenue
9 officer has some discretion as to whether or not he or she will
10 make the levy on Social Security. I -- I used the term
11 "uncooperative" because that's the standard that I use, uh, when
12 I send a levy to Social Security.

13 Q. Did there come a time when you -- when you found out at the
14 IRS that Defendant Schiff was receiving Social Security
15 benefits?

16 A. Yes, sir, that is correct. And it would also be through
17 that IRPTA Program.

18 Q. And there was a trigger in the IRS computer showing that
19 Defendant Schiff was receiving income? That's --

20 A. Correct.

21 Q. -- that's what you mean by --

22 A. Yes, sir.

23 Q. -- "triggered" in the --

24 A. Yes, sir.

25 Q. Did you levy Mr. Schiff's Social Security benefits?

1 A. I did.

2 Q. If I could direct your attention further in Government
3 Exhibit 289 to a levy dated May 2nd, 1996.

4 Is that a levy that you issued -- or that was -- that
5 you issued to the Social Security Administration?

6 A. This is the levy that I issued to Social Security.

7 MR. BOWERS: You got it out?

8 MR. NEIMAN: Sorry. There you go.

9 BY MR. NEIMAN:

10 Q. And what was the date of this levy?

11 A. May 2nd, 1996.

12 Q. And was Mr. Schiff given a copy of this levy?

13 A. Yes, sir. I mailed Mr. Schiff a copy.

14 Q. Were you successful in levying Defendant Schiff's Social
15 Security benefits?

16 A. Yes, sir.

17 Q. Is that process -- or is that still going on today, if you
18 know?

19 A. As of December 2005, yes, sir.

20 Q. How much does the IRS levy or how much does it receive from
21 the Social Security Administration on behalf of Defendant
22 Schiff's tax li- --

23 A. At this time, I think the amount is \$686.

24 MR. SCHIFF: How much was that?

25 THE WITNESS: \$686.

1 BY MR. NEIMAN:

2 Q. And is that applied to Defendant Schiff's outstanding tax
3 liability even today?

4 MR. SCHIFF: Hold it.

5 THE WITNESS: Yes, sir.

6 MR. SCHIFF: Hold it. I don't know if I'm hearing
7 right.

8 Was -- was the answer they got \$600 from my Social
9 Security?

10 THE COURT: No. 686.

11 THE WITNESS: Six --

12 MR. SCHIFF: But that's only one month.

13 THE WITNESS: I said monthly, sir.

14 MR. SCHIFF: Well, how many months have they been
15 taking it?

16 THE COURT: That's a question you can ask. It's not
17 your turn to ask questions. You can ask on cross.

18 MR. SCHIFF: Okay.

19 BY MR. NEIMAN:

20 Q. Mr. Talley, I'm happy to ask that question.

21 And for how many months has the IRS been levying
22 Defendant Schiff's Social Security benefits?

23 A. This levy was sent to the Social Security Administration on
24 the 2nd of May and that probably would have been too late to --
25 not probably -- it would have been too late to get the May

1 payment. So I would think that probably since June of 1996.

2 Q. Did you look for additional assets of Defendant Schiff in
3 trying to collect on this whole tax liability?

4 A. Yes, sir.

5 Q. Were you successful in the 1995/'96 time frame?

6 A. Uh, I found real property back in, uh, Hamden, Connecticut,
7 that, uh, I thought he had some connection to.

8 Q. And did you attempt to put a lien or levy on -- a lien on
9 that property?

10 A. There was a lien filed there already.

11 Q. By who?

12 A. Uh, the IRS office back there before Mr. Schiff moved to
13 Las Vegas.

14 Q. If Defendant Schiff opened up a new bank account using his
15 Social Security number, would you find out about it?

16 A. I would if I checked it.

17 Q. And what action, if any, would you take if you checked and
18 saw that he opened up another bank account in his name?

19 A. I would send a levy to that financial institution.

20 Q. How about if he bought a new car in his name? What action,
21 if any, would the IRS take?

22 A. I would have to check the Department of Motor Vehicle
23 records. And, if I found that he owned a vehicle, I would
24 determine his equity in it. And, if it was sufficient, seize
25 it.

1 Q. Was Defendant Schiff afforded the same opportunities to
2 enter into payment plans with the IRS as you offer other
3 taxpayers?

4 A. Mr. Schiff was not receptive to an explanation of those
5 rights.

6 MR. BOWERS: Move to strike as nonresponsive.

7 THE COURT: Sustained.

8 BY MR. NEIMAN:

9 Q. Was he offered them, first off?

10 A. I'm sorry?

11 Q. Was Mr. Schiff offered these other options at some point
12 during the process?

13 A. Yes, sir, he was offered -- he was offered those, uh,
14 things. Uh, there is a publication that we are required to
15 attempt to give a taxpayer. And I believe Mr. Schiff was the
16 recipient of that publication -- we call it "Pub 1" -- that
17 outline those same rights and options.

18 Q. And was Mr. Schiff receptive to these options?

19 A. He -- I don't know if he ever read it, but he has never
20 accepted my verbal comments in that regard.

21 Q. Did there come a time in 2000 when collection activity began
22 again with regard to Defendant Schiff?

23 A. Yes, it did.

24 Q. Can you explain what collection activity you're aware of
25 that took place then?

1 A. I had closed Mr. Schiff's case as continuous levy and it
2 went into a suspended status. At that time in 2000, the statute
3 of limitations was approaching. And we, of course, did not want
4 to write off that amount of money. Uh, Mr. Jim Gritis, another
5 revenue officer, asked if it was okay with me if he resurrected
6 the case.

7 Q. And was it resurrected?

8 A. The case was and --

9 Q. If I could --

10 A. -- he had it assigned to him.

11 Q. If I could direct your attention to Government Exhibit 290.

12 A. Yes, sir.

13 Q. Do you recognize Government Exhibit 290?

14 A. Yes, sir.

15 Q. What -- without explaining -- or without reading from it,
16 what is Government Exhibit 290?

17 A. Government Exhibit 290 is, again, uh, uh, a levy -- a Notice
18 of Levy Form 668-A.

19 Q. And it is a practice of the IRS to send these notices to
20 taxpayers prior to levying any property?

21 A. They would get a copy shortly after it's sent out.

22 MR. NEIMAN: Your Honor, at this time, the United
23 States would move into evidence Exhibit 290.

24 THE COURT: Any objection to 290?

25

1 (Discussion between Mr. Schiff and
2 Mr. Cristalli.)

3 MR. BOWERS: Your Honor, I don't -- I don't really
4 care. But I -- I guess I should object on the grounds of why
5 are we bringing Gritis's document through this witness. Where
6 is Mr. Gritis?

7 MR. NEIMAN: Mr. Gritis has passed away, your Honor.
8 And we're using this to get around the hearsay rule as notice to
9 Mr. Schiff.

10 THE COURT: Understood.

11 Any objection to 290?

12 MR. BOWERS: No objection, your Honor.

13 MR. SCHIFF: No objection, your Honor.

14 MR. CRISTALLI: No objection your Honor.

15 THE COURT: 290 is received.

16 (Government's Exhibit No. 290, received into
17 evidence.)

18 BY MR. NEIMAN:

19 Q. Mr. Talley, if we could look at Government Exhibit 290, what
20 is the date of this exhibit?

21 A. This exhibit is dated, uh, September 13th, 2000.

22 Q. And who was this Notice of Levy sent to?

23 A. Uh, this levy was sent to the Bank of America.

24 Q. And on behalf of which taxpayer was the IRS trying to
25 collect the liability?

1 A. Mr. Irwin Schiff.

2 Q. And, as of September 13th, 2000, what was Defendant Schiff's
3 liability for tax years 1979 through '85?

4 A. \$2,152,213.05.

5 Q. Looking at the next page of Exhibit 290, did the IRS -- was
6 the IRS successful in levying any money or getting any money out
7 of Defendant Schiff's bank account --

8 A. At that --

9 Q. -- at Bank of America? I'm sorry.

10 A. Yes, sir. That levy produced \$8,337.51.

11 Q. Mr. Talley --

12 MR. NEIMAN: Ms. Vannozzi, I need to hand the witness
13 what has already been admitted Government's Exhibit 247 and 249.

14 (Pause in the proceedings.)

15 BY MR. NEIMAN:

16 Q. Mr. Talley, if I could direct your attention to Government
17 Exhibit 247, which -- do you recognize or do you know what
18 Government Exhibit 247 is?

19 A. It appears to be a bank signature card.

20 Q. And for who is the bank signature card in the name of?

21 A. It was in the name of Freedom Books.

22 MR. NEIMAN: If we can put on the screen Government
23 Exhibit 247.

24 (Document displayed in open court.)

25

1 BY MR. NEIMAN:

2 Q. What is the date this card was issued, if we could see it on
3 there? If not, I may resort to the...

4 A. Okay. The date of this card is October 24th, 2000.

5 Q. And what was the date of the IRS levy to the Bank of America
6 in Government's Exhibit 290?

7 A. (Reviewing documents.)

8 That levy -- that levy was dated September 13th, 2000.

9 Q. Approximately how many weeks after the IRS levied the Bank
10 of America account was the -- was the signature card issued for
11 the Nevada State Bank account?

12 A. It appears to be about five weeks.

13 Q. Looking at the signature card, Government's Exhibit 247,
14 what number is listed there for taxpayer ID?

15 A. Taxpayer's ID number is listed as 88-0368654.

16 Q. Do you know what Defendant Schiff's Social Security number
17 is? I --

18 A. Some of it.

19 Q. -- I could direct your attention to Government Exhibit 290.
20 I believe it contains this identifying number or Social Security
21 number.

22 A. 047-16-2491.

23 Q. Is that the -- is that number different than the number
24 listed on the bank account opened five weeks after the IRS
25 levied the Bank of America account?

1 A. Entirely different.

2 Q. What effect, if any -- or what action, if any, would you
3 have taken if this bank account was opened -- I'm gonna take
4 that back.

5 If -- by using a different Social Security number to
6 open this bank account, would you have, as a collection officer,
7 been able to locate it as easily as if had been opened using his
8 Social Security number?

9 A. No, I could not have.

10 Q. If I could direct your attention to Government
11 Exhibit 249 --

12 A. (Complies.)

13 Q. -- do you recognize Exhibit 249?

14 A. Exhibit 249 is yet another signature -- bank signature card.

15 Q. From which bank? If it says it on there. It may not.

16 A. I did not determine the name of the bank.

17 Q. Is it for a different account number than the account we
18 looked at in Exhibit 247?

19 MR. SCHIFF: Your Honor, can you slow down a little
20 bit? I'm having trouble following.

21 THE COURT: Okay.

22 THE WITNESS: The tax identification number is the
23 same.

24 BY MR. NEIMAN:

25 Q. How about the account number, is that the same? Or are

1 these two different accounts?

2 MR. SCHIFF: Your Honor, I -- I opened up two
3 accounts --

4 THE WITNESS: These are --

5 MR. SCHIFF: -- with -- with -- I don't understand the
6 significance of these or what the relevance is. I opened up two
7 accounts on the same day. They -- they gave me -- these are
8 two --

9 THE COURT: He's --

10 MR. SCHIFF: -- different --

11 THE COURT: -- he's --

12 MR. SCHIFF: -- account numbers.

13 THE COURT: -- asking some preliminary questions. And,
14 if he doesn't establish relevance, you can move to strike. Two
15 different accounts.

16 Go ahead.

17 THE WITNESS: Yes, sir, they had different account
18 numbers.

19 BY MR. NEIMAN:

20 Q. What was the date this account was opened?

21 A. Also on October 24th, 2000.

22 Q. And was that also five weeks after the IRS levied the bank
23 accounts at Bank of America?

24 A. Yes, sir.

25 Q. Did Mr. Schiff, in opening this account, use his own Social

1 Security number?

2 A. No, sir, does not appear to.

3 MR. SCHIFF: Objection. There was no Social Security
4 number used. I didn't use somebody else's Social --

5 THE COURT: They didn't say --

6 MR. SCHIFF: -- that is not --

7 THE COURT: -- you did.

8 MR. SCHIFF: It's not a Social Security number.

9 THE COURT: They didn't say you did. He asked if you
10 used your --

11 MR. SCHIFF: Pardon me?

12 THE COURT: He asked if you used your Social Security
13 number. The answer was no.

14 MR. SCHIFF: Well, whose Social Security number did I
15 use?

16 THE COURT: No one said you used anyone else's.

17 MR. SCHIFF: It was -- they didn't ask me for a Social
18 Security number; they asked me for a taxpayer --

19 THE COURT: Well, you can --

20 MR. SCHIFF: -- ID number. That's not --

21 THE COURT: -- you can bring --

22 MR. SCHIFF: -- a Social Security.

23 THE COURT: -- it out on cross if you --

24 MR. SCHIFF: Pardon me?

25 THE COURT: You can bring it out on cross or in your

1 own case.

2 BY MR. NEIMAN:

3 Q. Did Mr. Schiff use his own Social Security number on the
4 Bank of America account, if you know?

5 MR. SCHIFF: Objection. That's --

6 THE COURT: Exhibit number.

7 MR. NEIMAN: Uh, 240, your Honor.

8 THE COURT: 240.

9 MR. NEIMAN: Which, I believe, was admitted into
10 evidence yesterday, Ms. Vannozzi, if you -- or a few days ago.

11 THE COURT: 240? Do you have 240 there?

12 THE WITNESS: No, sir.

13 THE COURT: No. Okay.

14 (Document handed to the witness.)

15 MR. NEIMAN: If I may have a moment, your Honor?

16 THE COURT: You may.

17 BY MR. NEIMAN:

18 Q. Looking at Government Exhibit 240, the Bank of America
19 account, whose name is this account in?

20 A. This account is in the name of Freedom Books.

21 Q. Is it "IRWIN A SCHIFF, DBA FREEDOM BOOKS"?

22 A. "IRWIN A SCHIFF, DBA FREEDOM BOOKS."

23 Q. And which -- did Mr. Schiff use his Social Security number
24 on this bank account?

25 A. Yes, he did.

1 MR. SCHIFF: What -- why -- I'm sorry. What exhibit
2 are we talking about now?

3 THE WITNESS: 240.

4 MR. SCHIFF: Pardon me?

5 THE COURT: 240.

6 MR. NEIMAN: If I may have a moment, your Honor.

7 THE COURT: You may.

8 MR. NEIMAN: I apologize again.

9 MR. BOWERS: Your Honor, is -- there's no question
10 pending; right?

11 THE COURT: Pardon?

12 MR. BOWERS: There's no question pending right now?

13 THE COURT: No.

14 (Pause in the proceedings.)

15 BY MR. NEIMAN:

16 Q. Mr. Talley, do you know what the difference is between a
17 Social Security number and a tax identification number?

18 A. Yes, sir.

19 Q. What is the difference?

20 A. Uh, different digits and the format.

21 Q. And do -- do individuals or corporations use one versus the
22 other or --

23 MR. BOWERS: Objection. Leading.

24 MR. NEIMAN: I'm sorry.

25

1 BY MR. NEIMAN:

2 Q. Can you explain the difference again one more time --

3 THE COURT: Sustained.

4 BY MR. NEIMAN:

5 Q. -- between --

6 A. Individuals would use a Social Security number and a
7 business entity would use a tax identification number.

8 Q. Mr. Talley, are offshore bank accounts beyond the reach of
9 the IRS?

10 A. To my knowledge, yes.

11 Q. And were the bank -- bank accounts that you located when
12 collecting -- doing collection activity, were those only
13 found -- did you find any bank accounts that did not have
14 Defendant Schiff's Social Security number on them?

15 A. No. I don't recall.

16 Q. You did not find any other accounts?

17 A. I don't recall finding any others.

18 Q. And do you remember the date in which the IRS seized
19 Defendant Schiff's automobile? Do you remember the year?

20 A. April 6, 1995.

21 Q. April 6th, 1995?

22 A. Yes.

23 Q. If I could direct your attention to Government Exhibit 293,
24 which has already been admitted into evidence.

25

1 (Document placed before the witness by the
2 clerk.)

