

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 )  
11  
12  
13  
14

15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 12)  
16 Thursday, September 29, 2005  
17  
18  
19

20 APPEARANCES: (See Page 2)  
21  
22  
23

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

1 APPEARANCES:  
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Also Present:  
Adam Steiner, Special Agent, IRS  
Sam Holland, Special Agent, IRS  
Gary Modafferi, J.D.

I N D E X

Further

WITNESS:                    Direct    Cross    Redirect    Recross    Redirect

Government's:

Luddie Talley	--	3155S	3170N	--	--
		3156B			
Audrey Barger	3180I	3186S	--	--	--
Paul T. Menaugh	3205N	3256C	--	--	--
		3294S			
		3335B			
Donna Fisher	3356N	3374C	--	--	--
		3388S			
		3397B			

EXHIBITS

MARKED FOR                    RECEIVED  
IDENTIFICATION                IN EVIDENCE

EXHIBIT NO.:

Government's:

330		3355	--
Defendant Schiff's:			
2112		3189	--
2113		3302	--
Defendant Neun's:			
2508		3291	--

1 LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 29, 2005; 9:12 A.M.

2 --oOo--

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

4 THE COURT: Okay. Are we ready?

5 MR. SCHIFF: No. I have some matters I'd like to bring  
6 up.

7 THE COURT: Well, all right.

8 MR. SCHIFF: Now --

9 MR. NEIMAN: So does the United States, your Honor.

10 MR. SCHIFF: Excuse me.

11 Um, yesterday the question of that Social Security, 15  
12 percent came up. Uh, I have a letter here that I sent to the  
13 Social Security, December 11th, 2003. Uh, I brought up with the  
14 Social Security that I was alerted to the illegality of the  
15 garnishment of more than 15 percent by the letter dated October  
16 20th, 2003, which was sent to a friend of mine. In that letter  
17 from the Social Security Administration, it said, "The law  
18 allows the IRS to take up to 15 percent of your benefits to pay  
19 your overdue taxes."

20 Now, frankly, it's my belief they can't even take the  
21 15 percent and in this letter I explain why. But there is no  
22 question that the most they can take is 15 percent.

23 Would you like to see the letter, your Honor? This is  
24 from the Social Security Administration itself.

25 (Document handed to the Court.)

1           MR. SCHIFF: Now, I was unaware of that until I saw  
2 that letter.

3           THE COURT: Okay.

4           MR. SCHIFF: Now, Mr. Talley was not telling the truth  
5 in a variety of ways. I -- I had the tape of that hearing. I  
6 should have played it, but I didn't.

7           Also, testimony came up that the car that they seized  
8 did not belong to me. And it didn't. I have the documents, but  
9 they weren't with me. I have so many documents I can't find  
10 anything. But that's beside the point.

11           It's clear -- oh, he said he didn't even remember  
12 writing "full" on that levy. Well, who else would have written  
13 it? That was his levy and it was a full levy. And he had no  
14 authority to do what he did.

15           Um, I would like to recall him. And the jury should be  
16 made aware that they are taking more than -- now, in order to  
17 stop that, your Honor, I --

18           THE COURT: Finish your thought.

19           MR. SCHIFF: Pardon me?

20           THE COURT: Finish your thought.

21           MR. SCHIFF: Well, the thing is I could fight that, but  
22 it -- it -- it means starting another lawsuit against the  
23 government. I just don't have the time to do it. So they take  
24 it. But the point is they are taking it illegally. I wrote --  
25 I wrote a letter. Uh, I got no response to that letter.

1           But, secondly, when you say read their lips or  
2 something, do you know I only have one eye? Did you know that?  
3 I can't see out of my left -- my right eye; I only can see outta  
4 my left eye. So I don't see too well either.

5           But there was one witness on the stand who had the --

6           THE COURT: You know you just wander all over the --

7           MR. SCHIFF: Well -- well, all right.

8           THE COURT: -- the cow pasture.

9           MR. SCHIFF: Well --

10          THE COURT: Why don't you just stay focused? Is that  
11 possible for you?

12          MR. SCHIFF: All right. I thought you were through  
13 listening to that. I mean, you want to make any comments on  
14 that?

15          THE COURT: No. You just start a sentence and then you  
16 fly off in another direction --

17          MR. SCHIFF: That's -- unfortunately --

18          THE COURT: -- in the middle of it.

19          MR. SCHIFF: -- that's a flaw in my -- I apologize for  
20 that.

21          THE COURT: That's why I told you yesterday I want you  
22 to write your questions out.

23          MR. SCHIFF: Okay. But -- so do you have any comments  
24 on that?

25          THE COURT: On what?

1           MR. SCHIFF: The fact that there's the I- -- the Social  
2 Security saying the most they can take is the 15 percent. So  
3 there's no discussion on whether they can take more or less.

4           THE COURT: Well, I have -- I have an earlier version  
5 of the Code and that 15 percent limitation was not -- was not  
6 in --

7           MR. SCHIFF: Well --

8           THE COURT: -- an earlier version the Code. So I'll  
9 hear from the Government on it --

10          MR. SCHIFF: Well --

11          THE COURT: -- and see what --

12          MR. SCHIFF: -- well --

13          THE COURT: -- they have to say.

14          MR. SCHIFF: -- I can argue that, but that's  
15 complicated. If you notice, they have a five-page, um, document  
16 that explains why they can't take anything. I mean, I could  
17 argue it, but it's complicated. And you said I can't --

18          THE COURT: Well, it is --

19          MR. SCHIFF: -- complicate the --

20          THE COURT: -- complicated. That's -- that's been your  
21 whole point, the law is complicated.

22          MR. SCHIFF: But there's a simple letter that says they  
23 can't take more than 15 percent.

24          THE COURT: Well, let me hear from the Government and  
25 I'll then address your concern.

1 MR. SCHIFF: Now --

2 THE COURT: This letter doesn't have the force of law;  
3 I'll tell you that.

4 MR. SCHIFF: Well, it's -- it's -- it's a letter from  
5 the Social Security Administration, from the government, saying  
6 they can't take more than 15 percent.

7 THE COURT: Okay.

8 MR. SCHIFF: And that every -- every month --

9 THE COURT: Have you addressed all the issues you want  
10 to address?

11 MR. SCHIFF: No.

12 THE COURT: Okay.

13 MR. SCHIFF: The other issue is it's very important  
14 that I hear Sam Holland's testimony. Now, I can't get expedited  
15 transcript -- uh, you have that machine. I have a computer.

16 Can it be arranged so that what you're lookin' at I can  
17 look at on my computer so I can see what's being said?

18 THE COURT: That's your request? Okay. I'll consider  
19 it.

20 Anything else?

21 MR. SCHIFF: Yes. The other thing is I found out that  
22 the jury asked you three questions. I thought that they only  
23 asked you one.

24 THE COURT: I read them all.

25 MR. SCHIFF: You read them?



1 THE COURT: I read them twice actually.

2 MR. SCHIFF: I didn't hear it. Can I -- I didn't hear  
3 it. Can -- can I ask you what those three questions were?

4 THE COURT: Ms. Clerk, do you have those questions?

5 THE CLERK: No, your Honor. They were made a part of  
6 the record and filed this morning downstairs in the Clerk's  
7 office.

8 THE COURT: Okay.

9 MR. SCHIFF: I thought they only asked you one  
10 question, which was the difference between --

11 THE COURT: There's one piece of paper. There were  
12 three questions -- or two questions within that one piece of  
13 paper and I read --

14 MR. SCHIFF: I recall --

15 THE COURT: -- I read them twice.

16 MR. SCHIFF: In -- in -- in cham- -- in -- in the  
17 sidebar?

18 THE COURT: No. I read them out loud in the courtroom.

19 MR. LEVENTHAL: I thought --

20 MR. BOWERS: I thought there was just one question that  
21 you read out loud and there were some comments.

22 THE COURT: There was subparts to the question. It was  
23 two or three questions on one -- in one line.

24 MR. SCHIFF: Well, the thing is I would like to recall  
25 Agent Talley because there was a number of things he said. He

1 covered a wide variety. He covered -- he covered the seizure of  
2 my car. He covered the fact that my car, uh, was -- was in  
3 somebody else's name.

4 (Discussion between Mr. Leventhal and  
5 Mr. Schiff.)

6 MR. IGNALL: Your Honor -- Mr. Schiff, are you done?

7 MR. SCHIFF: Yeah.

8 MR. IGNALL: All right.

9 MR. SCHIFF: But what am I gonna do about -- about  
10 being able to see --

11 THE COURT: Go over there and watch and listen as you  
12 have been.

13 MR. SCHIFF: See, I didn't even hear what you just  
14 said.

15 THE COURT: Go over to your chair and watch from there  
16 if you hear better over there.

17 MR. SCHIFF: Watch the -- the witnesses from there?

18 THE COURT: Correct.

19 MR. IGNALL: Your Honor --

20 THE COURT: Mr. Ignall.

21 MR. IGNALL: -- as we indicated yesterday, we had some  
22 serious concerns about Mr. Schiff going into irrelevant matters  
23 and confusing the jury. And I think the question that we got  
24 from the juror is an indication that Mr. Schiff may even be  
25 succeeding in confusing the jury about the law when -- and it's

1 a legal matter that has nothing to do with any of the elements  
2 in any of the offenses that are charged in this Indictment.

3 Therefore, we have provided to you and to Mr. Schiff  
4 and to counsel for, uh, Mr. Cohen and Ms. Neun a proposed jury  
5 instruction. I -- it's a two-part instruction. The first part  
6 is to make clear what's relevant and what was not relevant in  
7 Mr. Talley's testimony. It's actually, I think, a limiting  
8 instruction that would otherwise benefit Mr. Schiff because it  
9 limits the impact of Mr. Talley's testimony to notice to  
10 Mr. Schiff, which is why Mr. Talley was offered on those points.  
11 The legality or not is not the issue there.

12 But Mr. Schiff still wants to relitigate anything  
13 that's ever happened to him. And, by doing so with witnesses on  
14 the stand, it has the potential to, and appears to have  
15 succeeded in, confusing the jury about what a legal issue might  
16 be or might not be.

17 With respect to that 6331(h) that Mr. Schiff went into  
18 yesterday about seizing his Social Security benefits, he's  
19 simply wrong; that 6331(h), as the case that I've handed up to  
20 the Court indicates, United States v. Marsh -- it's a District  
21 Court opinion from Hawaii, but it has a perfectly good  
22 explanation of the law.

23 THE COURT: I didn't actually receive that case.  
24 Did --

25 MR. IGNALL: I think I handed it up to Ms. Vannozzi

1 with the proposed instruction.

2 THE COURT: All right. Well --

3 MR. IGNALL: Do you have it? If not, maybe

4 Mr. Leventhal will allow us to...

5 THE COURT: Did you hand me more than the instruction,  
6 Ms. Clerk?

7 THE CLERK: Yes, sir. I handed you --

8 THE COURT: Oh, okay.

9 THE CLERK: -- one page and --

10 THE COURT: All right.

11 THE CLERK: -- the stapled thing.

12 THE COURT: Okay. Let's see.

13 MR. IGNALL: All right.

14 THE COURT: Go ahead with --

15 MR. IGNALL: If you look on page 9 under Headnote 7 is  
16 the discussion of 6331(h), the first point, 6331(h) was not even  
17 enacted at the time that Mr. Talley levied Mr. Schiff's Social  
18 Security benefits. So, regardless of what it says, it has no  
19 relevance to what Mr. Talley did.

20 Secondly, 6331(h) expanded the authority of the IRS  
21 to make continuous levies. It didn't restrict it. Social  
22 Security benefits have never been exempt from levy. Certain --  
23 certain payments were exempt from levy. 6331(h) allowed the IRS  
24 in certain circumstances to have a continuous levy on up to 15  
25 percent of certain benefits that were otherwise subject to an

1 exemption under 6334.

2 Mr. Schiff may not like that; he may disagree with  
3 that. That's not an issue that's relevant to this trial. The  
4 law is what the law is. And I think because the jury's asked a  
5 question it's important that the Court instruct the jury on what  
6 the law is in this case in the context of an instruction that  
7 Mr. Talley's testimony is only for notice.

8 Secondly, and I think perhaps even more important,  
9 is that we request that the Court order Mr. Schiff not to  
10 address a legal issue, not to -- to cite a case, not to address  
11 a statute, not to address the authority of the IRS or, as may be  
12 the case with the next witness, the State of Nevada to do  
13 anything -- Nevada. Excuse me. Glad the jury wasn't here --  
14 without first raising that with the Court outside the hearing of  
15 the jury because otherwise I believe it places the Government in  
16 an untenable position of having to either allow Mr. Schiff to  
17 confuse -- an irrelevant issue and confuse the law or to stand  
18 up and object and make it appear to the jury that we're trying  
19 to keep the law from them.

20 I understand that the Court will instruct the jury on  
21 what the law is. But, as we go along, I think it's  
22 inappropriate for the jury to be either confused or left hanging  
23 as to wondering if perhaps Mr. Schiff is right when he's made an  
24 incorrect and irrelevant assertion of the law.

25 MR. CRISTALLI: Your Honor, just before --

1 MR. SCHIFF: Your Honor, can I --

2 MR. CRISTALLI: -- if we could just before Mr. Schiff  
3 goes, I have to -- I do have some concern about the Government's  
4 comment that the jury is confused as a result of the question  
5 that they asked. The question, in my opinion, was a fair  
6 question. They asked what the difference between a seizure -- a  
7 seizure and a levy was. I don't think that is confusion at all.

8 In fact, when they asked that question, I said to  
9 myself I thought it was a good question and I'd like to know the  
10 answer myself. And I think the witness actually clarified that.  
11 I don't think that suggests that, uh, in any way, shape, or form  
12 with regard to the jury that, um, they were, uh, being misled on  
13 the law. I -- I don't think there's any suggestion for that at  
14 all.

15 I've had cases where I've received, uh, questions from  
16 jurors that I absolutely didn't know what they were in regard  
17 to. So, I mean, you can't speculate as to what the jury is  
18 thinking; you can't try to control their thought processes as to  
19 what and how they are digesting the evidence in this particular  
20 case. I think that's ridiculous.

21 Um, and, um -- and so I think -- the Court made the  
22 decision yesterday. The Court said it's not relevant. The  
23 Court -- and we have a further -- as far as that particular, um,  
24 issue is concerned with regard to the levy, we've got further  
25 clarification today that, um, it was a -- it was a section that

1 was modified in 1997. I think the Court made it clear yesterday  
2 that it was not relevant to Mr. Schiff's cross- -- cross-  
3 examination. I don't necessarily have a problem if the Court,  
4 um, I guess, wants to clarify that point. But I think we're  
5 done with it. Um, and, uh, I mean, the type of instruction that  
6 the Government is seeking, I think, is, um -- is inappropriate.  
7 I would certainly have an objection to it.

8 THE COURT: Why is it inappropriate?

9 MR. CRISTALLI: Because they -- they want to control  
10 what they said is relevant and not relevant and their  
11 determination of relevancy on -- on -- on any future comment  
12 about the law in this particular case.

13 If -- if I have to get up there and cross-examine a  
14 witness on a particular issue as it relates to the law, not for  
15 the purposes of determining whether or not the law is legitimate  
16 or illegitimate as defined by Mr. Schiff, I would concede that  
17 the Court is going to instruct the jury on the law. However, as  
18 far as the belief system is concerned, I think at some  
19 particular time it may be important for us to, at least as far  
20 as my client is concerned, what type of material information,  
21 legal basis, um, Code sections were relied on. If I'm  
22 completely precluded from engaging in any dialogue as it relates  
23 to the law, it would prohibit my defense, my legitimate  
24 defense --

25 THE COURT: Well, Mr. --

1 MR. CRISTALLI: -- in this particular case.

2 THE COURT: -- first of all, Mr. -- Mr. Ignall did not  
3 ask that you be restricted.

4 MR. CRISTALLI: Okay.

5 THE COURT: The problem has been that Mr. Schiff  
6 continues to spout things and it's to his benefit to -- to make  
7 the law appear confusing to the jury so that, uh, he can further  
8 his point that laymen can't be expected to -- to understand the  
9 law and follow it. That's -- that's -- and, of course, that  
10 inures to your benefit or your client's benefit as well.

11 So with respect to an instruction --

12 MR. BOWERS: Your Honor, if I --

13 THE COURT: -- it's going to be to Mr. Schiff. I'll  
14 deal with -- with you and Mr. Bowers on -- on -- if it comes up.  
15 But, with respect to Mr. Schiff, he has continually interjected  
16 his view of the law, has attempted to relitigate past issues,  
17 and has -- has even -- even in the presence of the jury  
18 excerpted sections out of context in the Internal Revenue Code  
19 in an attempt to -- to demonstrate to the jury that it is --  
20 it's a complicated area.

21 So, uh, I am going to give the instruction with respect  
22 to the levy on Social Security benefits as requested by the  
23 Government. The case, uh, and my own research overnight showed  
24 that (h) is -- is -- was -- was enacted after and (h) actually  
25 expands the power of the government to reach assets or benefits



1 that were not previously subject to levy. But it -- it does not  
2 restrict, uh, and deal with Social Security benefits even --  
3 even so. And -- and the levy was issued before the amendment in  
4 any event. So the Marsh case from Hawaii supports the  
5 Government's position completely.

6 MR. SCHIFF: Did you want to say...

7 THE COURT: With respect to -- with respect to  
8 Mr. Schiff, I will order that Mr. Schiff not address any legal  
9 issue, statute, or legal authority in the presence of the jury  
10 without having first raised the issue outside the presence of  
11 the jury with the Court and having received a ruling. I will  
12 enforce that with the contempt power of the Court if it  
13 continues.

14 Mr. Bowers.

15 MR. BOWERS: Just very briefly, you already made your  
16 decision. I -- I don't object to the language of that  
17 instruction. I just am uncomfortable with the idea of starting  
18 to instruct the jury during the trial. Of the things we've  
19 talked about, I -- I don't have strenuous objection to that  
20 particular thing.

21 THE COURT: Right.

22 MR. BOWERS: My other concern is, I guess, uh, you  
23 decided what you're gonna do with Mr. Schiff. And that's fine.  
24 I'm -- I'm concerned about the spillover effects of that. I --  
25 I understand you know you're gonna put him in one category and

1 we're supposed to be in a separate category. And I -- I  
2 appreciate the Court will treat us differently. I don't know  
3 that the jury will appreciate the difference. So, I guess, I  
4 renew my motion to sever, which I think there's a hand signal  
5 for or...

6 THE COURT: Yes. Number one. It has become --

7 MR. BOWERS: Okay. There it is.

8 THE COURT: -- your number one motion.

9 MR. CRISTALLI: I'll join in number one.

10 MR. BOWERS: Okay. Thank you, your Honor.

11 THE COURT: Okay.

12 MR. SCHIFF: Your Honor, I want to clarify something.

13 First of all, Mr., uh, Talley said he was giving his  
14 understanding of the law. When I say what the law is, that's my  
15 understanding. Do I have to keep saying --

16 THE COURT: No, you don't have a right to do that.

17 You --

18 MR. SCHIFF: Well, I have an understanding of the law.

19 THE COURT: You don't -- you are not testifying,

20 Mr. Schiff.

21 MR. SCHIFF: All right.

22 THE COURT: And, in spite of the fact you want to -- to  
23 continue to do that, uh, notwithstanding the rulings of the  
24 Court, it is improper. You can, uh -- you know, if you decide  
25 to testify and go under oath, then you may be able to -- to

1 expound. But right now it's not show time --

2 MR. SCHIFF: Okay.

3 THE COURT: -- it is time to cross-examine witnesses.

4 MR. SCHIFF: Your Honor, did you recall Mr. Talley  
5 talking about a notice of lien and a levy? He was talking about  
6 levies and liens; right? Now, these are confusing subjects.

7 I -- I pointed out that there is a statute that said  
8 that the date the notice of seizure is given is the date at  
9 which the levy is made. The point is I was trying to make a  
10 distinction, which the jury didn't understand and I don't think  
11 the lawyers understand, there is not a levy unless a notice of  
12 seizure is given.

13 THE COURT: No. You're -- you're legally incorrect on  
14 that. And --

15 MR. SCHIFF: Well --

16 THE COURT: -- it's another case of your excerpting a  
17 part out of the Code that benefits you and disregarding all the  
18 surrounding provisions.

19 MR. SCHIFF: No. Well --

20 THE COURT: It is.

21 MR. SCHIFF: All right.

22 THE COURT: You don't know how to read the Code,  
23 Mr. Schiff.

24 MR. SCHIFF: Well --

25 THE COURT: It's very simply either you don't know how

1 to read it or you're refusing to -- to read the --

2 MR. SCHIFF: Well, there is --

3 THE COURT: -- the statutes as a whole. You're  
4 excerpting. You're not, uh, uh, a legal scholar apparently.  
5 You are just picking and choosing things that you want that will  
6 support your belief and disregarding all the rest.

7 The policy of interpretation, judicial interpretation  
8 of statutes, is you read the statutes as a whole in an attempt  
9 to make sense out of the statute and enforce the statute as  
10 written. And your -- your views are just not supported by case  
11 law, sir --

12 MR. SCHIFF: Well, all --

13 THE COURT: -- let alone statute.

14 MR. SCHIFF: -- all I'm gonna say is that that statute  
15 explains the difference between -- that's why they gave me a  
16 notice of seizure when he --

17 THE COURT: Mr. Schiff.

18 MR. SCHIFF: All right. Secondly, I wanna --

19 THE COURT: I read it --

20 MR. SCHIFF: Okay. Secondly --

21 THE COURT: -- and I know what you did and I know you  
22 don't know how to read statutes.

23 MR. SCHIFF: Okay.

24 Secondly, Section 6331, if you want to talk about  
25 statutes, clearly says that a notice of levy only applies to the

1 accrued wages and salaries of a government employee. That's  
2 what the statute says.

3 THE COURT: No, it does not. And I pointed that out  
4 yesterday. You conveniently disregarded the introductory  
5 sentence.

6 MR. SCHIFF: What does it say? The introductory  
7 sentence is -- read it.

8 THE COURT: It says any personal liable to pay who  
9 neglects.

10 MR. SCHIFF: Right.

11 THE COURT: And then it goes on to talk about people in  
12 a special category --

13 MR. SCHIFF: Which --

14 THE COURT: -- not eliminating all the other persons  
15 but government employees can also be levied.

16 MR. SCHIFF: Right, right.

17 THE COURT: You -- you just excerpted right out of the  
18 middle.

19 MR. SCHIFF: No. But, your Honor, if you'll notice --

20 THE COURT: Mr. --

21 MR. SCHIFF: -- it doesn't say --

22 THE COURT: -- Mr. Schiff --

23 MR. SCHIFF: -- it doesn't mention your bank account.

24 Why does that section focus on the accrued wages and salary of a  
25 government employee? The accrued --

1 THE COURT: Because they are in a special category.

2 MR. SCHIFF: No. The fact --

3 THE COURT: They are and the statute recognizes that.

4 MR. SCHIFF: No. Can I just make a comment?

5 THE COURT: No. You're not gonna argue the law with  
6 me. You're wrong. You have just cherry-picked what you thought  
7 would support your position and it is wrong.

8 MR. SCHIFF: Can I just make one comment?

9 The Government already has their accrued wages and  
10 salary. It's already in their possession, so it doesn't have to  
11 be levied. The word "levy" means "to seize." And the  
12 government can't seize the accrued wages and salary of their own  
13 employees because they already have it in their possession. So  
14 the government created a document which would -- in which they  
15 can notify their employees that they are gonna apply money --

16 THE COURT: You just made my point. They are in a  
17 special category and -- but that does not give you the right to  
18 disregard the first sentence --

19 MR. SCHIFF: Well, I'm saying --

20 THE COURT: -- that says "any person liable" can be  
21 levied.

22 MR. SCHIFF: But -- but --

23 THE COURT: Okay?

24 MR. SCHIFF: -- yes. But that's -- but a notice of  
25 levy is not a levy.

1           You heard Mr., uh, Talley say that a levy applies to  
2 two people. It applies to the individual and when he seizes it.  
3 But a notice of levy applies to three people.

4           THE COURT: That's not what he said.

5           MR. SCHIFF: There's a distinction.

6           THE COURT: No, that's not what he said either.

7           MR. SCHIFF: He -- he --

8           THE COURT: He's talked about the difference between  
9 seizure and levy.

10          MR. SCHIFF: Well, what -- I was asking him the  
11 difference between -- I happen to know the difference.

12          THE COURT: You don't.

13          MR. SCHIFF: Most people don't.

14          THE COURT: You don't know.

15          MR. SCHIFF: Well, I have to know. I write books --

16          THE COURT: Sir --

17          MR. SCHIFF: -- on the subject.

18          THE COURT: -- sir, you are wrong in your view of the  
19 law.

20          MR. SCHIFF: A levy -- your Honor --

21          THE COURT: Mr. Schiff --

22          MR. SCHIFF: -- a levy --

23          THE COURT: -- I am not gonna spend the morning arguing  
24 with you. You do not know what you're doing.

25          MR. SCHIFF: Can I have -- incidentally, can I have

1 that letter back that I sent -- that I gave you? Because the  
2 Government was arguing --

3 THE COURT: Mr. Schiff, you are through rearguing these  
4 same points. You -- the law does not support you, neither the  
5 statute nor the case law.

6 MR. SCHIFF: Well, let me ask you something --

7 THE COURT: No.

8 MR. SCHIFF: -- if someone makes statements --

9 THE COURT: No. You're not going to reargue it. Go  
10 over and sit down. We're bringing in the jury.

11 THE CLERK: Please bring your witness in.

12 (Jury enters the courtroom at 9:36 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. CRISTALLI: Yes, your Honor.

17 MR. BOWERS: Yes.

18 MR. SCHIFF: Yes, your Honor.

19 THE COURT: Thank you.

20 Ladies and gentlemen of the jury, yesterday you heard  
21 testimony that the IRS levied or seized certain of Mr. Schiff's  
22 assets. This evidence is introduced solely for the purposes of  
23 showing whether Mr. Schiff was aware of the IRS attempts to  
24 collect his tax liabilities. You are not to consider it for any  
25 other purpose.



1 I further instruct you that the statute that was the  
2 subject of Mr. Schiff's cross-examination of Mr. Talley  
3 regarding levying Social Security benefits was not enacted at  
4 the time Mr. Schiff's benefits were levied. Further, the  
5 statute does not restrict the legal authority of the Internal  
6 Revenue Service to levy 100 percent of the Social Security  
7 benefits.

8 I instruct you to disregard the questions and answers  
9 on that subject.

10 Now, we'll have Mr. Talley resume the stand.

11 (Luddie Talley takes the witness stand.)

12 LUDDIE TALLEY,  
13 called as a witness on behalf of the Government, having been  
14 previously duly sworn, was examined and testified further as  
15 follows:

16  
17 THE COURT: Any further questions, Mr. Schiff, or did  
18 you finish? Did you finish yesterday?

19 MR. SCHIFF: Well, Mr. Talley --

20 THE COURT: Felicia, my screen is shut down.

21 MR. NEIMAN: Your Honor, I believe we concluded  
22 yesterday with Mr. Schiff --

23 THE COURT: Mr. Schiff. Okay.

24 MR. NEIMAN: -- saying no more questions.

25 THE COURT: All right. Thank you.

1                   (Pause in the proceedings.)

2                   MR. SCHIFF: Your Honor, I would just like to play a

3                   tape of the interview between me and Mr. Talley and Mr. Gritis

4                   because it demonstrates some inconsistencies with Mr. Talley's

5                   testimony. And this is the tape of --

6                   THE COURT: I think we --

7                   MR. SCHIFF: -- my subpoena.

8                   THE COURT: -- addressed this yesterday.

9                   MR. SCHIFF: Pardon me? The Government has this tape.

10                  MR. NEIMAN: Your Honor, we would object to the length

11                  of the tape. I believe it's about 35 minutes.

12                  THE COURT: Yeah. We -- we addressed this yesterday,

13                  and it's really not relevant to anything.

14                  MR. SCHIFF: It's not relevant?

15                  THE COURT: No. No, it's -- you -- I remember we went

16                  through this --

17                  MR. SCHIFF: All right.

18                  THE COURT: -- at length yesterday --

19                  MR. SCHIFF: Um --

20                  THE COURT: -- with respect to the -- whether a summons

21                  was issued or subpoena and whether you -- you -- you

22                  acknowledged you didn't bring anything.

23                  MR. SCHIFF: I'm listening.

24                  THE COURT: And your point was that, uh, uh, there were

25                  no consequences. It really doesn't matter. The only thing

1 that's relevant is you were aware that the -- of the  
2 government's attempts to collect the tax.

3 MR. SCHIFF: Well, right. The government's -- now, I  
4 have an understanding. I'm not saying I'm right. I never  
5 say --

6 MR. NEIMAN: I'm gonna --

7 MR. SCHIFF: -- I'm right on --

8 MR. NEIMAN: -- object right now before he continues  
9 any further as to his understanding at this point.

10 THE COURT: I've already ruled --

11 MR. SCHIFF: Well, all right.

12 THE COURT: -- it's not relevant.

13 MR. SCHIFF: But as a result -- he -- he discussed the  
14 government's seizing of my car and -- and the fact that he got  
15 money from -- the fact that I was jailed.

16

17 CROSS-EXAMINATION (Continued)

18 BY MR. SCHIFF:

19 Q. Were you aware that as a result of that seizure and stuff  
20 the government filed a criminal complaint against me?

21 MR. NEIMAN: Objection. Asked and answered yesterday.

22 THE COURT: Sustained.

23 MR. SCHIFF: Well, your Honor, I have the complaint.

24 THE COURT: I know you just want to go over it again,  
25 but you can't. You already did it.

1 MR. SCHIFF: Can I show him the complaint?

2 THE COURT: No.

3 MR. SCHIFF: No -- no further questions.

4 THE COURT: Thank you.

5

6

CROSS-EXAMINATION

7 BY MR. BOWERS:

8 Q. Mr. Talley, how are you?

9 A. Fine. Thank you.

10 Q. I'm Chad Bowers. I'm Larry Cohen's attorney.

11 You know Larry, don't you?

12 A. Yes, sir.

13 Q. Okay. I was unclear. Have you ever had a discussion with  
14 Larry individually?

15 A. No, I have never had an individual discussion with him.

16 Q. As I understood your testimony, your knowledge of Larry  
17 Cohen consists of having seen him in your IRS building; is that  
18 correct?

19 A. That is correct.

20 Q. Um, do you testify with any regularity in court or is this  
21 sort of an exception for you?

22 A. This is sort of an exception.

23 Q. So you haven't been trained as part of your job with the IRS  
24 for how to testify in court, things to do, things not to do,  
25 that kind of thing?

1 A. No, I have not.

2 Q. Okay. Um, you had mentioned that Mr. Gritis at some point,  
3 uh, I think, if I understood your testimony correctly, came to  
4 you and, uh, for lack of a better phrase wanted to resurrect  
5 Mr. Schiff's collection action?

6 A. That is correct.

7 Q. Is that a fair statement?

8 A. That is.

9 Q. Do you have any, uh, understanding as to why Mr. Gritis did  
10 that?

11 A. Yes.

12 Q. What is that understanding?

13 A. I had been assigned Mr. Schiff's case since at least 1995.  
14 Now, we're talking '99 --

15 Q. That's when this happened --

16 A. -- or whatever.

17 Q. -- with Mr. Gritis?

18 A. I'm not sure of the exact year.

19 Q. But roughly there? I'm tryin' --

20 A. Roughly there.

21 Q. Okay.

22 A. And I was kinda at wit's ends as to what further to do with  
23 the case. So, in talkin' with my supervisor, we decided to  
24 close it out as a continuous levy.

25 Q. Which would mean -- and not to interrupt you -- but, as I

1 understand, it would mean that Social Security just keeps being  
2 taken and that's that?

3 A. That is correct.

4 Q. That's the end of the collection action?

5 A. Until other assets were found.

6 Q. Okay.

7 A. My frustration was that I had found another asset, but I was  
8 not, uh -- I was not supported in converting that asset to cash.

9 Q. Okay. I'm confused what that has to do with Mr. Gritis's  
10 decision to take --

11 A. Well, I haven't gotten to that point --

12 Q. Oh, I'm sorry.

13 A. -- yet. I'm --

14 Q. I apologize.

15 A. -- I'm tryin' explain to you why I closed the case.

16 Q. I apologize.

17 A. Anyway, I got to that point. And in voicing my  
18 frustrations, uh, with this -- Mr. Gritis and I were in -- I  
19 think we were in the same group at that time or at least we sat  
20 in close proximity -- anyway, he had heard me talkin' about this  
21 or whatever. And I had great admiration for his skills as a  
22 revenue officer also. So I thought that if I couldn't do it  
23 he'd be the only other one that could. So sure. If you want  
24 to, knock yourself out.