3 BY MR. NEIMAN:

4 Q. What's the title of Government Exhibit 293?

5 A. It's an automobile purchase, uh, form.

6 Q. And what is the date on which this automobile purchase
7 agreement was for?

8 A. December 18th, 1995.

9 Q. Approximately how many months after the seizure of his
10 vehicle was it?

11 A. Uh, eight months.

12 MR. NEIMAN: If I may have one more moment, your Honor?

13 THE COURT: You may.

14 (Discussion between Mr. Neiman and
15 Mr. Ignall.)

16 MR. NEIMAN: Your Honor, I have no further questions at
17 this time.

18 THE COURT: Cross-examination?

19 MR. IGNALL: Your Honor, may I address one thing?

20 THE COURT: Yes.

21 MR. IGNALL: There's a document that's a Declaration of
22 Luddie Talley. It's not an exhibit. It has been provided in
23 discovery, but I think it is -- it is Jencks Act material. I
24 just wanted to highlight it for the defendants if they wanna
25 look at it now that --

1 THE COURT: Thank you.

2 MR. IGNALL: -- they have a copy.

3 MR. BOWERS: Your Honor --

4 MR. IGNALL: We didn't -- we didn't provide it
5 separately with Jencks because they already had it.

6 MR. BOWERS: Your Honor, it may -- I have reason to
7 believe this cross may take a little while. Might we break here
8 for a few minutes and then come back and do this?

9 THE COURT: We will take our mid-afternoon break a
10 little early.

11 MR. BOWERS: Thank you, Judge.

12 THE COURT: We're in recess. The admonition continues.

13 (Jury leaves the courtroom at 2:50 p.m.)

14 THE COURT: Okay. Go ahead. Watch your step again.

15 THE WITNESS: Yes, sir.

16 (Recess from 2:50 p.m. to 3:09 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Bring in the jury.

19 THE CLERK: Yes, sir.

20 Can you get the witness back in, please?

21 MR. SCHIFF: Your Honor?

22 THE COURT: Yes.

23 MR. SCHIFF: I found the statute on the Tax
24 Restructuring Act, JCX-50-98R. Paragraph 7 states, "ILLEGAL TAX
25 PROTESTOR DESIGNATIONS."

1 It says: "... prohibits the use by the IRS of the
2 'illegal tax protestor' designation. Any extant designation in
3 the individual master file (the main computer file) must be
4 removed and any other extant designation (such as on paper
5 records that have been archived) must be disregarded. The IRS,
6 however, [is] permitted to designate appropriate taxpayers as
7 nonfilers" -- of course I filed -- "The IRS must remove the
8 nonfiler designation once the taxpayer has filed valid tax
9 returns for two consecutive years..." --

10 THE COURT: Hold on a minute.

11 MR. SCHIFF: -- "The provision" --

12 THE COURT: Hold on a minute, Ms. Clerk.

13 MR. SCHIFF: -- "The provision is effective on the date
14 of enactment, except that the removal of any designation from
15 the master file, is not required to begin before January 1,
16 1999."

17 So I move that you strike, um, the appellation of tax
18 protestor and ask for a curative instruction to the jury that
19 I'm not a tax protestor.

20 THE COURT: Okay.

21 Mr. Neiman.

22 MR. NEIMAN: Uh, your Honor, Mr. Talley was just
23 referring to the name of the group he worked in. If Mr. Schiff
24 wants to inquire -- which was prior to this law that Mr. Schiff
25 is -- or this code that Mr. Schiff is referring to -- if he

1 wants to ask Mr. Talley if the name was changed subsequent to
2 1998, I think that would be a fair question. Other than that, I
3 think it's a moot point.

4 THE COURT: It's --

5 MR. SCHIFF: But, your Honor, he used this designation
6 after the law was passed.

7 THE COURT: Well, he was talking about what he was
8 doing at the time and, uh, so it is -- he was speaking of a time
9 before the law that you have cited.

10 MR. SCHIFF: I've never been a tax protestor.

11 THE COURT: Okay. Bring the jury in, please.

12 (Jury enters the courtroom at 3:12 p.m.)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. NEIMAN: Yes, your Honor.

16 MR. CRISTALLI: Yes, your Honor.

17 MR. BOWERS: Yes, your Honor.

18 MR. SCHIFF: Yes, your Honor.

19 THE COURT: Thank you.

20 Mr. Schiff.

21

22 CROSS-EXAMINATION

23 BY MR. SCHIFF:

24 Q. Oh, boy. So much I have to cover.

25 Okay. First of all, Mr. Talley, you started your

1 presentation by saying you had a -- that the IRS sends a series
2 of letters informing you that you owe a tax, series of four
3 letters I believe you said, and then at the end of that you have
4 a right to a collection due process hearing. Is that -- is that
5 correct?

6 A. That is the current procedure, yes, sir.

7 Q. Okay. When you seized my car and maced me in 1995, did you
8 send me a series of those letters?

9 THE COURT: Objection?

10 MR. NEIMAN: Objection. He's testifying.

11 MR. SCHIFF: Well --

12 THE COURT: He is testifying.

13 MR. CRISTALLI: Did he?

14 BY MR. SCHIFF:

15 Q. Well, did --

16 MR. BOWERS: Seems like --

17 BY MR. SCHIFF:

18 Q. In 1995 --

19 MR. BOWERS: -- that was a legitimate question.

20 BY MR. SCHIFF:

21 Q. -- when you seized my car, did I get a series of those
22 letters?

23 A. Yes, sir, you did.

24 Q. Didn't those letters result as a result of the -- of the Tax
25 Restructuring Act of 1999 as of result of the disclosures that

1 the IRS was abusing taxpayers? Wasn't that program started in
2 1998?

3 THE COURT: Well, the -- that question is a compound
4 question. So --

5 BY MR. SCHIFF:

6 Q. Well, didn't --

7 THE COURT: -- if you want to break it down without
8 making a speech --

9 MR. SCHIFF: Okay.

10 THE COURT: -- you may.

11 BY MR. SCHIFF:

12 Q. Didn't the IRS practice of sending out a series of letters
13 start after 1998?

14 A. No, sir.

15 Q. You're saying that before 1998 they sent you a series of
16 letters?

17 A. Yes, sir.

18 Q. They didn't simply go to the banks with a Notice of Levy and
19 take the money?

20 A. No, sir.

21 Q. Okay. Let me -- okay. It's not -- all right.

22 When the IRS goes to a bank and takes money, do they
23 have a court order?

24 A. No, sir, not generally.

25 Q. No, they don't have a court order. Okay.

1 Now, you talked about levy -- oh, can I -- you talked
2 about levy and a notice of levy and a lien and a notice of lien.
3 These are different terms. Hold on -- pardon me. Let me just
4 get...

5 (Pause in the proceedings.)

6 BY MR. SCHIFF:

7 Q. Okay. Uh, when, uh -- when you seized a hundred and
8 fifty-six dollars from me while I was confined to the Clark
9 County Detention Center after my car was seized and they charged
10 me with several counts of --

11 THE COURT: No more speeches. Ask the question.

12 MR. SCHIFF: Okay.

13 BY MR. SCHIFF:

14 Q. Did you seize money that was taken out of my pockets while I
15 was detained in the Clark County Detention Center?

16 A. I did.

17 Q. Okay. And did you -- did you use a Notice of Seizure?

18 A. I did.

19 Q. Okay.

20 MR. SCHIFF: I want to -- this is Exhibit 2059.

21 (Document shown to Government counsel.)

22 MR. NEIMAN: The Government would have no objection to
23 the admission of this document.

24 (Defendant Schiff's Exhibit No. 2059, marked
25 for identification.)

1 THE COURT: Any objection from other counsel?

2 MR. CRISTALLI: No, your Honor.

3 MR. BOWERS: No. That's fine.

4 THE COURT: I didn't -- okay. Thank you.

5 2059 is received.

6 (Defendant Schiff's Exhibit No. 2059,

7 received into evidence.)

8 (Document handed to the witness by the

9 clerk.)

10 (Pause in the proceedings.)

11 THE COURT: Your question.

12 BY MR. SCHIFF:

13 Q. So that's what you used to seize the money that I had at the
14 Detention Center?

15 A. Yes.

16 Q. And that's a Notice of Seizure?

17 A. Yes, sir.

18 Q. Okay. Now, when you seize money from a bank, let's say Bank
19 of America or my Social Security, do you give them a Notice of
20 Seizure also?

21 A. No, sir.

22 Q. You don't.

23 So, when do you use a Notice of Seizure and when don't
24 you use a Notice of Seizure?

25 A. Well, Notice of Seizure is used when, uh, we're taking

1 property from the taxpayer generally.

2 Q. So let me get this straight. There's two ways you seize
3 property; is that correct? You can take somebody's car, you can
4 take somebody's money if he has it in his wallet, and that only
5 is between you and the taxpayer; is that correct?

6 A. Up to that point, yeah -- yes, sir.

7 Q. However, with a Notice of Levy that you send to a bank or
8 the Social Security Administration, that involves three
9 entities: the agent, the organization that has the money, and
10 the taxpayer. Is that correct?

11 A. Fair enough. Yes, sir.

12 Q. Okay. So let's get this straight. The difference between a
13 levy, when you seize property -- and, when you seize property by
14 levy, you have to give a Notice of Seizure; is that correct?

15 A. No, sir.

16 Q. It's not correct?

17 A. No.

18 Q. That's not correct. I know I have it here. (Pause.)

19 Well, in -- well, I -- I know it's in -- I -- I thought
20 I had --

21 THE COURT: Next --

22 MR. SCHIFF: Can I --

23 THE COURT: -- next question, Mr. Schiff.

24 MR. SCHIFF: -- let me have the The Federal Mafia.

25

1 (Discussion between Mr. Leventhal and
2 Mr. Schiff.)

3 MR. SCHIFF: This is -- this is in evidence.

4 (The Federal Mafia placed before the witness
5 by the clerk.)

6 BY MR. SCHIFF:

7 Q. Okay. Are you familiar with Code Section 6502? 60- --

8 60- -- 67- -- 6502(b)?

9 A. How is it titled, sir?

10 Q. Well, if I show you the Code section --

11 THE COURT: He has -- he has the book in front of him.

12 MR. SCHIFF: All right.

13 BY MR. SCHIFF:

14 Q. Can you turn to page 114? Section 6502.

15 A. Did you say page 114?

16 Q. I'm sorry. It's page 114.

17 A. Okay.

18 Q. There's an example of another Notice of Seizure; right?

19 A. It appears to be, yes, sir.

20 Q. And I reproduced Section 6502; is that correct?

21 THE COURT: "We produced," what does that mean?

22 MR. SCHIFF: Yes.

23 THE COURT: "We produced," what does that mean? You
24 produced it in that book that you're holding?

25 MR. SCHIFF: Well, I can -- I can give you the Code.

1 It's in the Code, but I -- I can -- I can hand him the code.

2 BY MR. SCHIFF:

3 Q. Do you recognize -- because this involves seizures, do you

4 recognize that Code section?

5 A. Yes, sir.

6 Q. Well, can you read paragraph (b)?

7 A. Paragraph (b) is "Date when levy is considered made."

8 Q. And what does it --

9 A. -- the date --

10 Q. I'm sorry.

11 A. -- "The date on which a levy on property or rights to

12 property is made shall be the date on which the notice of

13 seizure provided in section 6335(a) is given."

14 Q. So doesn't that contradict what you just said?

15 A. I don't believe it does, sir.

16 Q. Well, it says the date on which a levy is made is the date

17 on which a Notice of Seizure is given. If no notice of seizure

18 is given --

19 A. It depends on --

20 Q. -- no levy is made. Isn't that what it says?

21 A. It depends on the what the revenue officer is trying to

22 accomplish.

23 Q. Doesn't that statute state that the date on which the notice

24 of seizure is given is the date on which the levy is made? In

25 order for there to be a levy, there must be a Notice of Seizure.

1 MR. NEIMAN: Objection, your Honor.

2 MR. SCHIFF: Well --

3 MR. NEIMAN: The -- the witness can testify as to his
4 understanding within the meaning of his job. What Mr. Schiff's
5 interpretation or disagreement is with this section is
6 irrelevant.

7 THE COURT: True. He has testified as to his
8 understanding of the --

9 MR. SCHIFF: But what does the law say?

10 THE COURT: -- meaning of that section.

11 MR. SCHIFF: Your Honor, if everybody's interpretation
12 of the law is different, then nobody knows what the law is. I
13 mean, if I read that --

14 THE COURT: Well, you haven't -- you haven't shown any
15 different interpretation.

16 MR. SCHIFF: Well --

17 THE COURT: You're just arguing with him right now.

18 MR. SCHIFF: Well, I mean the words of the statute are
19 clear. It says, "The date on which a levy on property or rights
20 to property is made shall be the date on which the notice of
21 seizure provided in section 6335... is given." If no notice of
22 seizure is given, no levy --

23 THE COURT: Again --

24 MR. SCHIFF: -- is made.

25 THE COURT: Again, sir --

1 MR. SCHIFF: Okay.

2 THE COURT: -- you are arguing.

3 MR. SCHIFF: Okay.

4 BY MR. SCHIFF:

5 Q. If you don't --

6 THE COURT: Ask a question.

7 MR. SCHIFF: I'm sorry.

8 BY MR. SCHIFF:

9 Q. If you do not give a Notice of Seizure, on what date is the
10 levy made?

11 A. The date that the, uh, institution or person receives it.

12 Q. Well, receives what, a levy or Notice of Levy?

13 A. The Notice of Levy.

14 Q. Well, we already established that you don't use a Notice of
15 Seizure with respect to a levy -- Notice of Levy. I'll grant
16 that. All right.

17 You said in testimony -- oh, I want to clarify
18 something before we proceed because during his testimony -- I
19 wanna get this out of the way -- the Government introduced --
20 well -- the Government introduced Exhibit 291, which is the
21 Government's complaint to reduce to judgment, two million two
22 hundred and seventy-six dollars and two hundred forty-four
23 dollars [sic].

24 MR. SCHIFF: Can you put that on the screen?

25

1 (Document displayed in open court.)

2 BY MR. SCHIFF:

3 Q. Now, if you take a look at that --

4 MR. SCHIFF: Can you put the, um, years in which, uh,
5 the Government claims I owe this money? Can you put the years?
6 It's the fifth or sixth page.

7 THE WITNESS: It's on page 3.

8 BY MR. SCHIFF:

9 Q. Page 3. Well, page -- yeah, page 3. '79, yeah, '80, '81,
10 '82, '83.

11 Now, you'll notice that the amount of taxes the
12 government claims I owe is about 350,000. The rest -- the rest
13 of the two million is interest and penalties. Is that right?

14 A. I can't tell that from this document.

15 Q. Well -- well, it shows interest, penalties. How much in
16 taxes covering those years --

17 A. Let me go back to page 2 and I can read that to you. For
18 which year are you interested?

19 Q. Well -- well, if you went through it, one year, um, taxes
20 was 44,000, another year 36,000; is that correct?

21 A. That is correct.

22 Q. And then in '81, 8,000 approximately?

23 A. Correct.

24 Q. And the next year a hundred and forty-two thousand?

25 A. Correct.

1 Q. Then the next year 24,000 and the next year 5,000. So if
2 you totalled all that -- all that up --

3 A. Okay.

4 Q. -- it's about 340,000.

5 A. All right.

6 Q. Okay. And I also call your attention: These are the years
7 in which I filed those coerced returns claiming I owed taxes
8 that I didn't believe I owed at all.