25 Q. That's -- that's --

1 A. So he started doin' the same things that I would have done  
2 as a revenue officer with the case.

3 Q. So as -- okay. So, as I understand your testimony, this  
4 interest in taking another course of action beyond what you and  
5 your supervisor had initially agreed to stemmed from your  
6 conversation with Mr. Gritis? You -- you brought it up with  
7 him?

8 A. Um, I'm -- I'm not sure I'm following you. My supervisor  
9 had nothing to do with that at the time when I was talking with  
10 Mr. Gritis.

11 Q. Well, here's -- here's my question.

12 As I understand your testimony, you had come to a point  
13 in time where you had closed this file with the continuous levy.

14 A. That's correct.

15 Q. And you'd discussed that with your supervisor and whatever  
16 that conversation was that didn't change that decision.

17 A. That's correct.

18 Q. And then you engaged in a discussion with Mr. Gritis that  
19 resulted ultimately in reopening the file.

20 A. That is correct.

21 Q. And, as I understand your testimony, the discussion with  
22 Mr. -- let me ask it a different way.

23 Was Mr. Gritis at this time sort of the, uh -- the guy  
24 in the office you go to with the questions, the -- for lack  
25 of -- the old man in the office --

1 A. Sure.

2 Q. -- who knows how to do everything?

3 A. That's correct. That's a very nice description.

4 Q. Okay. And so you're talkin' to the old guy in the office  
5 about what you can do about this case because you weren't quite  
6 satisfied with just closing it the continuous levy; is that  
7 right?

8 MR. NEIMAN: I'm gonna object --

9 THE WITNESS: Absolutely.

10 MR. NEIMAN: -- to relevance.

11 THE COURT: What is the relevance of this? Where are  
12 we are goin' with this?

13 MR. BOWERS: Well, I'm just trying to figure out what  
14 motivated Mr. Talley in taking the course of action he did.  
15 And --

16 THE COURT: He told you --

17 MR. BOWERS: -- talked about these things.

18 THE COURT: -- told you he -- you know.

19 MR. BOWERS: Well, the problem is we have --

20 THE COURT: He's burnt out.

21 MR. BOWERS: Well, I know.

22 THE COURT: He wants -- and somebody else said I'll do  
23 it.

24 MR. BOWERS: And we have -- well, we have a deceased  
25 witness. So we --



1 THE COURT: So what's --

2 MR. BOWERS: -- don't know what happened there.

3 THE COURT: -- so important about that is what I'm  
4 trying to figure out? Why is that important?

5 MR. BOWERS: All right.

6 THE COURT: What does that have to do with the issues  
7 in this case?

8 MR. BOWERS: I'll let it go. That's fine.

9 BY MR. BOWERS:

10 Q. Um, back to Mr. Cohen.

11 You never -- you were never present at any of these  
12 hearings where you saw him in the building; is that right?

13 A. I was never -- I'm --

14 Q. You were never present at any of these hearings where you  
15 saw Mr. Cohen in the building? You didn't attend any of these  
16 hearings.

17 A. I think I might have sat in on one of his.

18 Q. Do you have any recollection of what transpired there?

19 A. Well, if I'm not mistaken, Mr. Cohen was in on his personal  
20 tax matter speaking with another revenue officer and, uh, the  
21 other revenue officer was asking him for financial information.  
22 And, as I recall it, the information was not provided.

23 Q. So he had a disagreement with the revenue officer about his  
24 own situation?

25 A. That's my recollection.

1 Q. Okay. That's the only time you -- you were present for any  
2 discussions?

3 A. I believe it is.

4 Q. Okay. And were you present for any other discussions he may  
5 have had?

6 A. I don't recall bein' present at any others.

7 Q. Okay. Did you see him on other occasions?

8 A. Oh, yes. Yes.

9 Q. Okay. Do you know who he was there with on other occasions?

10 A. No.

11 Q. Do you know -- so you don't know if he was there discussing  
12 Mr. Schiff's clients and their philosophies or some other theory  
13 of the law he may have?

14 A. No, I don't know.

15 Q. Okay. Thank you, Mr. Talley.

16 Oh, I'm sorry. There's one other area of testimony I  
17 almost forgot there. I apologize.

18 You talked about a description -- a process where you  
19 went through to resolve, um, problems with taxpayers prior to  
20 taking these more aggressive collection steps. Do you recall  
21 that testimony?

22 A. Yes, sir.

23 Q. Um, and I believe you said you sort of unofficially provided  
24 them with answers to their questions; you provided them a  
25 publication. That was one step in the process; is that correct?

1 A. That's correct.

2 Q. Was that Publication 2105 by any chance?

3 A. No, that would be Publication 1.

4 Q. Okay. Are you familiar with Publication 2105? If it --

5 A. No. I -- I would have to look at one. As you might -- as

6 you might well know, we have hundreds and hundreds of

7 publications. I can't remember them all.

8 Q. Yeah, I picked up on that.

9 If it refreshes your recollection, 2105 is the

10 publication that deals with, uh, taxpayers' questions to the

11 effect that I don't have to pay taxes for some reason.

12 A. Yeah.

13 Q. You are familiar --

14 A. Yes, I am.

15 Q. -- you do recall that then?

16 A. That's right.

17 Q. Okay. Is that a piece of material that you used in the

18 resolution process?

19 A. No.

20 Q. No. That's not a document you call on?

21 A. No.

22 Q. Okay. In resolving these claims, you don't -- if -- if a

23 taxpayer says to you, I don't have to pay the tax for whatever

24 reason, if -- if I understand your testimony, it's not your

25 practice to provide them with that answer. You have other

1 publications, but you don't provide them with that answer?

2 A. When I get that argument, yes, 2105 is provided.

3 Q. Oh, okay. That's what I'm -- so --

4 A. Yeah, yeah.

5 Q. -- so you are familiar with 2105 --

6 A. Oh, yes.

7 Q. -- and if somebody says to you, hey, I don't pay taxes for

8 the following reason, you say, look, here's 2105. This

9 addresses your concerns about that issue?

10 A. Yes. In addition to that, I also refer them to a Web site.

11 Q. To the IRS.gov?

12 A. That's right.

13 Q. Okay. Anything else you give them when you encounter that

14 situation, 2105 or IRS documents?

15 A. Yes. There is a particular letter -- uh, we no longer use

16 it. But there at one time was a letter that we sent to people

17 that represented that argument.

18 Q. But that's -- the letter's gone now. Now it's 2105 and

19 IRS.gov?

20 A. Correct.

21 Q. Okay. And you limit your education to that taxpayer on that

22 basis, the 2105 and IRS.gov? You don't go outside of those

23 documents and explain other things. You -- you limit it to

24 what's contained in those?

25 A. Pretty much.

1 Q. Okay. Um, you also mentioned as part of this resolution  
2 process -- and if I understood you correctly, this resolution  
3 process, regardless of which of the three methods you end up  
4 employing, it basically means getting the taxpayer to pay  
5 something; right?

6 A. Uh --

7 Q. Whether it's a payment plan or offer and compromise or -- or  
8 we leave you with some amount to live on, one of those three is  
9 basically designed to get the taxpayer to --

10 A. One of --

11 Q. -- pay the tax?

12 A. -- those three.

13 Q. Right.

14 A. There was a forth one, that is, to declare the account  
15 currently not collectible where no later payments were made.

16 Q. Oh, really?

17 THE COURT: That was mentioned.

18 MR. BOWERS: I'm sorry.

19 THE COURT: He mentioned that yesterday.

20 MR. BOWERS: Okay. I must have missed that.

21 BY MR. BOWERS:

22 Q. Sometimes you write the account off. Is that --

23 A. Well --

24 Q. -- a fair characterization of what you just said?

25 A. -- no, the account is not written off. It's suspended.

1 Q. Suspended.

2 A. Yes, sir. Penalties and interest will continue to  
3 accumulate.

4 Q. Okay. And, uh, you periodically review it to see if the  
5 taxpayer's comin' into an inheritance or --

6 A. There are certain triggers that will automatically do that.

7 Q. Uh, levy sources --

8 A. For --

9 Q. -- like -- like -- like --

10 A. Not necessarily.

11 Q. No, it would not.

12 A. It would depend on the amount of income. The way an account  
13 is closed as currently not collectible --

14 Q. Uh-huh.

15 A. -- you use a dollar criteria to close it.

16 Q. I'm sorry. You use a what?

17 A. Use a dollar criteria to close it.

18 Q. A dollar criteria. Okay.

19 A. Right.

20 If that dollar criteria is ever met on our income  
21 reporting system, it will automatically trigger a reissuance of  
22 that case.

23 Q. Okay. All right. So -- okay. I understand. I -- I didn't  
24 realize there was a forth.

25 A. Okay.

1 Q. But I understand.

2 That was -- that was actually my question. So, if I'm  
3 a taxpayer and I've got, you know, some obligation that I owe to  
4 the IRS and I'm -- I'm not making a lot. And, as part of this  
5 resolution process, I cooperate with you and you say: Look, you  
6 meet our dollar criteria, we're not going to, uh, attach or  
7 attempt to collect from your -- from your levy sources or  
8 assets. But we're gonna put you in an account and the interest  
9 and penalties are gonna continue to accrue, plus you're still  
10 gonna owe us what you owe us. And, in the event you make  
11 enough, we're gonna come back see you.

12 Is that more or less how that works?

13 A. That is correct.

14 Q. Okay.

15 A. Um-hum.

16 Q. What is the -- the minimum amount as a taxpayer that I can  
17 make and -- and get -- and be eligible for that program?

18 MR. NEIMAN: Objection. Relevance.

19 THE COURT: What is the relevance?

20 MR. BOWERS: Well, I think Mr. Talley suggested that  
21 part of his job as a collection's agent is to fairly and  
22 adequately evaluate each taxpayer's situation and -- and try to  
23 put a friendly face on the IRS. And I'm not disputing that. I  
24 just wanna have some limit, uh, as to how bad off I have to be  
25 before I qualify for that friendly treatment.

1 THE COURT: It's not -- it's not relevant.

2 MR. BOWERS: That's not relevant. Okay.

3 BY MR. BOWERS:

4 Q. Uh, finally, you testified that one of the -- let me ask it  
5 a different way.

6 Are there certain sources of information that the IRS  
7 is not allowed to collect directly to your knowledge?

8 A. I don't follow you.

9 Q. Well, can the IRS gather any information it's able to get  
10 its hands on directly about any taxpayer as you understand it?

11 A. If it will assist me in the resolution of that case, I know  
12 of no restrictions.

13 Q. Okay. You're -- you're not aware of anything that stops you  
14 from doin' whatever you need to to find an asset source or close  
15 a case or -- or collect or whatever it is?

16 A. Correct.

17 Q. Okay. So, as -- as you understand it, using ChoicePoint --  
18 which, as I understand, you testified is a database that  
19 apparently has information not available in any other government  
20 databases. Is that fair? It's a private database?

21 A. Some of it. That's correct.

22 Q. Okay. Maintained by a private company.

23 A. Correct.

24 Q. And you use ChoicePoint as a collections agent not to  
25 circumvent any IRS regulation or rule that you're aware of about



1 direct collection of taxpayer information, but just simply  
2 because it's easier to get that information than any other way  
3 you have. Is that fair?

4 MR. NEIMAN: Objection. Relevance again.

5 THE COURT: What is the relevance?

6 MR. BOWERS: Well, again, your Honor, I mean, these are  
7 all things he discussed at some length about the collections  
8 process and how it works and he was on for a long time  
9 discussing that process generally. And suddenly it's been  
10 reduced to --

11 THE COURT: Where are you going with this, though?  
12 You --

13 MR. BOWERS: Well, I just want the answer to this  
14 question. Your Honor, this is my last question. If he can  
15 answer this question for me, I'll sit down. And I guess I'll  
16 sit down if you sustain the objection. I just want an answer to  
17 why -- why the IRS is using ChoicePoint instead of some other  
18 means.

19 THE COURT: You can ask that question.

20 BY MR. BOWERS:

21 Q. Do you know why the IRS is using ChoicePoint, from a private  
22 company, instead of some other collection means?

23 A. That company has information that's not available to me in  
24 any other records. It might even be more current than the  
25 records we have.

1 Q. Okay.

2 MR. BOWERS: And I desperately wanna ask another  
3 question, but I made a promise. So I'll sit down.

4 THE COURT: Mr. Cristalli?

5 MR. CRISTALLI: No questions, your Honor.

6 THE COURT: No questions.

7 Redirect?

8 MR. NEIMAN: Just real briefly.

9

10 REDIRECT EXAMINATION

11 BY MR. NEIMAN:

12 Q. Mr. Talley, you mentioned an IRS Web site that you refer  
13 people to. What -- specifically what portion of the IRS Web  
14 site do you refer these individuals to who come in with these,  
15 uh, nontraditional arguments?

16 A. I said that. But I can't for the life of me now remember  
17 the Web site. I couldn't give it to you right now.

18 Q. Do you remember generally what types of information is  
19 contained on that --

20 A. Frequently asked questions, questions and answers.

21 Q. All right.

22 MR. NEIMAN: I have nothing further.

23 THE COURT: Any recross?

24 MR. SCHIFF: I don't know if it's relevant. It just  
25 dawned on me. Even if I can --

1 THE COURT: On the Web site. It's about the Web site.  
2 That's the only question that was asked was the Web site.

3 MR. SCHIFF: Does the Web site talk about Tax Court?  
4 Does the Web site explain Tax Court and deficiency notices?

5 THE WITNESS: I doubt it.

6 THE COURT: Any other questions?

7 MR. SCHIFF: I have no questions.

8 THE COURT: All right.

9 Mr. Bowers, any further questions?

10 MR. BOWERS: No, your Honor.

11 THE COURT: You're allowed to ask one because we're on  
12 a new round here. So if you wanna ask it, related to the Web  
13 site.

14 MR. BOWERS: I -- yeah, it's gotta -- yeah, I -- I'm --  
15 I'm rethinkin' my relevance over here.

16 THE COURT: Okay.

17 MR. BOWERS: So I'll just let it go for now.

18 THE COURT: All right. Thank you. All right.

19 The witness is excused. Thank you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: Government's next witness.

22 MR. IGNALL: Government calls Audrey Barger.

23 Your Honor, just for the Court's information,  
24 Ms. Barger is gonna testify about a 404(b) item information that  
25 we've previously given notice to the defendant because I don't

1 know if the Court wishes to instruct the jury about that now or  
2 at a future point.

3 THE COURT: Well, I -- I can. I'm not completely aware  
4 of the --

5 MR. BOWERS: I think a sidebar is in order.

6 MR. IGNALL: Would --

7 THE COURT: -- the substance of her testimony.

8 MR. IGNALL: Should we take a brief sidebar?

9 THE COURT: We -- we probably should --

10 MR. IGNALL: Okay.

11 THE COURT: -- just to make sure we're all on the same  
12 page.

13 MR. IGNALL: All right.

14 (Sidebar conference was held as follows:)

15 THE COURT: Other act evidence --

16 MR. IGNALL: Yes.

17 THE COURT: -- what it is?

18 MR. IGNALL: I'll wait for Mr. Schiff.

19 THE COURT: Okay.

20 MR. BOWERS: Hey, your Honor --

21 MR. IGNALL: He's.

22 MR. BOWERS: I'm sorry. Just real quickly.

23 Can we -- can I make objections to these foundational  
24 questions that the Government's going into and ask for the  
25 specific offer of proof? Because it's -- I understand your

1 point, but it really hurts me to let them sort of go all over  
2 all this stuff and then, when we get on to cross-examination,  
3 say no, it's being offered for this limited purpose. It makes  
4 me look like an idiot to be asking these questions that are  
5 based on their -- their direct. So if I'm gonna be limited,  
6 that's okay. I understand your point.

7 THE COURT: I just wondered where you were goin'.

8 MR. BOWERS: No, no --

9 THE COURT: I asked you --

10 MR. BOWERS: -- no.

11 THE COURT: -- to tell me --

12 MR. BOWERS: And I'm not mad.

13 THE COURT: -- where you were goin'.

14 MR. BOWERS: I'm not sayin' you made me look like an  
15 idiot. I'm just saying in the future if we're gonna keep me  
16 that limited I think that's fair. But I think I should be able  
17 to keep the Government that limited on direct because they lay a  
18 very wide foundation for a very narrow purpose. And, if I can't  
19 get into the foundation on cross, I think that's unfair if  
20 I'm -- I'm -- so either --

21 THE COURT: You can get into it. I just was asking  
22 where --

23 MR. BOWERS: Okay. All right then.

24 THE COURT: -- you were going with it.

25 MR. BOWERS: We'll just leave it as it is --

1 THE COURT: Yeah.

2 MR. BOWERS: -- and I'll --

3 THE COURT: I was just asked you where --

4 MR. BOWERS: Okay. Thank you.

5 THE COURT: -- you're goin' with it --

6 MR. BOWERS: No. That's fair.

7 THE COURT: -- or are you're tryin' to --

8 MR. BOWERS: I'm not --

9 THE COURT: -- if there's a question that said, you  
10 know, ChoicePoint -- are you aware that ChoicePoint, you know --

11 MR. BOWERS: Isn't it a fact that --

12 THE COURT: -- eavesdrops illegally or --

13 MR. BOWERS: Or incidentally.

14 THE COURT: -- or loses information.

15 MR. BOWERS: No. I -- anyway, I -- okay.

16 MR. IGNALL: Okay.

17 MR. BOWERS: Okay.

18 MR. IGNALL. All right, your Honor. Briefly,  
19 Mrs. Barger was a revenue officer for the State of Nevada.

20 THE COURT: Uh-huh.

21 MR. IGNALL: She's involved with sales tax enforcement.

22 THE COURT: Okay.

23 MR. IGNALL: She was involved in shutting down Freedom  
24 Books for failure to register with the state and to pay over  
25 the --

1 MR. SCHIFF: Oh, okay.

2 MR. IGNALL: -- the State of Nevada sales tax. We're  
3 offering this for the limited purpose of showing Mr. Schiff's  
4 state of mind. He, one, was aware of this happening; two, he  
5 made some statements to Ms. Barger and in a hearing that he had  
6 before the state about how he doesn't pay taxes, state can't  
7 make him keep records.

8 MR. SCHIFF: That -- that -- that is not -- I  
9 introduced a number of documents on this. I'd like to get 'em  
10 because they said they were gonna raise this issue. So --

11 MR. IGNALL: But --

12 MR. SCHIFF: I wanna --

13 MR. IGNALL: -- anyhow we'd --

14 MR. SCHIFF: -- get documents.

15 MR. IGNALL: -- we'd like to point out that --

16 MR. SCHIFF: I wanna get documents.

17 MR. BOWERS: We'll get 'em.

18 MR. IGNALL: One reason we --

19 MR. SCHIFF: Can you give --

20 MR. IGNALL: -- requested that the Court instruct  
21 Mr. Schiff to raise with the Court any legal arguments had to do  
22 with Mrs. Barger because I don't think the relevance of --

23 MR. SCHIFF: Oh, yeah.

24 MR. IGNALL: -- you know, whether the Nevada State  
25 Constitution permits them to impose a sales tax --

1 MR. SCHIFF: Oh.

2 MR. IGNALL: -- or not is irrelevant to any issue here  
3 and should not be raised before the jury.

4 MR. SCHIFF: Well, if you're gonna raise it, I had a  
5 lawyer because -- because the Nevada State Constitution says it  
6 shall make no laws regarding the free publication of -- of books  
7 and -- of speech and publication.

8 So my position was -- and I had a hearing on this, and  
9 I got the -- I got the, uh, minutes of the hearing -- I'm -- I'm  
10 saying that the state had no authority to impose a sales tax,  
11 because I didn't pay 'em in Connecticut either, on -- on my  
12 books and records. I took a position --

13 THE COURT: Okay.

14 MR. SCHIFF: -- that the sales tax was contrary. And I  
15 had a lawyer --

16 THE COURT: So you --

17 MR. SCHIFF: -- on this.

18 THE COURT: -- taken the position that sales tax in  
19 Nevada does not apply to books?

20 MR. SCHIFF: No. I said the -- I said that it was a  
21 violation of the Constitution of the State of Nevada.

22 THE COURT: Okay.

23 MR. SCHIFF: I didn't just arbitrarily say it. And I  
24 had hearings on this and I had a lawyer --

25 THE COURT: Yeah. You lost.



1 MR. SCHIFF: -- on this.

2 THE COURT: Yeah. You lost.

3 MR. IGNALL: We'd like an instruction that Mr. Schiff  
4 can't inquire --

5 MR. SCHIFF: But --

6 MR. IGNALL: -- of the witness --

7 THE COURT: You can't go into that on --

8 MR. SCHIFF: Well, then why --

9 THE COURT: -- the law.

10 MR. SCHIFF: -- why bring it up? I'm not going to the  
11 law. I wanna explain why I didn't pay sales tax. I didn't  
12 arbitrarily say --

13 THE COURT: You can do that --

14 MR. IGNALL: When he testifies.

15 THE COURT: When you testify, you can. You're not  
16 going into it now.

17 MR. SCHIFF: Well -- well, can I show the documents --

18 THE COURT: No.

19 MR. SCHIFF: -- I used?

20 THE COURT: No, because you're legally wrong. Sales  
21 tax --

22 MR. SCHIFF: But --

23 THE COURT: -- does apply to books in Nevada.

24 MR. SCHIFF: -- but I didn't think it did, and I was --

25 THE COURT: I don't care.

1 MR. SCHIFF: -- willing to litigate it.

2 THE COURT: Well, you can testify to that -- it's not  
3 your time to testify to your belief.

4 MR. BOWERS: Well, could he -- could he fairly ask her  
5 if she had any understanding of what his arguments were?

6 MR. IGNALL: Well, yes. And that's what we're gonna  
7 ask.

8 MR. SCHIFF: But I didn't arbitrarily say I'm not  
9 payin'.

10 MR. BOWERS: I mean, not that he would do that.

11 THE COURT: Yeah, yeah.

12 MR. SCHIFF: I was willing to litigate it, but I --

13 MR. BOWERS: But that seems --

14 MR. SCHIFF: -- couldn't get --

15 MR. BOWERS: -- a fair question.

16 MR. SCHIFF: I had a hearing on it. And I got the --

17 THE COURT: Okay.

18 MR. SCHIFF: -- and I got the tapes of the hearing --  
19 not the tapes. I got the transcript.

20 THE COURT: You're not gonna put all that in. You  
21 can --

22 MR. BOWERS: Okay. Do you agree to an instruction --

23 MR. SCHIFF: But can I just say this?

24 MR. BOWERS: -- from the judge --

25 MR. SCHIFF: The purpose --

1 MR. BOWERS: -- as to the what --

2 MR. SCHIFF: -- the Government is trying to say that I  
3 just did this arbitrarily without any basis of law.

4 THE COURT: Oh, I'm sure you can find reason for  
5 everything you do --

6 MR. CRISTALLI: Your Honor --

7 THE COURT: -- including -- including --

8 MR. SCHIFF: But --

9 THE COURT: -- some of the stuff you're doing now.

10 MR. CRISTALLI: Just for my client, your Honor, I have  
11 to lodge an objection on relevancy. I believe it's outside the  
12 four corners of this Indictment. I don't believe it's relevant.

13 MR. SCHIFF: And I don't believe it's relevant --

14 MR. IGNALL: -- that's admissible --

15 MR. SCHIFF: -- either.

16 MR. IGNALL: -- only against Mr. Schiff --

17 THE COURT: Yeah.

18 MR. IGNALL: -- and I think the Court will  
19 appropriately instruct --

20 MR. SCHIFF: -- the --

21 MR. IGNALL: -- the jury.

22 MR. SCHIFF: -- the case is so weak they gotta bring  
23 this up. They gotta bring up a --

24 THE COURT: Well...

25 MR. SCHIFF: -- a sales tax issue.

1 (Sidebar conference concluded and the  
2 following is held in open court:)

3 THE CLERK: Ma'am, could you please stand and raise  
4 your right hand?

5 You do solemnly swear that the testimony you shall give  
6 in the cause now pending before this court shall be the truth,  
7 the whole truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes, I will.

9 THE CLERK: Please be seated.

10 Please state for the record your full name and spell  
11 your last name.

12 THE WITNESS: Audrey Barger. That's B-a-r-g-e-r.

13

14

AUDREY BARGER,

15 called as a witness on behalf of the Government, having been  
16 first duly sworn, was examined and testified as follows:

17

18

DIRECT EXAMINATION

19 BY MR. IGNALL:

20 Q. Good morning, Mrs. Barger.

21 A. Good morning.

22 Q. It's sometimes a little bit difficult to hear in court. So,  
23 if you could try to adjust the mic close to you so everybody in  
24 here can hear what you're saying, that would probably help us  
25 all.

1 A. Okay.

2 Q. What do you do for a living, Mrs. Barger?

3 A. I'm retired.

4 Q. What job are you retired from?

5 A. Uh, Nevada Department of Taxation as a revenue officer.

6 Q. When did you retire?

7 A. October of '99.

8 Q. What were your responsibilities when you were a revenue  
9 officer for the State?

10 A. Um, collection of sales and use tax and making sure all  
11 businesses were registered to collect such.

12 Q. Have you ever met someone named Irwin Schiff?

13 A. Yes, I have.

14 Q. When did you first meet Mr. Schiff, as best you -- you can  
15 recollect?

16 A. I'm not exactly sure on the date.

17 Q. All right. Did --

18 A. Approximately, um, '95.

19 Q. Did you meet Mr. Schiff as part of your duties as a revenue  
20 officer with the State?

21 A. Yes, I did.

22 Q. Can you explain how that happened?

23 A. I was out canvassing businesses to make sure that everyone  
24 was registered as a seller if they were selling tangible goods.  
25 And I went into Mr. Schiff's business and found that he was not

1 registered with the State.

2 Q. What was the name of the business?

3 A. Freedom Books.

4 Q. Did you at some point have a discussion with Mr. Schiff  
5 about his obligation to be registered and pay the Nevada State  
6 sales tax?

7 A. Yes, I did. And he told me he didn't have to pay taxes.

8 Q. Did he tell you why?

9 A. He said that he wasn't selling anything; that most of the  
10 things he did sell were out of state which were not taxable;  
11 and, otherwise, he was giving the items away.

12 Q. Did the State ever take any action against Mr. Schiff with  
13 regard to his being registered or paying sales taxes?

14 A. Yes, we did. I issued him at that time a citation. At --  
15 not that particular time, but in '98, I believe it was, I issued  
16 a citation to him because he still had not registered.

17 Q. And did the State ever take any other action against  
18 Mr. Schiff --

19 A. Yes. He --

20 Q. -- and Freedom Books?

21 A. Yes. He came in for a show cause hearing to show why he  
22 should not be registered.

23 Q. Were you present at that hearing?

24 A. Yes, I was.

25 Q. What argument did Mr. Schiff make at that hearing?

1 A. He said he was not, uh, uh, obligated under the sales tax  
2 rules to -- to go ahead and, uh, register. He didn't have to  
3 pay taxes.

4 Q. Did he make any statement about paying taxes in general?

5 A. Um, he said something to the effect that, uh, what he was  
6 doing was not taxable.

7 Q. Did the State make a ruling in that case after that hearing?

8 A. Yes. They told him that he also had, um, employees which he  
9 had to register as a business for business tax and that he had  
10 to register as a seller and report his sales on the books that  
11 he was selling, and the tapes.

12 Q. Did the State take any action after that hearing?

13 A. Uh, he still failed to, uh, do all -- file all of his sales  
14 and use tax returns after he did register and there was an audit  
15 done. And the auditors made a deficiency determination based on  
16 what little records they could find and -- because he kept no  
17 records. He said he didn't have to keep records because he  
18 wasn't selling anything. And then he evidently came into the  
19 office and --

20 Q. Well, please only testify about what you know about  
21 personally.

22 A. Okay. He came into the office and paid the obligation and  
23 got the keys back after we had locked and sealed --

24 Q. I'm sorry --

25 A. -- the business.

1 Q. All right. Let's back up.

2 Did you take any action on the store itself? You said  
3 something about getting the keys back.

4 A. Oh. We had locked and sealed the business because he had  
5 failed to -- to register at the time when he was going to  
6 register --

7 Q. All right. And when --

8 A. -- before he did.

9 Q. -- do you remember what year that was?

10 A. I believe that was in '98.

11 Q. All right. And then you said something about he got the  
12 keys back. How did he do that?

13 A. Well, any time the business is locked and sealed we take a  
14 locksmith out and change the locks, and he has to fulfill his  
15 obligations to the state before he can get the keys back from  
16 the locksmith -- or from the Department.

17 Q. So he had to become current up to the point when you gave  
18 the keys back?

19 A. Yes.

20 Q. All right.

21 MR. IGNALL: No further questions, your Honor.

22 MR. CRISTALLI: Your Honor --

23 THE COURT: Cross-examination?

24 MR. CRISTALLI: -- I don't have any questions. I'd ask  
25 the Court -- I think the Court was going to give the curative



1 instruction.

2 THE COURT: I will, yes.

3 MR. CRISTALLI: Thank you.

4 THE COURT: Yes. The -- the instruction is that the  
5 testimony of the witness may not be considered to show  
6 conformity for purposes of this case with the -- with the crimes  
7 that have been committed in this case. However, it is  
8 admissible to prove, uh, motive, opportunity, intent,  
9 preparation, plan, knowledge, identity or absence of mistake or  
10 accident. And the further instruction is that the evidence is  
11 admissible, uh, only as to Defendant Schiff, not as to  
12 Defendants Neun and Cohen.

13 MR. CRISTALLI: Thank you, your Honor.

14 (Discussion between Mr. Leventhal and  
15 Mr. Schiff.)

16 MR. SCHIFF: Could I have a sidebar on this?

17 THE COURT: On what?

18 MR. SCHIFF: On the --

19 MR. IGNALL: Your Honor, maybe it relates to the  
20 Court's earlier ruling about cross-examination?

21 THE COURT: The -- the earlier ruling about  
22 cross-examination still continues. If you wish --

23 MR. SCHIFF: Well, I have a transcript.

24 THE COURT: -- if you're going to attempt to argue the  
25 law with the witness, you're not allowed to do it.

1 MR. SCHIFF: I'm not arguing the law.

2 THE COURT: You want to ask her a question --

3 MR. SCHIFF: Yes.

4 THE COURT: -- ask your question.

5

6 CROSS-EXAMINATION

7 BY MR. SCHIFF:

8 Q. And, Ms. Barger, um, it's been a long time since we had that  
9 hearing. I understand. It's 1998. So your memory might not be  
10 as accurate as it might be. Not intentionally.

11 Do you recall -- uh, I think it was your testimony just  
12 now that I simply said I just didn't want to pay taxes. Is that  
13 what you said just now?

14 MR. IGNALL: Objection. That mischaracterizes the  
15 testimony. But the witness can answer.

16 BY MR. SCHIFF:

17 Q. Is that my understanding of your testimony, that I said I --  
18 oh, the reason I didn't have to pay sales tax is that I was --  
19 most of my sales were out of town? Was that what you said?

20 A. Yes, at the time.

21 Q. Do you recall me raising the question that the reason I  
22 didn't have to pay sales tax is because the Nevada Constitution  
23 stated every citizen may --

24 THE COURT: No. You can't --

25 MR. SCHIFF: All right.

1 THE COURT: -- read it.

2 MR. SCHIFF: Okay.

3 THE COURT: You just ask her --

4 BY MR. SCHIFF:

5 Q. Do you remember --

6 THE COURT: You ask her --

7 BY MR. SCHIFF:

8 Q. -- do you remember --

9 THE COURT: -- a question --

10 BY MR. SCHIFF:

11 Q. -- me raising --

12 THE COURT: -- without attempting to put your version

13 of the law in.

14 MR. SCHIFF: I'm not -- but this is what I -- the

15 issues that we discussed.

16 THE COURT: You ask her --

17 BY MR. SCHIFF:

18 Q. Do you remember --

19 THE COURT: -- a question that relates to that. If you

20 need help from Mr. Leventhal, I'm sure he'll be happy --

21 MR. SCHIFF: I'm gonna give her --

22 THE COURT: -- to give you a question that is not --

23 MR. SCHIFF: All right.

24 THE COURT: -- objectionable.

25

1 BY MR. SCHIFF:

2 Q. Do you remember me discussing, perhaps, my understanding  
3 that the Constitution of the State of Nevada precluded them  
4 putting taxes on books and tapes? It had nothing to do with  
5 my --

6 THE COURT: Don't make a statement.

7 (Discussion between Mr. Leventhal and  
8 Mr. Schiff.)

9 BY MR. SCHIFF:

10 Q. Do you recall me stating that my reason was --

11 THE COURT: You asked the question now. Let her  
12 answer.

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. Do you remember --

16 THE COURT: Mr. Schiff --

17 BY MR. SCHIFF:

18 Q. Do you recall --

19 THE COURT: Mr. Schiff, she heard the question.

20 MR. SCHIFF: Okay.

21 THE WITNESS: What was the direct question?

22 THE COURT: The question was: Did he tell you that he  
23 wasn't paying because of his understanding of the Nevada  
24 Constitution.