9 MR. NEIMAN: Objection. He's testifying --

10 MR. SCHIFF: Well --

11 MR. NEIMAN: -- your Honor.

12 THE COURT: Testifying.

13 MR. SCHIFF: All right.

14 THE COURT: Strike.

15 MR. SCHIFF: All right.

16 BY MR. SCHIFF:

17 Q. Did any of these years cover money I owed in years I filed a
18 zero return?

19 A. I have no idea.

20 Q. Okay. You don't know that.

21 Um, you said -- you said that this -- the government --
22 you mentioned that the government got a summary judgment. What
23 is a summary judgment?

24 A. I don't recall that I testified about --

25 Q. Yeah. Well --

1 A. -- a summary judgment.

2 Q. -- either -- yes, you said I got -- you specifically said
3 that the government got a summary judgment with respect to these
4 amounts.

5 THE COURT: He said --

6 BY MR. SCHIFF:

7 Q. What is a summary judgment?

8 THE COURT: -- he said he received -- the 292 was the
9 judgment pursuant to 291.

10 MR. SCHIFF: Yeah. But he specifically --

11 THE COURT: He never attempted to define summary
12 judgment. You're the only person who raised the question of
13 summary judgment during one of your outbursts.

14 MR. SCHIFF: No. But he -- no. He used the summary --
15 he used --

16 THE COURT: No. You did. You're the one who did it.

17 BY MR. SCHIFF:

18 Q. All right. Well, then can I ask you -- um, can I ask you:
19 Were you aware that this was secured by way of a summary
20 judgment, not a jury trial?

21 A. No, sir.

22 Q. Were you aware of that?

23 A. No, sir.

24 Q. Do you know what a summary judgment is?

25 A. I'm familiar with the term, yes, sir.

1 Q. What is a summary judgment?

2 A. Well, I can't give you a Black's Law Dictionary definition
3 of it.

4 Q. But can you come close?

5 A. No.

6 Q. You can't come close?

7 A. No.

8 Q. You don't know what a summary judgment is?

9 A. No.

10 Q. Did you know -- did you notice if you look here there are --
11 there are a lot of fraud penalties? Can you -- can you take a
12 look at the fraud -- can you see the fraud penalties?

13 THE COURT: Which document are you referring to now?

14 MR. SCHIFF: Well, the Government's Document 291.

15 BY MR. NEIMAN:

16 Q. Did you notice the fraud penalties?

17 A. Yes, sir. There's a fraud penalty for tax years '79 through
18 '85.

19 Q. Were you aware that pursuant to the law -- pursuant --
20 because you talked about your understanding of the law.

21 Do you have an understanding that fraud was supposed to
22 be proven and not assumed? Were you aware of that?

23 A. No, sir.

24 MR. NEIMAN: Objection to --

25 MR. SCHIFF: Well, there's -- well, the Government --

1 THE COURT: Sustained.

2 MR. SCHIFF: -- introduced this document.

3 THE COURT: Sustained.

4 MR. SCHIFF: The Govern- --

5 BY MR. SCHIFF:

6 Q. Well, were you aware that in some of these years, covered
7 years, in which the government seized some 200,000 from me and
8 attributed that to me as income and taxed me again on it? Were
9 you aware of that?

10 A. No, sir.

11 Q. Okay. Were you aware that the government was trying to get
12 me to pay more money than I earned gross for all those years?

13 A. No, sir.

14 Q. Do you think they're in the middle ages, some depraved
15 medieval tyrant sought to extract from a conquered people more
16 in wealth than they possessed? Do you think any government
17 would attempt to do that?

18 MR. NEIMAN: I object. Argumentive.

19 MR. SCHIFF: The Government --

20 THE COURT: It is --

21 MR. SCHIFF: -- introduced this document.

22 THE COURT: It is argumentive.

23 MR. SCHIFF: And I want to clarify this document.

24 THE COURT: Argumentive. Sustained.

25

1 BY MR. SCHIFF:

2 Q. Are you aware that this doc- -- I'm gonna -- is now on
3 appeal before the Ninth Circuit?

4 A. No, I was not aware.

5 Q. Okay. I'm gonna bring my appeal in and we'll put it in.
6 Okay.

7 Now, let's get back. There was some indication that
8 when I met with you -- with you and, uh -- with you and
9 Gritis --

10 A. Yes, sir.

11 Q. -- I got the impression that you believed that you wanted me
12 to show up to discuss the seizing of my property.

13 THE COURT: You're testifying again.

14 BY MR. SCHIFF:

15 Q. Was -- I want to see if I understood what he said. Did --
16 you were suggesting --

17 THE COURT: You said "I got the impression" --

18 MR. SCHIFF: That you.

19 THE COURT: -- "that you." That is testifying.

20 MR. SCHIFF: Well, that's the impression I got.

21 THE COURT: Well, you can't testify.

22 BY MR. SCHIFF:

23 Q. Well, what --

24 THE COURT: I've told you and warned you over and over
25 again --

1 BY MR. SCHIFF:

2 Q. Well, what -- when I met --

3 THE COURT: -- cannot testify.

4 BY MR. SCHIFF:

5 Q. -- with you and Gritis, that day when [sic] you spoke about,

6 when I met with you and Gritis, what was that meeting about?

7 What was the meeting about when I met with you and --

8 A. We had more than one meeting.

9 Q. With you and Gritis, that particular meeting. Did you send

10 me -- did I get a summons? As a matter of fact, the Government

11 introduced a document -- here.

12 THE COURT: Mr. Schiff --

13 BY MR. SCHIFF:

14 Q. Did the Government introduce --

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: Yes.

17 THE COURT: -- would you please ask a question without

18 getting halfway through and then diverting off onto some

19 sidetrack. Ask a complete question.

20 MR. SCHIFF: Okay.

21 THE COURT: I'm gonna ask that you write out your

22 questions from now on --

23 MR. SCHIFF: Okay.

24 THE COURT: -- before you --

25 MR. SCHIFF: Well, I don't know what he's gonna testify

1 to.

2 THE COURT: Well, then you write 'em out while he's
3 testifying. You're just wandering.

4 MR. SCHIFF: All right. Okay.

5 BY MR. SCHIFF:

6 Q. The Government -- the Government introduced Exhibit 289A.
7 289A. What did that say? Can you -- can you just read what it
8 said?

9 THE COURT: All of it?

10 MR. SCHIFF: Yeah, just read what it said. The
11 Government --

12 THE COURT: Well, wait a minute.

13 MR. SCHIFF: -- introduces these documents --

14 THE COURT: Wait a minute.

15 MR. SCHIFF: -- but they don't read 'em.

16 THE COURT: You're gonna ask him to read the whole
17 document?

18 MR. SCHIFF: No. Just read the substance.

19 BY MR. SCHIFF:

20 Q. Read the... read the beginning of the second paragraph.

21 THE COURT: Can you see it blown up on the screen?

22 BY MR. SCHIFF:

23 Q. Just read the second paragraph.

24 THE WITNESS: I can read it?

25 THE COURT: Go ahead.

1 THE WITNESS: "You should bring signed returns and
2 visit our office on the date and at the time your meeting is
3 scheduled. If you cannot come to this meeting, you should call
4 our office immediately and reschedule your appointment."

5 BY MR. SCHIFF:

6 Q. Read the next paragraph.

7 A. "If you do not do either one, a summons may be issued
8 requiring you to produce certain books, papers, records, or
9 other relevant material. Under section 7210 of the Internal
10 Revenue Code, anyone who is summoned to testified or appear and
11 to produce books, accounts, or other relevant material, but who
12 does not do so and is convicted, will be fined up to \$1,000,
13 imprisoned for up to a year, or both, and will be [uh] charged
14 prosecution costs."

15 Q. Right.

16 And didn't you subsequently issue me a summons? And --
17 this is not my exact summons, but it's what a summons looked
18 like?

19 (Document shown to government counsel.)

20 MR. SCHIFF: It's just...

21 THE COURT: Mr. Schiff, what is your question?

22 BY MR. SCHIFF:

23 Q. This is -- all right. So did you issue me a summons --

24 MR. SCHIFF: Can I just show him the summons?

25 THE COURT: No. You can ask if he issued the summons.

1 No.

2 MR. SCHIFF: Pardon?

3 THE COURT: Stand back. Your question is --

4 BY MR. SCHIFF:

5 Q. Did you issue me --

6 THE COURT: -- did he issue a summons.

7 BY MR. SCHIFF:

8 Q. Did you issue --

9 THE COURT: Let him answer.

10 BY MR. SCHIFF:

11 Q. -- me a summons to produce my books and records and to bring

12 'em to the IRS?

13 A. I don't recall issuing you one.

14 Q. You don't recall?

15 A. No.

16 Q. You don't recall you and Gritis meeting in connection with

17 this summons?

18 A. I don't recall issuing -- issuing you a summons at that

19 time.

20 MR. SCHIFF: Your Honor --

21 THE COURT: Do you have something that purports to be

22 the summons issued by him?

23 MR. SCHIFF: Well, I couldn't find it.

24 THE COURT: Well --

25 MR. SCHIFF: But I have a tape. All right. Then what

1 I have to do, your Honor, is play the tape, which I brought in
2 already this morning, of the summons which Mr. Talley doesn't
3 recall.

4 THE COURT: How can you have a tape of a summons?
5 Is --

6 MR. SCHIFF: I have the tape of the summons proceedings
7 in which he was there and, um, Gritis was there. So, to refresh
8 his recollection, I move that we -- that I play -- the
9 Government has -- has this tape and they listened to part of it
10 already.

11 THE WITNESS: Can you tell me the date of it?

12 THE COURT: The date.

13 BY MR. SCHIFF:

14 Q. Well, you said you don't remember the -- the hearing; you
15 don't remember the summons.

16 THE COURT: Well, you haven't identified the date.
17 Identify the date.

18 MR. SCHIFF: Well -- well, I don't have the date. But
19 he can hear it. He's talking. It was around -- I -- I just
20 wanna play this.

21 THE WITNESS: Well, if I may, Mr. Schiff, before you do
22 that, this letter that you had me to read from, the section that
23 you had me to read from had no bearing on your case. That
24 section --

25

1 BY MR. SCHIFF:

2 Q. But all I --

3 A. -- wasn't addressed to you.

4 Q. All I said to you is you -- do you recall you issuing me a

5 summons to come down to the IRS with -- and produce all my -- my

6 books and records.

7 A. This letter --

8 Q. And I did.

9 A. -- this letter, sir, did not require you to produce

10 anything.

11 Q. That is a sample.

12 A. This letter is in --

13 Q. This is --

14 A. -- two sections.

15 Q. -- but this is --

16 A. That section is not checked.

17 Q. Subsequent to that, I said subsequent to that letter, did

18 you issue me a summons to come down with my books and records.

19 A. I do not recall ever issuing you a summons --

20 Q. That's when I got --

21 A. -- for your books and records.

22 MR. SCHIFF: All right. Let's play the tape.

23 THE WITNESS: The reason I asked you for the date of

24 it --

25 MR. SCHIFF: Let's play the tape.

1 THE WITNESS: -- Mr. Gritis may have issued that
2 summons.

3 MR. SCHIFF: Okay. Okay.

4 BY MR. SCHIFF:

5 Q. Let's -- all right. Let's assume Gritis issued the summons.
6 Did you recall me coming -- since I don't have --

7 A. Oh, I recall -- I recall quite well the date or -- or the
8 circumstances of our conversation.

9 Q. Did you recall me coming down to a meeting with you and
10 sum- -- with you and Gritis pursuant a summons that I got which
11 required me to bring all my books and records to the IRS and we
12 had a meeting on that? Do you recall that meeting?

13 A. I recall we had a meeting. I do not know if it was as the
14 result of a summons.

15 Q. Now, did [sic] the summons I received comparable to this
16 summons, except you -- you filled in my name?

17 THE COURT: He said he didn't remember issuing you a
18 summons.

19 MR. SCHIFF: Well, somebody had to issue --

20 BY MR. SCHIFF:

21 Q. Did somebody issue me a summons?

22 THE COURT: Well, he said he didn't know. Move on.

23 BY MR. SCHIFF:

24 Q. But I was issued a summons by -- then what was I doing at
25 the IRS and they're asking me to produce my books and records if

1 nobody issued me a summons? Didn't somebody issue me a summons?

2 THE COURT: The answer has been given.

3 MR. SCHIFF: Pardon me?

4 THE COURT: He has answered it several times. Move on.

5 MR. SCHIFF: Well, now, I -- well, I can't move on. I
6 can't move on unless somebody agrees that I was issued a summons
7 to bring down my books and records.

8 BY MR. SCHIFF:

9 Q. Now, when you get issued a summons by the IRS, when the IRS
10 issues a summons, and the summons says you are hereby summoned
11 and required --

12 MR. SCHIFF: Can I read from the summons.

13 THE COURT: Is that the one that you received?

14 MR. SCHIFF: Well, they just filled in -- this is a
15 sample summons, your Honor. This is what they issue. I can't
16 find my original summons. But I got one like this, except they
17 filled it in. And the summons that they sent me --

18 THE COURT: Well, if you -- if you can't produce it,
19 you can't introduce it.

20 MR. SCHIFF: This is a sample copy of a summons.

21 THE COURT: It's not the summons.

22 MR. SCHIFF: Well, that was --

23 THE COURT: You can ask him questions, but --

24 MR. SCHIFF: All right.

25

1 BY MR. SCHIFF:

2 Q. When you issue --

3 THE COURT: -- you can't use that document.

4 MR. NEIMAN: Your Honor --

5 BY MR. SCHIFF:

6 Q. When the IRS --

7 THE COURT: Yes.

8 MR. NEIMAN: If I may.

9 If Defendant Schiff wants to ask questions of Officer
10 Talley about the meeting or what was discussed at the meeting,
11 the Government would not object to any of that substance.

12 THE COURT: That's what I'm trying to get him to do,
13 but he wants to --

14 MR. SCHIFF: All right. Well, all I'm saying is --

15 THE COURT: -- belabor the --

16 MR. SCHIFF: All right. Well, all I'm saying is I
17 responded to a summons.

18 THE COURT: No testifying.

19 MR. SCHIFF: Well --

20 BY MR. SCHIFF:

21 Q. Well, do you recall me responding to a summons in which I
22 was summoned to bring all my books and records down to the IRS?

23 A. I know that you came to the IRS office. I do not know if it
24 was as a result of the summons --

25 Q. Would I come down --

1 A. -- on the date that you recorded that interview.

2 Q. Would I come down there voluntarily without being issued --

3 A. You have --

4 Q. -- a summons?

5 A. -- yes, sir, on many occasions.

6 MR. SCHIFF: We gotta play this. I'm sorry, your
7 Honor. It's not that long.

8 MR. BOWERS: There's no objection.

9 MR. SCHIFF: But I wanna play this. I had it -- I want
10 to -- Government has a copy of this.

11 THE COURT: What is -- what is the purpose of it?

12 MR. SCHIFF: Well, it's to show that I responded to a
13 summons and I -- I was required --

14 THE COURT: What difference does it make whether you
15 responded to a summons or not? How is that relevant?

16 MR. SCHIFF: What is relevant is that I didn't turn
17 over my books and records because this said I was not legally
18 required to turn over my books and records. And I didn't turn
19 over my books and records and nothin' happened.

20 BY MR. SCHIFF:

21 Q. The point is when you issue a summons, when the IRS issues a
22 summons, for someone to produce their books and records are they
23 required to produce their books and records?

24 A. If that indeed is what the summons is for.

25 Q. Are they -- yeah. But are they required to produce their

1 books and records in response to your summons?