25 THE WITNESS: I believe that it had to relate to the

1 fact that what you were selling did not, um, relate to the taxes  
2 because they were not done in the State of Nevada, if I recall.

3 BY MR. SCHIFF:

4 Q. Okay. So would it refresh your recollection if I showed you  
5 a copy of the hearing?

6 A. It's been a long time.

7 Q. Well, I understand.

8 THE COURT: Mark it. Mark the section you want to use;  
9 show it to opposing counsel.

10 MR. IGNALL: Assuming it's the same transcript, we have  
11 a copy.

12 MR. SCHIFF: It's an exhibit.

13 MR. IGNALL: Which page?

14 THE COURT: Which part? We're not gonna do the whole  
15 thing. So which part.

16 MR. SCHIFF: I just --

17 THE COURT: Identify the page. Have it marked.

18 MR. SCHIFF: The page may be -- we can put it up on...  
19 um, the bottom...

20 (Discussion between Mr. Leventhal and  
21 Mr. Schiff.)

22 (Defendant Schiff's Exhibit No. 2112, marked  
23 for identification.)

24 THE CLERK: That's 2112.

25 MR. IGNALL: Your Honor, the Government doesn't object

1 to Mr. Schiff refreshing the witness's recollection with this  
2 document.

3 THE COURT: Okay.

4 MR. IGNALL: But I don't think there's any need to put  
5 this into evidence.

6 THE COURT: It's not been tendered yet.

7 Show the witness the section that you wish her to read.

8 MR. SCHIFF: Yes. Well, let me -- let me just mark it  
9 so...

10 (Pause in the proceedings.)

11 MR. SCHIFF: I thought I had it here.

12 (Pause in the proceedings.)

13 BY MR. SCHIFF:

14 Q. Could -- could this recollect -- sorry. From here, just  
15 read from the bottom. That's page 4. Yeah. This -- yeah, 4.

16 (Pause in the proceedings.)

17 BY MR. SCHIFF:

18 Q. Okay. You can just -- to here.

19 THE COURT: Read it to yourself. See if it refreshes  
20 your recollection.

21 THE WITNESS: (Reviewing document.)

22 (Discussion between Mr. Leventhal and  
23 Mr. Schiff.)

24 THE WITNESS: I don't really recall this particular  
25 wording. But this doesn't have anything to do with the

1 collection of the sales and use tax.

2 BY MR. SCHIFF:

3 Q. But that's -- but that's -- that's the issue -- that's what  
4 I said at that hearing, isn't --

5 THE COURT: No. You can ask her --

6 MR. SCHIFF: This is a transcript.

7 THE COURT: You may not like the answer, but she has  
8 said that she doesn't remember that part of it. So --

9 MR. SCHIFF: But that's in the transcript. How can --  
10 well, suppose she doesn't remember it. That's what I said if  
11 it's in the transcript.

12 THE COURT: Yeah. What are we gonna do? She doesn't  
13 remember. What are we gonna do about that?

14 MR. SCHIFF: Well, I -- but -- but the reason she gave  
15 was not the reason that is shown in the transcript.

16 THE COURT: She gave her recollection. You have --

17 MR. SCHIFF: Your Honor, could I have a sidebar on  
18 this? I don't want to argue. But suppose her recollection is  
19 wrong --

20 THE COURT: That's --

21 MR. SCHIFF: -- and contradicted by a transcript?

22 THE COURT: That's why you have the opportunity to  
23 cross-examine her. She just said she didn't remember that.

24 MR. SCHIFF: But that's -- but I'm trying to  
25 cross-examine her to -- to --

1           THE COURT: Well, ask her the next question.

2 BY MR. SCHIFF:

3 Q. The next question is --

4           THE COURT: She said she didn't remember what you said.

5           MR. SCHIFF: Your Honor --

6           MR. IGNALL: Your Honor --

7           MR. SCHIFF: -- I didn't have -- think I have to

8 remember what she said. There's the transcript.

9           MR. IGNALL: I thought the question Mr. Schiff had

10 asked that he was refreshing the witness's recollection about

11 was whether Mr. Schiff had raised some sort of an argument about

12 the Nevada Constitution --

13           THE COURT: Correct.

14           MR. IGNALL: -- and whether this refreshes her

15 recollection whether he made that.

16           THE COURT: Correct. And she has answered it does not.

17 Next question.

18           MR. SCHIFF: Well --

19           MR. IGNALL: I mean, if it'll speed things along, the

20 Government will stipulate that Mr. Schiff raised an argument

21 about the Nevada State Constitution. That's --

22 BY MR. SCHIFF:

23 Q. And didn't I -- didn't I --

24           MR. IGNALL: And we'll also --

25



1 BY MR. SCHIFF:

2 Q. Doesn't the transcript reflect -- it took place a long time  
3 ago -- I understand -- and that you may have trouble  
4 recollecting. But was that a transcript of that hearing? If I  
5 show you the front page --

6 THE COURT: She doesn't disagree that it was. She's  
7 read it. She doesn't disagree.

8 (Discussion between Mr. Cristalli and  
9 Mr. Schiff.)

10 BY MR. SCHIFF:

11 Q. Well, isn't it true that I said those words at the hearing?

12 A. If it's in the transcript, I assume that you did.

13 Q. Okay.

14 A. I do not recall those words --

15 Q. Okay.

16 A. -- being spoke.

17 Q. Can you read the words I said?

18 MR. IGNALL: Objection to the relevance of this  
19 testimony. Again, the Government will stipulate that Mr. Schiff  
20 raised an issue about the Nevada Constitution.

21 BY MR. SCHIFF:

22 Q. So --

23 MR. IGNALL: And, beyond that, it's confusing the issue  
24 here.

25 THE COURT: It is.

1 BY MR. SCHIFF:

2 Q. So the issues --

3 THE COURT: Sustained.

4 BY MR. SCHIFF:

5 Q. So the transcript reflects that the reason I believed I

6 didn't have to pay taxes --

7 THE COURT: Mr. Schiff --

8 BY MR. SCHIFF:

9 Q. -- sales tax --

10 THE COURT: -- you are testifying as to --

11 MR. SCHIFF: Well, then can she read --

12 THE COURT: -- what was --

13 MR. SCHIFF: -- what I said?

14 THE COURT: -- your state of mind. And you're not

15 allowed to do that.

16 MR. SCHIFF: Well, can she read what I said?

17 THE COURT: No.

18 MR. SCHIFF: So I can't say --

19 THE COURT: The Government has already agreed you

20 raised a question about the constitutionality of --

21 BY MR. SCHIFF:

22 Q. Okay. So --

23 THE COURT: -- sales tax.

24 BY MR. SCHIFF:

25 Q. -- so -- so -- all right. So the fact was the Government

1 raised this issue -- so I didn't just arbitrarily say I'm not  
2 gonna pay Connecticut -- uh, Nevada sales tax, did I? It wasn't  
3 arbitrary?

4 THE COURT: Well, if you can answer that. Go ahead and  
5 answer it if --

6 BY MR. SCHIFF:

7 Q. Did you answer the question?

8 THE COURT: Do you understand the question?

9 THE WITNESS: Not fully.

10 THE COURT: Okay.

11 Ask another question.

12 MR. SCHIFF: All right.

13 BY MR. SCHIFF:

14 Q. I -- I believe the Government -- the reason I didn't pay  
15 Connecticut sales -- Nevada sales tax --

16 THE COURT: No. You can't testify --

17 BY MR. SCHIFF:

18 Q. Did I just --

19 THE COURT: You cannot testify.

20 BY MR. SCHIFF:

21 Q. -- did I just refuse to pay the sales tax arbitrarily  
22 like -- or was the reason -- because I think you gave the reason  
23 that I --

24 THE COURT: Mr. Schiff --

25 MR. SCHIFF: All right.

1 BY MR. SCHIFF:

2 Q. Was the reason --

3 THE COURT: -- ask a question.

4 BY MR. SCHIFF:

5 Q. -- was the reason that I did not pay Nevada sales tax --

6 THE COURT: She doesn't know the reason --

7 MR. SCHIFF: Well, she stated --

8 THE COURT: -- that was in your -- the real reason. It  
9 was in your head. Ask her a question that she can answer --

10 MR. SCHIFF: Well, your Honor --

11 THE COURT: -- without getting inside of your head.

12 MR. SCHIFF: On direct didn't she say I said I didn't  
13 have to pay sales tax because most of my sales were out of  
14 state?

15 THE COURT: That's one of the things she said.

16 MR. SCHIFF: What's another thing she said? What's  
17 another thing she said? The point is --

18 THE COURT: What you were doing was not taxable --

19 MR. SCHIFF: Oh.

20 THE COURT: -- that was a quote directly from her. You  
21 claimed what you were doing was not taxable.

22 (Discussion between Mr. Leventhal and  
23 Mr. Schiff.)

24 BY MR. SCHIFF:

25 Q. My question was: None of those were the reasons in the

1 transcript; isn't that correct? That your recollection could  
2 have been wrong.

3 A. I recall whenever you -- whenever I approached the business  
4 that you said that -- at that time that you were not required to  
5 pay the taxes.

6 Q. Why? Do you recall why I said I was not required to pay the  
7 taxes? I believed -- why I believed I wasn't required to pay.

8 A. Because you weren't selling anything basically is what you  
9 told me --

10 Q. Well --

11 A. -- at the time.

12 Q. -- wasn't the reason as reflected in the transcript that I  
13 believed that the Constitution of the State of Nevada which  
14 precluded a tax on speech and -- and the publishing -- that's  
15 freely published -- wasn't my reason because I believed the  
16 Constitution of the State of Nevada precluded the State of  
17 Nevada from taxing books and, uh -- books and -- and books?

18 A. That was possibly your reasoning. But, as a employee of the  
19 State of Nevada, I was required to make sure that all businesses  
20 were registered with the department if they sold any type of  
21 tangible personal property.

22 Q. Well, I -- I -- I registered with the State of Nevada,  
23 didn't I?

24 A. Not immediately. That's why you had the show cause hearing  
25 to start with.

1                   (Discussion between Mr. Leventhal and  
2                   Mr. Schiff.)

3       BY MR. SCHIFF:

4       Q.   Well, I eventually registered with the state.

5       A.   That's correct.

6       Q.   And I paid those sales taxes?

7       A.   That's correct.

8       Q.   But my belief was I wasn't --

9               MR. IGNALL:  Objection.

10      BY MR. SCHIFF:

11      Q.   -- required --

12             THE COURT:  Sustained.

13      BY MR. SCHIFF:

14      Q.   Didn't I -- I think I started a lawsuit against the State.

15             MR. SCHIFF:  All right.  No further questions.

16             THE COURT:  Cross-examination?

17             MR. CRISTALLI:  No questions, your Honor.

18             THE COURT:  Bowers?

19             MR. BOWERS:  No.

20             THE COURT:  Redirect?

21             MR. IGNALL:  No redirect, your Honor.

22             THE COURT:  The witness is excused.

23             MR. SCHIFF:  Can I have those pages?

24             THE CLERK:  No.  Actually, I take that.

25             MR. SCHIFF:  Oh.

1 THE CLERK: Remember?

2 THE COURT: Watch your step right over here, please.

3 Okay. We're going to take our midmorning break. We'll  
4 be in recess 15 minutes.

5 (Jury leaves the courtroom at 10:25 a.m.)

6 (Recess from 10:26 a.m. to 10:48 a.m.)

7 THE CLERK: All rise.

8 THE COURT: Please be seated.

9 (Pause in the proceedings.)

10 THE COURT: Okay. Go ahead.

11 MR. NEIMAN: Your Honor, I just wanted to bring to the  
12 Court's attention. The Government's next witness is Thomas  
13 Menaugh. He's a IRS Appeals manager who conducted hearings with  
14 Defendant Neun. He's gonna testify as to what he told Defendant  
15 Neun was regarding the law.

16 The Government's offering this as notice to the  
17 defendant. We don't believe that it opens the door for  
18 cross-examination to get into what the law actually is because  
19 that would invade upon the province of this Court.

20 MR. CRISTALLI: Your Honor, um, since it relates to my  
21 client, I am -- I mean, I'm not gonna sit up there and debate  
22 the legality of the law. However, it's critical for me to have  
23 an opportunity at the very least to get through this particular  
24 witness that my client went in there with legal support, legal  
25 documentation, um, IRS, Internal Revenue Service Codes, IRS

1 sections, case law. I'm not going to get in the holdings of  
2 those particular decisions. I'm not gonna get into the  
3 substance of any IRS, uh, uh, Code sections.

4 But, because we're dealing with an issue as to whether  
5 or not -- which is the jury's ultimate decision is to whether or  
6 not my client actually believed in her position, not whether or  
7 not the position was valid or invalid. I just want to have an  
8 opportunity, obviously, to explore with this particular witness  
9 the fact that my client just didn't walk in there and say, I  
10 don't care what you say. I'm not listening to you. And this is  
11 the deal. I have to have some -- I have to get into it to a  
12 certain extent to establish that she, um, did have some  
13 foundation for her position, whether or not it'd be legitimate  
14 or illegitimate. Um, I have to have that opportunity.

15 MR. NEIMAN: And the Government wouldn't object to  
16 eliciting testimony from the witness as to what happened at the  
17 meeting, what -- what the conversation, what was told, what she  
18 showed him. That I -- I -- the Government concedes is fair  
19 game.

20 MR. CRISTALLI: Okay.

21 MR. NEIMAN: It's getting into the actual Code and all  
22 that.

23 MR. CRISTALLI: No I'm not gonna -- I'm not gonna get  
24 into the legality of the position.

25 THE COURT: Okay.



1 MR. CRISTALLI: I'm not gonna do that.

2 THE COURT: All right. Sounds like we don't have a  
3 disagreement.

4 MR. CRISTALLI: I don't think so.

5 MR. SCHIFF: Your Honor --

6 THE COURT: Mr. Schiff.

7 MR. SCHIFF: -- if Cindy was there and I was there,  
8 this is in response to the collection due process hearing. This  
9 is in connection with the Code Section 6620. Now, Code Section  
10 6620 is a law and the law requires that at the collection due  
11 process hearing the taxpayer has a right to ask for certain  
12 documents.

13 So I can't see how you can get into a collection due  
14 process hearing without raising what the law says you're  
15 entitled to get as a result of the hearing and whether or not he  
16 gives you the documents that the law authorizes you to get. I  
17 mean, Section 6320 was a direct result of the tax structuring  
18 Act of 1998.

19 Now, how can you get into a collection due process  
20 hearing without getting into the law?

21 THE COURT: Well, the purpose of the testimony is to --  
22 for the Government to show -- the Government witness to show  
23 that they informed Ms. Neun of the -- of the law at the time.  
24 And, uh, that's all it's for. And, you know --

25 MR. SCHIFF: But, your Honor --

1 THE COURT: -- it's not -- it's not to determine the  
2 validity of the hearing or anything else; it's to determine  
3 whether she had notice.

4 MR. SCHIFF: But --

5 THE COURT: And so --

6 MR. SCHIFF: But suppose the hearing officer didn't  
7 comply with the law in producing the documents?

8 THE COURT: It doesn't matter. Let's assume that they  
9 didn't even go into the room and they stood out in the hall and  
10 told her what the law was. That's what this is about, not  
11 about -- not about the legality of the hearing.

12 You don't --

13 MR. SCHIFF: I don't understand.

14 THE COURT: Well, you may not understand, but that's my  
15 ruling.

16 Now, with respect to your earlier request, you -- you  
17 have made some comments about not being able to hear. And you  
18 acknowledged that you just heard me. I'm just talking in a  
19 normal tone of voice. I have -- I have talked very loudly  
20 because you have said that you don't hear. But you can hear me.

21 MR. SCHIFF: Yeah, I can hear this.

22 THE COURT: However, notwithstanding that --  
23 notwithstanding that, I'm going to ask you to fill out a request  
24 for realtime service from the --

25 MR. SCHIFF: Now, I didn't hear that. A request for

1 what?

2 THE COURT: Realtime service. That is --

3 MR. SCHIFF: Realtime service?

4 THE COURT: -- that is so you can see on the screen  
5 roughly what is going on. There are a lot of -- a lot of words  
6 that aren't in the matrix. And so you'll not be able to read it  
7 every word exactly, but you'll be able to get a good idea of  
8 what the question was.

9 You'll -- you'll need to speak with the court reporter,  
10 fill out one of her forms. It'll be submitted to the -- to the  
11 CJA clerk in the Clerk's office who will then review it. And,  
12 if it's approved -- and I have no reason to doubt it won't be  
13 approved given your hearing problem -- then it'll be set up for  
14 you.

15 MR. SCHIFF: See, one of the problems is you can't hear  
16 certain highs and lows. So, even though you can hear something,  
17 you really don't understand what it is.

18 THE COURT: Um-hum.

19 MR. SCHIFF: I was trying to get my hearing aids  
20 adjusted, but I can only -- I can't get there.

21 THE COURT: Well, go there tomorrow.

22 MR. SCHIFF: Yeah. Tomorrow?

23 THE COURT: Go there tomorrow and get 'em adjusted.

24 MR. SCHIFF: Is that -- tomorrow's Friday?

25 THE COURT: Tomorrow's Friday.

1 MR. SCHIFF: All right. I'll try to get 'em done.

2 THE COURT: Yeah, I hope it's Friday.

3 MR. SCHIFF: I didn't hear that. See, I didn't really  
4 hear that.

5 THE COURT: I hope it is Friday.

6 MR. SCHIFF: Okay.

7 THE COURT: Yeah.

8 MR. SCHIFF: I didn't hear. Okay.

9 (Pause in the proceedings.)

10 (Jury enters the courtroom at 10:56 a.m.)

11 THE COURT: Please be seated.

12 Will counsel stipulate to the presence of the jury?

13 MR. NEIMAN: Yes, your Honor.

14 MR. CRISTALLI: Yes, your Honor.

15 THE COURT: Thank you.

16 Government's next witness.

17 MR. NEIMAN: Your Honor, the United States will call  
18 Thomas Menaugh to the stand.

19 (Paul Thomas Menaugh takes the witness  
20 stand.)

21 THE COURT: Please remain standing, sir.

22 THE CLERK: Raise your right hand.

23 You do solemnly swear that the testimony you shall give  
24 in the cause now pending before this court shall be the truth,  
25 the whole truth, and nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated.

3 Please state for the record your full name and spell  
4 your last name.

5 THE WITNESS: My name -- excuse me -- is Paul Thomas  
6 Menaugh, M-e-n-a-u-g-h.

7 MR. CRISTALLI: Um, could I have the spelling of the  
8 last name again? I'm sorry.

9 THE COURT: M-e-n-a-u-g-h.

10 MR. CRISTALLI: -a-u-g-h?

11 THE COURT: Yes.

12 Go ahead.

13 MR. NEIMAN: Thank you, your Honor.

14

15 PAUL THOMAS MENAUGH,

16 called as a witness on behalf of the Government, having been  
17 first duly sworn, was examined and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. NEIMAN:

21 Q. Good morning, Mr. Menaugh. How are you employed?

22 A. I'm sorry?

23 Q. How are you employed? Who --

24 A. I am an Appeals team manager. Uh, I'm physically located in  
25 Phoenix although I have staff here in Las Vegas and also in

1 Phoenix.

2 Q. For -- who are you Appeals team manager for? Which agency?

3 A. For -- for IRS, Internal Revenue Service.

4 Q. And what does it mean to be an Appeals team manager?

5 A. It means I have direct responsibility for, uh, numerous

6 Appeals officers and Settlement officers. And I'm one that

7 actually has authority to resolve matters. They recommend

8 resolutions to me.

9 Q. How long have you been a manager?

10 A. Approximately nine years.

11 Q. Prior to becoming a manager, how were you employed?

12 A. I was an Appeals officer located in Phoenix since 1983.

13 Q. And how long in total have you been with the Internal

14 Revenue Service?

15 A. 33 years.

16 MR. SCHIFF: 42 years?

17 THE COURT: 33.

18 THE WITNESS: 33.

19 MR. SCHIFF: 33 years.

20 BY MR. NEIMAN:

21 Q. And I think you indicated earlier you are physically located

22 in Phoenix?

23 A. Yes.

24 Q. Do you oversee Appeals officers here in Las Vegas as well?

25 A. Yes, I do.

- 1 Q. Approximately how many Appeals officers do you oversee?
- 2 A. I have a staff of 11.
- 3 Q. How many of them are here in Las Vegas?
- 4 A. Uh, six.
- 5 Q. Can you describe what an Appeals officer is?
- 6 A. An Appeals officer is, uh, an Appeals employee that has a  
7 revenue agent background, primarily income tax matters, um,  
8 although they also handled offers and compromise, and we also  
9 handle collection due process since 1998.
- 10 Q. You mentioned the term "collection due process." What is a  
11 collection due process hearing?
- 12 A. Um, Congress passed and the President signed into law a -- a  
13 Bill in 1998 that provided administrative appeal for -- under  
14 Section 6320 and Section 6330 of the Internal Revenue Code that  
15 provided an administrative appeal for certain collection, um,  
16 proposed actions.
- 17 Q. What -- what does that mean in everyday language?
- 18 A. Um, it means that if the Internal Revenue Service proposes  
19 to file a levy against a taxpayer or if a lien is filed they  
20 have certain administrative appeals, um, under those two Code  
21 sections, which prior to 1995 they did not have an  
22 administrative appeal right.
- 23 Q. And is that administrative appeal handled by someone with  
24 whom you oversee?
- 25 A. Yes, either by the Settlement officers or by the Appeals

1 officers on our staff.

2 Q. And, from the IRS's perspective, what is the purpose of this  
3 collection due process hearing or of having this hearing at all?

4 A. Well, what is the purpose? Well, number one, the taxpayer  
5 would have requested -- under collection due process they would  
6 have requested the appeal of the proposed collection action.

7 Um, and --

8 MR. SCHIFF: Can I --

9 THE WITNESS: -- and --

10 MR. SCHIFF: -- can I hear your answer to that again?

11 THE WITNESS: Sure.

12 Um, the taxpayer would have to request an appeal to a  
13 collection action, such as a lien or a levy. And that's how it  
14 ends up in our office.

15 BY MR. NEIMAN:

16 Q. And, after this meeting's requested, what's discussed or  
17 supposed to be discussed at this meeting?

18 A. Well, when the taxpayer requests the hearing, then we  
19 schedule the appointment, um, and we ask people to come in for  
20 an appointment. At this point in time, we were -- we were  
21 bringing in just about everybody for appointments that asked --  
22 asked for a face-to-face conference.

23 At that conference, they have the right to, uh, raise  
24 liability under certain circumstances, the underlying liability,  
25 from what --



1 Q. When you say --

2 A. -- the lien or the levy came from. Yeah.

3 Q. When you say "the liability," you mean the amount of tax?

4 A. The tax, the tax liability.

5 MR. SCHIFF: Can I hear --

6 THE WITNESS: Yeah.

7 MR. SCHIFF: -- that answer again? It's very hard.

8 THE WITNESS: Okay.

9 The taxpayer has a right, uh, under collection due

10 process to certain, um, items under collection due process.

11 Number one, they can raise a liability issue if it hasn't been

12 raised previously.

13 BY MR. NEIMAN:

14 Q. Well, when would a liability issue or -- or the amount of

15 tax have been raised earlier or...

16 A. Well, the Internal Revenue Service would have, uh,

17 previously, for instance, uh, held an examination possibly or --

18 and/or issued a Notice of Deficiency, which is a formal, um,

19 letter sent to the taxpayer and gives them an opportunity to

20 petition the U.S. Tax Court.

21 Q. And, if they petition U.S. Tax Court, is this where the

22 amount of the tax could be disputed?

23 A. Yes, it is.

24 Q. All right. And if the taxpayer -- besides discussing in

25 some circumstances the amount of tax owed, what else would be

1 discussed ideally at these collection due process hearings?

2 A. They could also raise other issues. For instance, they can  
3 raise innocent spouse.

4 Q. What -- what does that mean?

5 A. Well, for instance, if --

6 Q. Uh -- go ahead.

7 A. Okay.

8 If, uh, a husband and wife have filed a joint return  
9 and one of 'em feels that they were unjustly being, um, subject  
10 to the liability, they can raise, under Section 6015,  
11 innocent -- innocent spouse.

12 Q. Could you discuss collection alternatives?

13 A. Sure.

14 Also under a collection due process, um -- for  
15 instance, a levy is proposed by the Collection Division, under  
16 collection due process the taxpayer can request that an  
17 alternative collection manner or method be -- be undertaken.

18 For instance, instead of a levy against wages, or  
19 something of that nature -- a levy against a bank account -- uh,  
20 they can say that, you know, they would like to enter into an  
21 installment agreement, for instance. And, um, if they're -- if  
22 they're eligible for an installment agreement, then we actually  
23 put them into an installment agreement to pay the tax liability  
24 over a period of months or years.

25 Q. Have you ever conducted a collection due process hearing

1       yourself?

2       A.   Yes, I have.

3       Q.   Approximately how many total have you conducted?

4       A.   As the actual hearing officer?

5       Q.   As either a hearing officer or sat in as a representative of

6       the Internal Revenue Service.

7       A.   Well, keeping in mind that as a manager one of my duties is

8       to actually observe conferences periodically, um, I -- I've sat

9       in observing numerous conferences, both in Las Vegas and also in

10      Phoenix.  Actually holding the conferences, uh, particularly

11      here in Las Vegas, I probably actually held about 10

12      conferences.

13      Q.   And what brought you out to Las Vegas that you personally

14      handle these hearings yourself?

15      A.   Some of my staff -- our -- our staff in Phoenix had

16      scheduled appointments.  The people that schedule appointments

17      didn't show.  We offered them a second opportunity.  And we --

18      we scheduled a second conference.  And in lieu of, uh, having

19      that person from Phoenix travel again when I was already going

20      to be here, uh, I held the conference.

21      Q.   Did you ever have a -- handle a collection due process

22      hearing where, uh, Cynthia Neun was present?

23      A.   Yes.

24      Q.   When did this take place?

25      A.   Well, I recall that would have been probably in, uh, 2000 or

1 2001.

2 Q. Approximately how many collection due process hearings that  
3 you sat through was Defendant Neun present?

4 A. Um, purely a guess. I'm gonna guess five.

5 Q. And --

6 A. And those would have been here in Las Vegas.

7 Q. All right. And are you aware of whether or not your group  
8 conducted meetings with Defendant Neun?

9 A. Yes, numerous.

10 Q. Define "numerous."

11 A. Um, well over --

12 MR. CRISTALLI: Foundation.

13 THE COURT: Uh, yes. Foundation. Sustained.

14 BY MR. NEIMAN:

15 Q. Um, is -- and did you know how many she appeared and the  
16 basis -- or in the -- I guess, in the role as a supervisor of  
17 these agents?

18 A. Well, I appeared as the manager.

19 Q. And are your underlying agents required to report to you as  
20 to the activities that go on at these collection due process  
21 hearings?

22 A. Uh, yes. I mean, they -- they make -- make me aware of the  
23 conferences shortly after they occur or before. But, of course,  
24 you have to understand the flow of the cases. When a case is  
25 being, uh, uh, recommended for -- or a proposal for a

1 resolution, the case comes to me and I approve the case,  
2 whatever the proposed action is.

3 Q. And, on this paperwork in which you're referring to, does it  
4 indicate who was present at these collection due process  
5 hearings?

6 A. Yes.

7 Q. And how many times had you seen Defendant Neun's name as  
8 present at one of these collection due process hearings?

9 A. Well, I don't know an exact number. But I'm going to guess  
10 well --

11 MR. CRISTALLI: Objection.

12 THE WITNESS: -- over a hundred.

13 MR. CRISTALLI: Calls for speculation.

14 THE COURT: He --

15 MR. CRISTALLI: I don't want him to guess.

16 MR. BOWERS: He said he was gonna guess.

17 THE COURT: Well, he said he's going to guess. Some  
18 parameters on his guess. Sustained.

19 BY MR. NEIMAN:

20 Q. Can you -- was it more than 25 collection --

21 A. Yes.

22 Q. -- due process --

23 A. Yes.

24 Q. Was it more than 50?

25 A. Yes.

- 1 Q. Was it more than 75?
- 2 A. Yes.
- 3 Q. Was it close to a hundred?
- 4 A. Yes.
- 5 Q. Was it many more than a hundred or you're not sure?
- 6 A. I -- I would not make a guess over that.
- 7 Q. Now, the -- the five or so hearings that you attended with,  
8 uh, Defendant Neun, were they all similar?
- 9 A. Yes.
- 10 Q. In what role was Defendant Neun appearing as?
- 11 A. Well, normally, um, the taxpayer and Ms. Neun, uh, would  
12 come in and then, um, she attempted to practice as a  
13 representative, um, in the conference. Um, and we -- because  
14 she was not an attorney or a CPA or an enrolled agent, under the  
15 rules of practice before the IRS and before appeals, she's not  
16 entitled to practice as a representative per se and we did not  
17 allow her to participate or practice per se.
- 18 Q. You used the word "enrolled agent." What does that mean?
- 19 A. That's someone that takes a -- that's an accountant that has  
20 certain qualifications and they, um, they pass an exam that's  
21 administered by the Internal Revenue Service.
- 22 Q. The hearing that you were present -- or the five or so  
23 hearings that you were present with Defendant Neun, uh, can you  
24 explain, I guess, how these meetings would begin?
- 25 A. Well, many of them would -- would start out that, um, they

1 wanted to know if we had a certificate or a verification from  
2 the Secretary that, um, all the rules and regulations had been  
3 followed by the compliance folks.

4 And I think you have to keep in mind as Appeals we're  
5 independent from compliance. We're a totally different  
6 organization, although we're still in- -- internal to the  
7 Internal Revenue Service. Um, but, um, they were looking for a  
8 certificate of some type verifying that the secretary verified  
9 that the rules and regulations, uh, had been followed at the  
10 compliance level.

11 Q. Well, what other types of, uh -- what other information or  
12 what else would these taxpayers with Defendant Neun ask for  
13 or --

14 A. Well, they would also ask for the delegations of authority.

15 For instance, if a Notice of Deficiency had been  
16 issued -- and normally it had been -- they would ask for the  
17 delegation of authority of the person that signed the Notice of  
18 Deficiency or they would ask for our delegation of authority.

19 Q. Would they ever challenge, uh, whether or not they were  
20 responsible to pay taxes?

21 A. Yes.

22 Q. Uh, in what capacity? What would they say in that regards?

23 A. Well, they would say something to the effect of show me in  
24 the Internal Revenue Code, um, where it says that I owe tax. In  
25 many instances, because of the law, they had previously been

1 issued a Notice of Deficiency and they had not petitioned U.S.  
2 Tax Court. And, accordingly, the statute provides that if they  
3 previously had an opportunity to raise the liability or to argue  
4 the liability they can't argue that liability before us in a  
5 collection due process, um, case. And so we would try to  
6 terminate the discussion as to liability at that point.

7 Q. And -- and you would then direct them to what -- how would  
8 you respond, I guess, to -- to these various arguments?

9 A. Well, I mean, it was pretty -- they were pretty adamant to  
10 the fact that there is no obligation for them to pay federal  
11 income tax. Um, and, you know, on occasion, particularly when I  
12 would sit in on a conference, I would explain to them that there  
13 is. And, in fact, I would actually go through -- many of them  
14 would bring in an Internal Revenue Code that had tabs in it.

15 Q. Did the Codes that they brought in look the same?

16 A. Yes.

17 Q. Okay.

18 A. New.

19 Q. Uh, explain --

20 MR. CRISTALLI: I'm sorry. I didn't hear that. Could  
21 you -- what did he say? New?

22 MR. BOWERS: Did you say they were new looking?

23 THE WITNESS: They were new. They looked like they  
24 brand new.

25



1 BY MR. NEIMAN:

2 Q. And were they tabbed?

3 A. Yes.

4 Q. Did they ever indicate -- or did any of these taxpayers ever  
5 indicate where they purchased these?

6 A. No, I don't recall that.

7 Q. Okay. Uh, and what would they do, if anything, with the  
8 Code book when these taxpayers would come in?

9 A. Well, they would hold up the Code and in a dramatic fashion  
10 say, You show me in the Internal Revenue Code where it says I  
11 owe internal -- you know, federal income tax.

12 Q. And how would you respond?

13 A. Well, after the first few of these, I decided that, um, I  
14 would show them. And I actually went through certain sections  
15 with them, um, and explained the liability. But every time when  
16 I was --

17 MR. CRISTALLI: Your Honor, I'm gonna object pursuant  
18 our previous, uh, discussions about whether or not we're gonna  
19 get into the substance of the law here. I mean, I'm gonna be  
20 precluded by the Court from entering into that dialogue with  
21 this particular witness. And I don't know. You're opening --  
22 we're opening the door a little bit here.

23 THE COURT: I don't think so because he's not arguing  
24 Code sections. He's just saying what -- how he explained his  
25 position. And you're going to be allowed to -- to ask him if,

1 uh, your client explained her position. Overruled.

2 MR. CRISTALLI: Okay.

3 THE WITNESS: So I would explain to them various Code  
4 sections and in some instances I would actually read a  
5 particular Code section or a portion of it. Um, and then I  
6 would say, you know, that is the basis for the reason that you  
7 have a liability for federal income tax.

8 BY MR. NEIMAN:

9 Q. And was Defendant Neun present when you would do this with  
10 these taxpayers?

11 A. Yes.

12 Q. Approximately how many times was she present when you did  
13 this?

14 A. Like I said, I'm gonna just guess five times.

15 Q. Uh, did you ever hand out or give these taxpayers a copy of  
16 a case or cases that may have rejected their position?

17 A. There was a case that came out in December of 2000 -- and  
18 the name was Pearson -- from the Tax Court. And, in the Pearson  
19 case, the Tax Court --

20 MR. CRISTALLI: Objection. Objection.

21 MR. NEIMAN: Maybe I could ask another question.

22 BY MR. NEIMAN:

23 Q. Did you --

24 THE COURT: Ask another question.

25

1 BY MR. NEIMAN:

2 Q. Did you explain to the taxpayer with Defendant Neun present

3 what the substance of the Pearson case was about?

4 A. Yes.

5 Q. And what was it that you told them the Pearson case was

6 about?

7 A. The Pearson case --

8 MR. CRISTALLI: Objection. Same objection.

9 MR. NEIMAN: Your Honor, this is --

10 MR. CRISTALLI: He's not a lawyer.

11 MR. NEIMAN: Going to notice.

12 MR. SCHIFF: Yeah, I must object to this also --

13 THE COURT: Well, he can --

14 MR. SCHIFF: -- because --

15 THE COURT: -- he can summarize his position of what

16 he --

17 MR. SCHIFF: Can I --

18 THE COURT: -- told the defendant that the --

19 MR. CRISTALLI: Your Honor --

20 THE COURT: -- case held. The Court will receive it

21 for that limited purpose --

22 MR. CRISTALLI: Your Honor --

23 THE COURT: -- and not for the --

24 MR. SCHIFF: Can I have a sidebar on this, please?

25 THE COURT: Not for the purpose of -- of the Court --

1 or the jury accepting that that's what the case really holds.

2 MR. CRISTALLI: Your Honor --

3 THE COURT: You're going to be allowed to --

4 Mr. Cristalli, to --

5 MR. CRISTALLI: Yes, sir.

6 THE COURT: -- to ask if she presented cases.

7 MR. CRISTALLI: Yes, sir. Thank you.

8 THE COURT: But he certainly can testify what he  
9 informed her.

10 MR. CRISTALLI: Yes, sir.

11 BY MR. NEIMAN:

12 Q. Generally speaking, without getting into the specific  
13 details of the case, what did he tell -- what did you tell the  
14 taxpayer and Defendant Neun about the holding in the Pearson  
15 case?

16 A. Well, we explained that the arguments that they were putting  
17 forth that there was no liability had already been heard by the  
18 full Tax Court. And, in Pearson, they said that they would  
19 issue sanctions in the future, I think under 6673, if they  
20 continued to continue to argue those type of case -- arguments.

21 Q. What -- what is sanctions, if you know?

22 A. A fine in addition to whatever tax liability was there. A  
23 penalty.

24 Q. Did you give instruction to the Appeals officers which you  
25 oversaw to give similar advice when, uh, meeting with taxpayers

1 who put forth these same positions?

2 A. Yes, absolutely. Um, in fact, when the case came out in  
3 late 2000, at that point in time I asked each of the Appeals  
4 officers and the Settlement officers that were handling this  
5 type of case to, um, make sure that they advised in their  
6 letters, communications, and even hand out a copy of the case.

7 Q. Did the way that you instructed your Appeals officers that  
8 you supervised to handle these cases change over time?

9 A. Yes.

10 Q. Can you explain that evolution on how the IRS responded to  
11 these hearings?

12 A. Well, we first started hearing collection due process cases  
13 in approximately March of 1999. At that point in time, uh, the  
14 Internal Revenue Service appeals organization really did not  
15 have any set method of handling collection due process cases.  
16 That -- that methodology evolved over a period of time, um,  
17 relative to the type of cases where the issue was that they  
18 didn't owe income tax. Um, when the Pearson case came out, then  
19 we used that to inform the taxpayers that, um, you know, the  
20 type of argument that they were making would not be heard by the  
21 Tax Court.

22 Q. Do you know whether or not Defendant Neun's role at these  
23 collection due process hearings changed, uh, at the -- did you  
24 notice a change in the ones that you actually handled?

25 A. You know, only holding the five or so cases, I couldn't say

1 there was a pattern.

2 Q. Well, what -- what percent -- what percentage of the  
3 collection due process hearings that you oversaw put forth  
4 the -- these arguments which we just discussed regarding the --  
5 the liabilities of income tax?

6 A. Um, a large number of our cases. Um, we probably had, um,  
7 four or five Appeals officers and Settlement officers that  
8 worked directly for me, uh, and there were also a couple of  
9 Settlement officers here in this office that worked for another  
10 manager. Uh, but just the people that I -- that worked --  
11 worked with me, um, I probably had four or five people working  
12 collection due process pretty much full time and easily 50 to  
13 75 percent of their time was working on the type of case where  
14 they were making the underlying argument that there was no  
15 liabilities for federal income tax.

16 MR. BOWERS: Your Honor, I'm sorry. I just have a late  
17 objection.

18 I'm not sure if these arguments that this witness is  
19 claiming about no obligation for income tax are tied to  
20 Mr. Schiff or something else or what they are. It's a  
21 foundation objection to that question, which is late, but any  
22 further questions along that line.

23 THE COURT: So, as I understand your objection, it is  
24 to foundation?

25 MR. BOWERS: Yeah. I don't know when he says "these

1 arguments."

2 MR. NEIMAN: Well, I can maybe ask --

3 THE COURT: Well, he's already discussed what those  
4 arguments were and in quite a bit of detail and that included  
5 the authority of the secretary, the certificate of compliance,  
6 those -- the lack of a statute that requires, uh, individuals to  
7 pay income tax. These are -- these are things that he's already  
8 gone into detail and he has continued to explain how those  
9 matters, those arguments, took up the time of his hearings  
10 officers, four or five hearings officers, 50 to 75 percent of  
11 their time.

12 MR. BOWERS: Okay. So those --

13 THE COURT: So the foundation is laid.

14 MR. BOWERS: Those are the arguments we're talking  
15 about.

16 THE COURT: As I understand it.

17 THE WITNESS: That's correct.

18 MR. NEIMAN: I can ask another question that may  
19 clarify it a little bit more.

20 BY MR. NEIMAN:

21 Q. Did you notice -- did you review the tax returns of the  
22 taxpayers who put forth these arguments or did you have an  
23 opportunity to see them?

24 A. Yes, I did.

25 Q. And can you describe what these tax returns of the people

1 who put forth these arguments look like?

2 A. Uh, they were tax returns filed, um, mainly on normal 1040  
3 returns but all the lines had zeroes entered in them. A few  
4 instances the jurat -- we call it the jurat, which is the signed  
5 under penalty of perjury -- that was modified. But most of it  
6 just had zeros and no information attached to them.

7 Q. "No information" meaning no W-2 information?

8 A. No W-2 reflecting wages or no 1099's or anything of that  
9 nature.

10 Q. Did you notice whether or not they had any attachments  
11 putting forth positions to the tax returns?

12 A. I believe they did. And that was a -- what we referred to  
13 as a constitutional type of argument. They said that -- they  
14 would say in those attachments that, um, they -- they held the  
15 belief that there was no valid li- -- reason for them -- or  
16 liability for them to file federal income tax returns and pay  
17 federal income tax.

18 Q. Uh, did there come a time when you attended a collection due  
19 process hearing here in Las Vegas with a taxpayer by the name of  
20 Matthew Diamond?

21 A. Yes.

22 Q. Uh, do you remember approximately when that took place?

23 A. It was in 2001. But, um, I don't recall the specific date.

24 Q. Did Mr. Diamond have a representative or somebody who  
25 accompanied him to this meeting?



1 A. Yes, he did.

2 Q. Who accompanied him to this meeting?

3 A. Uh, Ms. Neun.

4 Q. And were you present at that meeting?

5 A. Yes.

6 Q. I think we laid that already.

7 A. I actually held the conference.

8 Q. And who were you -- who else at the IRS, if anybody, was  
9 with you at this meeting?

10 A. Uh, one of the -- one of the Appeals officers that worked  
11 for me at the time. A gentleman by the name of Tony Aguiar.

12 MR. NEIMAN: Your Honor, at this time the United States  
13 would like to publish Government Exhibit 153, which I believe  
14 was admitted through the testimony of Mr. Diamond as an  
15 audiotape.

16 THE COURT: 153, is it in...

17 MR. BOWERS: Your Honor --

18 MR. SCHIFF: You're gonna play the tape?

19 MR. CRISTALLI: Yes.

20 The only condition that we had previously agreed on is  
21 that the, uh, entirety of the tape be played.

22 MR. NEIMAN: The Government will play the entire tape;  
23 however, so the Court knows, we are gonna break it up into  
24 clips, segments.

25 THE COURT: Okay.

1 MR. BOWERS: And I don't care what portion of the tape  
2 is played. But if it's coming in -- is it already in?

3 THE COURT: It's already -- is it already in?

4 THE CLERK: I don't have it over here.

5 MR. BOWERS: If it comes in, I just -- I think the  
6 whole tape needs to come in. You can't just --

7 MR. CRISTALLI: That's right.

8 MR. SCHIFF: Yes.

9 MR. CRISTALLI: It is.

10 MR. SCHIFF: The whole tape is coming in.

11 THE COURT: Well, that's true. The --

12 MR. BOWERS: Okay.

13 THE COURT: -- whole tape --

14 MR. BOWERS: Then I have --

15 THE COURT: -- comes in.

16 MR. BOWERS: -- no objection. Thank you, Judge.

17 THE COURT: They are going to play it in segments.

18 Hold on. What was the exhibit number?

19 MR. NEIMAN: 153. I believe it was admitted on

20 September 22nd.

21 THE CLERK: It has been admitted, yes. But... Unless  
22 it's out of order.

23 (Pause in the proceedings.)

24 MR. NEIMAN: I believe there's a reason why you can't  
25 find this, Ms. Vannozzi. I apologize.

1           Your Honor, like the other audiotapes, this one has  
2           been digitized through the computer.

3           THE COURT: Thank you. You may publish.

4                   (Audiotape played in open court.)

5           BY MR. NEIMAN:

6           Q. Mr. Menaugh --

7           A. Yes.

8           Q. -- is this a similar argument that you heard at the  
9           beginning of the five other collection due process -- or four  
10           other collection --

11          A. Yes, it is.

12          Q. And is it similar with the arguments that you heard -- well,  
13          I guess I should ask this question first.

14                 Did you sit in on other collection due process hearings  
15                 where Defendant Neun was not present but these arguments were  
16                 put forth?

17          A. Yes.

18          Q. Approximately how many of those had you sat in?

19          A. 30.

20          Q. And were these -- was this first argument generally the  
21                 first argument made at these hearings?

22          A. Yes.

23                 MR. NEIMAN: If I may approach the witness?

24                 THE COURT: You may.

25                 MR. NEIMAN: I'm approaching with what's been marked as

1 Government Exhibit 1. Actually, your Honor, if I could do this  
2 maybe on the ELMO. Would that be okay?

3 THE COURT: You may.

4 MR. NEIMAN: Thank you.

5 THE COURT: Is 1 in yet?

6 THE CLERK: Yes.

7 MR. NEIMAN: Government Exhibit 1 is.

8 THE COURT: Okay. You may.

9 (Document displayed in open court.)

10 BY MR. NEIMAN:

11 Q. I know you probably don't recognize Government Exhibit 1,  
12 Mr. Menaugh. But, if I could direct your attention to a tab  
13 labeled within Government Exhibit 1 as "CDP REQUEST." If you  
14 could look at this form and ignore the handwriting and the color  
15 on it, is this what a request for a collection due process  
16 hearing looked like?

17 A. Yes, it is. Yes, it is.

18 Q. And is this what the taxpayer would have to fill out prior  
19 to requesting such a hearing?

20 A. Um, under the regulations, uh, it had to be in writing. And  
21 the Internal Revenue Service provided this form. And as -- I  
22 believe it's a 12153 or 12253, yeah.

23 Q. Well --

24 A. Form.

25 Q. -- I guess the -- form you're referring to the form

1 number --

2 A. Yes --

3 Q. -- down at the bottom?

4 A. -- form number on the bottom.

5 Q. Okay. All right.

6 MR. NEIMAN: If we may please continue the tape. I'm  
7 sorry to change sources on you.

8 (Audiotape continued to be played in open  
9 court.)

10 BY MR. NEIMAN:

11 Q. Mr. Menaugh, what was it specifically that Mr. Diamond  
12 was -- was asking for, if you know?

13 A. Um, in order for the Internal Revenue Service to function,  
14 both at the compliance level and even at the Appeals level, the  
15 secretary is the one that's originally granted all authority.  
16 That authority then has to be delegated down to certain levels  
17 within the Internal Revenue Service to do certain -- or take  
18 certain actions.

19 For instance, I am delegated the authority to approve,  
20 um, resolutions on the cases that come before me. And it's an  
21 actual written delegation. He apparently was looking for the  
22 delegations, for instance, for the people that issued the  
23 notices -- or signed the Notices of Deficiency or that issued  
24 the Notices of Lien.

25 Q. Did that have anything to do with the collect -- the purpose

1 of the collection due process hearing from the IRS's  
2 perspective --

3 A. No.

4 Q. -- or from your perspective?

5 A. No.

6 (Audiotape continued to be played in open  
7 court.)

8 BY MR. NEIMAN:

9 Q. Sorry to cut it off mid sentence.

10 During this meeting, did you see Mr. Diamond consult at  
11 all with Defendant Neun?

12 A. As I recall, yes.

13 Q. Do you remember approximately how many times they would  
14 have --

15 MR. CRISTALLI: Your Honor, I'm gonna object. The tape  
16 speaks for itself. If there was a pause here that would suggest  
17 that there was some conference between the two, so be it. There  
18 is nothing to suggest that whatsoever.

19 Was there some type of pause that I'm missing during  
20 the course of this due process hearing that gave her an  
21 opportunity to consult on a particular issue? I think that  
22 misstates the evidence that we're seeing it as -- as we watch  
23 and listen.

24 MR. BOWERS: I -- I -- Mr. Cristalli is absolutely  
25 right, even though it doesn't affect my client.

1           MR. CRISTALLI: I mean, you could lay a better  
2 foundation, I guess.

3 BY MR. NEIMAN:

4 Q. How would he consult with Defendant Neun?

5 A. Well, I would say that he would look at her, ask her a  
6 question, she would provide an answer. You're hearing, I think,  
7 some of it. There may have been some inaudible portion that's  
8 not on the tape, I mean, in a whisper type of thing. But...

9           MR. CRISTALLI: Well, I don't want him to -- I'm gonna  
10 object. This is speculation.

11           THE COURT: Well, he was there. He can answer if they  
12 were -- if they were whispering and off the tape. Overruled.

13           THE WITNESS: Because that -- that did occur. I mean..

14           THE COURT: Overruled.

15                   (Audiotape continued to be played in open  
16 court.)

17 BY MR. NEIMAN:

18 Q. Mr. Menaugh, it appears you're arguing over the definition  
19 of "income." Is that fair to say?

20 A. Yes. And I was trying to explain the, um, the reason for  
21 the liability.

22 Q. And if -- if someone -- or, if a taxpayer wanted to  
23 challenge the amount of income that the IRS said they had, would  
24 Tax Court be the appropriate remedy?

25 A. Yes, it would.

1 Q. Was that the remedy and the purpose of these collection due  
2 process hearings?

3 A. No, it wasn't.

4 The purpose of these was to really arrive at a  
5 collection alternative because he had previously had an  
6 opportunity to petition U.S. Tax Court and he didn't do that.

7 MR. SCHIFF: Can I have that answer again about the  
8 purpose of the collection due process hearing?

9 THE WITNESS: The purpose of this due process hearing  
10 in this particular instance, because he had previously received  
11 a Notice of Deficiency --

12 BY MR. NEIMAN:

13 Q. Meaning he had previously been given the opportunity to  
14 challenge the amount of the tax?

15 A. That's correct.

16 -- was -- was particularly to look at collection  
17 alternatives.

18 MR. SCHIFF: So your answer is the purpose of the  
19 hearing was to offer collection alternatives? Is that your  
20 answer?

21 THE WITNESS: That was -- that was a part of it. Also  
22 to determine if in fact -- we were to determine if in fact all  
23 the rules and regulations had been followed by the compliance  
24 folks.

25



1 BY MR. NEIMAN:

2 Q. Meaning within the IRS?

3 A. Within the IRS.

4 MR. NEIMAN: All right. We'll finish the tape.

5 (Audiotape continued to be played in open  
6 court.)

7 BY MR. NEIMAN:

8 Q. Mr. Menaugh, approximately how many meetings were the exact  
9 arguments that you -- that we just listened to did you hear --  
10 or have you sat through -- let me re-ask that question. That  
11 was a terrible question.

12 Approximately how many meetings had you sat in where  
13 these same arguments were raised?

14 A. I'm gonna guess 30.

15 MR. BOWERS: Objection, Judge. I just wanna be clear  
16 as to what argument that we just heard -- exactly what arguments  
17 this witness is about to answer to.

18 THE COURT: Your objection is to --

19 MR. BOWERS: It would be a foundation --

20 THE COURT: -- his question, how many meetings did you  
21 attend where these exact arguments were made?

22 MR. BOWERS: Well, first, he said "exact" and then he  
23 said "these." I don't wanna be semantic or technical. I just  
24 want to know what --

25 THE COURT: Okay.

1 Will you repeat the question.

2 BY MR. NEIMAN:

3 Q. We just heard some arguments made on this tape, didn't we,  
4 Mr. Menaugh?

5 A. Yes.

6 Q. How many times did you hear the arguments mentioned on this  
7 tape, mentioned to you live, at collection due process hearings?

8 A. Here in Las Vegas I would guess there were probably --  
9 approximately 10 times.

10 Q. And how many times elsewhere?

11 A. Uh, we also had cases of this nature in Phoenix and I sat in  
12 on a number of those. I would say 30 in total.

13 Q. Uh, were the arguments -- well, if I could direct your  
14 attention, actually, to Government Exhibit 154, which I believe  
15 I need to approach you with.

16 MR. NEIMAN: I got it. I got it.

17 May I approach the witness?

18 THE COURT: You may.

19 (Document placed before the witness.)

20 BY MR. NEIMAN:

21 Q. Do you recognize Government Exhibit 154?

22 A. Uh, this is an excerpt taken from Tax Notes Today on the  
23 Terry Hyrum Pearson (phonetic) case, which I believe came out in  
24 December of 2000.

25 Q. And is this the case that you referenced you gave to

1 Mr. Diamond in Ms. Neun's presence at the collection due process  
2 hearing?

3 A. That's the same case, although I think we would have given  
4 an actual copy of the case issued by the Tax Court.

5 Q. Same contents though or --

6 A. Um, starting at the full text, I think, on the second page  
7 where it says "full text."

8 MR. NEIMAN: Your Honor, at this time the United States  
9 would move into evidence Exhibit 154.

10 MR. CRISTALLI: Your Honor, I'm going to object. First  
11 of all, it's not even a published decision. It says, "Tax Notes  
12 Today, Friday, December 15th, 2000." Furthermore, the -- the --  
13 this Court is going to instruct the jury on the law. This is  
14 the issue that we've been dealing with. Um, there has been  
15 numerous court decisions that my client has relied on to base  
16 her position that I am unable to discuss or get into evidence as  
17 an exhibit all throughout the course of this trial.

18 So I have certainly a concern about admitting through  
19 this witness a legal opinion that's not even a valid legal  
20 opinion because it's not -- it's not -- doesn't appear to be  
21 like the reported decision.

22 MR. NEIMAN: Your Honor --

23 MR. CRISTALLI: It's a portion of a -- it begins on --  
24 it says "abstract" and it says "a summary" and then on the  
25 second page it talked about a "full text." I mean, it's

1 certainly not a reported decision as we're accustomed to in the  
2 legal profession.

3 MR. BOWERS: I'm sorry. I've got to add to that,  
4 Judge. This is --

5 MR. SCHIFF: Um --

6 MR. BOWERS: Please, Irwin.

7 The admission of this document under these  
8 circumstances I'm not sure if this is the position, uh, that  
9 this witness is about to adopt for the IRS, if it's this  
10 witness's position.

11 Uh, in addition to Mr. Cristalli's concerns, I think  
12 that complicates, uh, the going back and forth on what the law  
13 is and who is presenting the law and all the rest of this stuff.

14 MR. CRISTALLI: And --

15 THE COURT: Go ahead.

16 Oh. Wait for Mr. Schiff. Mr. Schiff wants to speak --  
17 add something.

18 (Discussion between Mr. Leventhal and  
19 Mr. Schiff.)

20 MR. SCHIFF: Yeah, I have an objection. Yeah, I have  
21 an objection. You wanna hear it?

22 MR. BOWERS: He asked for it --

23 THE COURT: I --

24 MR. BOWERS: -- Irwin.

25 THE COURT: -- invited you. Go ahead.

1 MR. BOWERS: Why don't you tell him what it is.

2 MR. SCHIFF: Is the IRS bound by Tax Court decisions?

3 THE COURT: No, that's not a -- that's not a --

4 MR. SCHIFF: Well, it's on my objection.

5 THE COURT: No. You don't ask him questions.

6 MR. SCHIFF: Well --

7 THE COURT: The Government still has him --

8 MR. SCHIFF: I have --

9 THE COURT: -- on direct.

10 MR. SCHIFF: -- an objection.

11 MR. LEVENTHAL: What's your objection?

12 MR. SCHIFF: My objection is that --

13 THE COURT: Number 154. What is your objection --

14 MR. SCHIFF: I have an objection --

15 THE COURT: -- to 154.

16 MR. SCHIFF: -- because this is a Tax Court decision.

17 And the IRS doesn't consider itself bound by Tax Court

18 decisions.

19 MR. NEIMAN: Your Honor, the United States would redact

20 the portions that were not provided to Defendant Neun, uh, being

21 the abstract and the summary. However, the full text is being

22 used to offer as -- show notice to Defendant Neun that her

23 positions which she put forth at this collection due process

24 hearing and multiple others had been rejected and were now

25 resulting in sanctions being imposed for people who put forth

1 those.

2 MR. BOWERS: Okay, your Honor. Interestingly enough, I  
3 think Irwin and I may have said the same thing, which is if you  
4 allow this document in, a -- a strong concern apparently for  
5 both of us, is is this document -- I know it's being showed to  
6 offer notice. But part of that notice has to indicate that this  
7 is the position of the IRS or this is the position of  
8 Mr. Menaugh or whose position is this.

9 THE COURT: Well, this is a Tax Court decision  
10 submitted to show notice to the defendants that their position  
11 was, uh, not, uh -- not based in law.

12 MR. BOWERS: Well --

13 MR. CRISTALLI: Your Honor, I don't know even know if  
14 it says that.

15 THE COURT: Pardon?

16 MR. CRISTALLI: I don't know if it actually says that.

17 THE COURT: Well, you better take a look at it.

18 MR. CRISTALLI: Right. I need to real quickly. I  
19 mean, I don't -- I mean, we're making these assertions without,  
20 you know, taking a look at it. And that concerns me.

21 MR. BOWERS: Well, maybe I could solve my objection on  
22 voir dire 'cuz I can't figure out who's providing this notice or  
23 in what capacity Mr. Menaugh is representing this -- this case  
24 to stand for.

25 THE COURT: He just gave them a court decision that he

1 informed them rejected their position.

2 MR. CRISTALLI: Is it, though, the position -- are --  
3 are we clear -- does the -- does the IRS recognize --

4 MR. BOWERS: That's the issue.

5 MR. CRISTALLI: -- Tax Court decisions? I mean, that's  
6 ultimately the decision. And, if they don't, then it's not  
7 relevant to these proceedings.

8 MR. NEIMAN: Your Honor, of course, the -- the IRS --  
9 and now we're getting into --

10 THE COURT: Is that your -- is that your --

11 MR. CRISTALLI: No, no. I'm --

12 THE COURT: -- you intend to show that to the -- to the  
13 jury that the IRS doesn't recognize Tax Court decisions? Is  
14 that part of your case?

15 MR. CRISTALLI: I'm asking that -- what is -- what  
16 is -- is that what the Government is putting it forth for. I'm  
17 asking the question.

18 THE COURT: No. They've already told you it's for  
19 notice. Notice that their position -- that the defendants'  
20 position and arguments have been rejected by the Tax Court.  
21 That's the purpose of it.

22 MR. CRISTALLI: It's not even a published decision,  
23 your Honor.

24 MR. NEIMAN: Your Honor, it was handed to them -- it  
25 was handed to Mr. Diamond and in Defendant Neun's presence at a

1 meeting in which Defendant Neun was a representative of  
2 Mr. Diamond.

3 THE COURT: I understand the circumstances.

4 MR. NEIMAN: I can conclude with my questioning of the  
5 witness and we can determine this at the lunch break, your  
6 Honor.

7 THE COURT: All right. Why don't you do that.

8 MR. NEIMAN: It may be easier to --

9 THE COURT: That'll give the Court an opportunity to  
10 review the case to make sure it is -- it supports what they were  
11 telling the taxpayer.

12 BY MR. NEIMAN:

13 Q. Uh, we heard on the tape you go through certain Code  
14 sections with, uh, Defendant Neun present. Was -- how many  
15 times would you say you -- you given that response with the Code  
16 sections to taxpayers who put forth these same arguments that we  
17 heard on the tape?

18 A. I probably personally have given that to, um -- I'm gonna  
19 guess -- 10 -- 10 conferences that I sat in on.

20 Q. And did you and the taxpayer ever agree as to the  
21 interpretation of, uh -- of income?

22 A. No, we didn't. It appeared that they had their own opinion  
23 and they were unwavering in that position.

24 Q. Getting back to the group that you supervised here in  
25 Las Vegas who conducted these collection due process hearings,



1 how much time would you say they spent dealing with these types  
2 of arguments at these hearings?

3 A. Well, as I indicated, uh, there were probably four or five  
4 of -- of the employees on the staff that handled, um, the  
5 collection due process cases. And I would easily estimate that  
6 50 to 75 percent of their time was dealing with this. We  
7 referred to these as frivolous argument type of cases because  
8 it's well settled in the law that income tax -- okay.

9 Q. Uh, and what -- did this prevent your -- your group from  
10 assisting other taxpayers?

11 A. Yes, it did.

12 Q. Can you explain how so?

13 A. Well, we have numerous other types of cases. We have  
14 other -- we have other collection matters, we have offers and  
15 compromise, and we also have collection due process cases where  
16 the folks are trying to enter into installment agreements or  
17 offers and compromise so that they can pay the tax liability  
18 instead of having levies, um, assessed against them.

19 Um, that's -- you know, we had a lot of other business  
20 to deal with, we had a lot of other cases. Um, our average case  
21 inventory at any one time per Appeals officers or Settlement  
22 officer could be in the neighborhood of eighty to a hundred  
23 cases.

24 Q. And -- and what --

25 A. And some of our folks were dealing with these almost a

1 hundred percent of their time.

2 MR. NEIMAN: The United States has nothing further at  
3 this time.

4 THE COURT: All right. We'll take our break for lunch.  
5 We'll be in recess until 1:30 this afternoon and the admonition  
6 continues.

7 (Jury leaves the courtroom at 12:10 p.m.)

8 THE COURT: We're in recess.

9 MR. BOWERS: I'm sorry, your Honor. 1:30 or...

10 THE COURT: 1:30.

11 (Lunch break, 12:10 p.m. to 142 p.m.)

12 THE CLERK: All rise.

13 THE COURT: Thank you. Please be seated.

14 Okay. Are we ready to bring the jury in?

15 MR. IGNALL: Your Honor, we have two things briefly.

16 THE COURT: Okay.

17 MR. IGNALL: On the last exhibit -- what number was  
18 that, Jeff, the Tax Court decision? -- we'll get the number in a  
19 second -- I think the issue here is -- I'm sorry. 145 -- the  
20 issue here and I think a limiting instruction to the jury is  
21 appropriate that this document is being introduced solely as  
22 evidence of notice to anyone who may have gotten it or seen it.  
23 In this case, the point was that it was produced to Mr. Diamond  
24 with Ms. Neun present there.

25 But I think and -- and, for future context, I think the

1 relevant -- the relevant inquiry here is -- it's certainly  
2 admissible for notice. But, I think, whether it's admissible or  
3 not is a 403 and 611 question that goes to whether admitting the  
4 text of a decision like this would confuse the jury, misstate  
5 the law, or in some other way invade the province of the Court.

6 I don't believe that's the case with Exhibit 154. But,  
7 if this issue comes up again, I think that's the appropriate  
8 context in which to view these. Because I think there's a  
9 difference between a document that -- something the IRS gives to  
10 Defendant Neun that accurately states the law and one that might  
11 mistake the law or some other document that may come up that  
12 does not accurately state the law and then may confuse the jury  
13 or invade the province of the Court.

14 THE COURT: Thank you.

15 MR. IGNALL: I'm sorry. That was the one. The second  
16 thing is --

17 MR. BOWERS: Could we answer that? I have a comment on  
18 that.

19 MR. IGNALL: Okay. I'm sorry.

20 MR. BOWERS: I'd -- I'd request that we delay decision  
21 on why it's coming in other than for notice to another time  
22 if -- because that may not come up. But, if you give an  
23 instruction as to this, as I understand it, there's no evidence  
24 Larry Cohen's ever seen this document and that it not be  
25 admitted for notice against Mr. Cohen.

1 THE COURT: Thank you.

2 MR. CRISTALLI: Did we admit it?

3 MR. IGNALL: Not yet.

4 MR. CRISTALLI: Are we going to admit it?

5 THE COURT: Well, you had some objections. First you  
6 said it wasn't a --

7 MR. IGNALL: We're requesting its admission with a  
8 limiting instruction that --

9 THE COURT: You weren't -- first you said it was not a  
10 reported decision. It is.

11 MR. CRISTALLI: It's a -- it's a reported decision in  
12 what content? It's -- it's a --

13 THE COURT: Westlaw, Tax Court Decision. Tax Court  
14 Decisions are published. And I have the Westlaw cite and the  
15 printout in front of me.

16 MR. CRISTALLI: It was my position that -- I -- I  
17 didn't -- if -- if it's a precedent that is recognized, um -- I  
18 mean, I will certainly consent that Ninth Circuit decisions are  
19 precedent, United States Supreme Court decisions are precedent,  
20 um, other circuits act as precedent. I -- I didn't know that a  
21 Tax Court decision is -- is precedent --

22 THE COURT: Well --

23 MR. CRISTALLI: -- for --

24 THE COURT: -- it really doesn't have to be precedent.  
25 It's -- the issue is notice and it is a correct statement of the

1 law.

2 MR. CRISTALLI: And my -- well, I don't necessarily  
3 disagree with that aspect of it, your Honor. My -- my concern  
4 is, though, that -- just like we have, you know, numerous  
5 district courts, you don't bring a determination from another  
6 district court judge in for precedent during a case on a  
7 completely different -- different case, in trial or in court.  
8 We don't recognize that as precedent. And my -- my confusion --

9 THE COURT: It's not being submitted as precedent.  
10 The -- the issue is, is did it give notice that these arguments  
11 had been rejected by courts and considered frivolous and -- and,  
12 uh, it does that. And it's consistent with the -- with the  
13 Ninth Circuit cases that reiterate the very same things this  
14 decision -- this Tax Court decision is saying.

15 MR. CRISTALLI: Well, my only concern is, though, you  
16 would have to -- in -- in terms of a notice issue, you would  
17 have to acknowledge that a Tax Court decision is --

18 THE COURT: Well, that --

19 MR. CRISTALLI: -- legal precedent.

20 THE COURT: -- goes to the weight, not -- not to the  
21 admissibility.

22 MR. CRISTALLI: Okay. Well, I -- I just would keep my  
23 objection in place. That's all.

24 THE COURT: Okay.

25 MR. SCHIFF: Your Honor --

1 THE COURT: It's coming in --

2 MR. SCHIFF: I have --

3 THE COURT: -- with a limiting instruction.

4 MR. SCHIFF: Your Honor, when we were in the sidebar  
5 and we were talking about, uh, IRS summons and I suggested to  
6 you that the case of U.S. v. Schultz, the Second Circuit, said  
7 that you don't have to comply with an IRS summons. I mean, they  
8 clearly said that. And you said to me, well, that's the Second  
9 Circuit. This is the Ninth Circuit. We're not bound by it.

10 THE COURT: That's right.

11 MR. SCHIFF: Now -- well, if you're not bound by a  
12 Second Circuit decision, why should people think they are bound  
13 by a Tax Court, which is not even a court of law?