2 A. If they exist, yes, sir.

3 Q. Pardon me?

4 A. If they exist, yes, sir.

5 Q. Well, I didn't produce my books and records, did I?

6 MR. NEIMAN: Objection. His testifying.

7 THE COURT: Sustained.

8 MR. SCHIFF: No. It's a fact.

9 BY MR. SCHIFF:

10 Q. Isn't it a fact that I didn't produce my books and records?

11 Isn't that a fact? Isn't that a fact?

12 A. I don't recall your producing any, no.

13 Q. So I didn't produce my books and records in response to this
14 summons?

15 A. I don't recall that you did.

16 Q. And nothin' happened to me as a result?

17 A. Well, I don't know.

18 Q. Now, you just said that when a person gets an IRS summons
19 they're required to -- to produce their books and records in
20 response to an IRS summons. Is that what you're saying?

21 A. Yes, sir.

22 Q. Are you -- are you aware of the recent decision, uh --

23 MR. NEIMAN: Objection to relevance.

24 MR. SCHIFF: Well, it's relevant. It just shows that
25 he just made a false statement. That's why it's relevant. This

1 is --

2 MR. NEIMAN: Your Honor --

3 MR. SCHIFF: -- this is a case, United States v. Robert
4 Schulz. Here's the case. It's a Second Circuit case decided
5 January 25th, 205 [sic], Docket No. 04-0196CV.

6 Do you want to see a copy? I'd be happy to give you
7 have a copy.

8 MR. NEIMAN: The Government doesn't understand the
9 relevance either of --

10 MR. SCHIFF: The relevance is the witness just made a
11 false statement --

12 THE COURT: No, he didn't --

13 MR. SCHIFF: -- because --

14 THE COURT: -- he didn't.

15 And, Mr. Schiff, this is going nowhere. You're just
16 arguing with the witness, making another speech on -- on a false
17 statement of the law on your part.

18 MR. SCHIFF: Here. Can I read --

19 THE COURT: Stop it.

20 MR. SCHIFF: -- from the Second Circuit opinions?

21 THE COURT: Sanctions.

22 MR. SCHIFF: You want to see the Second Circuit?

23 THE COURT: I don't need to see it. It's not the Ninth
24 Circuit. It has nothing do with this case.

25 MR. SCHIFF: Well, it has to do with his testimony.

1 THE COURT: It does not. It is irrelevant. I have
2 found it so.

3 MR. SCHIFF: Are you familiar with this case? Can I --

4 THE COURT: I don't --

5 MR. SCHIFF: -- have a sidebar on this?

6 THE COURT: -- I don't need to be familiar with it,
7 Mr. Schiff, because it has nothing to do with this case.

8 MR. SCHIFF: It has to do with his testimony, your
9 Honor. I don't want to argue with you.

10 BY MR. SCHIFF:

11 Q. All right. Let me ask you -- all right. Mr. Talley, you
12 talked about a Notice of Levy. And you stated that you believed
13 that you were following the law. Is that correct?

14 A. Yes, sir.

15 Q. You stated specifically.

16 And you also stated that the IRS -- I wrote -- is -- is
17 authorized to seize property pursuant to -- to -- now, what is
18 your belief as to what section of the Internal Revenue Code
19 authorized you to issue Notices of Levy?

20 A. Internal --

21 Q. What section of the Internal Revenue Code?

22 A. -- Internal Revenue Code, Section 63- --

23 Q. 6331?

24 A. -- '31.

25 Q. 6331. Let me have the -- have the Code.

1 Okay. So you're saying that your belief is that 6331
2 authorizes the IRS to issue Notices of Levy; is that correct?

3 A. Yes, sir.

4 Q. Okay.

5 MR. SCHIFF: May I approach the witness?

6 THE COURT: You may.

7 BY MR. SCHIFF:

8 Q. I show you Section 6331. Now, where in Section 6331 --
9 well, do you want to start -- can you read Section 6331 at the
10 top?

11 MR. NEIMAN: Objection, your Honor. If Mr. Talley
12 wants to testify as to his understanding as it pertains to his
13 job, that's one thing. To argue over the -- the law and what
14 the Code says is -- would be irrelevant as --

15 MR. SCHIFF: Your Honor, I'm not arguing what the law
16 is.

17 THE COURT: You can ask him of his interpretation of
18 the law if you wish.

19 MR. SCHIFF: I'm asking his belief. He said he
20 believed he --

21 BY MR. SCHIFF:

22 Q. Uh, where in Section 6331 does it mention the IRS and
23 authorizes the IRS to send out Notices of Levy? Where in
24 Section 6331?

25 A. Am I to understand that, uh, because this starts out with

1 the "Authority of [the] Secretary" as opposed to "Internal
2 Revenue Service"?

3 Q. No. You said -- is the -- is the Internal Revenue Service
4 mentioned in Section 6331?

5 A. Well, I'd have to do quite a bit of reading to find that.

6 Q. Just read paragraph (a) because -- isn't it a fact that only
7 paragraph (a) mentions a Notice of Levy? In other words --

8 A. I can't testify to that, sir, without reading it.

9 Q. Well, read it.

10 MR. NEIMAN: Your Honor, I'm gonna object that
11 Mr. Schiff is playing a semantic game here of the difference
12 between the Department of Treasury and the IRS and...

13 THE COURT: He is.

14 MR. NEIMAN: We may have to ask --

15 THE COURT: He is. The distinction is irrelevant.

16 MR. SCHIFF: Well --

17 THE COURT: By case law, it's irrelevant. You were
18 wrong.

19 MR. SCHIFF: Well, I'm just saying --

20 THE COURT: You were wrong on your apparent
21 interpretation of the law.

22 MR. SCHIFF: I didn't interpret --

23 THE COURT: I have the case right in front of me, and
24 you are wrong.

25 MR. SCHIFF: I'm not interpreting the law. I'm asking

1 him to interpret -- I'm asking his understanding of the law.

2 THE COURT: You are -- obviously what you're doing,
3 which is --

4 MR. SCHIFF: Okay.

5 THE COURT: -- a juvenile approach to -- to interpret
6 the law.

7 MR. SCHIFF: Okay.

8 BY MR. SCHIFF:

9 Q. Let me ask you this then --

10 THE COURT: You are claiming that because it doesn't
11 mention the IRS, it only mentions the Secretary of the Treasury,
12 that the IRS somehow doesn't have authority.

13 MR. SCHIFF: I never said that.

14 THE COURT: Well, that's what you're -- that's where
15 you're going.

16 MR. SCHIFF: I didn't say --

17 THE COURT: It's obvious.

18 MR. SCHIFF: -- that, your Honor. I just -- he's the
19 one who said --

20 THE COURT: Well, don't you go and ask --

21 MR. SCHIFF: All right.

22 THE COURT: -- your next question. We'll see where --

23 BY MR. SCHIFF:

24 Q. The next question is --

25 THE COURT: -- you're going.

1 BY MR. SCHIFF:

2 Q. The next question is: There's mention of a Notice of
3 Levy -- I'm not saying, you know -- there is mention that
4 there's a Notice of Levy that can be sent out. Isn't that
5 right? They mention Notice of Levy. This is your authority for
6 sending out a Notice of Levy; isn't that right?

7 A. Yes, sir.

8 Q. Okay. So can you just mention -- can you just read that
9 little paragraph.

10 THE COURT: Which one?

11 MR. SCHIFF: With respect to Notice of Levy. They talk
12 about Notice of Levy in that paragraph.

13 THE COURT: Where do you want him to read? You direct
14 him.

15 MR. SCHIFF: All right, all right, all right.

16 BY MR. SCHIFF:

17 Q. Read here. They specifically provide for a Notice of Levy.
18 I'll tell ya -- it's in The Federal Mafia.

19 THE COURT: Find it in the --

20 MR. SCHIFF: Okay.

21 BY MR. SCHIFF:

22 Q. Here it says --

23 THE COURT: -- Code.

24 BY MR. SCHIFF:

25 Q. "Levy may be made." Start about six lines down. "Levy may

1 be made."

2 MR. NEIMAN: Your Honor, I'm gonna object. If we're
3 gonna start reading piecemeal portions of law, the Government's
4 gonna have to ask for an instruction on the law.

5 MR. SCHIFF: Well, he can read the whole thing.
6 Levy -- this is the only portion --

7 THE COURT: Mr. Schiff, what is your point with this?

8 MR. SCHIFF: My point is that the statute says, "[a]
9 Levy may be made upon the accrued salary or wages of any
10 officer, employee, or elected official, of the United States,
11 [or] the District of Columbia, ... [and] by serving a notice of
12 levy."

13 And my point is that the Notice of Levy only applies to
14 the accrued salary and wages of a federal employee. That's what
15 it says.

16 THE COURT: Are you following this? My Code doesn't
17 say --

18 MR. SCHIFF: Well --

19 THE COURT: -- what he just read.

20 MR. SCHIFF: -- well, it says, "Levy may be made upon
21 the accrued salary or wages of any officer, employee, or elected
22 official, of the United States, the District of Columbia, or any
23 agency or instrumentality of the United States or the District
24 of Columbia, by serving a notice of levy on the employer."

25 The only employer there is the United States.

1 BY MR. SCHIFF:

2 Q. Now, that is the only --

3 THE COURT: Well, no, that's -- that's not what that
4 says. "If any person liable to pay any tax neglects or refuses
5 to pay the same."

6 MR. SCHIFF: Yeah. It says, "If any person liable to
7 pay" --

8 THE COURT: You're just picking out something out of
9 the middle of it and reading it out of context --

10 MR. SCHIFF: Well --

11 THE COURT: -- and gluing it onto some --

12 MR. SCHIFF: Well, all right.

13 THE COURT: -- other argument.

14 BY MR. SCHIFF:

15 Q. Why -- Mr. Talley, why when the statute talks about levies
16 they single out federal employees and only one asset? It
17 doesn't say their bank --

18 MR. NEIMAN: Objection on Mr. Schiff commentating on
19 this law.

20 MR. SCHIFF: I'm asking him why --

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. All right. Now, so when you sent out a Notice of Levy --
24 now, in all those documents that you submitted --

25 MR. SCHIFF: Where are those documents that the

1 Government -- the Government submitted a bunch of documents --

2 THE COURT: There's a --

3 MR. SCHIFF: -- covering Notices of Levy.

4 THE COURT: -- a whole bunch of documents --

5 MR. SCHIFF: Oh, here --

6 THE COURT: -- the Government has submitted.

7 MR. SCHIFF: -- Notice of Levy. Okay. Got it.

8 THE COURT: Identify what you're --

9 MR. SCHIFF: Okay.

10 THE COURT: -- referring to.

11 MR. SCHIFF: Okay, okay.

12 BY MR. SCHIFF:

13 Q. Here is a Notice of Levy.

14 THE COURT: Identify it --

15 MR. SCHIFF: Well --

16 THE COURT: -- so the witness can look it up.

17 MR. SCHIFF: Well, this is --

18 THE COURT: What is the exhibit number?

19 MR. SCHIFF: -- a Notice of Levy that I received.

20 MR. NEIMAN: What number? 289?

21 MR. SCHIFF: I don't know.

22 MR. NEIMAN: What number?

23 MR. IGNALL: Exhibit number.

24 MR. SCHIFF: I'll give it a number. I gave it to you,

25 but now I don't know.

1 THE COURT: Identify the document.

2 MR. SCHIFF: The document --

3 THE COURT: If you don't -- if you can't identify it,
4 move on.

5 MR. SCHIFF: The document -- it's just a Notice of
6 Levy.

7 THE COURT: Well, which one is it?

8 MR. SCHIFF: Well, it's a Notice of Levy that was sent
9 to my sister.

10 THE COURT: To what?

11 MR. SCHIFF: It was a Notice of Levy sent to --
12 7-31-87. Well, if I could just get -- you had it. There's a
13 whole slew of Notices of Levy and levy, like a whole slew of
14 'em. Just give me a few of yours.

15 MR. NEIMAN: Mr. Schiff, 289, Government's exhibit.

16 MR. SCHIFF: 289. But -- no, this isn't 289.

17 MR. IGNALL: No.

18 MR. SCHIFF: This is mine.

19 MR. IGNALL: No. In our 289, Mr. Schiff -- it's in
20 your -- it's in your books.

21 MR. SCHIFF: Oh, 289 -- all right. 289.

22 I just want him to verify that that's what a Notice of
23 Levy looks like.

24 (Pause in the proceedings.)

25 MR. SCHIFF: No, no, no. Before I do that, you have

1 some levy notices that you introduced. You have a whole bunch.

2 MR. NEIMAN: Contained within Government Exhibit 289.

3 MR. SCHIFF: Yeah. You -- you have a Government
4 exhibit. Wanna just give me one? I'll -- I'll -- you submitted
5 a bunch of 'em.

6 MR. IGNALL: We've given you a copy, Mr. Schiff.

7 MR. NEIMAN: We've provided you with a copy of
8 everything, Mr. Schiff. This is our only copy.

9 MR. SCHIFF: Okay. Okay. This is the Government's
10 exhibit. Okay.

11 BY MR. SCHIFF:

12 Q. This is the Government's Exhibit 289. Can you look at the
13 Government's Exhibit 289?

14 THE COURT: He has it.

15 THE WITNESS: Yes, sir, I have it.

16 BY MR. SCHIFF:

17 Q. Now -- now, this is a levy; right?

18 A. This is one, yes, sir.

19 Q. Yeah, levy.

20 So this is the front of the levy. However -- and this
21 was sent -- who was this sent to? Anybody?

22 A. Norwest Bank.

23 Q. But no Notice of Seizure was given?

24 A. No Notice of Seizure was given.

25 Q. So, pursuant to law, it's not really a levy. But all right.

1 MR. NEIMAN: Objection.

2 MR. SCHIFF: All right.

3 MR. NEIMAN: Your Honor --

4 MR. SCHIFF: All right.

5 MR. NEIMAN: -- if we could have a sidebar.

6 MR. SCHIFF: All right.

7 Q. All right, all right. Let's look at --

8 MR. SCHIFF: All right. I apologize.

9 BY MR. SCHIFF:

10 Q. Look at the back of it.

11 THE COURT: Sustained.

12 BY MR. SCHIFF:

13 Q. Look at the back of it. Paragraph (a). There's paragraph

14 (a); is that correct?

15 A. I don't have that on mine, sir.

16 Q. Here. Here. There's two pages to the Government's

17 Exhibit 289, the front page and the back page. Right?

18 A. There's a front and back, yes, sir --

19 Q. Okay.

20 A. -- but there are no paragraph (a).

21 Q. Now -- so when a person gets it, it looks somethin' like

22 this. It's all on one sheet. Right? When -- when the

23 government gets -- when a person gets a levy like this, it's

24 usually --

25 A. Mr. Schiff, the, uh, levy in question here was a multipage,

1 uh, uh, packet of forms with the carbons in 'em. The backs will
2 differ on some of them.

3 Q. But --

4 A. I don't have those backs.

5 Q. But you don't -- but the Government has -- the Government's
6 Exhibit 289 is two pages.

7 A. Yes.

8 Q. One page is the front and one page is the back.

9 A. Yes, sir.

10 Q. Okay. I'm gonna look -- I'm asking you to look at the back
11 page.

12 A. All right.

13 Q. Now, the back page reproduces Code Section 6331, doesn't it?

14 A. No, it does not on my copy.

15 Q. Well, here is my exhibit. Are you telling me it's not on
16 yours?

17 MR. SCHIFF: Can I approach the witness?

18 THE COURT: You may. You're already there.

19 THE WITNESS: (Reviewing document.)

20 This is not what you have here, sir. (Reviewing
21 document.)

22 These forms are entirely different.

23 BY MR. SCHIFF:

24 Q. Well -- well, there's a problem here.

25 MR. SCHIFF: I'll ask the Government: Does your

1 Exhibit 289 --

2 MR. IGNALL: It depends which page, Mr. Schiff.

3 MR. NEIMAN: Your Honor, I think the confusion is
4 there's multiple Notices of Levy in the exhibit. Some of them
5 have different backs than others. Mr. Schiff is referring to
6 the back of one of the Notices of Levy while Mr. Talley is
7 referring to the other.

8 MR. SCHIFF: Well, let's get the same -- let's get --
9 let's get --

10 MR. IGNALL: If you ask him to flip forward a few
11 pages.

12 BY MR. SCHIFF:

13 Q. Move forward, Mr. Talley. This is -- I think this is
14 important. Okay. You got it?

15 A. You're referring to the Form --

16 Q. I'm talking about --

17 A. -- 668-B.

18 Q. -- 668-B.

19 A. Okay. That's a different form.

20 Q. Government's Exhibit 289.

21 A. Okay, sir.

22 Q. The second page represents the back of the form that a
23 person would get.

24 A. Okay.

25 Q. Okay. And on the back they reproduce Section 6331; is that

1 correct?

2 A. In part.

3 Q. Well -- well, what part don't they? It says paragraph (a),
4 (b), (c) -- don't they reproduce all of Section 60- --

5 A. I'd have to back into the Code to see if the entire thing is
6 there.

7 Q. Well, go back into the Code.

8 A. I can't tell from this.

9 Q. You want to go back into the Code and see? It says right
10 here -- they don't say they are leaving off anything. It says
11 Section 6331. You want --

12 MR. SCHIFF: Can we -- can we put this -- oh, there it
13 is. There it is.

14 BY MR. SCHIFF:

15 Q. Don't they reproduce Section 6331?

16 A. (Reviewing document.)

17 Q. They mention --

18 THE COURT: Wait a minute. Wait a minute.

19 BY MR. SCHIFF:

20 Q. -- a Notice of Levy.

21 THE COURT: Don't make another statement. Let him
22 answer the question. He's looking it up.

23 (Pause in the proceedings.)

24 THE WITNESS: No, sir, it is not the entire Code
25 section 6321 [sic] -- or '31.

1 BY MR. SCHIFF:

2 Q. But -- all right. What is -- what is omitted?

3 A. I'm sorry?

4 Q. Well, did they omit a portion of Section 6331?

5 A. It appears to be on the back of this Form 668-B.

6 Q. Okay. But, in any case, they reproduced paragraph (a)?

7 A. Yes, sir.

8 Q. They reproduced paragraph (a).

9 A. Yes, sir.

10 Q. And would you say that that is the only paragraph in
11 Section 6331 that mentions a Notice of Levy? But that this is
12 not a Notice of Levy; it's a levy. In other words, what you're
13 looking at --

14 THE COURT: Are you -- why don't you --

15 BY MR. SCHIFF:

16 Q. What you're looking at --

17 THE COURT: Why don't you frame your question --

18 MR. SCHIFF: Yeah, okay.

19 THE COURT: -- rather than reversing yourself in
20 midstream?

21 BY MR. SCHIFF:

22 Q. You're looking at IRS Form 668-A [sic], and that's a levy.
23 That's not a Notice of Levy; it's a levy.

24 A. No, sir. Again this is 668-B.

25 Q. B, yeah.

1 A. Yes, sir.

2 Q. It's a levy. The Notice of Levy is a 668-A; is that
3 correct?

4 A. When it's sent to a financial institution, that is correct.

5 Q. Okay, okay. Or it could be sent to employers --

6 A. Not in --

7 Q. -- to garnish wages?

8 A. Not in "A," no, sir.

9 Q. Well, if you wanna garnish an employee's wages, what -- what
10 do you send to the employer?

11 A. Form 668-W.

12 Q. A 668 -- is that a Notice of Levy?

13 A. Yes, sir, it is.

14 Q. So it's a Notice of Levy, but it has a different number?

15 A. That's correct.

16 Q. Now, when the employer gets a Notice of Levy, is he required
17 to honor it?

18 A. Yes, sir.

19 Q. He is required to honor it?

20 A. Yes, sir.

21 Q. Suppose he doesn't honor it. What happens to him?

22 A. We would make a final demand for payment. And, if he
23 didn't, we could bring --

24 Q. Okay.

25 A. -- an action against him.

1 Q. Okay. You can make a final demand for payment.

2 But suppose the employer doesn't honor his final

3 demand. What happens?

4 A. An action can be brought against the employer.

5 Q. An action can be brought against the employer?

6 A. Yes, sir.

7 Q. Are you familiar with the legal reference guide for revenue

8 officers?

9 MR. NEIMAN: I'm gonna object to the relevance.

10 THE COURT: What is the relevance?

11 MR. SCHIFF: Well, the relevance is it contradicts his

12 testimony. It contradicts --

13 THE COURT: I don't --

14 MR. SCHIFF: -- his testimony.

15 THE COURT: Well, you've been asking him questions

16 about things that don't have anything to do with this case.

17 MR. SCHIFF: The case is -- I am saying that the IRS

18 seizes property not in accordance with the law.

19 MR. NEIMAN: Your Honor --

20 MR. SCHIFF: That's my -- my thesis is that --

21 THE COURT: Well, you're not here to give your thesis.

22 You're here to ask --

23 MR. SCHIFF: Well --

24 THE COURT: -- this witness questions about his

25 testimony --

1 MR. SCHIFF: Well, I'm asking him.

2 THE COURT: -- not to put on a show.

3 MR. SCHIFF: I'm not putting on a show. The
4 Government's trying to say I have money offshore because I'm
5 afraid the IRS is gonna seize my property legally, that I have
6 my money in the Christian Patriot, when I know that they have no
7 authority to seize the way they do.

8 THE COURT: You can put on your case when it's time --

9 MR. SCHIFF: Here is --

10 THE COURT: -- to put --

11 MR. SCHIFF: All right.

12 THE COURT: -- on your case.

13 MR. SCHIFF: Here is --

14 THE COURT: This has nothing to do with --

15 MR. SCHIFF: Okay.

16 THE COURT: -- the facts that he testified to.

17 MR. SCHIFF: Okay. Here's --

18 BY MR. SCHIFF:

19 Q. Okay. Can you read from --

20 THE COURT: No. Wait a minute. I've ruled that it's
21 irrelevant.

22 MR. SCHIFF: This is the IRS -- could I have a sidebar
23 on this then?

24 THE COURT: No.

25 MR. NEIMAN: The Government would ask for a sidebar as

1 well --

2 MR. BOWERS: Yeah, the counsel --

3 MR. NEIMAN: -- to discuss some of this.

4 (Sidebar conference was held as follows:)

5 MR. IGNALL: Your Honor, is everyone here? Your
6 Honor --

7 THE COURT: Yes.

8 MR. IGNALL: -- we've seen this happen a few times
9 before. This is a different issue as to whether Mr. Schiff
10 believes he owes taxes or not. Any question that goes to the
11 authority of the IRS to do anything is not relevant to any --

12 THE COURT: I know.

13 MR. IGNALL: -- issue in this case.

14 Mr. Schiff is, I think, confused about the elements of
15 tax evasion, that if he believes that the IRS is trying to take
16 his money illegally that somehow defeats the mens rea
17 requirement for the evasion of payment, which is incorrect.
18 Regardless, the only way that can possibly come up is through
19 Mr. Schiff's testimony.

20 We'd ask for two things now: an instruction from the
21 Court that the IRS has the authority --

22 MR. SCHIFF: He's -- he's --

23 MR. IGNALL: -- to enforce and administer --

24 MR. SCHIFF: First of all --

25 MR. IGNALL: -- the Internal Revenue laws of the United

1 States and an instruction to Mr. Schiff that he can't raise any
2 issue about the authority of the IRS. That's a legal issue that
3 he could raise with the Court, and it's either gonna be granted
4 or denied. I think the Court's already ruled on that.

5 But I think we need an instruction to Mr. Schiff that
6 he can't raise any issue about the authority of the IRS to
7 enforce --

8 MR. SCHIFF: All right. But he also said --

9 MR. IGNALL: -- the Internal Revenue laws --

10 MR. BOWERS: I'm sorry.

11 MR. IGNALL: -- because whether --

12 MR. BOWERS: You're asking for a statement from the
13 judge to him or a statement from the judge to the jury?

14 MR. IGNALL: I want two things: statement to
15 Mr. Schiff that he not go into these issues --

16 MR. BOWERS: Okay.

17 MR. IGNALL: -- and a statement to the jury, just a
18 brief statement, that --

19 MR. BOWERS: Not so. Okay.

20 MR. IGNALL: -- the Internal Revenue Service is
21 authorized by Congress to enforce and administer the --

22 MR. SCHIFF: I'm not saying that.

23 MR. BOWERS: Now, clearly, whatever you want to
24 instruct is fine.

25 MR. IGNALL: Yeah.

1 MR. SCHIFF: Let me just say one thing.

2 Did you hear him say that he can take a hundred percent

3 of my Social Security, that he has discretion? There's no such

4 thing. He said he -- they are takin' a hundred percent of my

5 Social Security --

6 THE COURT: Well, now --

7 MR. SCHIFF: -- the law only says 15 percent.

8 THE COURT: Now, you're getting into another --

9 MR. SCHIFF: All right.

10 THE COURT: -- area completely.

11 MR. SCHIFF: All right. Let me just get into --

12 THE COURT: Your --

13 MR. SCHIFF: -- one little thing.

14 THE COURT: Your --

15 MR. SCHIFF: All right. I'll promise --

16 THE COURT: -- attempt to prove through this witness

17 that the IRS can't legally levy and collect taxes is -- is --

18 MR. SCHIFF: But, first of all --

19 THE COURT: -- is over the top.

20 MR. SCHIFF: But, your Honor, they are taking a hundred

21 percent of my Social Security. Suppose I --

22 THE COURT: That's a different issue. We haven't even

23 got into that.

24 MR. SCHIFF: But he --

25 THE COURT: What you were trying to do out there was

1 completely different.

2 MR. SCHIFF: But -- but there's a difference in --
3 they -- they leave out the paragraph (a). But let me just say
4 this --

5 THE COURT: Yeah. Well, you know --

6 MR. SCHIFF: -- the Government --

7 THE COURT: -- I'd like you to stay on point.

8 MR. SCHIFF: All right. I'm --

9 THE COURT: You jump around.

10 MR. SCHIFF: I know. That's part of my personality.

11 THE COURT: I know. And --

12 MR. SCHIFF: I must apologize. I don't do that
13 deliberately.

14 But there's only one issue I want to make. When he
15 sent -- and I have the Government's witness -- when he sent a
16 Notice of Levy to the Social Security he wrote "full" and he
17 used the word "continuous levy." He had no --

18 THE COURT: If you want to ask him if he has authority
19 to take it all, you can ask him that.

20 MR. SCHIFF: Okay.

21 THE COURT: That's --

22 MR. SCHIFF: All right.

23 THE COURT: -- a different issue.

24 MR. SCHIFF: Now -- now, I'll sit down --

25 MR. IGNALL: If he knows.

1 THE COURT: I'm instructing you not to argue about the
2 authority --

3 MR. SCHIFF: I'm not gonna argue.

4 THE COURT: -- of the IRS to collect taxes anymore.

5 MR. SCHIFF: But he has no authority to say "full levy"
6 when there's --

7 THE COURT: Well, that's a different issue.

8 MR. SCHIFF: All right. All right.

9 THE COURT: But --

10 MR. SCHIFF: I'll just do that and I'll sit down.

11 THE COURT: All right. Wait a minute.

12 MR. BOWERS: Okay, Judge -- that's -- that statement's
13 been recorded, Irwin. He might hold you to that.

14 MR. SCHIFF: I'll -- I'll do it. They are taking a
15 hundred percent of my Social Security.

16 (Sidebar conference concluded and the
17 following is held in open court:)

18 THE COURT: Okay. First the instruction --

19 MR. SCHIFF: Okay.

20 THE COURT: -- the requested instruction.

21 MR. SCHIFF: Okay.

22 THE COURT: Ladies and gentlemen of the jury, the Court
23 informs you that the Internal Revenue Service has the authority
24 to enforce and administer the Internal Revenue laws of the
25 United States.

1 MR. SCHIFF: Okay.

2 THE COURT: The jury has a question here. And it is
3 this: "What is the difference between a Notice of Levy and a
4 Notice to Seizure?" That's the first question.

5 Second question, "Are they the same document?"

6 I won't read the rest of the question. I think it
7 might be prejudicial. So I won't read it.

8 MR. BOWERS: Your Honor, may counsel approach at
9 sidebar --

10 THE COURT: You may.

11 MR. BOWERS: -- to find out what the rest of that
12 question is?

13 THE COURT: Yes.

14 (Sidebar conference was held as follows:)

15 (Note given to counsel to review.)

16 THE COURT: That's from one juror. I don't want all
17 the rest of the jurors to --

18 MR. IGNALL: Fair enough.

19 MR. BOWERS: Thank you, Judge.

20 THE COURT: -- jump on the --

21 MR. SCHIFF: Let's see it.

22 THE COURT: -- bandwagon.

23 MR. CRISTALLI: I'm confused about the difference too.

24 THE COURT: Well --

25 MR. BOWERS: All of us are.

1 MR. CRISTALLI: Yeah. Irwin, here.

2 MR. LEVENTHAL: You should read it. Let Irwin look at
3 that.

4 MR. BOWERS: Here.

5 THE COURT: Yeah, here you go.

6 (Pause in the proceedings.)

7 MR. SCHIFF: I could answer this question.

8 MR. BOWERS: The problem is, is you cannot --

9 MR. IGNALL: You could testify.

10 MR. SCHIFF: I'll answer this.

11 THE COURT: No, you can't answer this. It's not to
12 you.

13 MR. IGNALL: Well, your Honor --

14 MR. LEVENTHAL: Not right now. We'll get to that.

15 MR. NEIMAN: I think one of our problems --

16 MR. SCHIFF: I'll answer it. It's right --

17 MR. LEVENTHAL: No, no. We'll do it when you get up
18 there.

19 THE COURT: I'm asking it to the witness.

20 MR. IGNALL: Okay.

21 MR. SCHIFF: I'll answer. If you want me to answer --

22 THE COURT: No, I don't want you to answer.

23 (Sidebar conference concluded and the
24 following is held in open court:)
25

1 BY MR. SCHIFF:

2 Q. Um, Mr. -- Mr. Talley --

3 THE COURT: Wait a minute. I'm gonna ask the
4 witness --

5 MR. SCHIFF: I'm sorry.

6 THE COURT: -- to clarify this --

7 BY MR. SCHIFF:

8 Q. Mr. Talley --

9 THE COURT: -- since this is a question that should be
10 asked -- can be asked.

11 What is the difference between a Notice of Levy and a
12 Notice of Seizure?

13 THE WITNESS: The Notice of Seizure is used when we're
14 taking property from a taxpayer.

15 THE COURT: Is it used at the time of the seizure?

16 THE WITNESS: Yes, sir, it is.

17 THE COURT: And a copy handed to the taxpayer?

18 THE WITNESS: It is required to be handed to him, yes,
19 sir.

20 THE COURT: Okay.

21 And now a Notice of Levy.

22 THE WITNESS: Uh, notice of a levy is sent to a holder
23 of a taxpayer's property/accounts.

24 THE COURT: Like a bank or --

25 THE WITNESS: That is correct. A copy of the levy is

1 provided to the taxpayer, not necessarily the same date, but
2 mailed to him a few days later.

3 THE COURT: They are -- are they the same document?
4 That's --

5 THE WITNESS: No, sir, they are not.

6 THE COURT: All right. So those are the questions.
7 Thank you.

8 BY MR. SCHIFF:

9 Q. Isn't the reason is that when -- when a Notice of Levy is
10 sent to a bank the agent doesn't go into the bank and grab the
11 property. So -- so it's not seized. So no Notice of Seizure is
12 given?

13 A. Well --

14 Q. But when you took my money when I was --

15 THE COURT: Let him answer the question.

16 BY MR. SCHIFF:

17 Q. You don't seize it.

18 THE COURT: Wait. He's -- the question is already
19 there. Let him answer it.

20 THE WITNESS: No. I'm -- I'm giving the bank a Notice
21 of Levy that I expect them to honor and send back so that I
22 don't have to go and do that.