14 THE COURT: Well --

15 MR. SCHIFF: They have limited jurisdiction.

16 THE COURT: -- that's your -- your argument. And it's  
17 not being admitted for precedent, as I said already; it's being  
18 admitted to show notice --

19 MR. SCHIFF: Well, your Honor, beyond --

20 THE COURT: -- and whether -- you can argue that it  
21 wasn't notice because you don't --

22 MR. SCHIFF: Well, your Honor --

23 THE COURT: -- you don't accept the court decisions  
24 like --

25 MR. SCHIFF: Well --

1 THE COURT: -- Mr. Diamond said he doesn't recognize  
2 court decisions as part of the law. Uh --

3 MR. SCHIFF: Well, the --

4 THE COURT: -- you know, that's -- those are -- those  
5 are opinions. You can state those opinions if you decide to  
6 take the stand when -- when -- when --

7 MR. SCHIFF: When the IRS --

8 THE COURT: -- your case comes.

9 MR. SCHIFF: Pardon me.

10 When the Tax Court issues a decision, the IRS says we  
11 acquiesce or not acquiesce. If they don't like the decision,  
12 they say we don't acquiesce. And the only -- in their -- in  
13 their internal documents, they say only quote Tax Court  
14 decisions that are favorable --

15 THE COURT: Well --

16 MR. SCHIFF: -- to us.

17 THE COURT: -- Mr. Schiff, the issue is whether there  
18 was notice to these, uh, defendants, or to Neun and you at  
19 least, that -- that these ideas had been rejected by the Tax  
20 Court. I'm sure the Government is going to --

21 MR. SCHIFF: Um --

22 THE COURT: -- introduce other -- other cases that are  
23 binding precedent.

24 MR. SCHIFF: I --

25 THE COURT: I can accept this or I cannot accept it.

1 I'm not bound to accept it as I'm not bound to accept the Second  
2 Circuit decisions. But I can follow those if I think they are  
3 an accurate reflection of the law. And so that's what I'm  
4 doing.

5 MR. SCHIFF: Uh, I mean, I have internal documents that  
6 say that the Tax Court is only bound by Supreme Court decisions.

7 MR. IGNALL: Your Honor, I think that may be an  
8 appropriate area of inquiry for Mr. Schiff's direct examination.  
9 If he doesn't -- for some reason he doesn't believe --

10 MR. SCHIFF: I'm not gonna --

11 MR. IGNALL: -- he's bound by that, even though he had  
12 notice of that it, I think that's --

13 THE COURT: I have already mentioned that already.

14 MR. SCHIFF: I am not gonna --

15 THE COURT: Court has ruled.

16 MR. SCHIFF: -- get into in this. I'm not --

17 THE COURT: Court has ruled.

18 MR. SCHIFF: -- in cross-exam. I'm not gonna get into  
19 these laws.

20 THE COURT: No, I'm not gonna let you get into it on  
21 cross-examination. But you could get into it in your own direct  
22 when you're on the stand.

23 MR. IGNALL: Your Honor, that leads into our second  
24 point, which may be moot. I'm not sure. But, given that we  
25 have a break before the cross-examination starts, I thought it



1 might be an appropriate time for the Court to inquire as to  
2 Mr. Schiff if there were any areas of law he intended to go into  
3 so the Court could rule on his proffers as to whether those are  
4 relevant or not outside the presence of the jury without the  
5 need for a sidebar.

6 THE COURT: Well, I can inquire.

7 MR. SCHIFF: Okay. I disagree with his statements on  
8 the law, but I'm not gonna go into it.

9 He said, um, Section 61, uh, defines, um, gross income.  
10 I disagree. Courts have ruled that income is not defined in the  
11 Code. But I'm not gonna -- I'm not gonna get into that.

12 He also mentioned some Code sections that said certain  
13 things that I disagree with. I'm not gonna get into that. I'm  
14 not gonna get into anything --

15 THE COURT: Well, I don't want --

16 MR. SCHIFF: -- any law that I --

17 THE COURT: -- to know --

18 MR. SCHIFF: -- disagree with.

19 THE COURT: -- what you're not going to get into. What  
20 I want to know is what you intend to get into.

21 MR. SCHIFF: I'm gonna -- I'm gonna get into -- he  
22 mentioned going to Tax Court: what does this mean; whether they  
23 are bound by their regulations; um, what their regulations say;  
24 what a taxpayer has a right to do under -- when he goes to a CPD  
25 hearing; if he gets an adverse hearing, what are the options

1 that the taxpayer has; what the purpose of the CPD hearing is.  
2 That wasn't made clear.

3 I'm not gonna find fault with any law and I'm not gonna  
4 bring up the law. All I want to know is if he complies with the  
5 law. I'm not going to get into discussing the law. As I said,  
6 I disagree. I think he's misleading the jury as to the law.  
7 But that's the way it has to be.

8 You could -- the Government can object any time that  
9 they think I, uh -- I had a time -- hard time just writing down  
10 what he was saying. I just want him to clarify what he said.  
11 He said -- for instance, he said he has a right to go to Tax  
12 Court. The jury doesn't know what that means. What does going  
13 to Tax Court mean and how many days do they have to go to Tax  
14 Court?

15 THE COURT: Okay.

16 MR. BOWERS: Your Honor, I'm sorry. I -- I don't want  
17 to make an issue of this because I don't know that it's really  
18 my fight right now. But I do need some clarification.

19 Is this witness giving his opinions -- not as an expert  
20 or anything else, but, when he answers these questions or seeks  
21 to admit documents or cites previous or various Code sections,  
22 he's doing that as a representative of the IRS; is that  
23 correct? I mean, it's not -- not in his personal capacity;  
24 right? He's -- he's answering for the Service?

25 THE COURT: Well, he's answering as to what he did.

1 I'm not sure the point of your -- your inquiry.

2 MR. CRISTALLI: Your Honor, just -- I'm sorry. Did he  
3 answer?

4 MR. BOWERS: Well, I don't know if I'm gonna get an  
5 answer.

6 I -- I just don't under -- it seems to me that he's  
7 here as an agent of the IRS, that his testimony talks about Code  
8 sections, regulations, cases, whatever it is, and that that  
9 testimony is given as an agent of the IRS. So this is the IRS's  
10 position on these issues. That's all I'm trying to figure out.

11 MR. NEIMAN: I think this witness was here to testify  
12 as to the meetings he had with the defendant, what he told her,  
13 what she said to him, and what happened at those meetings.  
14 Nothing more.

15 THE COURT: That's my understanding of it. He -- he  
16 hasn't been tendered as an expert on the law. He has been asked  
17 certain questions, uh, in the course of examination that  
18 required him to reference sections and so he's stating his  
19 personal opinion as to what he thinks the law is. But he is --  
20 he does not...

21 MR. SCHIFF: Uh --

22 MR. BOWERS: Irwin, please. Please. Just a moment.

23 So then he's giving his personal opinion, not the  
24 opinion of the IRS? I'm not looking to fight with this guy  
25 about anything. I'm just trying to clarify what it is he's

1 offering with his opinion.

2 THE COURT: He's hear to testify as to fact.

3 Percipient witness.

4 MR. SCHIFF: Can -- can I just ask him this -- because  
5 I don't know if it's clear -- could I ask him -- because he  
6 inferred this but then he says -- can I say to him: Is it your  
7 understanding that the purpose of the CPD hearing is to make  
8 sure that all of the administrative procedures, um, have been  
9 met before the IRS can seize property?

10 THE COURT: You can ask that.

11 MR. SCHIFF: Could I ask that?

12 THE COURT: Yeah.

13 MR. SCHIFF: Because he alluded to that.

14 THE COURT: Well --

15 MR. SCHIFF: All right. I think he said it. I'm not  
16 sure because that's the purpose of it.

17 Oh, incidentally --

18 THE COURT: Well, that's one of the --

19 MR. SCHIFF: Well --

20 THE COURT: -- many purposes.

21 MR. SCHIFF: -- the purpose -- see, is the IRS can  
22 seize property pursuant to Section 6331 and this is to make sure  
23 that they follow all the procedures before they can seize the  
24 property; is that right? Can I say that?

25 THE COURT: You can ask him if that's one of the

1 purposes.

2 MR. SCHIFF: Yeah. All right.

3 THE COURT: All right.

4 MR. CRISTALLI: Um, just one final note for purposes of  
5 the record. And I understand the Court's ruling.

6 Um, in terms of -- for example, this -- the Pearson  
7 case coming in as, uh -- for the purposes of notice the only  
8 concern I have with regard to that is that there were certain  
9 documentations -- for example, there was a letter by one -- by  
10 this lawyer in Nebraska that the Court said basically that was  
11 an incorrect statement of the law. And I don't disagree with  
12 the Court in the Court's assessment that it is.

13 But the issue inherent in my defense is not whether or  
14 not my client, um, um -- it's not whether or not the information  
15 was incorrect or, you know, based on this Court's interpretation  
16 illegal; it's the reliance aspect of it. So the mere fact that  
17 the document from this particular lawyer comes in doesn't  
18 demonstrate to the jury that they were correct in their  
19 assessment of the law. But, rather, it goes to the reliance  
20 aspect of that particular document for their position which  
21 ultimately winds into my belief defense.

22 And that's the concern I have with regard to letting  
23 other, um, precedent, other documentation in to -- to support  
24 the validity of the law. It's not about whether or not the  
25 law -- the law is clear. The Court's gonna instruct the jury on

1 the law. That's not the issue. It's the reliance and the  
2 notice that we're fightin' about here.

3 So I don't know whether or not the Court would allow us  
4 to put some of that documentation in through witnesses in order  
5 to support our position of reliance.

6 MR. IGNALL: Well, Jeff and I are gonna fight over this  
7 one.

8 I think this goes back to what I was going --  
9 mentioning before, that I think the document that  
10 Mr. Cristalli's talking about was some sort of notice to  
11 Mr. Lewis who is not on trial. If that letter -- if notice of  
12 that letter had gone to one of our defendants and one of our  
13 defendants relied on that, then I think it is presumably  
14 admissible as to notice for that defendant.

15 Then I think the Court has to go into a Rule 403 and a  
16 Rule 611 analysis as to whether the probative value of that is  
17 substantially outweighed by the danger of confusing the jury or  
18 any other consideration and whether that's an appropriate way to  
19 get that evidence before the jury.

20 But the letter that I think -- the letter that we've  
21 seen tendered was not tied in any way to any defendant. So I  
22 think this is a premature --

23 THE COURT: Yeah, yeah.

24 MR. IGNALL: -- discussion.

25 THE COURT: Mr. Lewis was not on trial. So --

1 MR. CRISTALLI: I understand that.

2 THE COURT: Yeah. There may come a point where you  
3 can.

4 MR. CRISTALLI: Okay.

5 THE COURT: And that may be -- may be no sooner than  
6 when you start --

7 MR. CRISTALLI: Okay.

8 THE COURT: -- presenting your defense case.

9 MR. CRISTALLI: Thanks. Thank you, your Honor.

10 (Mr. Menaugh resumes the witness stand.)

11 (Pause in the proceedings.)

12 THE CLERK: Ready?

13 (Jury enters the courtroom at 1:59 p.m.)

14 THE COURT: Please be seated.

15 Will counsel stipulate to the presence of the jury?

16 MR. NEIMAN: Yes, your Honor.

17 MR. CRISTALLI: Yes, your Honor.

18 MR. BOWERS: Yes, your Honor.

19 THE COURT: Thank you.

20 MR. CRISTALLI: May I, your Honor?

21 THE COURT: You may.

22 MR. CRISTALLI: Thank you.

23 THE COURT: Thank you.

24

25

## CROSS-EXAMINATION

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BY MR. CRISTALLI:

Q. Good afternoon, Mr. Menaugh.

A. Good afternoon.

Q. Um, let's pick up, first of all, with regard to how the collection due process hearings originated. Um, I think you testified on your direct examination that they originated through the Reform Act of 1998; correct?

A. That's correct.

Q. And the Reform Act of 1998 came about because the IRS was under some pretty heavy scrutiny at the time, if I'm not mistaken. True?

A. That's correct.

Q. Basically, there was some issues as far as, um, you know, improper seizures; dep- -- dep- -- deprivation of property issues as it related to IRS agents taking property from citizens; correct?

A. That was my understanding, yes.

Q. And there were congressional hearings on that particular topic; correct?

A. Yes, there were.

Q. And, um, ultimately, it was a determination through those hearings and other -- other, um, hearings that the IRS, um, should do something in an effort to be a little bit more cooperative with citizens; correct?



1 A. Would you -- would you repeat that?

2 Q. Well, the result of the -- the, um -- the dialogue, the  
3 meetings, the congressional hearings as it related to, um, the  
4 issues pertaining to the IRS at that particular time resulted  
5 in, um, a reformation, um, in an effort to have the IRS be more  
6 accountable for their actions. Would that be accurate?

7 A. I think I would state that in a little bit different  
8 fashion.

9 Q. Okay.

10 A. I think I would say the intent, as I understood or as I read  
11 the law, was to provide the folks that had liens or levies or  
12 collection actions proposed against them to give them a due  
13 process --

14 Q. Right.

15 A. -- in which they previously, as I understand, did not have.

16 Q. Right. And that was -- and we're both agreeable on the  
17 reason why that came about was because there was some issues in  
18 terms of, um, IRS practices.

19 A. I would agree with that.

20 MR. NEIMAN: I'm gonna object to the relevance of that  
21 question.

22 THE COURT: Sustained.

23 BY MR. CRISTALLI:

24 Q. Okay. Um, let's talk about the collection due process, uh,  
25 actions then.

1           If I'm not mistaken, a collection due process action is  
2     an action in which one is entitled to after they -- after they  
3     receive certain notices from the Internal Revenue Service;  
4     correct?

5     A.   That's correct.

6     Q.   Basically, um, the Internal Revenue Service would advise  
7     them that, um, they have a certain tax liability and if they  
8     want or have an issue as it related to that liability they could  
9     exercise their right for -- for a due process hearing?

10    A.   Well, that's not exactly correct.  It -- they would, uh --  
11    there would be an assessment made and then they would give them  
12    a notice and demand for payment.  And then, if no action was  
13    taken on the notice and demand for payment, uh, and no  
14    collection, uh, was occurring then, uh, the collection folks,  
15    the collection division, I guess at that time, would take  
16    certain collection activity.

17           Number one, they may lien property or they may have  
18    issued levies or proposed to issue a levy, intent to levy  
19    notice, when that notice for intent to levy was issued or when  
20    the notice of lien was issued.  Within a specified period of  
21    time, the taxpayer could file a collection due process hearing  
22    request.  If it fell within that specified period, then they had  
23    the jurisdiction of the Tax Court if they didn't reach an  
24    agreement with the appeals folks, with our office.

25    Q.   Which is the collection due process office for hearings?

1 A. We're the appeals office.

2 Q. Right.

3 A. Yeah.

4 Q. Okay. So if things don't, um, resolve -- well, first of  
5 all, let's -- let's chronologically get it straight.

6 A. Sure.

7 Q. We have the, uh -- the notices that are -- that are received  
8 by the taxpayer, which basically indicate that they have a tax  
9 liability; correct?

10 A. Yes.

11 Q. And that there is a notice of lien and/or levy?

12 A. Yes.

13 Q. All right. And then a taxpayer in response to the notice of  
14 lien or levy can exercise their right to a due process hearing?

15 A. Yes, that's correct. With a notice of the lien or levy,  
16 they would have -- be given information relative to that they  
17 had collection due process rights --

18 Q. Okay.

19 A. -- and they could file a request for hearing.

20 Q. Okay. And, during the pendency of their request for a  
21 hearing, there would be no action taken against, um, their  
22 assets and/or their property; correct?

23 A. There was not supposed to be. That's correct.

24 Q. Okay. You say "not supposed to be." Are there occasions  
25 that there is action taken against the property prematurely?

1 A. Well, of course, with the, uh, lien -- and the lien would  
2 have already occurred when they -- the lien would have been  
3 filed by the time they receive the notice. Um, so any  
4 collection due process request would be for the removal of that  
5 lien. So the lien action would have already occurred.

6 However, relevant -- relative to an intent to levy,  
7 that was just that, it was an intent to levy. So, if they filed  
8 their collection due process hearing request timely, then the  
9 levy was not to occur.

10 Q. But the -- but the lien takes place. So it's not a notice  
11 of lien, it's actually a lien prior to the due process hearing.

12 A. The lien has been placed and they receive a notice that a  
13 lien has been filed.

14 Q. And then they have, um, I guess during the course of their  
15 collection due process hearing, to negotiate with you in an  
16 effort to maybe get that lien removed; correct?

17 A. That's correct.

18 Q. All right. All right. Now, let's, um -- let's talk  
19 specifically about, um, the collection due process hearings that  
20 we were discussing today where Ms. Neun was involved and, um,  
21 um, Mr., um, um -- Mr. Diamond -- I'm sorry. I lost the train  
22 of thought there -- uh, obviously there came a point in time  
23 where you participated in that particular process; correct?

24 A. Well, I was actually conducting that conference.

25 Q. You conducted it.

1 A. Yeah.

2 Q. Well, in conducting it, obviously you participated in it.

3 A. Yes.

4 Q. True?

5 A. Oh, yes. Um-hum.

6 Q. Okay. So, um, Matt Diamond came down to the office with  
7 Ms. Cynthia Neun as, uh, his representative; correct?

8 A. That's correct.

9 Q. And basically as his representative, she was acting as a  
10 witness.

11 A. That isn't how it started out. She --

12 Q. Uh --

13 A. -- I mean, when she came in, she was attempting to -- what  
14 we -- what we refer to "as practice." She was advocating on his  
15 behalf when the -- when it started.

16 Q. Well, isn't it true, though, you immediately told her that  
17 she was not gonna be able to advocate on his behalf?

18 A. Yes, we did.

19 Q. Well, she never even really got an opportunity to do  
20 anything other than represent herself as a taxpayer  
21 representative for Mr. Diamond?

22 A. As -- as I recall from the transcript and from reviewing it,  
23 uh, she attempted to advocate in there.

24 Q. All right. Well, I have the transcript, and we all saw it  
25 this morning. It's in evidence. I'm reading from the first

1 page where everybody was introducing themselves.

2 Uh, Cynthia says, "I'm Cynthia Neun, taxpayer['s]  
3 representative for Mr. Diamond."

4 "Tony Aguiar, Appeals officer."

5 "My name is Tom Mineau [sic]."

6 Uh, here is Ms. Neun: "-- but we wanted you to state  
7 that for the record, which is why I introduced myself that way."

8 So basically at that particular time she, um, uh -- you  
9 had told her, um -- you had asked her whether or not she was an  
10 accountant -- I mean, an accountant or an attorney, um, after  
11 she had introduced herself. And -- and, in response to that,  
12 she basically said, listen, I didn't intro- -- I just introduced  
13 myself. I didn't explain to you that I was a CPA or was an  
14 attorney. Correct?

15 A. I believe I asked her if she was an attorney, CPA, or  
16 enrolled agent.

17 Q. Right.

18 A. And she said she wasn't.

19 Q. Right.

20 A. And I think at that point, as I recall, I made a comment  
21 along the lines, you know, you can't practice --

22 Q. Right.

23 A. -- you can't represent the taxpayer per se.

24 Q. Right. But she didn't do anything to represent the  
25 taxpayer.

- 1 A. Not at that point, as I recall.
- 2 Q. So -- but that's when you put -- that's -- that's when you  
3 told her not to do anything and so she didn't do anything.  
4 Right?
- 5 A. Well, that's when we informed her that she couldn't -- she  
6 couldn't act as a representative per se.
- 7 Q. Right.
- 8 So, other than introducing herself as a taxpayer  
9 representative, she did nothing to represent Mr. Diamond?
- 10 A. As I recall later in the discussion in the conference there,  
11 she did have some, um -- some, um -- insertions or assertions  
12 that she made and I think I had to remind her at that point.
- 13 Q. Well, would it be safe to say during the entire -- I mean,  
14 how long did this interview take place would you estimate? We  
15 listened to it this morning. Would you say about 25 minutes?
- 16 A. Yeah. I -- I was going to say 30 minutes plus.
- 17 Q. Okay. And so let me just -- let's just be straight here. I  
18 mean, Ms. Neun introduced herself. She introduced herself as a,  
19 uh -- as a taxpayer representative; correct?
- 20 A. Yes.
- 21 Q. Okay. You -- you asked her if she was an accountant and/or  
22 attorney; right?
- 23 A. CPA.
- 24 Q. CPA. CPA and/or attorney; right?
- 25 A. Right.

1 Q. She said no; correct?

2 A. Right.

3 Q. And, then, in fact she went one step further and she said I  
4 would have -- I would have told you that. But I just had  
5 introduced myself. So -- and she almost in an apologetic manner  
6 stated to you that, you know, she's sorry she didn't tell you  
7 that up front.

8 A. I don't recall that that's what she said. What -- what  
9 exactly did she say there?

10 Q. Um, well, let me just see here. (Reviewing document.)  
11 She said, "-- but we wanted you to state" -- "state  
12 that for the record, which is why I introduced myself that way."  
13 Um, let me just see here.

14 Well, in any event, I guess the point I'm trying to  
15 make is that she didn't try to represent herself, um...

16 MR. NEIMAN: I'm gonna object to Mr. Cristalli's point.  
17 If he has a question.

18 BY MR. CRISTALLI:

19 Q. She didn't represent herself as a CPA or attorney; correct?  
20 A. No, sir, she did not.

21 Q. Um, she never tried to misrepresent herself, um, to you with  
22 regard to her, um, role at that particular hearing; correct?  
23 A. No.

24 Q. Okay. And we listened to the entirety of the hearing which  
25 was about 25 minutes. And would it be safe to say during the



1 course of that particular hearing she was not an obstructionist  
2 in any manner. Right?

3 A. I would not say she was an obstructionist. I think, you  
4 know, there was -- there was one or two times in there, as I  
5 recall, that she attempted to assert, uh, an argument.

6 Q. So would it be safe to say then, sir, though for the most  
7 part it was Mr. Diamond representing himself during the entirety  
8 of that proceeding?

9 A. For the substantial portion of the conference, yes.

10 Q. And would it also be safe to say that Mr. Diamond wasn't at  
11 a loss for words in terms of his ability to represent himself;  
12 correct?

13 A. No, I would say he was at no loss for words.

14 Q. Right. He didn't say -- he didn't -- he didn't go to this  
15 woman and say: What do I say next? What do I say next.  
16 Correct?

17 A. Other than what's on that -- the tape --

18 Q. Right.

19 A. -- I don't recall specifically what he may or may not have  
20 done. It's been too long ago.

21 Q. Right.

22 But we heard the tape this morning; correct?

23 A. Yes, sir.

24 Q. And you wouldn't disagree with me, um, with the fact that  
25 Mr. Diamond basically represented himself throughout the

1       entirety of that --

2       A.   I would --

3       Q.   -- hearing?

4       A.   -- I would probably agree with that, yes.

5       Q.   And so other than Ms. Neun being a witness to that

6       proceeding, the majority of the, uh -- of the representations

7       made on behalf of Mr. Diamond were made by Mr. Diamond; correct?

8       A.   The majority, yes.

9       Q.   Okay. Mr. Diamond had a pretty good understanding of his

10      position as he articulated it to you; correct?

11      A.   Well, I think he was adamant in his belief.

12      Q.   I'm sorry. Could you repeat that?

13      A.   I believe that he was adamant in his belief.

14      Q.   Okay. And, in fact, he was adamant in his belief in that,

15      um, you had a relatively lengthy dialogue with him in terms of,

16      um -- in terms of his tax liability.

17      A.   Yes.

18      Q.   And the -- the -- the first issue that he dealt with

19      specifically, um, you on was the verification of the

20      Secretary -- of -- of the Secretary of Treasury. Is that what

21      it is? The Secretary of Treasury or...

22      A.   The statutes actually -- 6320 and '30 say --

23      Q.   Correct.

24      A.   -- that there will be a verification by the Secretary that

25      certain rules and procedures have been followed.

1 Q. Correct. And in fact --

2 A. And he took that to believe that there was some find of  
3 certificate or something like that, a written certification.

4 Q. Correct.

5 I mean, you're familiar with the Internal Revenue Code,  
6 correct, to a certain extent? I mean, I'm not asking you to  
7 recite it verbatim.

8 A. I would say I'm not an expert, but...

9 Q. Okay. And you're familiar with 6330; correct?

10 A. Yes.

11 Q. And specifically 6330, subsection (c), which, um, talks  
12 about the matters considered at the hearing, the due process  
13 hearing; right?

14 A. Yes.

15 Q. Okay. And in that provision, see subsection (1), it says,  
16 "Requirement[s] of [the] Investigation. The Appeals officer  
17 shall at the hearing obtain verification from the Secretary that  
18 the requirements of any applicable law or administrative  
19 procedures have been met." Correct?

20 A. I believe that's what the statute says.

21 Q. And would it be safe to say that that's what Mr. Diamond was  
22 relying on in terms of his request that he get verification from  
23 the Secretary?

24 MR. NEIMAN: Objection. Speculation what Mr. Diamond  
25 was relying on.

1                   THE COURT: Sustained.

2           BY MR. CRISTALLI:

3           Q. Okay. Well, he -- he pointed out Section 6330, correct, to

4           you? Right?

5           A. I'm not sure if he named the section. But --

6           Q. Well --

7           A. -- he said -- I think he made the comment that verification

8           by the Secretary should be given.

9           Q. I'm sorry?

10          A. I think he said something along the lines of verification by

11          the Secretary.

12          Q. Verification by the Secretary.

13          A. Yeah.

14          Q. And it would be safe to say that there is a -- a section

15          which speaks directly to that very issue; correct?

16          A. That's what the statute says.

17          Q. 6330, subsection (c), paragraph (1), "Requirement of [the]

18          investigation." Right?

19          A. That's one of the requirements, I believe, yeah.

20          Q. Okay. So there is a requirement for verification from the

21          Secretary?

22          A. Well, may I answer that?

23          Q. Sure.

24          A. It -- as -- as we tried to explain to Mr. Diamond that when

25          we receive a file we receive a composite of various actions that

1 have occurred. For instance, we need to make sure that -- as  
2 far as the rules and regulations are concerned that in fact --  
3 and a -- and a correct Notice of Deficiency was issued and then  
4 subsequently -- and, by that, I mean that it was issued to the  
5 correct last known address and so forth -- and then that the  
6 assessment was actually made and that notice and demand for the  
7 tax was -- was made.

8 Those are part of the rules and regulations that we  
9 look to make sure that -- that -- that in fact the Secretary has  
10 followed those.

11 Q. Okay. Okay. That's fine.

12 I mean, it would be safe to say that he had a  
13 misunderstanding with regard to the requirement of the  
14 verification as it related specifically to 6330, subsection  
15 (c)(1); correct?

16 A. Would it be safe to say what?

17 Q. He -- he relied on this section to put forth --

18 A. Can we --

19 Q. -- his position that you needed to give him verification  
20 from the Secretary; right?

21 MR. NEIMAN: Same objection, your Honor.

22 THE COURT: Sustained.

23 You asked it better --

24 MR. CRISTALLI: Goes to reliance.

25 THE COURT: You asked it better the first time --

1 MR. CRISTALLI: Okay.

2 THE COURT: -- which was would it be safe to say that  
3 he had a misunderstanding with regard to the requirement.

4 MR. CRISTALLI: Right.

5 BY MR. CRISTALLI:

6 Q. But I -- but I -- but he -- but there's no question that he  
7 relied on a particular section in supporting his position;  
8 correct?

9 MR. NEIMAN: Objection. Speculation.

10 THE COURT: Sustained.

11 BY MR. CRISTALLI:

12 Q. Well, he showed you the section for which he relied on,  
13 didn't he?

14 A. I don't recall that he showed me the section.

15 Q. Well, he cited it, didn't he? He said, "[a] verification  
16 from the Secretary"; correct?

17 A. I -- I believe he did say that. And -- and what I believe  
18 that my response was that it was our interpretation -- and, by  
19 that, I meant the IRS appeals -- that it was our interpretation  
20 that what we had to give -- what we had to do was review the  
21 file in -- in its entirety to make sure that the various steps  
22 had been taken appropriately; that there was no certificate, no  
23 written verification, and that we -- that we did not receive a  
24 written verification from the Secretary.

25 Q. I understand. And --

1 A. Okay.

2 Q. -- sir, just so we're clear, I'm the not sayin' that you did  
3 anything that you're not supposed to do by your policies --

4 A. Right.

5 Q. -- and procedures. My point is what this particular  
6 individual relied on in putting forth his position during the  
7 course of that particular hearing. Just so we're clear.

8 Um, so it would be safe to say, though, would it not,  
9 that that is the only section that deals specifically with due  
10 process hearings and verifications from the Secretary of -- of  
11 Treasury; correct?

12 MR. NEIMAN: I'm gonna object. And we're --

13 MR. CRISTALLI: It goes to reliance. What --

14 MR. NEIMAN: -- we're goin' into the --

15 MR. CRISTALLI: -- what they relied on.

16 MR. NEIMAN: -- depths of the Code.

17 MR. CRISTALLI: I'm not --

18 MR. NEIMAN: This witness does not --

19 MR. CRISTALLI: I just admitted --

20 MR. NEIMAN: -- know what these other witnesses relied  
21 on.

22 MR. CRISTALLI: They -- they cited it to him during the  
23 course of the hearing. How couldn't he know? I'm not talking  
24 about whether or not their position is right.

25 THE COURT: Well, you keep --

1 MR. CRISTALLI: I'm talking about --

2 THE COURT: -- getting back --

3 MR. CRISTALLI: -- what their reliance --

4 THE COURT: -- into what's in the mind of the person  
5 who is asserting it. And that's where your questions are going  
6 to objection.

7 The objection's sustained. He can't get into the mind  
8 of the person, uh --

9 BY MR. CRISTALLI:

10 Q. Sir -- I'm sorry.

11 THE COURT: -- you know --

12 BY MR. CRISTALLI:

13 Q. Sir --

14 THE COURT: -- he can't speculate or you're gonna get  
15 hurt if he starts speculating.

16 BY MR. CRISTALLI:

17 Q. Sir, um, during -- you said that you attended many of these  
18 hearings; correct?

19 A. Quite a few.

20 Q. Many of these hearings -- let's just be straight. The  
21 hearings that we're going to be talking about are hearings where  
22 individuals assert that they have no legal liability to pay  
23 income tax; correct?

24 A. Yes.

25 Q. And they -- they file a zero return with what they call the



1 "Long attachment"; correct?

2 A. Zero return -- yeah, yeah, with the Long attachment.

3 Q. Okay.

4 A. Right.

5 Q. All right. And, when they come into the hearing, they

6 specifically ask the person who is presiding -- in this

7 particular case it was you. Okay? -- they -- they cite to you

8 the specific statute which is 63- -- and, if you don't recall,

9 then that's fine -- but they cite to you specifically 6330,

10 subsection (c)(1), to support their position with regard to

11 verification. Correct?

12 MR. NEIMAN: Objection. It's already been established.

13 I think the question was asked simply whether or not there was a

14 misunderstanding here between Mr. Diamond and the IRS. I --

15 MR. CRISTALLI: I'm just getting to the point what

16 they're relying on in support of their position.

17 THE COURT: That's the whole point. He doesn't know

18 what they are relying on.

19 MR. CRISTALLI: That's not correct. He never said

20 that. I wanna ask the question whether or not --

21 THE COURT: No. It's an objectionable question because

22 he can't speculate as to what they were --

23 MR. CRISTALLI: It's not --

24 THE COURT: -- relying on.

25 MR. CRISTALLI: -- speculation. They cited it to him

1 when he walked in there.

2 THE COURT: That doesn't mean that's what they are  
3 relying on.

4 BY MR. CRISTALLI:

5 Q. Okay. Um, in any event, based on your testimony today that,  
6 uh, they had -- they had a misunderstanding about, um, the  
7 verification aspect and whether or not you were required to give  
8 it to 'em. And your testimony was -- and -- and it's safe to  
9 say that, um, you guys, as you said over and over and over again  
10 during the course of the hearing, that we agree to disagree.  
11 Correct?

12 A. That's correct.

13 Q. And he held his position pretty adamantly in that, um, he  
14 didn't believe that he was getting the answers that he, um,  
15 requested of you; correct?

16 A. That was my understanding, he didn't feel that he was  
17 getting an answer. I -- he was being rather adamant in that  
18 position.

19 Q. Okay. So then we went on and we started to -- during the  
20 course of that particular process -- due process hearing, uh,  
21 Mr. Diamond then again had -- you got off of the verification  
22 issue because I think, um, you couldn't come to an agreement on  
23 it and then you started to talk about the liability aspects of  
24 the tax, if I'm not mistaken. Would that be accurate?

25 A. Yes, I did.

1 Q. Okay. And, once again, um, you and Mr. Diamond went back  
2 and forth in terms of, uh, his -- his requesting you to give him  
3 some type of authority which would support a position that there  
4 was a legal responsibility of him to have to pay income tax;  
5 correct?