23 BY MR. SCHIFF:

24 Q. So you don't seize anything?

25 A. No.

1 Q. But when you take a car you seize it?

2 A. Yes.

3 Q. So, therefore, Notice of Seizure is given?

4 A. Um-hum. That's correct.

5 Q. My understanding --

6 A. Mr. -- Mr. Schiff --

7 Q. All right. Let's --

8 A. -- so that you will understand it better, the Notice of

9 Levy, the Form 2433, is used in conjunction with a levy, the

10 688 -- uh, 668-B.

11 Q. Well, why would it have to be -- you're telling me two

12 documents are mailed out?

13 A. Actually, more.

14 Q. I never saw it. Okay. I never saw it.

15 In any case, in any case --

16 A. In your case, Mr. Schiff, I -- I personally handed them to

17 you.

18 Q. Um, but you mentioned something about a continuous levy.

19 You said -- when you sent the Notice of Levy to the Social

20 Security Administration to take my entire monthly paycheck --

21 uh, benefit, you used what is known as a continuous levy; is

22 that correct?

23 A. Is it a 668-W?

24 Q. 668-WC. Yeah, here it is.

25 A. That is right. It would be continuous.

1 Q. And this is the continuous levy; is that correct?

2 A. Yes, sir.

3 Q. Okay. What is the difference between a continuous levy and
4 a levy that's not continuous?

5 A. A continuous levy is one that stays in effect until a
6 release is issued by the Internal Revenue Service. The --
7 that's where we use the "W." And, when we use the 668-A, that
8 is a one-time levy.

9 Q. Um, how -- how would -- how would that work if you sent a
10 levy to a bank? So you send a levy -- Notice of Levy to a bank
11 and they turn over whatever money is in the account. Right?

12 But if the --

13 A. That levy would attach to whatever funds are in the account
14 the date of receipt.

15 Q. But the next --

16 A. Were you to make a deposit two days later, that levy would
17 not attach to it.

18 Q. Right.

19 So a continuous levy stays there --

20 A. That is correct.

21 Q. -- and -- okay.

22 Now, are there special provisions with respect to a
23 continuous levy in the Internal Revenue Code? Are there special
24 contingence [sic] -- special contingent [sic] -- are there
25 special conditions -- conditions in connection with the

1 continuous levy as --

2 A. I believe --

3 Q. -- you recall?

4 A. -- there are. Yes, sir.

5 Q. There is?

6 A. I believe there are.

7 Q. What -- what do you recall the special condition is?

8 A. There are several. Which...

9 Q. All right. Well, if I gave you -- if I showed you the
10 section of the code --

11 A. Okay.

12 Q. -- that deals with the continuous levy, would that refresh
13 your -- oh, you've got the Code.

14 A. Right. Which section?

15 Q. It's Section 6331(h)(1). What does it say with respect to a
16 continuous levy?

17 THE COURT: (h)(1)?

18 MR. SCHIFF: Yes.

19 THE COURT: As cross-conference?

20 MR. SCHIFF: "Continuing levy on certain payments."

21 THE COURT: Are you following, Mr. Talley?

22 THE WITNESS: Are you referring to the paragraph that's
23 entitled "Specific [sic] payment"?

24 BY MR. SCHIFF:

25 Q. "Continuing levy on certain payments," yes, that's what I'm

1 referring to?

2 A. Oh, (h). I thought you said (1).

3 Q. No. (h)(1).

4 A. Oh, just (h)(1).

5 "In general. If the Secretary approves a levy
6 under" -- "under this subsection, the effect of such levy on
7 specified payments to or received by a taxpayer shall be
8 continuous from the date such levy is first made until such levy
9 is released."

10 Q. Continuing. It's continuing.

11 A. "Notwithstanding section 6334, such continuous levy shall
12 attach to up to 15 percent of any specified payment [uh] due to
13 the taxpayer."

14 Q. So the most that you can take with a continuous levy is
15 15 percent; is that correct?

16 A. No, sir, it's not.

17 Q. It's not?

18 A. No, sir.

19 Q. Where does it say you can take more?

20 A. Mr. Schiff, you are selecting certain portions of the Code.

21 Q. When -- when you sent this levy to the Social Security --

22 A. I'm aware -- I'm aware of that.

23 Q. -- this is a government document, 289.

24 A. I'm aware of that. I sent it.

25 Q. Okay.

1 -- did you write "full" on it?

2 A. No, I did not write "full."

3 Q. Well, then who wrote that?

4 A. I put "no exemption satisfied" -- "no exemptions authorized,
5 satisfied by other means." I have no idea who wrote "full" on
6 it.

7 Q. You have no idea who wrote "full"?

8 A. No.

9 Q. But they are taking the full --

10 A. The very nature of the form itself makes it continuous.

11 Q. Yeah. But they are taking the full amount of my pay; is
12 that right?

13 A. That was my intent then; it's my intent --

14 Q. Okay.

15 A. -- now.

16 Q. Well, can you show me anywhere in this Code book where you
17 are authorized to use a Notice of Levy to take the full amount
18 of my Social Security benefit?

19 A. I can't go through the Code book and show you right now, but
20 I can explain to you what you're doing.

21 Q. Isn't it a fact that there is no such law and that you're
22 simply confiscating a hundred percent of my Social Security
23 because I can't do anything about it? Isn't --

24 A. You're wrong.

25 Q. -- that what you're doing? You're stealing a hundred

1 percent --

2 THE COURT: Wait a minute.

3 MR. SCHIFF: There is no law that allows him to do it.

4 MR. NEIMAN: Your Honor --

5 THE COURT: You're making a speech and you --

6 MR. SCHIFF: Yeah, I'm making a speech.

7 THE COURT: -- you have given a compound question.

8 MR. SCHIFF: He just denied writing "full." And that's

9 his --

10 THE COURT: Mr. Schiff, control yourself. You have

11 asked him a question. He is -- was attempting to answer --

12 MR. SCHIFF: All right.

13 THE COURT: -- when you started yelling at him.

14 MR. SCHIFF: All right. I'm sorry.

15 BY MR. SCHIFF:

16 Q. You said --

17 MR. NEIMAN: Your Honor --

18 BY MR. SCHIFF:

19 Q. -- when you testified --

20 MR. NEIMAN: -- The Government is -- we're gonna renew

21 what was discussed at sidebar to some extent that Mr. Talley is

22 acting within the authority given to him by Congress.

23 MR. SCHIFF: Okay.

24 MR. BOWERS: Well, wait. Yeah. I have --

25 MR. CRISTALLI: I don't know that that's --

1 THE WITNESS: Mr. Schiff --

2 MR. CRISTALLI: -- I don't know that that's -- I don't
3 disagree with what we've discussed in terms of, you know, the
4 Court directing the jury on the law. I'm not quite sure,
5 though, if that's the situation in this particular instance.

6 MR. SCHIFF: I'm asking Mr. Talley --

7 THE WITNESS: Mr. Schiff, the title of this Section (h)
8 is "Continuous [sic] levy on certain payments." Don't pertain
9 to everything.

10 BY MR. SCHIFF:

11 Q. You said to me -- you said that you had discretion to do
12 certain seizures. Didn't you say that?

13 A. No, I said I had certain -- well --

14 Q. Can you show me in the law -- uh, isn't your job to obey the
15 law?

16 A. It's not my job; it's my duty.

17 Q. Your duty is to obey the law.

18 THE COURT: You're arguing with the witness now.

19 MR. SCHIFF: Okay.

20 THE COURT: Ask him --

21 BY MR. SCHIFF:

22 Q. Do you know any law in that Code book or in the
23 regulations --

24 (Discussion between Mr. Leventhal and
25 Mr. Schiff.)

1 MR. SCHIFF: I'm sorry. I'm sorry.

2 BY MR. SCHIFF:

3 Q. Can you cite me any law or any regulation that allows the
4 IRS to use the continuous levy to take a hundred percent of
5 wages -- let me backtrack.

6 Have you used a continuous levy to take more than
7 15 percent of wages?

8 A. Yes, sir.

9 Q. Have you used a continuous levy to take -- well, you have.

10 So you admit that you've used a continu- -- how many
11 times have you done that?

12 A. Well, numerous times.

13 Q. Numerous times.

14 A. Yeah. Yes, sir.

15 Q. So numerous times you've used a continuous levy to take more
16 than 15 percent --

17 A. Yes, sir.

18 Q. -- even though the statute specifically limits a continuous
19 limit to 15 percent?

20 A. To certain --

21 MR. NEIMAN: Objection --

22 BY MR. SCHIFF:

23 Q. Could you show me --

24 MR. NEIMAN: -- mischaracterization of the statute.

25 THE COURT: Sustained. Mischaracterization --

1 MR. SCHIFF: Okay.

2 THE COURT: -- of the statute.

3 MR. SCHIFF: Okay.

4 BY MR. SCHIFF:

5 Q. Can you show me any statute that allows you to use a
6 continuous levy to take more than 15 percent of anybody's wages
7 or of anybody's pension benefits?

8 MR. NEIMAN: Same objection, your Honor.

9 BY MR. SCHIFF:

10 Q. Can you cite that statute?

11 MR. BOWERS: Well, I'm gonna have to help Mr. Schiff on
12 this. The objection was that mischaracterizes the statute.
13 This can't be the same objection because he's not --

14 THE COURT: He attempted to answer before. I'm gonna
15 allow him to answer.

16 THE WITNESS: I believe 6331 gives me that authority.

17 BY MR. SCHIFF:

18 Q. Where?

19 A. In 6331, Mr. Schiff.

20 Q. How -- how -- all right. Can you explain to me how you
21 believe that?

22 A. Because -- because the 15 percent that you had me to read
23 here pertains to certain payments.

24 Q. What?

25 A. Pertains to certain payments.

1 Q. Well, what -- what kind of payments can you take more than
2 15 percent? If -- if the statute limits a continuous levy to
3 15 percent of the payment, how can you believe that the statute
4 allows you to take more than 15 percent?

5 MR. NEIMAN: Your Honor --

6 BY MR. SCHIFF:

7 Q. Explain that to me. I --

8 MR. NEIMAN: -- objection again. It's a
9 mischaracterization. We would ask for a sidebar. We -- we
10 could explain this.

11 MR. SCHIFF: I mean, I'm just an ordinary --

12 THE COURT: Sidebar.

13 MR. SCHIFF: -- citizen who reads the law.

14 (Sidebar conference was held as follows:)

15 MR. IGNALL: Your Honor, is everyone here?

16 THE COURT: Do we have everyone here?

17 MR. IGNALL: Your Honor, I think we want a further
18 instruction to Mr. Schiff that he can't raise with any witness
19 that the -- any IRS section is illegal. If that's a contention
20 he makes, he can raise that to the Court or when he testifies he
21 can say that somehow he believed this. But to try and go into
22 what's legal and what's not legal with the witness, invades in
23 the province the Court and it allows him to confuse the jury as
24 we understood from that --

25 MR. SCHIFF: I -- I didn't say they had no author- -- I

1 said the statute clearly limits --

2 MR. BOWERS: He can't --

3 MR. IGNALL: You can't --

4 MR. SCHIFF: To 15 percent, doesn't it?

5 MR. IGNALL: It doesn't and we'll explain why. I

6 think --

7 MR. CRISTALLI: Okay. Well, let's do that.

8 MR. IGNALL: -- and I think we need an instruction to

9 the jury on why this is wrong.

10 THE COURT: Okay. All right.

11 MR. BOWERS: I object to an instruction to the jury.

12 THE COURT: What?

13 MR. CRISTALLI: We don't know yet. Let's -- I mean,

14 I -- I would like -- to be honest with you, I'm --

15 MR. IGNALL: The relevance of this case to this case is

16 beyond me to begin with. But, leaving that aside, under 6331 --

17 MR. CRISTALLI: 6331. Okay, Dave. Correct.

18 MR. IGNALL: -- (h) is what Mr. Schiff's talking about.

19 MR. CRISTALLI: Correct.

20 MR. IGNALL: It says certain payments.

21 MR. CRISTALLI: Wait. Where are you?

22 MR. IGNALL: (h)(1).

23 MR. SCHIFF: Continuous levy. It says 15 percent.

24 MR. IGNALL: I'm on specified payments. Specified --

25 MR. CRISTALLI: Yeah, specified.

1 MR. IGNALL: -- payments --

2 MR. CRISTALLI: That's two. That's two.

3 MR. IGNALL: No. (1) limits 15 percent --

4 MR. CRISTALLI: Right.

5 MR. IGNALL: -- specified payments. Specified payments
6 are then identified --

7 MR. CRISTALLI: Right.

8 MR. IGNALL: -- in (h)(2).

9 THE COURT: Right.

10 MR. CRISTALLI: Right.

11 MR. SCHIFF: But that -- that's the provision for --

12 MR. IGNALL: And the Social Security --

13 MR. SCHIFF: -- continuous levy.

14 MR. IGNALL: Social Security and wages and whatever
15 other things that Mr. Talley has levied a hundred percent on are
16 not included in (2), which is a cross-reference to 6334(a).

17 THE COURT: Right.

18 MR. BOWERS: Well --

19 MR. IGNALL: If the Court wants to look at that more
20 closely --

21 MR. CRISTALLI: Make the payments --

22 MR. IGNALL: -- before instructing --

23 MR. BOWERS: Hold on a minute.

24 Is Social Security considered --

25 MR. CRISTALLI: Wait a second.

1 THE REPORTER: I'm sorry? If you were making an
2 objection [sic], I didn't hear you.

3 MR. BOWERS: The objection was just the objection. Now
4 it's question. Um...

5 MR. IGNALL: I'm wondering if we could address that to
6 the jury right now?

7 MR. SCHIFF: How could someone --

8 MR. IGNALL: But I do want an instruction -- the
9 Government does request an instruction that Mr. Schiff --

10 MR. CRISTALLI: I just need for Mr. Schiff --

11 MR. SCHIFF: Listen. I --

12 MR. IGNALL: -- do not --

13 MR. SCHIFF: -- asked --

14 MR. IGNALL: -- illegal --

15 THE REPORTER: I'm sorry.

16 MR. IGNALL: -- that any IRS action is illegal with any
17 witness. If he wants to say what he believes when he takes the
18 stand, that's fine.

19 MR. CRISTALLI: He wrote "full levy." I'm asking him
20 where is there a provision for a full levy.

21 THE COURT: And he's told you, in 6331.

22 MR. SCHIFF: Where?

23 THE COURT: In the earlier sections.

24 MR. SCHIFF: Where? That's a continuous levy. But
25 there are two kinds of levies: one is continuous. So there was

1 restrictions on a continuous levy because they know it's for
2 wages or pension benefits, so they limit the amount you can
3 take.

4 THE COURT: No. You're just arguing with him.

5 MR. CRISTALLI: Well, your Honor, I have a concern
6 because I'm confused. And forgive my ignorance because I'm not
7 a tax lawyer or a tax expert. But I don't know -- I haven't --
8 I don't see that it has been established that this witness did
9 do what he was supposed to do according to the law. And, if he
10 didn't do what was supposed to do according to law, then it's
11 fair game for cross-examination.

12 Okay. Well, I don't know. I mean, I just need some --

13 MR. IGNALL: That's -- that's a legal issue that I
14 think needs to be raised with the Court.

15 MR. BOWERS: Well, no, because --

16 MR. CRISTALLI: But if he --

17 MR. BOWERS: No, no, no, because this witness testified
18 as to what his understanding of the proper --

19 MR. IGNALL: Yes.

20 Does he --

21 MR. BOWERS: -- IRS procedures in law were. So --

22 MR. IGNALL: -- does he understand that --

23 MR. BOWERS: Okay.

24 MR. IGNALL: -- he was acting within the law? Yes. If
25 he's --

1 MR. SCHIFF: How do you know?

2 MR. IGNALL: He said that he did. You can ask him if
3 he said that.

4 MR. SCHIFF: But the law --

5 MR. BOWERS: Well --

6 MR. SCHIFF: -- says 15 percent.

7 THE COURT: No. It's -- that's argument.

8 MR. IGNALL: You can raise that --

9 MR. BOWERS: Wait a second.

10 MR. IGNALL: -- with the Court.

11 MR. BOWERS: Hold on a second.

12 If this --

13 MR. IGNALL: I have no --

14 MR. BOWERS: -- if this is coming from any other party
15 or attorney other than Irwin and the presumption was that there
16 was a good-faith basis for -- for asking him these questions
17 that might come out of a misunderstanding of the law, you'd let
18 it happen. Now, I'm not saying that means Irwin gets to do it.
19 But --

20 THE COURT: No.

21 MR. BOWERS: -- we should have an opportunity to look
22 at it.

23 THE COURT: Well, it's -- the specified payments are
24 defined right here. And -- and there are --

25 MR. SCHIFF: It says "notwithstanding."

1 THE COURT: -- there are other sections here that
2 allow --

3 MR. BOWERS: There are a number of other sections
4 that --

5 THE COURT: -- repeated levies --

6 MR. SCHIFF: But -- but --

7 THE COURT: -- all through here.

8 MR. SCHIFF: -- but, your Honor, are they making a
9 specific -- then you're saying that 15 percent doesn't mean
10 anything.

11 THE COURT: It means that with respect to specified
12 payments.

13 MR. SCHIFF: Well, what payments? What's specified?

14 THE COURT: It says right here.

15 MR. SCHIFF: Okay. Let's see it.

16 MR. IGNALL: I don't want an instruction on that right
17 now.

18 MR. SCHIFF: Can I see it? I mean, I -- I know it's
19 limited to 15 percent.

20 THE COURT: Railroad Retirement Act. It's on here.

21 MR. SCHIFF: No, no, no, no. Here. Here. No levy --
22 it says continuous levy. Okay. There's one other thing.

23 MR. IGNALL: But I still think it's inappropriate for
24 Mr. Schiff --

25 MR. SCHIFF: Wait --

1 MR. IGNALL: -- or any lawyer --

2 MR. SCHIFF: -- a minute.

3 MR. IGNALL: -- to argue the law --

4 MR. SCHIFF: Specified -- the purpose of --

5 MR. IGNALL: -- in order --

6 THE REPORTER: I can't hear --

7 MR. SCHIFF: -- "any Federal payment other than ...

8 payment for which eligibility is based on the income or assets

9 (or both) of a payee,

10 "... any payment described in paragraph (4), (7), [or]

11 (9)" -- well, let's look. Just a second.

12 MR. CRISTALLI: My only concern with regard to, um, the

13 statement that was just made by the Government is that, for

14 example, if you have a police officer who -- there's a law on

15 the books and a police officer violates the law, the law is

16 clear, then that's certainly gain for cross-examination. If --

17 if the law is 15 percent -- and I don't know that it is or

18 not -- and he didn't comply with that law, then it's fair game

19 for cross-examination. That's my only -- that's my only --

20 MR. SCHIFF: Well, I mean, I have --

21 MR. IGNALL: Even with a police officer, you wouldn't

22 be able to --

23 MR. SCHIFF: The only exclusions are --

24 MR. IGNALL: -- did you follow the law? Yeah.

25 MR. SCHIFF: Well, I know --

1 MR. CRISTALLI: You can't --

2 MR. SCHIFF: -- it applies.

3 THE COURT: He's debating with the witness as to what
4 the law is. That's --

5 MR. SCHIFF: Well, the law is clear to me.

6 THE COURT: Well, that's why we're here.

7 MR. SCHIFF: Well, it's 15 percent. I mean...

8 THE COURT: No.

9 MR. BOWERS: That wasn't the best response.

10 MR. SCHIFF: This is designed to --

11 THE COURT: It's specified payments.

12 MR. SCHIFF: Well, here. Now, it eliminates certain
13 payments. Well, I can -- I can unravel it if -- but I'm all
14 screwed up here.

15 But it says exceptions. The only exceptions -- these
16 are -- shall not apply to a tax professional (mumbling)
17 secondary (mumbling) which waives the restriction imposed by --
18 I didn't waive it. Secondary fines with the exception
19 (mumbling) is jeopardy. They haven't stated -- substance shall
20 not apply to any levy occur in Section 6402. Well, let's look
21 at 6402.

22 MR. IGNALL: It's still not relevant one way or the
23 other.

24 MR. SCHIFF: It is relevant. They are taking a hundred
25 percent of my Social Security.

1 THE COURT: Well --

2 MR. SCHIFF: They've taken 60 grand already.

3 THE COURT: -- he believes that he's legally entitled

4 to do it.

5 MR. SCHIFF: Well, if I believe I am legally entitled

6 to --

7 THE COURT: You can -- you can bring it up if --

8 MR. SCHIFF: First of all, your Honor, he said he

9 doesn't believe -- I have that tape. He's not being forthright.

10 He said he doesn't remember me having --

11 THE COURT: Well, your whole point is -- with that was

12 just a subterfuge to say you didn't produce according to summons

13 and there were no consequences. So what? I spat and there were

14 no consequences this morning.

15 MR. SCHIFF: But --

16 THE COURT: So what?

17 MR. SCHIFF: -- but the Second Circuit ruled in that

18 case that --

19 THE COURT: The Second Circuit is not the Ninth

20 Circuit. So it's not binding precedent. And I'm not sure it

21 says what you say it says.

22 MR. SCHIFF: Well, I'll give you the case.

23 THE COURT: I got the case already. I've got it -- the

24 citation.

25 MR. SCHIFF: It says nothing will happen if you don't

1 comply with an IRS summons.

2 THE COURT: Well --

3 MR. SCHIFF: That's what they said. The IRS didn't
4 like it.

5 THE COURT: Mr. Schiff, the reason we're here is
6 because of your interpretation of the laws. That's why we're
7 here.

8 MR. CRISTALLI: Your Honor, there is a -- there is a
9 provision in here, though, that identifies, um --

10 MR. BOWERS: One of the exemptions is Social Security
11 payment potentially --

12 MR. CRISTALLI: I just don't --

13 THE REPORTER: "Potentially" what?

14 MR. BOWERS: Potentially -- one of the -- paragraph (h)
15 limits certain payments that can't be paid -- that can't be
16 seized over a certain amount and we sorta dismissed those
17 because it wasn't a railroad or whatever.

18 THE COURT: Right.

19 MR. BOWERS: The paragraphs that you referred to at a
20 later Code section appear to actually maybe be a Social Security
21 payment, which he's talking about which would make him right
22 surprisingly enough.

23 MR. IGNALL: Regardless, I don't think it's appropriate
24 to question the witness about what the law is --

25 THE COURT: It isn't.

1 MR. IGNALL: -- whether the IRS does it legally or
2 illegally. It's a legal matter for the Court.

3 THE COURT: That's right.

4 MR. BOWERS: He's testified to --

5 MR. SCHIFF: I know they can't take more than 15
6 percent.

7 MR. BOWERS: The IRS --

8 MR. SCHIFF: Well --

9 MR. BOWERS: -- that's the problem --

10 MR. SCHIFF: -- if you want me to give you an analysis
11 of this, I'll bring it in tomorrow.

12 MR. IGNALL: Okay.

13 MR. SCHIFF: I'll -- I'll unravel it.

14 THE COURT: Well, we're -- we're at the break time.

15 So --

16 MR. SCHIFF: Maybe I'll unravel it during the break.

17 THE COURT: You know, I'm not gonna let you argue
18 with -- with these people over the law on some, you know --

19 MR. SCHIFF: They're taking a hundred percent of my
20 Social Security; they are not entitled to do it. He wrote "full
21 levy" --

22 THE COURT: That's not what this case is about, them
23 taking your social security.

24 MR. SCHIFF: That's part of it.

25 THE COURT: No, it's not. That's the problem. It's

1 not relevant. You're just bringing up side issues.

2 MR. SCHIFF: The Government is bringing up. The
3 Government brought up the civil -- the civil case, the
4 Government is bringing up my probation violation.

5 THE COURT: For notice. That is relevant.

6 MR. IGNALL: For notice, yes, your Honor.

7 THE COURT: Yeah, it is relevant for notice.

8 MR. SCHIFF: Well, everything is relevant.

9 (Sidebar conference concluded and the
10 following is held in open court:)

11 BY MR. SCHIFF:

12 Q. I got one more question. I got one more question.

13 A. Yes, sir.

14 Q. With respect to the continuous notice, right, which is
15 covered -- you still got the Code section there --

16 A. Uh...

17 Q. -- with respect to the continuous levy?

18 A. Yes, sir.

19 Q. Can you read the first line?

20 MR. NEIMAN: Your Honor, isn't this what we just
21 addressed at sidebar?

22 THE COURT: It is.

23 MR. SCHIFF: I'm gonna -- it's my last question.

24 THE COURT: It is.

25

1 BY MR. SCHIFF:

2 Q. Can you just read the first line?

3 A. The first line in section (h) --

4 Q. Yes.

5 A. -- subsection (h)? "Continuing levy on certain payments."

6 Q. Continue reading.

7 THE COURT: No. We've just gone over this.

8 BY MR. SCHIFF:

9 Q. Well, can you -- can you continue --

10 THE COURT: You're arguing with the Court. If you want

11 to ask him a question about how he --

12 MR. SCHIFF: I just want --

13 THE COURT: -- interprets the law, you may do you that.

14 You're not going to --

15 MR. SCHIFF: Okay.

16 THE COURT: -- have him --

17 BY MR. SCHIFF:

18 Q. I -- how do --

19 THE COURT: -- pick sections out that suit you.

20 What is your question?

21 BY MR. SCHIFF:

22 Q. Mr. Talley, did you ever hear of pocket commissions?

23 A. Yes, sir.

24 Q. How many kinds of pocket commissions does the IRS issue?

25 A. I have no --

1 MR. NEIMAN: I'm gonna object to relevance.

2 THE COURT: What is the relevance of this?

3 MR. SCHIFF: It's very relevant.

4 THE COURT: Well, you can't say "it's very relevant."
5 Is there any evidence --

6 MR. SCHIFF: Well, I can tell you --

7 THE COURT: -- that that has --

8 MR. SCHIFF: -- why it's relevant.

9 THE COURT: -- happened in this case?

10 MR. SCHIFF: Well, I wanna ask him what kind of a
11 pocket commission he has.

12 MR. NEIMAN: Your Honor, this is the same -- going
13 along to the exact same thing we were discussing at sidebar.

14 THE COURT: Yes. Sustained.

15 MR. SCHIFF: I have -- I have a copy -- I just wanna
16 ask him what kind of a pocket commission he has.

17 THE COURT: Sustained.

18 (Discussion between Mr. Leventhal and
19 Mr. Schiff.)

20 THE COURT: Sustained.

21 MR. SCHIFF: Pardon me?

22 THE COURT: Sustained. You can't ask him.

23 MR. SCHIFF: I can't ask him what kind of --

24 THE COURT: No.

25 MR. SCHIFF: -- a pocket commission? Can I -- can we

1 take a break?

2 THE COURT: We just did. We've just done two of them.

3 You told me you were gonna ask one more question about the --

4 MR. SCHIFF: Well, I was gonna ask him to read --

5 THE COURT: -- the Social Security --

6 MR. SCHIFF: -- the first line.

7 THE COURT: -- and you didn't. You --

8 BY MR. SCHIFF:

9 Q. All right. Let me ask --

10 THE COURT: -- you told me a half hour ago one more --

11 MR. SCHIFF: Okay.

12 THE COURT: -- question.

13 MR. SCHIFF: Well, how long did he testify against me?

14 You've got all kinds of --

15 BY MR. SCHIFF:

16 Q. When the IRS raided me, when you raided me, and you said

17 that some of your colleagues came along, how many special agents

18 showed up? How many special agents were there?

19 A. I had started out with two. I don't know -- I don't

20 remember how many ended up --

21 Q. Do you have --

22 A. -- there.

23 Q. Can you make a guess?

24 A. I'd say about six or seven.

25 Q. Wasn't it more like ten?

1 A. Possible.

2 Q. Okay. And as a result -- incidentally, when you seized my
3 car, the car was on private property, wasn't it?

4 THE COURT: Mr. Schiff, will you stay on track, please?

5 MR. SCHIFF: Okay, okay.

6 BY MR. SCHIFF:

7 Q. When you seized my car, the car was on private property,
8 wasn't it?

9 MR. NEIMAN: Objection. Relevance. Same --

10 MR. SCHIFF: The relevance is -- well, it's relevant.
11 He brought it up.

12 THE COURT: How is it relevant?

13 BY MR. SCHIFF:

14 Q. It was -- the car was on private property, wasn't it?

15 THE COURT: What is the relevance of whether or not it
16 was on private --

17 MR. SCHIFF: The relevance --

18 THE COURT: -- or public property?

19 MR. SCHIFF: -- is they didn't have a search warrant.
20 It was illegal.

21 MR. NEIMAN: Your Honor, objection. And we're gonna --
22 Government has the same concern addressed at sidebar.

23 MR. SCHIFF: Well, he's bringing all this stuff up.

24 And when I try to prove that it's all illegal --

25 THE COURT: Mr. Schiff, it is not your position,

1 again --

2 BY MR. SCHIFF:

3 Q. Mr. Talley --

4 THE COURT: Mr. Schiff, it is not your position to make
5 statements about what the law is.

6 MR. SCHIFF: I --

7 THE COURT: You are not testifying; you are
8 cross-examining.

9 MR. SCHIFF: All right.

10 BY MR. SCHIFF:

11 Q. As a result of that, didn't the government charge me with
12 three specific crimes?

13 A. I don't recall what crimes you were charged with --

14 Q. You don't recall?

15 A. -- or how many. No, sir.

16 Q. They booked me that night and they charged me with --

17 THE COURT: You can't testify.

18 BY MR. SCHIFF:

19 Q. But they did charge me with certain crimes; is that correct?

20 A. Mr. Schiff, I was not a party to that. I don't know.

21 Q. And were you aware that the government dropped all those
22 charges?

23 A. I believe the charges were dropped.

24 Q. And were you aware that I reported my car stolen by the IRS
25 to the -- to the authorities?

1 A. No. I'm not aware of --

2 MR. NEIMAN: Objection.

3 THE WITNESS: -- what you did.

4 MR. NEIMAN: He's testifying.

5 BY MR. SCHIFF:

6 Q. If I had purchased another car --

7 THE COURT: You are testifying --

8 MR. SCHIFF: All right, all right.

9 THE COURT: -- Mr. Schiff. I've warned you over and

10 over.

11 MR. SCHIFF: Okay.

12 BY MR. SCHIFF:

13 Q. If I had purchased another car and put it in my own name,

14 you would have seized it again; is that right?

15 A. Probably.

16 Q. Well, wouldn't I have been stupid to buy another car so you

17 could seize? Wouldn't that have been stupid?

18 MR. NEIMAN: I'm gonna object to --

19 THE WITNESS: Would you like --

20 MR. NEIMAN: -- argumentative and --

21 THE COURT: Argumentative.

22 MR. NEIMAN: -- spare the witness.

23 THE COURT: Sustained.

24 BY MR. SCHIFF:

25 Q. Okay. So somebody bought a car for me, they paid for it,

1 and I leased it for [sic] them --

2 THE COURT: You're testifying --

3 BY MR. SCHIFF:

4 Q. -- from them.

5 THE COURT: -- again. I've warned you --

6 MR. SCHIFF: Well --

7 THE COURT: -- not to testify.

8 BY MR. SCHIFF:

9 Q. Well, I'm asking: Isn't that what happened?

10 THE COURT: That is not a question. That's a
11 statement.

12 BY MR. SCHIFF:

13 Q. That's why the car was licensed in Pennsylvania when I
14 leased it from them.

15 THE COURT: You're testifying.

16 BY MR. SCHIFF:

17 Q. Well, isn't that why --

18 THE COURT: I've warned you not to testify.

19 BY MR. SCHIFF:

20 Q. Now, when you said I didn't use my Social Secure [sic]
21 number when I opened up that account, I didn't use a Social
22 Security number period. The form didn't ask me for a Social
23 Security number.