6 A. That's correct.

7 Q. Okay. And, during the course of that dialogue, um, he cited  
8 to you -- cited to you to a number of Supreme Court decisions;  
9 Correct?

10 A. I believe that's correct.

11 Q. Okay. And you didn't have an opportunity to engage him in a  
12 dialogue with regard to the holdings of those particular  
13 decisions; correct?

14 A. No, I did not.

15 Q. Okay. Um, and so it would be safe to say, then, as a result  
16 of the exchange between you and Mr. Diamond he was not satisfied  
17 that, um, those legal decisions, those Supreme Court, uh, cases,  
18 uh, did not stand for his position; correct?

19 MR. NEIMAN: Objection. Speculation again.

20 THE COURT: Sustained.

21 BY MR. CRISTALLI:

22 Q. He relied on, uh, certain decisions --

23 THE COURT: Sustained.

24 BY MR. CRISTALLI:

25 Q. Did he bring in certain -- did he show you court cases?

1 A. I do not recall that he actually showed us the court cases.  
2 I do recall that he -- he cited to Supreme Court cases.

3 Q. Okay. And you didn't enter into a dialogue with him with  
4 regard to the position or the -- the holding on those cases;  
5 correct?

6 A. Did not.

7 Q. Okay. Um, and you cited him to Title 26, subsection (1),  
8 to, um -- to verify your position that this is where your tax  
9 liability, um, lies. Basically this is the authority for  
10 which -- for where your tax liability lies. Correct?

11 A. Yes.

12 Q. And, um, he said fine. But he wanted to have a dialogue  
13 with regard to, um, certain cases that held a different, uh,  
14 holding, a different position. Correct?

15 A. I don't recall that that's exactly what he said. But,  
16 anyway, go ahead.

17 Q. All right. It would be safe to say that during the course  
18 of the exchange/interaction between you and Mr. Diamond he  
19 wasn't satisfied that his, um, questions were answered by you;  
20 correct?

21 MR. NEIMAN: Objection as to what Mr. Diamond's sat- --  
22 satis- -- satisfaction.

23 THE COURT: Sustained.

24 BY MR. CRISTALLI:

25 Q. Well, we listened to the tape together, did we not?

- 1 A. Yes.
- 2 Q. And Mr. Diamond never said to you: Oh, you're right. Thank  
3 you. Very nice. Have a good day. Let's cut a deal on the, uh,  
4 income tax right now. Right?
- 5 A. No, he did not.
- 6 Q. Would it be safe to say, um, that there was a stand --  
7 standoff, standstill? Whatever you may call it.
- 8 A. I don't believe he agreed with my position and I did not  
9 agree with his position.
- 10 Q. Okay. And he didn't just willy-nilly come up there and say  
11 I just don't owe income tax. He actually held a belief that in  
12 his mind, at the very least, supported his position that he had  
13 no legal liability to pay income tax; correct?
- 14 MR. NEIMAN: Objection.
- 15 THE COURT: Sustained.
- 16 BY MR. CRISTALLI:
- 17 Q. He brought in -- with him and questioned with you, had a  
18 dialogue with you, with regard to other precedent that he relied  
19 on to support his position that he had no liability to pay  
20 income tax; correct?
- 21 A. The other precedent? I think you're referring to the  
22 Supreme Court cases that he mentioned.
- 23 Q. Okay. Is that the only precedent that you can recall?
- 24 A. That's the only thing I recall.
- 25 Q. Okay. Now, you're also familiar with, um, the Desktop

1 Manual from Freedom Books?

2 A. No.

3 Q. Okay. Did you -- did you review this on direct examination  
4 or did I not see that?

5 A. Well, there were a couple of exhibits maybe in there that --  
6 I think one was the collection due process hearing request form,  
7 the 12153 or '253.

8 Q. Okay.

9 A. I think he pointed that out to me.

10 Q. Okay. And basically, um, when the Government showed you  
11 that, it was -- it had, um, writings and instructions on it, uh,  
12 as to how to handle a collection due process hearing or what you  
13 do procedurally in response to a collection due process hearing;  
14 correct?

15 A. There was writing on that form, on that exhibit; there was,  
16 uh, highlighting. But I did not read the form in its entirety.

17 Q. Okay.

18 A. I couldn't tell you everything that's on there.

19 Q. And it would be safe to say that Mr. Diamond continuously  
20 over and over and over again asked you to show him -- show him  
21 the law on liability; correct?

22 A. Yes.

23 Q. Um, and he was pretty adamant about his position with regard  
24 to that --

25 A. Yes.

1 Q. -- correct?

2 A. Yes.

3 Q. Okay. Now, you talked a little bit about the, uh -- the --  
4 the Pearson decision; correct?

5 A. Yes.

6 Q. Now, the -- the Pearson decision is a decision from Tax  
7 Court; right?

8 A. That's correct.

9 Q. And you talked a little bit about, um, Tax Court earlier,  
10 um, as a means of a taxpayer to go and discuss with, uh, a -- a  
11 court of law their liability to pay -- to pay tax or not have to  
12 pay tax; correct?

13 A. That's correct.

14 Q. And that is done subsequent to a ruling by you at the  
15 administrative due process hearing?

16 A. Well --

17 Q. If they --

18 A. -- may I expand upon that just a little bit?

19 Q. Sure.

20 A. For instance, um, if a taxpayer has an income tax dispute,  
21 they are normally given an opportunity to come to the appeals  
22 office and in what we refer to as a nondocketed status. In  
23 other words, no Notice of Deficiency has been filed and no  
24 petition's been filed in the Tax Court. That's in the normal  
25 type of, uh, income tax disputes.

1           However, I believe the Service Center on the type of  
2 returns that were being filed, these zero returns, I don't  
3 believe that they were giving them appeal rights. And I think  
4 what they were doing was they were preparing substitutes for  
5 return and then issuing Notices of Deficiency allowing them to  
6 petition U.S. Tax Court. And I believe, as I recall in  
7 Mr. Diamond's situation, a Notice of Deficiency was issued to  
8 the -- what we understood to be the last known address. And, in  
9 fact, in the conference Mr. Diamond indicated that he had  
10 received those Notices of Deficiency. And then, in  
11 Mr. Diamond's situation, he did not petition the Tax Court to  
12 argue the merits of the income tax liability.

13           So then, when it went to the collection action, um, he  
14 was given collection due process rights. And, under the  
15 collection -- collection due process rights, he could come to  
16 appeals and he could argue various things, collection  
17 alternatives, for instance. However, under the statute he  
18 didn't get a second bite at the apple, more or less. He wasn't  
19 able to argue the liability because he previously had had that  
20 opportunity when the Notice of Deficiency was issued, but he  
21 didn't petition. So, under the statute, he was precluded from  
22 raising liability.

23           In spite of not being able to raise the liability, you  
24 know, I felt that it was important in this particular instance  
25 when he kept going over, you know, show me what the -- you know,



1 where it says I have a liability, I felt that it was important  
2 to go on the record and explain to him where in the Code, where  
3 in the law it provided that there was a liability.

4 Q. So then there are -- there are times -- so, in terms of  
5 procedurally speaking, um, the appeal in terms of a liability  
6 could occur prior to a due process hearing?

7 A. Oh, yes. Yeah.

8 Q. Okay. But it's not always that way. Is that accurate?

9 A. Well, you have to understand: For an assessment to be made,  
10 there has to have been a Notice of Deficiency issued.

11 Q. Right. Right.

12 A. I mean, that's where the liability arises. Long before  
13 collection due process.

14 Q. Okay.

15 A. Collection due process is only because of a proposed or an  
16 action -- collection action taken by the Collection Division.  
17 That's the only reason that collection due process is there is  
18 for the collection action. It doesn't arise from the Notice --  
19 Notice of Deficiency.

20 Q. Okay. So, um, then it would be safe to say that if one did  
21 not have an opportunity to go to the Tax Court to argue a  
22 liability issue, then there would be no decision by that Tax  
23 Court in terms of noticing that person on their liability;  
24 correct?

25 A. Would you repeat that?

1 Q. Um, you go to the Tax Court to argue your liability; right?

2 A. Yes, sir.

3 Q. Okay. Tax Court says you're liable; right?

4 A. That's correct.

5 Q. You're on notice that you're liable; right?

6 A. Yes.

7 Q. Okay. In this particular case, Mr. Diamond didn't do that.  
8 He went right to the collection due process and didn't have, um,  
9 a -- an opinion from the court telling him that he was liable  
10 for this; right?

11 A. That's correct.

12 Q. Okay. And that's why you engaged him in terms of liability  
13 even though your hearing was pretty much procedural?

14 A. Well, he had the opportunity to petition Tax Court --

15 Q. Right.

16 A. -- he didn't do it --

17 Q. Right.

18 A. -- so it -- we refer to it as a Notice of Deficiency being  
19 defaulted and it was assessed. And the only reason that he had  
20 collection due process was because there was an assessed amount  
21 that had not been paid.

22 Q. Okay. And, um, then, in terms of a Tax Court and Tax Court  
23 decisions, that would then, um, jive with the Pearson, um, case;  
24 correct? That's a Tax Court -- that's a -- a tax appeal  
25 decision --

1           MR. NEIMAN:  Objection.

2           BY MR. CRISTALLI:

3           Q.  -- or appeal to the Tax Court; correct?

4           MR. NEIMAN:  Objection.  Vague and confusing question.

5           THE COURT:  It is.

6           MR. CRISTALLI:  Okay.

7           BY MR. CRISTALLI:

8           Q.  The Pearson decision is a decision from the Tax Court;

9           right?

10          A.  From a collection due process, uh, petition.

11          Q.  Okay.  The -- the Pearson decision does not, um, relate

12          directly to zero -- zero Long returns; correct?

13          A.  No.  It refers to what, I believe, they say are frivolous

14          arguments.  And they said they would not entertain those.  They

15          felt that -- as I recall, they felt that that was -- that in the

16          Pearson instance, it was being done for purposes of delay.  And

17          I believe at that juncture, the Tax Court was putting the public

18          on record --

19          Q.  Right.

20          A.  -- that if that type of case came before them again with

21          what they determined to be frivolous arguments relative to

22          income not being taxable that after that they would issue

23          sanctions under, um, 6673.

24          Q.  Right.

25                 But Pearson, specifically in the holding, um, is not a

1 zero Long return issue; correct?

2 A. I really don't recall. I'd have to go back and read the  
3 file and read --

4 Q. Well, I have it right here. Do you want to take a look at  
5 it?

6 A. Sure.

7 MR. CRISTALLI: May I approach, your Honor?

8 THE COURT: You may.

9 (Document placed before the witness.)

10 THE WITNESS: (Reviewing document.)

11 Would you repeat your question?

12 BY MR. CRISTALLI:

13 Q. Um, yeah. Okay.

14 That decision does not apply to, uh, zero Long returns;  
15 correct?

16 A. I don't -- I don't see any comment in what I've read, uh,  
17 quickly, uh, that it was a zero return. What I do see is in  
18 some footnotes, uh, Footnote No. 9, I guess, yeah, and it  
19 states:

20 This matter was called for hearing at the Court's  
21 motion session held in Washington, D.C., November the 8th, 2000.  
22 Counsel for respondent appeared at the hearing and offered  
23 argument and evidence in support of respondent's motion to  
24 dismiss. No appearance was made by or on behalf of petitioner  
25 at the hearing. Rather, petitioner responded to the notice of

1 hearing by filing a Rule 50(c) statement in which he asserted  
2 that he is not liable for the underlying taxes based on  
3 frivolous and groundless arguments, including the following:

4 According to 6331(a) and the fact I am not an elected  
5 official or an employee of the United States of America, or one  
6 of its possessions, and not receiving an income from the  
7 government upon whom a levy or a Notice of Levy could be served,  
8 the Notice of Intent to Levy should not be allowed to be used on  
9 the citizens in general public.

10 And it goes on and says, The word "income" is not  
11 defined in the I.R.C. but can only be -- and I'm -- this is sort  
12 of the cut off -- can only be a derivative of corporate  
13 activity, income taxes, uh, applied on individuals is illegal.  
14 Taxes are filed voluntarily and assessment of taxes on  
15 individuals is voluntarily and self-assessment.

16 In my opinion, what that is saying is basically the  
17 same argument to the attachments that were made to the zero tax  
18 returns.

19 Q. So you're interpreting that, uh, decision in that particular  
20 court to apply to, uh, the zero Long returns?

21 A. Where they make the argument that their income is not  
22 subject to -- not subject to federal income tax. I mean, they  
23 all -- most -- I would say the zero tax returns I saw had  
24 attachments to them basically making the argument that what they  
25 received was not taxable income.

1 Q. Okay. But it's safe to say it's not a zero Long argument;  
2 correct.

3 A. I don't know if this was a zero Long argument --

4 Q. Okay.

5 A. -- return or not.

6 Q. Would it be safe to say through -- through your review and  
7 analysis you're trying to make, um, an assessment that is --  
8 that that argument is similarly situated to a zero, uh, Long  
9 return; correct?

10 A. With the attachments to the zero returns, the arguments they  
11 made, yes, it was the same type of what we determined to be  
12 frivolous arguments. And -- and the court -- U.S. Tax Court has  
13 held the same.

14 Q. Okay. And that's -- in that document, then, in -- in -- you  
15 know, you --

16 A. Does it refer to zero return? No.

17 Q. Right. Doesn't refer to zero return.

18 Um, after your review, as an IRS agent for 30-plus  
19 years, you, through your analysis, determined that it is a  
20 similar argument that a zero Long return makes; correct?

21 A. Similar argument.

22 Q. Okay. Um --

23 A. May I make one comment?

24 Q. Sure.

25 A. The reason that we were giving the Pearson case out was that

1 we wanted to put the people on notice --

2 Q. Right.

3 A. -- that if they did petition the Tax Court --

4 Q. Right.

5 A. -- that the Tax Court may issue sanctions against them --

6 Q. Correct.

7 A. -- which subsequently happened.

8 Q. Right. And that's my point.

9 It -- it's -- it would be -- it's not a clear-cut, uh,  
10 straightforward decision by that particular court that says zero  
11 Long returns are subject to sanctions; correct?

12 A. It does not say zero Long returns, no.

13 Q. Okay. So you basically have to, um, do an analysis to come  
14 to that determination to a certain extent?

15 MR. NEIMAN: I'm gonna object. The document's in  
16 evidence; it speaks for itself.

17 MR. CRISTALLI: It doesn't speak for itself. That's  
18 the concern I have.

19 THE COURT: It does.

20 MR. CRISTALLI: Okay.

21 BY MR. CRISTALLI:

22 Q. All right. Um, but it's your hope and -- it's your hope  
23 that that type of -- that that Pearson decision would put a  
24 taxpayer on notice that they would have to -- they have a legal  
25 liability to pay income tax; correct?

1 A. Well, the reason that I instructed my staff to -- to give  
2 the Pearson case out was to put the folks that were makin' these  
3 arguments that -- that if they did petition the Tax Court that  
4 the Tax Court might issue sanctions against them. That was the  
5 sole purpose.

6 Q. Okay. Now, in terms of sanctions, there's nowhere in that  
7 decision that says that one would be subject to criminal  
8 prosecution; correct?

9 A. No.

10 Q. Okay.

11 A. Not that I recall.

12 Q. And the sanctions that are referred to in that particular  
13 decision refer to civil penalties; right?

14 A. Under 6673, that's a civil penalty --

15 Q. Correct.

16 A. -- yes.

17 Q. All right. Um, so after reviewing that, uh, document, one  
18 would not be put on notice that what they are doing is illegal;  
19 correct?

20 MR. NEIMAN: Objection. Speculation.

21 THE COURT: Sustained.

22 BY MR. CRISTALLI:

23 Q. It doesn't say in there: If you do it, you're breakin' the  
24 law; right?

25 A. In the opinion?



1 Q. Yeah.

2 A. It says sanctions will be issued. I think you'd have to  
3 look at --

4 Q. I'm just asking you --

5 A. -- Section 6673 -- you'd have to look at 6673 to see what it  
6 states.

7 Q. Okay.

8 A. And I think the purpose of 6673 is that they would issue  
9 sanctions so that there would not be purpose -- purposeful  
10 actions by the taxpayer to delay.

11 Q. Okay. Now, you said that a lot of times the people that  
12 come in and hold this particular philosophy, um, come in with  
13 IRS Codes; correct?

14 A. Yes.

15 Q. And typically those IRS Codes are -- are new. That's what  
16 you testified to.

17 A. Yes.

18 Q. Okay. I'm gonna approach with Defendant's Exhibit 2000, two  
19 zero zero [sic] -- I'm sorry. It's 2500.

20 Do you recognize this Internal Revenue Code?

21 A. I don't know whose it is.

22 Q. Have you ever seen Cynthia Neun come in with an Internal  
23 Revenue Code while --

24 A. If she brought it in, I did not notice it.

25 Q. So, um, you would rec- -- you said that Cynthia Neun came in

1 many times when you participated in the hearings; correct?

2 A. I think I said on conferences that I participated on -- in  
3 here in -- in Las Vegas that there were probably five to ten  
4 cases that she was in the conference that I sat in on or held a  
5 conference.

6 Q. And is it your testimony you never, uh, recognized her  
7 walking in with that Code book?

8 A. I don't recall what she carried into the...

9 Q. Okay. And it would be safe to say that is not a new version  
10 or a -- a new Internal Revenue Code; correct?

11 A. No.

12 Q. Looks like it's been pretty used and abused; right?

13 MR. NEIMAN: I'm gonna object to relevance with this  
14 witness.

15 THE COURT: What is the relevance?

16 MR. CRISTALLI: It goes to reliance. It goes to a  
17 good-faith belief. It goes to the essence of my defense in this  
18 particular case.

19 MR. NEIMAN: Your Honor, what this witness relied on is  
20 irrelevant.

21 THE COURT: It is.

22 THE WITNESS: I would make a comment. I think that's a  
23 2002 Code, although the "2" is cut off.

24 MR. CRISTALLI: Okay.

25 THE WITNESS: And we held conferences on these in 2000

1 and 2001.

2 MR. CRISTALLI: Would you mark this, please?

3 THE CLERK: Yes.

4 (Defendant Neun's Exhibit No. 2508, marked  
5 for identification.)

6 MR. CRISTALLI: Sir, I'm gonna approach with  
7 Defendant's Exhibit 2508.

8 (Document shown to Government counsel.)

9 BY MR. CRISTALLI:

10 Q. Sir, I'm going to ask you to take a look at this. It is  
11 Defendant's Proposed 2508. I'm gonna ask if you recognize this  
12 as something -- or one of the items that Ms. Neun brought in  
13 during the course of the, uh, hearings that she, uh, was at when  
14 you were there.

15 A. You know, I think I can answer your question very simply: I  
16 don't recall --

17 Q. Okay.

18 A. -- what she brought. I'm not sure she brought anything in.

19 Q. Okay.

20 A. I mean, I really don't know.

21 Q. Okay. That's fair.

22 Now, sir, you said that Ms. Neun, um, interjected  
23 occasionally throughout the, um -- throughout the hearing with  
24 Mr. Diamond; correct?

25 A. I believe what I said was she later on in the conference

1 began to make an assertion. And I don't recall exactly where it  
2 was.

3 Q. She made an assertion. And -- and it was immediately  
4 stopped by Agent Aguilar [sic]; correct?

5 A. Aguilar. Yes.

6 Q. Aguilar.

7 And she stopped; right?

8 A. I believe so.

9 Q. And, I mean, I may be wrong. But I looked through the  
10 entirety of this document and I see that Ms. Neun only attempted  
11 twice, at a very minimal, uh -- at the very best, to interject  
12 anything. Would you disagree with me with regard to that  
13 statement?

14 A. No. I think you're correct. I think it was once, twice,  
15 maybe three times. But that was it.

16 Q. Okay. So, once again, you wouldn't disagree with me that  
17 she was cooperative during the course of the hearing?

18 A. Well, I mean, she was -- well, I won't -- she didn't try --  
19 I mean, once we made the comment that you can't practice --

20 Q. Right.

21 A. -- before appeals --

22 Q. She followed the rules.

23 A. Yes, I would say that she did.

24 Q. Okay.

25 A. She wasn't belligerent or anything like that.

1 Q. Okay. Now, um, Mr. -- Mr. Diamond -- you found out, I'm  
2 sure, that Mr. Diamond was, a -- a former police detective for  
3 the New York Police Department; correct?

4 A. I recall after reviewing the information that was provided  
5 to me because it's been four years ago that he was employed by  
6 the New York City Police Department. As to what his position  
7 was, I really don't know.

8 Q. And then you also found out that he was a bailiff for the  
9 Clark County, uh, court system; correct?

10 A. Again, I understood that he was employed by -- by Clark  
11 County. I subsequently learned that he may have been a bailiff  
12 or something of that nature. But, at that time, I'm not sure  
13 that I knew that.

14 Q. Okay. Uh, based on, uh, Mr. Diamond's, uh, interaction with  
15 you, he did nothing, uh, in terms of his dialogue that would  
16 suggest he, uh, was -- he -- he was doing something illegal or  
17 he believed he was doing something illegal; correct?

18 A. I don't think I could answer that.

19 MR. CRISTALLI: I don't have any further questions,  
20 your Honor.

21 Thank you, sir.

22 THE COURT: Mr. Bowers.

23 MR. BOWERS: I'm gonna defer to Mr. Schiff, your Honor.

24 (Pause in the proceedings.)

25

## CROSS-EXAMINATION

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BY MR. SCHIFF:

Q. Now, I think you already acknowledged, based upon Mr. Cristalli's examination, that the collection -- CPD hearing means what? CDP.

A. Collection due process.

Q. All right. And you acknowledge that that resulted as a result from the investigation of the IRS by the, uh, Senate Finance Committee in 1997?

A. And I believe in 1998, yes.

Q. Yeah.

The hearings were in '97; is that correct?

A. Were the hearings in '97?

Q. Yes.

A. I know I happened to be there during -- I happened to be in Washington, D.C., during a portion of those hearings.

Q. You saw some of those hearings?

A. No. I happened to be in Washington, D.C. --

Q. Okay.

A. -- on another matter.

Q. Were you aware that the Chairman of that committee, Senator William Roth, wrote a book?

MR. NEIMAN: I'm gonna object to the relevance.

MR. SCHIFF: I want -- I want to know if he read this book.

1 THE COURT: Not relevant.

2 MR. SCHIFF: Pardon me?

3 THE COURT: Not relevant.

4 MR. SCHIFF: Well, all right.

5 BY MR. SCHIFF:

6 Q. Uh, now, I believe you agreed with Mr. Cristalli that in  
7 this -- you mentioned the statute 6330, right, that the  
8 collection due process hearing --

9 A. Relative to levies.

10 Q. -- was within Section 6330.

11 A. Relative to levies, yeah.

12 Q. Now, I think you'll also agree that the statute -- what was  
13 the purpose of the collection due process hearing? What was the  
14 purpose?

15 A. Well, the purpose of the collection due process hearing or  
16 the --

17 Q. Yeah, the collection due process hearing. What was the  
18 purpose of the hearing itself? What was the purpose of  
19 sending -- well, how did --

20 THE COURT: Let him answer the question.

21 MR. SCHIFF: I'm sorry.

22 THE COURT: You're --

23 BY MR. SCHIFF:

24 Q. How could an individual --

25 THE COURT: -- jumping around.

1 MR. SCHIFF: I'm sorry.

2 THE COURT: Do you want to withdraw the question --

3 MR. SCHIFF: Yeah, I'll withdraw --

4 THE COURT: -- and ask another one?

5 MR. SCHIFF: -- the question.

6 BY MR. SCHIFF:

7 Q. What -- what was -- okay.

8 When -- how did a person happen to go to a CPD hearing?

9 How does he happen to be there?

10 A. Okay. Well, let's just take 6330. That deals with levies.

11 Q. How does he get to go?

12 A. Okay.

13 Where the Collection Division had issued a Notice of

14 Intent to Levy, the taxpayer was given a notice with that --

15 with that letter that says we attempt to levy and it says that

16 you have a right under collection due process, Section -- IRC

17 Section 6330 to file an appeal or a request for a hearing before

18 the Appeals office, which is a separate and independent

19 organization.

20 Q. Okay. How many days from the date of that notice did he

21 have to apply for the hearing?

22 A. 30 days.

23 Q. 30 days from the date of the notice.

24 A. Actually, I believe it began on the date after the notice

25 was issued.



1 Q. 30 days exactly; is that correct?

2 A. In order to have a collection due process, uh, with  
3 jurisdiction in the Tax Court.

4 Q. Now --

5 A. If it was filed outside of that time period, then you had  
6 what was known as an "equivalent hearing." And you still had a  
7 hearing, but you didn't have right to appeal the decision of  
8 the --

9 Q. Okay.

10 A. -- Appeals office.

11 Q. So the taxpayer had to -- to request a hearing within that  
12 30-day period, starting from the date of the notice?

13 A. That's right.

14 Q. And, if the taxpayer happened to be a truck driver that was  
15 not at home, let's say the -- the offer of the collection due  
16 process hearing was the first of the month but he didn't see it  
17 until the 15th.

18 MR. NEIMAN: I'm gonna object to the relevance. I  
19 don't --

20 MR. SCHIFF: The relevance is --

21 MR. NEIMAN: I don't know how it's relevant to what the  
22 defendants were told at these meetings.

23 MR. SCHIFF: I'm trying to explain the rapidity with  
24 which an individual had to respond.

25

1 BY MR. SCHIFF:

2 Q. So then he would have only 15 days to respond; is that

3 correct?

4 THE COURT: What is the relevance to --

5 MR. SCHIFF: The relevance is --

6 THE COURT: -- this case?

7 MR. SCHIFF: -- your Honor --

8 THE COURT: This case.

9 MR. SCHIFF: -- is that it -- it wasn't clarified how a

10 citizen could get a hearing. He had 30 days to respond from the

11 notice. But, if he didn't see the notice, it would -- that

12 would cut down the time.

13 THE COURT: Do we have someone here that he talked

14 about that didn't receive notice?

15 MR. SCHIFF: No. He got a notice. But he was a truck

16 driver. So he didn't see it.

17 THE COURT: No, no. You're --

18 MR. SCHIFF: Well, then he would only have 15 --

19 THE COURT: -- giving a hypothetical of something that

20 doesn't exist at this time.

21 MR. SCHIFF: It's only a hypothetical in the sense that

22 he had 30 days from the date of the notice.

23 THE COURT: It's not relevant.

24 MR. SCHIFF: All right. It's not relevant.

25 THE COURT: You haven't shown me --

1 MR. SCHIFF: Okay.

2 THE COURT: -- how it is.

3 BY MR. SCHIFF:

4 Q. Now, did I understand you to say that the purpose of the  
5 hearing is to make sure that all of the administrative  
6 procedures have been followed?

7 A. That's one purpose.

8 Q. Was there another purpose?

9 A. Yes, sir.

10 Um, the taxpayer could also raise the issue that they  
11 were entitled to innocent spouse relief if they had filed a  
12 joint return. And, of course, that would be determined under  
13 Section 6015. It gets a little complicated. Also, they had the  
14 right to raise the liability issue if in fact they had not had a  
15 previous -- previous opportunity to argue the income tax  
16 liability and then collection alternatives. I believe that was  
17 the extent of...

18 Q. All right. What did the law allow them to raise with  
19 respect to the liability?

20 A. Well, they actually go to the heart, or the essence, of the  
21 liability if they had not previously had that opportunity to,  
22 uh, you know --

23 Q. So --

24 A. -- to appeal that.

25 In a particular instance with Mr. Diamond, as I recall,

1 he was issued a -- a Notice of Deficiency to his last known  
2 address and then he did not petition the U.S. Tax Court.

3 Q. Okay.

4 A. And, as we learned in the conference, he did in fact receive  
5 the Notices of Deficiency.

6 Q. Did the law allow the taxpayer to challenge the existence of  
7 the underlying tax liability?

8 A. Yes, it did --

9 Q. Okay.

10 A. -- as long as they --

11 Q. Okay.

12 A. -- as long as they previously hadn't had the opportunity to  
13 challenge that.

14 Q. Exactly.

15 So he could either challenge the amount or the  
16 existence.

17 A. Oh, I see what you're saying --

18 Q. Right?

19 A. -- the liability here. The existence.

20 Q. You can challenge the existence also as well as the amount.

21 A. You know, I think you would have to look at the intent of  
22 Congress. And I'm no expert on the intent of Congress. I  
23 couldn't testify to what their intent was.

24 Q. But the law itself said he could challenge the existence?

25 MR. NEIMAN: I'm gonna object to further questions with

1 this witness as being irrelevant and --

2 MR. SCHIFF: I'm --

3 MR. NEIMAN: -- outside the scope --

4 MR. SCHIFF: -- I'm just trying to clarify --

5 MR. NEIMAN: -- of his examination.

6 MR. SCHIFF: -- what the collection --

7 THE WITNESS: I think -- I think what it states in the

8 statute is liability.

9 BY MR. SCHIFF:

10 Q. Can I -- would -- if I showed you the statute, would --

11 A. I'll be glad to read it.

12 MR. SCHIFF: Well, you -- you done a fairly good --

13 here is the Tax Code.

14 (Document placed before the witness.)

15 THE COURT: Is that marked?

16 MR. SCHIFF: No. It's just the statute.

17 THE COURT: How -- how --

18 MR. SCHIFF: It's Section 6330.

19 THE COURT: How does opposing counsel know that?

20 MR. SCHIFF: All right. I'll show it to them.

21 THE COURT: That's --

22 MR. SCHIFF: Well, he --

23 THE COURT: -- the idea.

24 MR. SCHIFF: -- has the Code book. He has Section

25 6330.

1 THE COURT: Well, we don't know it until you show it to  
2 them --

3 MR. SCHIFF: All right. I'm sorry.

4 THE COURT: -- and have it marked.

5 MR. NEIMAN: Your Honor, the Government would stick to  
6 its relevance objection to this line of questioning.

7 MR. SCHIFF: Do you want to see it?

8 MR. NEIMAN: I -- I...

9 (Document handed to Government counsel.)

10 THE COURT: Hand it to the clerk for marking.

11 MR. SCHIFF: Okay.

12 THE COURT: Hand it to the clerk for marking.

13 MR. SCHIFF: Well --

14 THE CLERK: Exhibit 2113.

15 (Defendant Schiff's Exhibit No. 2113, marked  
16 for identification.)

17 THE CLERK: I'll give it to him, okay --

18 MR. SCHIFF: Okay.

19 THE CLERK: -- once I mark it.

20 MR. SCHIFF: Okay.

21 (Document handed to the witness by the  
22 clerk.)

23 THE WITNESS: Specifically it states, "Issues at [the]  
24 hearing." Um --

25

1 BY MR. SCHIFF:

2 Q. Okay.

3 A. -- and (B) it says, "Underlying Liability. The person may  
4 also raise at the hearing challenges to the existence or amount  
5 of the underlying tax liability for any tax period if the person  
6 did not receive any statutory notice of deficiency for such tax  
7 liability or did not otherwise have an oppor-" -- "opportunity  
8 to dispute such tax liability."

9 Q. Okay. So presumably the citizen had a right -- if he had a  
10 deficiency notice and if he went to Tax Court, presumably he  
11 could challenge the existence of --

12 A. Yes. It states --

13 Q. -- the underlying tax liability.

14 A. It states --

15 Q. Is that correct?

16 A. -- it states, "if the person did not receive any statutory  
17 notice of deficiency for such tax liability."

18 Q. Okay.

19 A. He in fact did.

20 Q. Now, it is realistic to assume that -- if a person went to  
21 Tax Court and challenged the existence of the underlying tax  
22 liability, would the Tax Court in your judgment ever rule that  
23 there was no such thing as an income tax liability?

24 A. No.

25 Q. Pardon me?

1 A. No.

2 Q. So though he had a right to --

3 A. But I think you --

4 Q. -- raise the issue --

5 A. -- misread this. It says, "if the person did not receive  
6 any statutory notice of deficiency for such tax liability." In  
7 other words, he had the opportunity to raise whatever arguments  
8 that he was gonna raise relative to the existence or amount of  
9 the underlying tax --

10 Q. So --

11 A. -- liability, but he had to do that with the Tax --

12 Q. Yeah --

13 A. -- Court relative to a Notice of Deficiency.

14 Q. Yeah. Well, suppose he filed a petition to Tax Court --

15 THE COURT: No.

16 MR. NEIMAN: Objection.

17 MR. SCHIFF: All right.

18 MR. NEIMAN: Relevance.

19 MR. SCHIFF: I don't wanna go with that.

20 THE COURT: It's not relevant.

21 MR. SCHIFF: All right.

22 THE COURT: We're talking about Mr. Diamond here --

23 MR. SCHIFF: Okay.

24 THE COURT: -- who had the opportunity --

25 MR. SCHIFF: Okay.



1 THE COURT: -- and didn't take it.

2 MR. SCHIFF: Okay.

3 THE COURT: So he couldn't challenge it.

4 MR. SCHIFF: Okay.

5 BY MR. SCHIFF:

6 Q. Now, there's nothing, however -- there's nothing in the law  
7 that states that the Appeals officer shall discuss -- before --  
8 I withdraw that -- before he got the offer -- before he got the  
9 offer to request a collection due process hearing, he presumably  
10 got a 30-day letter; is that correct?

11 A. I do not know if he got a --

12 Q. Well --

13 A. -- 30-day letter -- personally I don't believe that he did  
14 because of the type of return that he -- that he filed. They  
15 normally went directly to substitute for return. From the  
16 return that he was -- that he filed, they went to a substitute  
17 for return; they issued a Notice of Deficiency.

18 Q. Okay.

19 A. I doubt seriously that there was a 30-day letter issued in  
20 this case. But I do not know that for a fact.

21 Q. Okay. Well, wouldn't the IRS -- I mean, before they said  
22 they are gonna seize your property, wouldn't they have made an  
23 attempt to audit his return; give him an opportunity to come in  
24 and discuss what he might or may not have owed? You know what a  
25 30-day letter is?

1           MR. NEIMAN: I'm gonna object to relevance beyond the  
2 scope.

3           THE COURT: What is the relevance?

4           MR. SCHIFF: The relevance is that there was nothing to  
5 discuss. The only thing that they had to discuss at the CPD  
6 hearing, your Honor, is whether all the administrative  
7 procedures had been met, not the validity of his return. That  
8 had already been established before he got the -- the notice of  
9 seizure. He would have --

10 BY MR. SCHIFF:

11 Q. Do you know what a 30-day letter is?

12           THE COURT: Wait a minute.

13 BY MR. SCHIFF:

14 Q. Do you know what a 30-day letter is?

15           THE COURT: Mr. -- Mr. Schiff, there is an objection.

16 Is your question about Mr. Diamond's CPD --

17           MR. SCHIFF: No. My question --

18           THE COURT: -- hearing or a general question?

19           MR. SCHIFF: My question is about his statements he  
20 made. And I'll get to Mr. Diamond in a minute. But I'm trying  
21 to establish the procedures that the IRS follows before they  
22 attempt to seize somebody's property. They don't -- they just  
23 don't send you a letter, we're gonna seize your property. There  
24 has to be procedures before they do that.

25

1 BY MR. SCHIFF:

2 Q. Aren't there?

3 THE COURT: He's already testified to that.

4 MR. SCHIFF: Okay.

5 BY MR. SCHIFF:

6 Q. So, before they seize the man's property, they would have  
7 either invited him in for an audit -- or gave him an opportunity  
8 for an audit?

9 A. Not necessarily --

10 Q. Well --

11 A. -- because -- and may I explain that?

12 Q. Yes.

13 A. Apparently there were sufficient documentations submitted to  
14 the Internal Revenue Service in the form of W-2's, 1900's. And  
15 the Service, the Internal Revenue Service, compliance folks and  
16 also the Appeals Division looks to what's known as the "burden  
17 of proof."

18 The Service -- the government has the burden of proof  
19 when it comes to income; however, the taxpayer has the burden of  
20 proof when it comes to expenses. So when we receive, um, this  
21 type of return, the Service Centers normally prepare a  
22 substitute for return and issue a Notice of Deficiency using --

23 Q. Can I -- I'm sorry. Go ahead.

24 A. -- using the income tax -- the income information that they  
25 have, keeping in mind that the Service has the burden of proof.

1           They then issue a Notice of Deficiency. At that point  
2 in time, the taxpayer can say that is correct but I also have  
3 these expenses. And then they can produce the documentation for  
4 the expenses and they've lived up to their burden of proof.

5 Q. Are you saying that -- if an individual submits a return  
6 showing he had no income, are you saying that then the IRS  
7 produces a substitute for his return?

8           MR. NEIMAN: I'm gonna object to this line of inquiry.

9           MR. SCHIFF: I'm just asking --

10          MR. NEIMAN: It's irrelevant.

11          MR. SCHIFF: It's not -- I'm asking a simple question.

12 BY MR. SCHIFF:

13 Q. If a man files a return showing zeroes on it, does the IRS  
14 then uh, create another substitute for the return he filed?

15 A. I'll answer that.

16 Q. Yeah.

17          THE COURT: Go ahead.

18          THE WITNESS: Sure.

19           I mean, they -- they only -- as I understand, they only  
20 issue -- or prepare a substitute for return and issue a Notice  
21 of Deficiency when the Service has received information that  
22 that person has received income. In other words, they don't  
23 just pick numbers out of an -- out of the air. And that --

24 BY MR. SCHIFF:

25 Q. Okay.

1 A. -- that information comes from third parties, such as  
2 employers.

3 Q. Okay. When a person gets a deficiency notice, right -- so  
4 you're saying that without auditing his return or -- and without  
5 inviting him in to explain why he may owe more money than  
6 indicated on his return, you're telling me the first  
7 communication from the IRS might be a deficiency notice?

8 MR. NEIMAN: Objection. Asked and answered and  
9 relevance.

10 MR. SCHIFF: I just want to clarify that in my mind.

11 BY MR. SCHIFF:

12 Q. So the first thing he might receive -- I'm sorry -- is a  
13 deficiency notice?

14 A. My understanding is normally, um -- and I've learned to  
15 never say "always" and things of that nature -- but my  
16 understanding is normal procedure is that when a zero type of  
17 tax return is filed that -- that the Service Center will send  
18 out a letter to the taxpayer stating that this return that you  
19 have filed does not contain sufficient information and they give  
20 them a period of time to file a return reflecting their income.

21 Q. Well, doesn't that letter --

22 A. And that's probably the first, you know, notification back  
23 to the taxpayer --

24 Q. So --

25 A. -- not a Notice of Deficiency.

1 Q. Okay. So we clarified that.

2 So, before the deficiency notice comes in, the taxpayer  
3 is given an opportunity, presumably, to clarify why he filed  
4 what he did and he has a right to ask for a hearing; is that  
5 correct?

6 A. Not from that notice.

7 Q. Well, isn't that -- isn't that called --

8 A. That notice --

9 Q. -- a 30-day notice?

10 A. No.

11 -- that notice simply says we're requesting that you  
12 file a return reporting your income and your deductions. And  
13 you have a certain period of time within which to file it.

14 Q. So you're saying --

15 A. And that comes from the Service Center.

16 Q. You have no knowledge of what is known as a 30-day letter?

17 A. No, I'm not saying that. That's not a 30-day letter.

18 Q. Well -- well -- well, what is a 30-day letter?

19 A. Okay. A 30-day letter would be in a situation -- and not in  
20 a zero income tax type of return but where someone has filed a  
21 return reporting their income and their deductions and  
22 Examination Division has certain questions relative to certain  
23 items to that return. It may be additional income; it may be  
24 certain of the expenses.

25 If they can't reach an agreement at the examination

1 level, then the Examination Division issues a 30-day letter.  
2 And the 30-day letter is simply a notice of our proposed changes  
3 to your taxable income. And the 30 days come from you have 30  
4 days within which to appeal our decision.

5 If the taxpayer doesn't file a timely appeal within  
6 that 30 days, then normally the Examination Division issues a  
7 Notice of Deficiency. However, if the taxpayer does appeal  
8 timely, then normal income tax returns, where they filed and  
9 they reported their income and reported their expenses, then the  
10 Appeals Division or the Appeals Office hears those -- uh, those  
11 protests -- we refer to them as protests.

12 What we do not hear is, for instance, even if for some  
13 reason the Examination Division would inappropriately issue a  
14 30-day letter on a -- what we refer to as a constitutional or  
15 frivolous argument type of case, by regulations, Treasury Regs,  
16 the Appeals Division does not entertain arguments as to what we  
17 refer to as frivolous arguments. We don't -- we don't listen to  
18 those.

19 Q. But suppose a person files a traditional return and he said  
20 he owes \$10,000. And, based on information the IRS has, they  
21 claim he owes 30,000.

22 A. Um-hum.

23 Q. So they send him a 30-day letter and he comes in and he  
24 discusses that with the agent; is that right?

25 MR. NEIMAN: Your Honor, objection. We're a long way

1       aways from the collection due process hearing and Mr. Diamond in  
2       which it was conducted --

3               THE COURT:   Correct.

4               MR. SCHIFF:   Your Honor, he talked about petitioning  
5       Tax Court, deficiency notices.

6               THE COURT:   Well --

7               MR. SCHIFF:   I think we ought to clarify what that  
8       means.

9               THE COURT:   We can spend all day here.

10              MR. SCHIFF:   We're not gonna spend all day, your Honor.

11              THE COURT:   We can spend the rest of this year talking  
12       about hypotheticals involving the IRS.

13              MR. SCHIFF:   I won't take more than five minutes.  I'm  
14       not discussing the law.  I'm just trying to clarify what a  
15       deficiency notice --

16              THE COURT:   And what is --

17              MR. SCHIFF:   -- in Tax Court means.

18              THE COURT:   -- the relevance of it?

19              MR. SCHIFF:   The point I wanna make here is he just  
20       said that he -- he will send --

21       BY MR. SCHIFF:

22       Q.   The person gets a deficiency notice; is that -- in other  
23       words, if the taxpayer and the IRS --

24              THE COURT:   No.  You're not askin' questions.  You're  
25       gonna tell me the relevance.



1           MR. SCHIFF: All right. No.

2 BY MR. SCHIFF:

3 Q. If the IRS --

4           THE COURT: Mr. Schiff, look at me.

5           MR. SCHIFF: Yes.

6           THE COURT: You are addressing me. You're not

7 addressing any more questions until I rule on the objection.

8           MR. SCHIFF: Okay. Can I say why it's relevant at

9 least?

10          THE COURT: That's what I've been asking you to do.

11          MR. SCHIFF: Well, because he discussed appealing Tax

12 Court, a deficiency notice. I don't think the jury knows what

13 these --

14          THE COURT: What does that have to do with

15 Mr. Diamond's hearing and the notices --

16          MR. SCHIFF: It'll be --

17          THE COURT: -- that were given?

18          MR. SCHIFF: -- relevant in a minute. If -- if it's

19 not relevant, then you can admonish me. Okay? If it's not

20 relevant.

21          THE COURT: You know what form my admonishment's gonna

22 take.

23          MR. SCHIFF: Yes.

24 BY MR. SCHIFF:

25 Q. Okay. The point I wanna make is if the tax -- a normal

1 filing of a traditional return says he owes 10,000 bucks. The  
2 IRS says he owes 30. He gets his 30-day letter. He meets with  
3 the IRS [sic] officer. They can't agree.

4 A. With the Appeals officer?

5 Q. Yeah. He deals --

6 A. Okay.

7 Q. -- the Appeals officer.

8 A. Okay.

9 Q. On a traditional return, they can't agree.

10 A. Um-hum.

11 Q. What happens next?

12 A. The Appeals office issues a Notice of Deficiency --

13 Q. Uh, exactly right.

14 A. -- for the amount that we are not in agreement on.

15 Q. Okay. So now the taxpayer has to appeal to Tax Court.

16 A. Yes, sir.

17 Q. Okay. So the Tax Court presumably makes the determination  
18 of what the person owes; is that right?

19 A. Yes.

20 Q. Not the IRS?

21 A. That's correct.

22 Q. So, essentially, the IRS has no authority to make a  
23 determination greater than what the individual says his tax is.  
24 If they can't agree --

25 MR. NEIMAN: Your Honor, I think my point's been proven

1 now --

2 THE COURT: Yes.

3 MR. NEIMAN: -- as to the relevance and we need to move  
4 on.

5 THE COURT: We have just --

6 MR. SCHIFF: Okay.

7 THE COURT: -- we have just jumped the Grand Canyon --

8 MR. SCHIFF: Okay.

9 THE COURT: -- with that leap.

10 MR. SCHIFF: All right.

11 BY MR. SCHIFF:

12 Q. Now, what does petitioning Tax Court involve?

13 MR. NEIMAN: Still objection, your Honor. Relevance.

14 THE COURT: Sustained.

15 MR. SCHIFF: It's not --

16 THE COURT: You haven't shown me -- I'm not gonna take  
17 you up on your offer.

18 MR. SCHIFF: All right.

19 THE COURT: But don't push me.

20 MR. SCHIFF: All right. All right.

21 BY MR. SCHIFF:

22 Q. Now -- now, the Section 6330 gives the taxpayer the right  
23 to, uh, raise any issue relevant to the amount of tax the  
24 Government says he owes. Isn't that what it provides, he can  
25 raise any relevant issue?

1 MR. NEIMAN: Asked and answered.

2 THE COURT: Sustained.

3 BY MR. SCHIFF:

4 Q. What are some of issues therefor that a taxpayer who might  
5 have a penalty imposed -- what is some of the issues he might  
6 raise at the collection due process hearing?

7 A. Well --

8 Q. Give me some of the issues --

9 A. -- if it was --

10 Q. -- he might raise.

11 A. -- if it was a penalty that was raised on the Notice of  
12 Deficiency and he failed to petition the Tax Court, then he's  
13 barred by the statute from raising that liability or the penalty  
14 amount in collection due process.

15 Q. Yeah. But -- so let's assume he doesn't want to raise that  
16 issue. Are there other issues he could raise?

17 MR. NEIMAN: Objection. Asked and answered.

18 THE COURT: It was.

19 BY MR. SCHIFF:

20 Q. Are there other --

21 THE COURT: He went over these --

22 BY MR. SCHIFF:

23 Q. -- issues he can raise?

24 THE COURT: -- he went over even on your  
25 cross-examination. He -- he listed four areas.

1 MR. SCHIFF: Can he raise an issue --

2 MR. BOWERS: Can I get those, Judge? Because I -- I'm  
3 confused. I'm sorry.

4 THE COURT: You forgot which they are?

5 MR. BOWERS: Well, I -- I just don't know I'm smart  
6 enough to pick 'em out.

7 THE COURT: We'll do a sidebar.

8 MR. BOWERS: Thank you.

9 THE COURT: And I'll --

10 MR. BOWERS: Thank you, Judge.

11 THE COURT: -- show you my notes.

12 MR. BOWERS: Thank you.

13 THE COURT: During the break.

14 MR. BOWERS: Yeah, that's cool.

15 BY MR. SCHIFF:

16 Q. Before the IRS can seize a man's property pursuant to  
17 Section 6331, doesn't Section 6331 state he has to receive a  
18 notice and demand for payment?

19 A. I believe that's correct.

20 Q. So would it be a fair -- issued to -- I think Mr. Diamond  
21 raised it -- to -- to see a copy of the notice and demand sent  
22 to him. Wouldn't that be --

23 A. I believe that he asked that and what we commented was we  
24 had what's known as a "Certificate of Assessment." And on the  
25 Certificate of Assessment it states, I believe -- and it gave

1 dates. And I don't remember the dates, but I think for each  
2 year was like two different dates for each year. And it said  
3 balance due. And that would have been when the notice and  
4 demand was issued.

5 Did we actually have in the file for Mr. Dillard --  
6 Diamond the, uh, notice and demand? No, I don't believe that we  
7 did.

8 Q. But he asked for a copy. And I think he said it wasn't  
9 furnished to him. I think that's what I --

10 A. We -- we referred to our Certificate of Assessment which, in  
11 essence, is a recordation of things like that.

12 Q. Well, suppose --

13 A. We have to --

14 Q. All right.

15 A. -- rely on that.

16 Q. Suppose a man had a -- had a penalty imposed on him, okay,  
17 and -- would it -- could he have asked to see a copy of the  
18 document imposing the penalty?

19 MR. NEIMAN: Objection. Hypothetical.

20 BY MR. SCHIFF:

21 Q. Well, would that be --

22 THE COURT: Sustained.

23 BY MR. SCHIFF:

24 Q. Would that be something he could raise at the CDP hearing?

25 A. He would have seen the Notice of Deficiency.

1 Q. Now -- all right. Besides having laws, have you ever heard  
2 of Internal Revenue Code Regulations, IRS Regulations?

3 A. Yes, sir.

4 Q. Is the IRS bound by its regulations?

5 MR. NEIMAN: Objection. Relevance.

6 THE COURT: What is the relevance?

7 MR. SCHIFF: Well, I'm just asking him a question. Is  
8 the IRS bound by its --

9 THE COURT: Well, that's a --

10 MR. SCHIFF: -- regulations?

11 BY MR. SCHIFF:

12 Q. Do you know whether or not --

13 THE COURT: You can -- like I said, we can be here the  
14 rest of the year --

15 MR. SCHIFF: I'm sorry.

16 THE COURT: -- asking hypothetical questions that have  
17 nothing to do with this case.

18 MR. SCHIFF: Well, this has something to do with his  
19 testimony.

20 THE COURT: In what way?

21 MR. SCHIFF: Can I ask the question?

22 THE COURT: No. Tell me how it has to do with his  
23 testimony.

24 MR. SCHIFF: Okay.

25

1 BY MR. SCHIFF:

2 Q. Are you --

3 MR. SCHIFF: All right. Section 6330 -- regulation --  
4 IRS Regulation 301, 6330-1, states --

5 MR. NEIMAN: Your Honor, we're goin' down that same  
6 path.

7 MR. SCHIFF: Well, you -- well, you want me to say the  
8 relevance. It states --

9 THE COURT: No. Don't read it to me. Tell me how  
10 it -- what relevance it has to this case.

11 MR. SCHIFF: Well, it relates its facts before an I- --  
12 before an Appeals officer can issue a determination, he is  
13 required to obtain verification from the IRS office collecting  
14 the tax that the requirements of any applicable law or  
15 administrative procedures have been met.

16 BY MR. SCHIFF:

17 Q. Does the Appeals officer get, prior to the determination,  
18 that verification from the office?

19 A. Yes.

20 Q. They do?

21 A. Yes.

22 Q. So your testimony is that the IRS gets verification -- all  
23 right.

24 Do they ever give that verification? Did they give  
25 that verification to Mr. Diamond?



1 A. Yes.

2 Q. They did?

3 A. Yes.

4 Q. Um, I heard --

5 A. It was the Certificate of Assessment, the Form 4340.

6 Q. No. But --

7 A. We --

8 Q. -- is a 4340 the same thing as verification from the IRS

9 office collecting the tax?

10 MR. NEIMAN: Objection, your Honor. We're going --

11 again, Mr. Schiff's misinterpretation of the law.

12 THE COURT: Sustained.

13 MR. SCHIFF: This is not the law; this is the

14 regulation.

15 BY MR. SCHIFF:

16 Q. All right. What does -- all right. What does the word

17 "verification" mean to you?

18 THE COURT: I'm sorry. Verification?

19 BY MR. SCHIFF:

20 Q. What does the word "verification" mean?

21 THE COURT: Go ahead.

22 BY MR. SCHIFF:

23 Q. What does the word "verification" mean?

24 A. It means reviewing, in this instance, the file; the

25 documentation of the file; any transcripts in the file to

1 ascertain that -- for instance, that the Notice of Deficiency  
2 was issued; Notice of Deficiency was issued timely; the Notice  
3 of Deficiency was issued to the correct last known address; that  
4 after -- and that the assessment was in fact made. All that's  
5 ascertainable from the Certificate of Assessment, the Form 4340.  
6 Additionally, you can ascertain from that that in fact a notice  
7 and demand for payment was made to the taxpayer on each specific  
8 year.

9 The Certificate of Assessment is by year. There's one  
10 Certificate of Assessment for each tax period. It's a  
11 compilation of various actions that have occurred.

12 Q. Is there anything in connection with the word "verification"  
13 which means something done under oath or af- -- or affirmation?

14 MR. NEIMAN: Objection. Again, it goes to the  
15 misinterpretation and relevance and...

16 THE COURT: Sustained.

17 MR. SCHIFF: All right.

18 BY MR. SCHIFF:

19 Q. Now, I think -- if I heard correctly, I think I heard  
20 Mr. Diamond say, correct me if I'm wrong, he said -- so the IRS  
21 didn't give me any of the documents he believed he was entitled  
22 to get. Didn't he say that on the tape?

23 A. I believe that he did.

24 Q. Okay. So suppose Mr. Diamond didn't believe he got all the  
25 documents he thought he could get and they gave him an adverse

1 determination.

2 MR. NEIMAN: Objection to the hyp- -- we're going  
3 through exactly what happened on the tape right now, your Honor.

4 BY MR. SCHIFF:

5 Q. Well, I'm saying did he get --

6 THE COURT: Exactly.

7 BY MR. SCHIFF:

8 Q. Suppose someone gets an adverse determination -- and I  
9 believe from the tape that Mr. Diamond -- from listening to the  
10 tape, he said I didn't get all the documents. What could he do  
11 about it?

12 A. At that point in time, um, we had an -- an agreement to  
13 disagree. And we felt that we provided the verification. We  
14 had looked at the Certificate of Assessment and we had made a  
15 decision that all the rules and regulations had been followed by  
16 the Secretary at the compliance level. We also made the  
17 determination that he could not raise the liability issue. And  
18 we also determined that he was not interested in a collection  
19 alternative because he still was not in compliance as to filing  
20 tax returns at that point in time. And he never raised the  
21 innocent spouse issue.

22 Accordingly, I believe -- and I would have to go back  
23 and look at the file -- we issued a notice of determination on  
24 this issue giving him the opportunity to petition Tax Court to  
25 take his argument further.

1 Q. Okay. But -- but something happened on his -- on that tape  
2 that I want to touch on. Because I tried to make the point that  
3 before Mr. Diamond reached that point, he would have had a  
4 deficiency notice and presumably a 30-day letter. So it would  
5 have already been established that that's what he owed. Right?

6 A. Yes.

7 Q. And the only thing that the -- the collection due process  
8 hearing would have focused on is whether all of the  
9 administrative procedures had been met before they seized his  
10 property; is that right?

11 A. Yes.

12 Q. There is nothing in that statute that says the Appeals  
13 officer can discuss the validity of his return.

14 THE COURT: What is the point?

15 MR. SCHIFF: The point is that all that discussion  
16 about you filed the zero return and the meaning of income  
17 that --

18 THE COURT: Well --

19 MR. SCHIFF: -- he's not authorized to do that.

20 THE COURT: First --

21 MR. SCHIFF: The only question --

22 THE COURT: -- first you claim that the IRS doesn't  
23 talk to you on the phone; now you claim they talk too much.

24 MR. SCHIFF: Well, the whole purpose of the --

25 THE COURT: Come on.

1           MR. SCHIFF: Pardon me?

2           THE COURT: You're -- you're -- you're tryin' to have  
3           it both ways.

4           MR. SCHIFF: I am saying the purpose of the due process  
5           hearing -- that had all been established, that he owed the  
6           money.

7           THE COURT: He explained why --

8           BY MR. SCHIFF:

9           Q. Before -- isn't -- isn't it a fact --

10          THE COURT: -- he gave that information to Mr. Diamond.

11          MR. SCHIFF: Yeah.

12          THE COURT: And -- and he was tryin' to help him out to  
13          understand why there is an obligation to pay tax. And that's  
14          why he engaged in that discussion. He's already testified that  
15          they don't do that anymore because it takes too much time. But  
16          that was the reason why. You're not -- what's the point of it?

17          MR. SCHIFF: All right.

18          THE COURT: Are you saying he shouldn't have answered  
19          the man's questions?

20          MR. SCHIFF: But the whole purpose of the collection  
21          due process, as he stated before, was to -- just to determine if  
22          all the administrative procedures had been met, whether there  
23          had been a proper assessment, whether they had a tax return --

24          THE COURT: Correct.

25          MR. SCHIFF: -- whether there had been a notice and

1 demand sent to him.

2 THE COURT: He said that and he said that they had --

3 MR. SCHIFF: All right.

4 THE COURT: -- been followed.

5 MR. SCHIFF: All right.

6 THE COURT: What was your point?

7 BY MR. SCHIFF:

8 Q. Now, suppose Mr. Diamond believed that the determination was  
9 wrong.

10 MR. NEIMAN: Objection. Speculation.

11 BY MR. SCHIFF:

12 Q. Well, suppose anybody --

13 MR. NEIMAN: And hypothetical.

14 MR. SCHIFF: All right.

15 BY MR. SCHIFF:

16 Q. Let me ask you something, sir. Of all the collection due  
17 process hearings that you're familiar with, how many times has  
18 the Appeals officer agreed with the taxpayer? Percentage.

19 A. Well, number one, I will tell you we don't keep any  
20 record --

21 Q. Well, can you --

22 A. -- of how many we agree on.

23 Let me explain what our mission is. Our mission is to  
24 resolve cases in a fair and equitable manner if we can do so  
25 without litigation. That is our task. That's our mission.

1           And I will tell you on cases that are, for instance,  
2 docketed before the Tax Court -- and we have a Tax Court coming  
3 up here in, um, Las Vegas in February -- um, we will probably  
4 resolve prior to litigation approximately 95, maybe even  
5 90 percent of those -- 98 percent of those cases. And that's --  
6 that's standard. I mean, that's just what happens. Very few  
7 cases actually go to trial.

8           And it's the same with collection due process. If  
9 somebody comes in and they, um -- they have a liability, they  
10 acknowledge that they have a liability, it's not our intent to  
11 see that a levy is enforced if there is another more  
12 palatable -- and I think that's a good term -- uh, manner in  
13 which to collect the tax.

14           For instance, if they can enter into an installment  
15 agreement, they can't currently pay it, then we try to put them  
16 into an installment payment so that they pay it over a period of  
17 time.

18 Q. But assume that a taxpayer doesn't believe the determination  
19 was correct or proper. He has a right to appeal.

20 A. And Mr. Diamond had that opportunity --

21 Q. Right.

22 A. -- the first shot at U.S. Tax Court.

23 Q. Anybody has a right to appeal.

24 MR. NEIMAN: Objection. Asked and answered.

25 THE COURT: It is.

1 MR. SCHIFF: Okay.

2 THE COURT: It's been asked and answered --

3 MR. SCHIFF: Okay.

4 THE COURT: -- several times.

5 BY MR. SCHIFF:

6 Q. When a person appeals to Tax Court -- and how many -- how

7 many days does he have to appeal to Tax Court?

8 A. Uh, from the date of the Notice of Deficiency --

9 Q. No, no.

10 A. Yeah. No. That's -- that's --

11 Q. The determination.

12 A. No. Well, let me explain. From the date of the Notice of

13 Deficiency, the taxpayer has 90 days to petition the Tax Court

14 if they are within the United States. If they are outside the

15 United States, I believe it goes to 150 days.

16 Q. That's not my question. We're not talking appealing a

17 deficiency. We're talking about appealing an adverse

18 determination as a result of a CDP hearing.

19 THE COURT: Well, that's not -- that wasn't your

20 question.

21 MR. SCHIFF: My question --

22 THE COURT: You just asked a general question.

23 MR. SCHIFF: My question --

24 THE COURT: If a person appeals to Tax Court, how many

25 days does he have. He's answering it.



1 MR. SCHIFF: But I thought we're talking about a CDP  
2 hearing, not --

3 THE COURT: You didn't ask that question.

4 MR. SCHIFF: All right.

5 THE COURT: There are lots of appeals. And, if you  
6 want to specify a particular one, then do it --

7 MR. SCHIFF: Yes.

8 THE COURT: -- in your question.

9 BY MR. SCHIFF:

10 Q. I'm talking about if someone has a CDP hearing and is  
11 dissatisfied with the determination and the determination is  
12 against him, he gets the notice --

13 A. It's called a Notice --

14 Q. -- that he lost.

15 A. Notice of --

16 Q. Right.

17 A. -- Determination.

18 Q. All right. Now, he has how many days to appeal to Tax  
19 Court?

20 A. Again, I believe it's 60 days. But it may be 30 days from  
21 the date of that Notice of Determination. It's either 30 or 60.

22 Q. 30 -- well --

23 A. And I don't recall which.

24 Q. -- would it -- could I suggest to you that it's 30 days?

25 MR. NEIMAN: Objection. Relevance.

1 THE COURT: What is the relevance?

2 MR. SCHIFF: Well, it's 30 days -- well, it's not

3 irrel- --

4 THE COURT: What's the relevance?

5 MR. SCHIFF: -- the relevance is it's 30 days from the

6 date of the determination.

7 BY MR. SCHIFF:

8 Q. Is that correct?

9 A. Notice of Determination.

10 THE COURT: And so what if it is? So what? What's the

11 relevance?

12 MR. SCHIFF: Well, how could a waitress --

13 THE COURT: Okay.

14 MR. SCHIFF: -- truck driver --

15 THE COURT: It's not relevant.

16 MR. SCHIFF: -- in 30 days --

17 THE COURT: It's not relevant.

18 MR. SCHIFF: -- when you appeal --

19 THE COURT: It's not relevant. You're just arguing --

20 BY MR. SCHIFF:

21 Q. Isn't the appeal --

22 THE COURT: -- the fairness of the law. It has nothing

23 to do with his testimony.

24 BY MR. SCHIFF:

25 Q. Isn't an appeal to Tax Court like initiating a civil

1 lawsuit? When you go to Tax Court -- when you go to Tax Court  
2 you have to file a petition to Tax Court; is that correct?

3 A. Yes, sir.

4 Q. And the government responds?

5 A. On what they've determined to be S cases. But, if a  
6 taxpayer elects S status, small case status, there is no answer  
7 to the petition. In a regular case, unless the taxpayer elects  
8 S -- S case status, then there --

9 Q. Okay. A little louder, please.

10 A. -- there's an answer to the petition by the U.S. Government.

11 MR. NEIMAN: Your Honor, I'm gonna object --

12 BY MR. SCHIFF:

13 Q. Now --

14 MR. NEIMAN: -- to the further questioning. How is it  
15 relevant to what he --

16 THE COURT: He hasn't explain it.

17 MR. NEIMAN: -- these defendants --

18 MR. SCHIFF: It is relevant --

19 THE COURT: He hasn't explained its relevance.

20 MR. SCHIFF: The relevance, your Honor, is what -- it  
21 explains what Freedom Books has to do when people get these  
22 adverse hearings and they don't know how to petition Tax Court.  
23 And they have two weeks to do it in because it's 30 days from  
24 the date of the determination.

25

1 BY MR. SCHIFF:

2 Q. Isn't that correct?

3 THE COURT: Well, if that's what you want to argue, you  
4 do it in your own case. This witness has --

5 MR. SCHIFF: All right. One more question.

6 THE COURT: -- his testimony is --

7 MR. SCHIFF: One more.

8 BY MR. SCHIFF:

9 Q. When a person goes --

10 THE COURT: -- did not go in this area.

11 MR. SCHIFF: Let me have one more question, then I'm  
12 gonna be through.

13 BY MR. SCHIFF:

14 Q. When a person --

15 THE COURT: You said that -- you said that a lot --

16 MR. SCHIFF: All right.

17 THE COURT: -- of questions ago.

18 MR. SCHIFF: You got my word this time.

19 BY MR. SCHIFF:

20 Q. When a person goes to Tax Court -- when a person goes to Tax  
21 Court, the government is represented by a full-time professional  
22 lawyer in Tax Court; is that correct?

23 A. That's correct.

24 Q. How many rules does Tax Court have?

25 MR. NEIMAN: Objection. We've exceeded the one

1 question and relevance.

2 THE COURT: How many more do you want ask?

3 MR. SCHIFF: One -- two more. Two more.

4 THE COURT: Okay. It's over. Okay.

5 MR. SCHIFF: Two more.

6 THE COURT: It's over because --

7 MR. SCHIFF: You're not gonna give me --

8 THE COURT: -- there will always be two more.

9 MR. SCHIFF: Two more. I promise.

10 THE COURT: You did that early. You might have  
11 forgotten.

12 MR. SCHIFF: Well, one question leads to another, you  
13 know.

14 THE COURT: Yeah.

15 MR. SCHIFF: I have two more. I've got two more.

16 THE COURT: I sustained the objection.

17 MR. SCHIFF: I got two more questions.

18 THE COURT: No. It's -- it's irrelevant. You're just  
19 trying to --

20 MR. SCHIFF: I'm -- I'm trying to say how unfair going  
21 to Tax Court is.

22 THE COURT: Well, you can't say that. Okay?

23 MR. SCHIFF: I can't say that.

24 THE COURT: No, you can't --

25 MR. SCHIFF: I withdraw the question.

1 THE COURT: -- say that. And the remark is stricken.

2 MR. SCHIFF: It's not easy, your Honor, going to Tax  
3 Court. You should to go Tax Court like --

4 MR. NEIMAN: Your Honor, your Honor --

5 THE COURT: We're gonna take our break.

6 MR. SCHIFF: One more question.

7 BY MR. SCHIFF:

8 Q. Do you think the average truck driver knows --

9 THE COURT: We're far into --

10 BY MR. SCHIFF:

11 Q. -- how to go to Tax Court?

12 THE COURT: We're far into our -- Mr. Bowers, unless  
13 you only have one or two questions.

14 MR. BOWERS: I just have very few questions. But I  
15 didn't understand some testimony the Court was gonna help me  
16 with. So let's take our break.