24 THE COURT: You're testifying, sir.

25

1 BY MR. SCHIFF:

2 Q. Did the form ask me for Social Security number?

3 A. May I look at it again?

4 Q. Yes.

5 A. (Reviewing document.)

6 The form asks for a taxpayer ID.

7 Q. That's the taxpayer ID the IRS gave me. Didn't -- didn't
8 ask me for my Social Security number.

9 A. Social Security number could be an ID number.

10 Q. That's what they gave me. I don't know how I got it, but
11 that's what I got.

12 In any case, when the government -- when the Bank of
13 America turned over my money, were you aware that I sued the
14 Bank of America?

15 A. Yes, sir.

16 Q. And were you aware after I sued them that Bank of America
17 changed their deposit agreement?

18 A. No, I'm not aware of that.

19 Q. Oh. Were you aware that the statutes in the State of Nevada
20 require all banks, whether they are federal or state, not to
21 turn over any money except pursuant to a court order and a writ
22 of garnishment? Were you aware of that?

23 A. No, sir, I'm not.

24 Q. So you weren't --

25 MR. NEIMAN: Objection. Relevance.

1 THE COURT: Sustained.

2 BY MR. SCHIFF:

3 Q. You weren't aware of that?

4 A. No, sir.

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. Were you aware --

8 THE COURT: Mr. Schiff, you continue to ignore the
9 orders of the Court. You --

10 MR. SCHIFF: All right. No -- no further questions.

11 THE COURT: You have shown continuous disrespect.

12 MR. SCHIFF: No further questions, your Honor.

13 THE COURT: All right. We're going to take our recess
14 for the evening. We'll be in recess until 9:00 a.m., Ms. Clerk?

15 THE CLERK: Yes, sir.

16 THE COURT: The instruction not to discuss the case
17 among yourselves or with others or to read or view or listen to
18 any media accounts not to form any conclusions until all of the
19 evidence has been received is a continuing admonition.

20 Thank you.

21 (Jury leaves the courtroom at 4:33 p.m.)

22 MR. IGNALL: Your Honor --

23 THE COURT: Yes.

24 MR. IGNALL: -- may we address something with the Court
25 after the witness is excused?

1 THE COURT: Pardon?

2 MR. IGNALL: May we address something with the Court?

3 THE COURT: Yes.

4 MR. IGNALL: The witness can be excused first.

5 THE COURT: Yes.

6 Mr. Talley, you are excused.

7 (The witness leaves the courtroom.)

8 THE COURT: Okay. The witness is out of the courtroom.

9 Go ahead.

10 MR. IGNALL: Your Honor, I really think we need two
11 things that we mentioned at sidebar: one is an instruction to
12 Mr. Schiff that he cannot address the legal authority of the IRS
13 to do anything or whether an IRS action was legal or illegal in
14 any questioning. That's something that needs to be addressed to
15 the Court.

16 Now, if there was some circumstance that Mr. Schiff,
17 through his counsel, believed was appropriate for
18 cross-examination of a witness, I would recommend that the Court
19 ask Mr. Schiff to raise that with the Court to allow the Court
20 to rule on that before entering into any question like with a
21 witness.

22 Because I don't -- we had a little discussion at
23 sidebar in terms of whether a police officer could be
24 cross-examined about the law -- not necessarily what he believed
25 the law was but about the law to cross-examine the police

1 officer. And I don't see how that would be -- a police officer
2 who executes an illegal search that issue's raised with the
3 Court and the Court determines whether the evidence is
4 admissible or suppressible.

5 MR. BOWERS: Your Honor -- oh, I'm sorry.

6 MR. IGNALL: This is clearly confusing the jury. We've
7 got that question from the juror on a completely tangential
8 issue that I don't know what the relevance of that was to begin
9 with. It's a legal issue that Mr. Schiff himself was confusing.
10 That -- Mr. Talley's testimony was for notice that these actions
11 were taken; Mr. Schiff was aware of these collection actions;
12 and, because of that, he put his money and his assets in a place
13 that the IRS couldn't reach them. That's the point of that part
14 of the testimony.

15 Whether -- indeed, whether the IRS was legally or
16 illegally seizing his Social Security is not relevant to whether
17 he's evading the payment of the outstanding taxes. He's aware
18 of IRS collection efforts on just about everything he has and,
19 therefore, he's taken what he has and putting it in nominee
20 names, in a warehouse bank offshore, or whatever. So that
21 question in no way is relevant to Mr. Talley's cross-
22 examination.

23 And, again, I think we need -- and we'll work on this
24 overnight -- an instruction on some of the areas that Mr. Schiff
25 has confused. And I will admit I am no expert on the continuing

1 levy. But I'm hoping by tomorrow morning we'll be able to have
2 an instruction that we think is appropriate and comports with
3 the law.

4 But I think at this point we need an instruction to
5 Mr. Schiff that it's inappropriate to argue the law with any
6 witness or to argue that any IRS action was illegal. And,
7 indeed, that little bit about the pocket commission goes to the
8 authority of the IRS to do something. That's not relevant to
9 any issue in this case. It's a legal point that Mr. Schiff can
10 raise with the Court outside the presence, your Honor.

11 MR. BOWERS: Your Honor --

12 MR. IGNALL: Thank you.

13 MR. BOWERS: -- I'm gonna jump in here as quickly as
14 possible. I don't want to get in the position of where the
15 Court thinks --

16 MR. CRISTALLI: Just say it.

17 MR. BOWERS: Well, here -- here's the issue, Judge.

18 MR. CRISTALLI: Just say it.

19 MR. BOWERS: Everything they may say may be true in
20 certain circumstances. But they -- they put this witness up
21 here to offer far more than just simply, oh, I -- I instigated
22 this collection process. I mean, I -- I recall distinctly on
23 cross-examin- -- or on direct examination, at least at one
24 point, where he's testifying to his understanding of the law.

25 And also I wanna point out to the Court it's not as

1 simple as Mr. Ignall suggests. For example, he says if we had a
2 suppression hearing and a police officer or trooper or FBI agent
3 were testifying, we wouldn't ask him his understanding of the
4 law. Well, that's probably true.

5 But, if we had a police officer testifying about why he
6 arrested someone with respect to a battery or another crime, he
7 would provide a definition of the law which would include his
8 understanding. That is what this gentleman did. Now, if that's
9 not why the Government put him up there, that's okay. But he
10 ended up telling us that he is operating in a way that he
11 understands the law to be.

12 Now, I'm not saying I condone Mr. Schiff's methods or
13 that there's not a cleaner way to do this. But I think the
14 Court had it exactly right when it said you may question this
15 witness on his understanding of the law. Now, if the particular
16 law he's questioning him on isn't relevant, uh, if it's
17 prejudicial, if any of those things are happening, that's a
18 separate issue.

19 But I don't think it's appropriate for the Government
20 to put on a witness who offers his understanding of the law and
21 then us be stuck with a prohibition against asking that witness
22 about his understanding of the law based on any material at all,
23 particularly the law that he's supposed to have an understanding
24 of.

25 MR. CRISTALLI: And, your Honor, just to follow-up

1 hopefully very quickly, you know, I'm most interested in what
2 we're talkin' about here specifically and that's with regard to
3 6331, "Levy and distraint," and specifically as it relates to,
4 uh, whether or not the government is limited to a 15 percent and
5 whether or not this particular agent didn't comply with that
6 law.

7 If that's the case, it's absolutely gain for
8 cross-examination. We have an agent who hasn't complied with,
9 um, the law for which he is administering. Certainly, if I have
10 a police officer on the stand who hasn't complied with policy,
11 procedures, and/or the law which impeaches his credibility which
12 goes to -- in this particular case, it goes to bias and it goes
13 into the heart of the belief systems as they relate to the
14 defendants in this particular case. So --

15 THE COURT: Well, it depends on what the issues --

16 MR. CRISTALLI: -- so how --

17 THE COURT: Depends on what the issues in the case are
18 as to whether --

19 MR. CRISTALLI: Well --

20 THE COURT: -- it's relevant.

21 MR. CRISTALLI: -- if --

22 THE COURT: I mean, if the police officer, for example,
23 says I thought the speed limit was 35 and it was really --
24 you're able to point out it was 25, he didn't -- you know, he
25 didn't see it or -- or -- or read it wrong, that's -- it doesn't

1 really matter if -- if it's -- you know, in -- in a murder case.

2 And, basically, what we have here is we have -- we have
3 a question of what is the relevance of it even if he
4 misunderstood this particular law. Uh, the fact that he might
5 be exceeding his authority, I'm not convinced -- on the -- on
6 the levy -- is -- is really relevant to the issues --

7 MR. BOWERS: Well --

8 THE COURT: -- that are before the Court in this case
9 which are, uh, the -- the -- the willful --

10 MR. BOWERS: Your Honor, the -- I'm sorry.

11 THE COURT: -- attempt to defeat the taxing
12 authorities.

13 MR. BOWERS: Your Honor, it goes to, in this instance,
14 this witness's credibility. He -- he's up there as a witness
15 for the Government; he's relating his understanding of the law;
16 uh, and establishing through his understanding of the law, uh,
17 that he's right about these things and this is what he believes,
18 this is what he knows.

19 And, if in fact he's wrong about something of this
20 consequence -- now, I'm not condoning the way it was done. But
21 that should be fair game if he's up there saying this is my
22 understanding of the laws and I follow the law. And -- and, by
23 implication, people at the IRS follow the law and Mr. Schiff's
24 making arguments that are inappropriate because this isn't what
25 the IRS does and, in fact, he's wrong on that law, that needs to

1 be brought out.

2 THE COURT: Well --

3 MR. BOWERS: Now --

4 THE COURT: -- not all -- not all --

5 MR. SCHIFF: Your Honor --

6 THE COURT: -- failures to understand the law would
7 reflect on credibility. You're --

8 MR. SCHIFF: Your Honor --

9 THE COURT: -- I think you're -- you're overweighing,
10 uh, the importance of this. It is of marginal relevance to
11 the -- to the Government's burden of proof in this case. It
12 really doesn't have a lot to do with it other than you could
13 maybe show he -- he missed a step in another levy somewhere.
14 It -- so what? What --

15 MR. SCHIFF: Your Honor --

16 THE COURT: -- does that have to do with what is at
17 issue for the jury to decide? And, that is, the actions of
18 these parties. He's not on trial.

19 MR. SCHIFF: Your Honor, you heard him say that he has
20 discretion on whether to take more or less. There's no -- IRS
21 agents don't have discretion to --

22 THE COURT: He said that is his understanding of his
23 authority, and so that's what he said. Whether you like it or
24 not, uh, is another issue. If you want to show that he didn't
25 have authority, then -- or discretion, then you can call someone

1 else --

2 MR. SCHIFF: Well --

3 THE COURT: -- or, when you take the stand, you can --
4 you can contradict him.

5 MR. SCHIFF: Your Honor, the law doesn't give agents
6 that kind of discretion. They have to proceed according to
7 regulations or statutes. Otherwise reg- -- they have to publish
8 their regulations so the public knows what they are authorized
9 to do. I never saw a regulation or a statute that says, well,
10 they have discretion to do what they want to do.

11 But, more important, when I asked him what kind of a
12 pocket commission he had, you refused to let him answer because
13 the IRS issues two kinds of pocket commissions, enforcement and
14 nonenforcement, and he has a nonenforcement pocket commission,
15 which means he has no enforcement authority within the law. And
16 you did not allow me --

17 THE COURT: Now --

18 MR. SCHIFF: -- to bring that out.

19 THE COURT: -- he has authority --

20 MR. SCHIFF: Pardon?

21 THE COURT: He has authority and --

22 MR. SCHIFF: He has a nonenforcement pocket commission.
23 I'll show you the --

24 THE COURT: I don't care about pocket commission. The
25 witness has authority. He is --

1 MR. SCHIFF: His pocket commission --

2 THE COURT: -- an employee of the Internal Revenue
3 Service. He has authority.

4 MR. SCHIFF: But why didn't you let me ask him what
5 kind of a pocket commission?

6 THE COURT: Because it has nothing to do with this.

7 MR. SCHIFF: Well, because he would have had to answer
8 he has a nonenforcement pocket commission.

9 MR. BOWERS: Perhaps -- perhaps --

10 THE COURT: Yeah. You know, your -- your -- again,
11 your idea of what's important is not my idea. And I've made my
12 ruling. The problem --

13 MR. SCHIFF: Your Honor --

14 THE COURT: -- you have is that you don't respect --
15 you don't respect anything you disagree with and --

16 MR. SCHIFF: Your Honor, I don't disagree with
17 anything. Here is --

18 THE COURT: You don't respect anything you disagree
19 with and --

20 MR. SCHIFF: You want --

21 THE COURT: -- you have evidenced that over and over
22 again.

23 MR. SCHIFF: Can I pass this up?

24 THE COURT: I have sanctioned you three times today,
25 according to my recollection, and it hasn't slowed you down one

1 whit.

2 MR. BOWERS: Your Honor, maybe -- maybe -- I was
3 unclear what those actions are. Maybe that would help slow
4 Mr. Schiff down.

5 THE COURT: The sanctions, as I said, were doubling
6 each time.

7 MR. BOWERS: So, if I understand the math, which I
8 probably don't because I'm a lawyer, but that would go two, then
9 four, then eight plus one from yesterday is now nine days in
10 custody; is that correct?

11 THE COURT: We had one yesterday. We had --

12 THE CLERK: Two.

13 THE COURT: -- three -- two today? I only did two?
14 Okay.

15 MR. BOWERS: Two or three? Oh. Then it'll only be --
16 only be five days in custody. Five total. Four or five, your
17 Honor?

18 (Pause in the proceedings.)

19 THE COURT: Seven.

20 MR. BOWERS: Seven.

21 Irwin, did you hear that?

22 MR. SCHIFF: What?

23 MR. BOWERS: Seven days in jail.

24 MR. SCHIFF: For what?

25 MR. BOWERS: For --

1 THE COURT: Contempt.

2 MR. BOWERS: -- not stopping.

3 MR. SCHIFF: How is it in contempt?

4 THE COURT: And I could have easily done more than
5 that. You -- you just kept going.

6 MR. SCHIFF: Your Honor --

7 THE COURT: Because you are disregarding the orders of
8 the Court to stop. You continue on lines of questioning that
9 I've sustained objections to three and four times --

10 MR. SCHIFF: I don't hear --

11 THE COURT: -- and you keep going on. You have shown
12 disrespect for the Court; you have delayed the proceedings.

13 MR. SCHIFF: Your Honor, when the witness is obviously
14 not telling the truth, when he said he doesn't remember -- when
15 he doesn't remember I went up to a hearing --

16 THE COURT: Well, that justifies you --

17 MR. SCHIFF: -- on a summons.

18 THE COURT: -- that justifies you dishonoring the
19 orders of the Court?

20 MR. BOWERS: Court's indulgence for just a moment,
21 Judge.

22 (Discussion between Mr. Bowers and
23 Mr. Schiff.)

24 THE COURT: Okay. We are in recess --

25 MR. BOWERS: Thank you.

1 THE COURT: -- until 9:00 a.m.

2 MR. IGNALL: Thank you, your Honor.

3 THE COURT: Thank you.

4 (Proceedings adjourned at 4:46 p.m.)

5 --oOo--

6 I hereby certify that pursuant to Section 753, Title 28, United
7 States Code, the foregoing is a true and correct transcript of
8 the stenographically reported proceedings held in the
9 above-entitled matter.

10

11 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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