17 MR. NEIMAN: Your Honor, if it is brief, we would ask  
18 for the witness's flight sake to maybe...

19 THE COURT: Oh. To finish.

20 MR. NEIMAN: If it's brief.

21 THE COURT: Let's see --

22 MR. NEIMAN: Because as of now, the Government --

23 THE COURT: -- let's see if --

24 MR. NEIMAN: -- has no redirect.

25 THE COURT: -- we can finish.

1           MR. BOWERS: I'll be very quick. Maybe a little  
2 latitude.

3

4                                   CROSS-EXAMINATION

5 BY MR. BOWERS:

6 Q. An S case?

7           MR. NEIMAN: Objection. Relevance.

8           MR. BOWERS: And I don't even know what that is. Yeah,  
9 I'm sorry.

10 BY MR. BOWERS:

11 Q. Was S case brought up or did you volunteer that? I don't  
12 even know what that is.

13           MR. NEIMAN: It's irrelevant, your Honor, and outside  
14 the scope of the direct --

15           MR. BOWERS: Well, see --

16           MR. NEIMAN: -- examination.

17           MR. BOWERS: -- that's why I wanted the break to figure  
18 out what he had talked about.

19           THE COURT: Let's carry on. The witness needs his --

20           MR. BOWERS: So an S case isn't important?

21           THE COURT: It's -- it's not really relevant to what --

22           MR. BOWERS: I don't --

23           THE COURT: -- we're doing here --

24           MR. BOWERS: -- I don't even know where it came from.

25           THE COURT: -- unless we're gonna get into --

1           MR. BOWERS: Well, I don't want to get into it. I  
2 don't know --

3           THE COURT: -- a seminar.

4           MR. BOWERS: -- what it is. I don't even know what it  
5 is. All right. Anyway...

6           THE COURT: It's a small status meaning no answer by  
7 the government. It's just a -- you know, an abbreviated  
8 briefing process.

9           MR. BOWERS: Let me ask one more question like that  
10 just so I'm clear.

11           Has his testimony been that the only issues of  
12 liability or -- or anything relating to liability that can be  
13 covered at a collection due process hearing is something  
14 regarding the -- the Notice of Deficiency and where it was sent,  
15 whether the forms are correct, the notice and demand for payment  
16 or some sort of innocent spouse?

17           THE COURT: Well, there's several: whether the  
18 administrative procedures are followed --

19           MR. BOWERS: Okay.

20           THE COURT: -- innocent spouse, uh, liability if no  
21 previous opportunity to appeal; and the collection alternatives.  
22 Those are the four things.

23           MR. BOWERS: Okay. All right. I'm ready.

24           THE COURT: As I understand the answer.

25



1 BY MR. BOWERS:

2 Q. Is -- is that right, Mr. Menaugh?

3 A. Yes, sir.

4 Q. I'm sorry. I'm Larry's attorney. I'm Chad Bowers.

5 You got a flight?

6 A. Actually not today. I changed it.

7 MR. NEIMAN: Uh-oh.

8 THE WITNESS: I was --

9 BY MR. BOWERS:

10 Q. So the Gov- --

11 A. -- I was afraid -- I was afraid --

12 Q. -- the Government just --

13 A. -- we would be late.

14 Q. -- lied to the Court and the jury?

15 MR. NEIMAN: I thought you told me it was 4:30.

16 THE WITNESS: No. That's okay. It was as a matter of

17 fact. But I changed it.

18 MR. BOWERS: Oh.

19 THE COURT: Did you change it after -- after our --

20 THE WITNESS: Yes, sir --

21 THE COURT: -- during our --

22 THE WITNESS: -- I did.

23 THE COURT: -- last recess? Is that right?

24 THE WITNESS: No. I changed it last night when I heard

25 how deliberations were --

1 BY MR. BOWERS:

2 Q. So I'm not gonna keep ya from a flight?

3 THE COURT: Don't tell us what you heard.

4 THE WITNESS: I'm sorry.

5 BY MR. BOWERS:

6 Q. I'm not gonna keep ya from a flight then?

7 MR. NEIMAN: Then we --

8 THE WITNESS: No.

9 MR. NEIMAN: -- can take a break, your Honor.

10 THE COURT: We can take a break then. We'll take a  
11 break.

12 (Jury leaves the courtroom at 3:26 p.m.)

13 THE COURT: We're in recess.

14 (Recess from 3:26 p.m. to 3:52 p.m.)

15 THE CLERK: All rise.

16 THE COURT: Bring in the jury.

17 THE CLERK: Yes, sir.

18 (Pause in the proceedings.)

19 THE COURT: Please be seated.

20 Will counsel stipulate to the presence of the jury?

21 MR. NEIMAN: Yes, your Honor.

22 MR. BOWERS: Yes, your Honor.

23 MR. CRISTALLI: Yes, your Honor.

24 MR. SCHIFF: Yes, your Honor.

25 THE COURT: Thank you.

1           Go ahead, Mr. Bowers.

2           MR. BOWERS: All right.

3   BY MR. BOWERS:

4   Q. Mr. Menaugh, I think I started. I'm Chad Bowers. I

5   represent Larry Cohen.

6           Um, none of the testimony you offered here today had to

7   do with Larry Cohen; is that correct?

8   A. I do not know him.

9   Q. You don't even recognize him?

10   A. If I've met him, I'm not sure who Larry Cohen is.

11   Q. Bald guy. Kojak guy here. You still don't know him as

12   "Larry Cohen"?

13   A. If I've met him before, I don't --

14   Q. Okay.

15   A. -- recall that.

16   Q. You don't have any personal knowledge of Larry Cohen ever

17   attending a collection due process hearing or -- or anything

18   else that you'd be supervising; correct?

19   A. I have no personal knowledge of him attending.

20   Q. Perfect.

21           Um, now, you -- you're an appeals manager; right?

22   A. Yes, sir.

23   Q. For?

24   A. For the Appeals Division of Internal Revenue Service.

25   Q. Okay. Which -- which -- which relates to collection due

1 process hearings alone or also some other stuff?

2 A. Well, we handle a lot of other things besides collection due  
3 process.

4 Q. Okay.

5 A. We handle nondocketed income tax cases, docketed income tax  
6 cases.

7 And do you know -- understand what I mean by "docketed"  
8 and "nondocketed"?

9 Q. No. But...

10 A. Cases that are docketed are before the U.S. Tax Court.

11 Q. Okay.

12 A. We also handle offers and compromise, um, where people make  
13 an offer as to -- as to -- as to collectability. Let's say they  
14 owe us 450, 500 thousand dollars and at this point in their  
15 lives, for one reason or another, they only have what we refer  
16 to as reasonable collection potential of, let's say, \$50,000.  
17 Um, the objective of an offer and compromise is to get that  
18 resolved for a lower amount and whatever they can pay and so  
19 they can move on with their lives.

20 We also handle trust fund recovery penalties,  
21 penalty-appeal-type cases. Things of that nature. Excise tax,  
22 estate tax.

23 Q. All right. Um, okay. But -- but like -- like -- well,  
24 let's take the collection due process hearing, for example.

25 It's called an appeal or -- or you're an appellate -- is

1       there -- is there a review of any factual findings at a  
2       collection due process hearing?

3       A.   Yes.

4       Q.   Which -- what findings are reviewed?

5       A.   Are you referring to a collection due process case?

6       Q.   Yeah, yeah.

7       A.   Okay.  We determine if in fact -- for instance, if a Notice  
8       of Deficiency has been issued --

9       Q.   Uh-huh.

10      A.   -- we determine if that Notice of De- -- and I thought I  
11      covered this -- but, if a Notice of Deficiency has been issued  
12      to the correct last known address --

13      Q.   Right.  Yeah.  I remember that.

14      A.   -- if the Notice of Deficiency --

15      Q.   Right.

16      A.   -- was issued timely within the statute of limitations --

17      Q.   Right.

18      A.   -- in other words, we look to the liability that's been  
19      assessed.  We want to make sure that, number one, the liability  
20      was assessed following correct procedures.  Also, we look to --  
21      on collection due process matters, as to whether in fact the  
22      taxpayer received a notice and demand for payment; uh, relative  
23      to a levy that the Collection Division took, um, um, procedures,  
24      you know, what -- what it determined to be the normal, regular  
25      procedures for proceeding to a levy.

1 Q. Okay. And let -- let me see if I understand you correctly  
2 though.

3 When -- when you review these things, these factual  
4 findings, you look in your file. I -- I've got a letter here --

5 A. Yes.

6 Q. -- or there's a Notice of Demand or 30-day --

7 A. Yes.

8 Q. -- it's dated this day, it's this address. Right?

9 A. Yes.

10 Q. Okay. And then, as I understand it, the -- the taxpayer  
11 shows up and you say, well, did you get this letter or do you  
12 live at this address? to verify that it went to the last known  
13 address? Or do you even do that?

14 A. Yes, we do.

15 Q. Okay.

16 A. Let -- let's just talk about the last known address. Uh, we  
17 will pull a transcript, um, and -- to determine if in fact --  
18 what the taxpayer's last known address was back at the point in  
19 time that a Notice of Deficiency was issued. If we determine  
20 that it was issued to the last known address, then it's deemed  
21 to have been received unless we have instance -- we have in the  
22 file, um, for instance, the notice in an envelope that says  
23 "taxpayer has moved. No forwarding address." But, if we've  
24 issued it to the last known address, the law provides, the  
25 statute provides, that that is adequate notice.

1           Part of the collection due process says that -- that  
2           they actually receive the notice. In the instant case, we  
3           determined in the interview that Mr. Diamond had in fact  
4           received the notices. Not only were they sent to the correct  
5           last known address, but he actually received them. He  
6           acknowledged that.

7           Q. All right. So you review the notices and you legally  
8           establish that they were sent to the last known address.

9           At the collection due process hearing, testimony from  
10          the taxpayer that they actually got it helps establish that;  
11          right? I mean, you already had it under the law. But that  
12          pretty much makes it clear. Right?

13          A. Yeah.

14          Q. Okay. And then they're not -- and I guess it would help  
15          establish they are not an innocent spouse; that, you know,  
16          they -- they were the one who signed the return?

17          A. Well, they would have to raise the innocent spouse argument.

18          I mean --

19          Q. Okay. So if they didn't --

20          A. -- we don't -- we don't raise that.

21          Q. So, if they didn't raise it, then that -- that would be --  
22          again, presumably the burden's established. That's -- that's  
23          not a valid defense to --

24          A. If they raise --

25          Q. -- the liability?

1 A. -- the innocent spouse issue, then we actually conduct a --  
2 we don't conduct -- but we refer back to Compliance for them to  
3 conduct an investigation or --

4 Q. Okay.

5 A. -- examination relative to the innocent spouse issue.

6 Q. Okay. So the taxpayer --

7 A. And then we receive that innocent spouse case back --

8 Q. Okay. So --

9 A. -- and we make a final determination on that.

10 Q. All right. So if a taxpayer shows up and says: Wait. I'm  
11 an innocent spouse --

12 MR. NEIMAN: I object to relevance. An innocent spouse  
13 has nothin' to do with what these -- what this is about.

14 MR. BOWERS: Your Honor --

15 THE COURT: Where are we going? Are we just going on a  
16 ride or are we going somewhere?

17 MR. BOWERS: Well, no. I -- I don't intend to lead the  
18 Court on a ride. I'm trying to figure out what -- what the  
19 purpose of this collections hearing is. Because as I understand  
20 it from his testimony, whether it's Mr. Diamond or any other  
21 taxpayer, there is an extremely limited range of things that can  
22 happen here. You can show up and say: I'm an innocent spouse,  
23 which I'm just learning actually starts some sort of process.  
24 You can show up and say, uh, yes, this is my address which  
25 confirms what they had already established under the law. You



1 may under some circumstances -- I don't quite follow -- be able  
2 to say this isn't my liability. But apparently he has no  
3 discretion to discuss that outside of the innocent spouse.

4           Seems to me that there's very, very little that can be  
5 covered in this process. And I -- I can't just ask him that  
6 question that way. So I'm trying to eliminate --

7           THE COURT: Well, he's already testified. And I -- I  
8 recalled those areas back that -- that have been mentioned over  
9 and over again as to what they do.

10           MR. BOWERS: Well --

11           THE COURT: Do you need to go over it again to --

12           MR. BOWERS: No. It's just --

13           THE COURT: -- I mean, where are we going with this?

14           Are we --

15           MR. BOWERS: Well, Judge, it just seems to me that it's  
16 a misnomer to call this an appeal hearing of some kind when  
17 there's only about three things that can be said to do anything.  
18 But I'll just leave it alone. That's fine.

19           BY MR. BOWERS:

20           Q. You -- you provided the Pearson decision to Ms. Neun; right?

21           A. I believe in this instance, in the conference with  
22 Mr. Diamond we did, yes.

23           Q. Okay. Yeah, yeah. All right. Did you ever provide it to  
24 Mr. Schiff that you can explicitly recall?

25           A. I've never met Mr. Schiff --

1 Q. Okay.

2 A. -- previously.

3 Q. So probably not then; right?

4 A. I've never met Mr. Schiff.

5 Q. All right.

6 Mr. Cohen, you never met him. So you didn't provide

7 him with that. Is that --

8 A. I never --

9 Q. -- correct?

10 A. -- met Mr. Cohen.

11 Q. That's correct? My statement's correct. Right?

12 A. Correct.

13 Q. Okay. Um, do you -- why did you give her Pearson? What was

14 the notice that you were putting her on?

15 MR. NEIMAN: Objection. Asked and answered.

16 MR. BOWERS: No, no, no, no, no. No.

17 BY MR. BOWERS:

18 Q. What does Pearson say that --

19 MR. NEIMAN: I believe Mr. Cristalli covered this on

20 his cross-examination.

21 THE COURT: He did. I'll allow Mr. Bowers some leeway,

22 but this has already --

23 BY MR. BOWERS:

24 Q. Well, let me -- let me ask it an easier way.

25 THE COURT: -- been discussed.

1 BY MR. BOWERS:

2 Q. Doesn't, as you understand, Pearson say you can't use a  
3 collection due process hearing to discuss a frivolous argument.  
4 We're warning you not to do that? Is that a fair  
5 characterization of Pearson?

6 A. Yes.

7 Q. Okay. But Pearson doesn't discuss any specific type of  
8 frivolous argument; is that correct?

9 A. I believe in the footnotes that I cited it talked about  
10 stating -- the argument apparently was being made that certain  
11 things were not income.

12 Q. I'm sorry. I...

13 A. Didn't I mention that under Footnote 9? Isn't that what we  
14 covered?

15 THE COURT: You did.

16 BY MR. BOWERS:

17 Q. That there were -- that there were certain types of  
18 arguments that were included in that? Is that what you're  
19 saying?

20 A. I believe Footnote 9 that I read stated that.

21 Q. Um, you mentioned your mission statement. Is that separate  
22 from the IRS's mission statement?

23 A. Yes, sir, it is. The Appeals mission statement is separate  
24 from the IRS.

25 Q. Do you -- do you adopt the IRS's mission statement as well?

1 A. Well, I think you have to understand compliance -- the IRS  
2 compliance statement and mission.

3 Q. I --

4 A. Theirs -- theirs is to protect the revenue and to enforce  
5 com- -- and to ensure compliance, voluntary compliance.

6 Our mission in Appeals is to act as an independent  
7 agency. And it was even reinforced in the 1998 Act. And we are  
8 to resolve cases in a fair and equitable manner without  
9 litigation if at all possible.

10 Q. Okay. So I understand that the IRS's statement is to  
11 provide American taxpayers with top quality service by helping  
12 them understand and meet their tax responsibilities and by  
13 applying the tax law with integrity and fairness to all.

14 Does that sound like what you understand it to be?

15 A. As I recall, yes.

16 Q. And your mission --

17 A. I don't --

18 Q. -- statement --

19 A. -- I don't have it memorized.

20 Q. Your mission statement is not in conflict with that?

21 A. No --

22 Q. -- as you --

23 A. -- it is not.

24 Q. -- understand it?

25 A. No.

1 Q. Okay. All right. Um, now, you would characterize, I  
2 assume, Mr. Diamond as an uncooperative taxpayer, at least in  
3 his behavior at your CDP hearing. Is that fair?

4 A. I would categorize him as misguided.

5 Q. Misguided. A misguided taxpayer. Okay.

6 Um, I -- I must have misunderstood your prior  
7 testimony. You don't have any discretion as to what you cover  
8 at a CPD hearing with a misguided or cooperative or a friendly  
9 taxpayer; right? It's all the same authority. There's --  
10 there's...

11 A. I don't understand your question.

12 Q. Well, I thought I understood you earlier to say that you  
13 believed you had certain discretions that you didn't employ  
14 with -- with Mr. Diamond because he was, I guess, misguided, not  
15 uncooperative. I didn't -- I didn't understand that correctly.

16 A. Still don't understand the question.

17 Q. You -- do you believe that you have any discretion as to  
18 what you should and shouldn't cover at a CPD hearing?

19 A. No. The law is very straightforward on the items in 6320  
20 and 6330 what we -- what the taxpayer is allowed to raise. And  
21 that's -- those are our parameters as far as a collection due  
22 process matter is concerned.

23 Q. Okay. And so would you agree that when you ran into  
24 conflict with Mr. Diamond over what could be raised and couldn't  
25 be raised you had one of three responses which was either:

1 Mr. Diamond, we're gonna have to agree to disagree; what is your  
2 next issue; or we feel we've done everything we need to do.

3 Do you recall any other response other than those three  
4 when you two got into it?

5 A. Not really, no.

6 Q. Okay. I mean, I'm not tryin' to trick you. I don't wanna  
7 go --

8 A. No.

9 Q. -- through the transcript.

10 A. No.

11 Q. I tried to cover 'em all. That --

12 A. Right.

13 Q. -- that was your way of trying to minimize conflict with  
14 Mr. Diamond and still preserve what you believed to be his  
15 rights; correct?

16 A. Well, may I make a comment there? I didn't feel that  
17 Mr. Diamond and I were going to reach an agreement; that I was  
18 going to convince him, um, that I was correct; that -- you know,  
19 that --

20 Q. Sure, sure.

21 A. -- that was the law.

22 And I really came to a conclusion that it was a further  
23 waste of my time, um, to do that. And we would then give him  
24 the opportunity through the Notice of Determination that if he  
25 wanted to pursue his argument he could do so before the U.S. Tax

1 Court. However, that's why we provided the -- a copy of the  
2 Pearson case. And we actually provided a copy of the case, not,  
3 um --

4 Q. Not --

5 A. -- not the abstract.

6 Q. -- this thing here.

7 A. Yeah. Well, this is an abstract out of the Tax Notes Today  
8 on Friday, December the 15th.

9 I mean, we actually provided him a copy with that -- of  
10 that, you know, so that we -- so that he would understand that  
11 if he did petition the Tax Court there was a possibility of  
12 sanctions.

13 Q. Okay. And I -- I -- which is fine. I mean, I -- I agree  
14 with all that.

15 But would you also agree that you used those responses  
16 in an effort to try to get through the hearing as expeditiously  
17 as possible while still protecting Mr. Diamond's rights?

18 A. Yes.

19 Q. And following your obligation, as you understood them  
20 pursuant to whatever -- code, statutes, regulations, policy,  
21 whatever --

22 A. Mission statement.

23 Q. -- just --

24 A. Yes, yes.

25 Q. -- you were just tryin' to get through this in a way that is

1 best for everyone. Correct?

2 A. Yes, that's correct.

3 Q. Okay. All right. So did you, other than Pearson, um,  
4 provide Mr. Diamond with any other guidance on anywhere else he  
5 might be able to go to address these other issues that you --  
6 you couldn't address in that forum?

7 A. Well, the other issues I felt were -- and that's why I went  
8 through the Code sections.

9 Q. True. I -- I -- I know you tried.

10 A. I mean, I --

11 Q. Yeah.

12 A. -- I made an effort to --

13 Q. I know.

14 A. -- to show him that, you know, this is the statute; this the  
15 law.

16 Q. Which didn't work too well.

17 A. No, sir, it did not.

18 Q. Okay. And -- was -- was there anything else that happened  
19 that wasn't on this tape that was along that same vein? Hey,  
20 Mr. Pearson [sic], you're not a bad guy. I'm tryin' to help ya  
21 out. You don't believe my version of the Code. I understand.  
22 Maybe you could go here or call this number or go to this place  
23 to -- to maybe have the IRS or somebody else explain this to you  
24 in a way that makes sense?

25 A. I don't recall that, no.



1 Q. Okay. So you don't recall really anything like that  
2 happening that wasn't on -- on the tape in the transcript;  
3 right?

4 A. No.

5 Q. Okay. Um, and you didn't provide either Mr. Diamond or  
6 Ms. Neun with any other documents, besides Pearson, that --  
7 directing their further actions that might be of some sort of  
8 assistance to them one way or another?

9 A. Well, let me first set the context of this case. This case  
10 I had assigned to one of my Appeals officers in Phoenix, a  
11 gentleman by the name of Desoto. He originally scheduled the  
12 conference with Mr. Diamond. And, for one reason or another,  
13 Mr. Diamond could not make that conference. I was coming back  
14 up here. And, in lieu of having Mr. Desoto coming just for that  
15 one conference --

16 Q. Um-hum.

17 A. -- I told him that I would in fact conference the case  
18 because that's not my normal job. That's not normally what I  
19 do.

20 Q. Right. You're a manager, right, generally?

21 A. Yes.

22 Q. Right.

23 A. I normally don't conference cases, although I was assisting  
24 them at that time.

25 And I came up. Now, he may have sent -- I have not

1 looked at the -- uh, the Diamond file -- he may have sent an  
2 acknowledgement letter or a letter, um, scheduling the  
3 conference with some other -- uh, with a document that was  
4 called, uh, something along the lines of "Frivolous Arguments,"  
5 that these -- you know, the Tax Court has not listened to these  
6 type of arguments.

7 We did that. We are currently doing that still. We  
8 still --

9 Q. Let me --

10 A. -- have 'em. But I don't know if -- I do not know if in  
11 fact we did that --

12 Q. Yeah --

13 A. -- in this instance.

14 Q. -- I hate to cut you off, but you have no idea if this  
15 happened with Mr. --

16 A. Not --

17 Q. -- Diamond; right?

18 A. -- not in this instance --

19 Q. Yeah.

20 A. -- I do not know.

21 Q. Okay. Um, so, to the best of your knowledge, you gave him  
22 the Pearson case at the hearing and did your best to explain  
23 things to him. And, you know, that satisfied your Division's  
24 obligation as you understood it. Is that correct?

25 A. Yes.

1 MR. BOWERS: Thank you, Mr. Menaugh.

2 THE COURT: Redirect.

3 MR. NEIMAN: No redirect, your Honor.

4 THE COURT: Thank you. The witness is excused.

5 Government will call its next witness.

6 MR. NEIMAN: Your Honor, the United States will call

7 Donna Fisher.

8 (Donna Fisher takes the witness stand.)

9 (Government's Exhibit No. 330, marked for

10 identification.)

11 THE CLERK: Please raise your right hand.

12 You do solemnly swear that the testimony you shall give

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

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

15 THE WITNESS: I do.

16 THE CLERK: Please be seated.

17 Please state for the record your full name and spell

18 your last name.

19 THE WITNESS: Donna Fisher, F-i-s-h-e-r.

20

21 DONNA FISHER,

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

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

24

25

## DIRECT EXAMINATION

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BY MR. NEIMAN:

Q. Good afternoon, Ms. Fisher.

A. Good afternoon.

Q. Ms. Fisher, how are you currently employed?

A. See the smile on my face? I'm retired.

Q. And where are you retired from?

A. From the Internal Revenue Service, the Appeals function.

Q. Okay. And what was your job within the IRS?

A. My last job was public affairs specialist in Washington, D.C., for the last year and a half. Prior to this time, I was a Settlement officer in the Las Vegas Appeals Office.

Q. And for how long were you a Settlement officer in the IRS?

A. Uh, approximately, uh, 10 years.

Q. Generally speaking, what's a Settlement officer?

A. A Settlement officer is someone -- it's similar to an Appeals officer who hears disputes between the Internal Revenue Service and taxpayers. But the Settlement officer generally has more collection knowledge than, um, audit knowledge.

Q. Do you know what a collection due process hearing is?

A. Yes, I do.

Q. What is a collection due process hearing quickly?

A. Okay. Collection due process hearing is where a taxpayer can come to Appeals if they disagree with the method of collection, um, by the Internal Revenue Service, such as a lien

1 or a levy action.

2 Q. Approximately how many collection due process hearings have  
3 you either conducted or sat in on in your -- while working at  
4 the IRS here in Las Vegas?

5 A. Oh, easily 300.

6 Q. And during what time period did you sit in these 300  
7 collection due process hearings?

8 A. Um, shortly after enactment of the law in January 1999 until  
9 I left Las Vegas in early March 2003 --

10 Q. Did you ever --

11 A. -- 2004. I'm sorry.

12 Q. I'm sorry to interrupt you.

13 Did you ever sit in on any collection due process  
14 hearing with Defendant Cynthia Neun?

15 A. Yes, I did.

16 Q. Approximately how many of these collection due process  
17 hearings did you sit in with Defendant Neun?

18 A. Um, I would say probably at least a hundred.

19 Q. And during what time periods did you sit with Ms. Neun  
20 through these hundred, uh, collection due process hearings?

21 A. I -- my earliest recollection is mid 2001 to until the time  
22 I left in 2004.

23 Q. In what capacity did Defendant Neun show up at these  
24 collection due process hearings?

25 A. Um, she was there to try to advocate for the taxpayer.

1 Q. You use the word "try." Can you complain why you say tried?

2 A. Um, technically, um, Ms. Neun was not eligible to advocate  
3 for the taxpayer because at the Appeals function you have to be  
4 either an attorney, an enrolled agent, a CPA, or a family member  
5 in order to advocate for someone else.

6 Q. And did Defendant Neun qualify for any of those?

7 A. She did not.

8 Q. Did the IRS allow Defendant Neun to speak at these early  
9 stages of these collection due process hearings that you  
10 attended with her?

11 A. Yes, we did --

12 Q. Uh --

13 A. -- and.

14 Q. -- can you explain generally, I guess, what types of  
15 arguments Defendant Neun was making at this collection -- these  
16 collection due process hearings?

17 A. Largely constitutional arguments as far as, uh, saying that  
18 there was no such thing as legal income tax; that, um, we, as  
19 representatives of the Service, did not have, uh, delegation  
20 authority to have these hearings. Um, arguments such as that,  
21 that wages are not income and similar.

22 Q. And were these same arguments made in the hundred or so  
23 collection due process hearings you attended with Defendant  
24 Neun?

25 A. Yes, the same arguments.

1 Q. Uh, and did there come a time when Defendant Neun was no  
2 longer able to speak at these hearings?

3 A. Yes.

4 Q. Can you explain the circumstances surrounding that to your  
5 personal knowledge if you have any?

6 A. Yes. It was a new law and we were trying to give everyone  
7 full scope to begin with. But when, uh -- it evolved to the  
8 fact that we realized that these -- it -- it wasn't valuable for  
9 Ms. Neun to keep repeating the same arguments that they had no  
10 basis.

11 Q. And did you tell her that they had no basis?

12 A. Yes.

13 Q. Approximately how many times did you tell her they had no  
14 basis?

15 A. Every -- during every hearing. During every hearing we  
16 repeated that. It was, um -- we showed court cases; we gave the  
17 taxpayer court cases.

18 Q. Do you remember the name of any tax --

19 A. Uh, Pearson is one of them that we --

20 Q. Okay. What are the --

21 A. -- we used routinely. And we use also used any other cases  
22 that had been settled up until the time of the hearing,  
23 whichever ones would come up. But Pearson we used routinely.

24 Q. Did you ever refer Defendant Neun to sections of the code  
25 which required her to pay taxes?

1 A. What I did is I -- we had a list of Internal Revenue Code  
2 sections that we would give to the taxpayer, Ms. Neun there,  
3 which had a brief listing of an answer to the arguments that  
4 they were raising about where in the Code section it said that  
5 you had to pay taxes, where in the Code section did it say wages  
6 were income. That sort of thing.

7 Q. And how many times did you go through this process with  
8 Defendant Neun --

9 A. I went --

10 Q. -- or with Defendant Neun present, I should say?

11 A. I would say easily we -- we started handing out that  
12 information easily 30, 50 times.

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

14 THE COURT: You may.

15 BY MR. NEIMAN:

16 Q. I'm handing what's been marked for identification purposes  
17 only as Government Exhibit 330. Do you recognize Government  
18 Exhibit, uh, 330?

19 A. Yes, I do.

20 Q. Uh, without reading the contents, can you just explain  
21 generally the nature of what Government Exhibit 330 is?

22 MR. BOWERS: Judge, I have to object to that question  
23 on foundation. I have no idea. She said something about time,  
24 but didn't say when. She went to another portion of her answer.

25 MR. NEIMAN: I'll ask a follow-up question.



1 THE COURT: Okay.

2 MR. SCHIFF: I object, your Honor, because this --  
3 this -- there was almost no arguments in here, your Honor,  
4 that -- that we at Freedom Books subscribed to. Absolutely  
5 none.

6 MR. BOWERS: That's a different issue, Irwin.

7 MR. SCHIFF: I can tell you the ones that we subscribe  
8 to.

9 THE COURT: Don't do that.

10 MR. CRISTALLI: Your Honor, um, I have an objection on  
11 this -- as it relates to this document. I understand the  
12 Government's not putting it in. But there is case law that is  
13 cited in this particular document that I don't believe is cited  
14 correctly. So --

15 THE COURT: I don't --

16 MR. CRISTALLI: -- we have -- I would have to get into  
17 that with this particular witness, which I have a concern of.  
18 And, if the Court desires a sidebar on this, I certainly  
19 would --

20 MR. NEIMAN: Your Honor, the Government is not planning  
21 to introduce this document into evidence. The Government is  
22 trying to elicit the testimony from the witness that this  
23 document was provided to taxpayers with Ms. -- in Defendant  
24 Neun's presence and it was to describe the general nature of the  
25 information contained therein.

1 MR. CRISTALLI: Your Honor, I would object on relevancy  
2 grounds only because I have a disagreement in terms of how  
3 certain laws are cited in this particular manual. I'd love --

4 THE COURT: Well --

5 MR. CRISTALLI: -- I certainly --

6 THE COURT: -- we can deal with whether you're right or  
7 the IRS is right --

8 MR. CRISTALLI: No. It has nothin' to do with --

9 THE COURT: -- separately. The issue is did she get  
10 notice of this position.

11 MR. SCHIFF: Your Honor, can I --

12 MR. CRISTALLI: Your Honor, with all due respect, the  
13 contents of some of these decisions in --

14 THE COURT: It's coming into evidence. It's not coming  
15 into evidence. And, if you're arguing that it's an incorrect  
16 statement of the law --

17 MR. CRISTALLI: Yes.

18 THE COURT: -- then, uh, you know, that -- that might  
19 bear on whether it's admitted into evidence. But it's not being  
20 offered. It's just -- it's being --

21 MR. CRISTALLI: Right.

22 THE COURT: -- he's asking her if this is what she gave  
23 the taxpayer and Ms. Neun.

24 MR. BOWERS: Judge, I -- I guess I'd request a curative  
25 instruction with respect to notice. If the foundation issues --

1 I mean, it's being offered for notice for a limited purpose. So  
2 I'd like an instruction regarding that.

3 MR. SCHIFF: Well, your Honor, this is misleading  
4 because we raise very few of these arguments. Has nothin' to do  
5 with us.

6 THE COURT: Well, it -- if it addressed any of the  
7 arguments that you're advancing, it's relevant and --

8 MR. SCHIFF: Well, if you'd like, I can tell you the  
9 arguments that might apply.

10 THE COURT: Ms. Clerk, did you give it a number?

11 THE CLERK: It is --

12 THE COURT: It is already --

13 THE CLERK: -- numbered 330.

14 THE COURT: -- I guess, isn't it?

15 THE WITNESS: Yes, it is.

16 THE COURT: It's just not in my book.

17 MR. NEIMAN: Yeah. I apologize, your Honor.

18 THE COURT: Go ahead.

19 MR. NEIMAN: Late addition.

20 THE COURT: Overruled. The objections are overruled.

21 BY MR. NEIMAN:

22 Q. Do you recognize this document?

23 A. I do recognize this document.

24 Q. How do you recognize this?

25 A. This is a document that we had in our office that was

1 prepared -- um, or at least it was given to us by some of our  
2 counsel and we gave it to our taxpayers who were trying to raise  
3 frivolous arguments.

4 Q. Uh, approximately how many -- and did you ever give this to  
5 Defendant Neun?

6 A. Yes.

7 Q. Approximately how many times did you give this document to  
8 Defendant Neun?

9 A. Okay. Uh, I gave this document to her on every occasion --  
10 to her taxpayer on every occasion that she came in, at least the  
11 last 30 times. At least.

12 Q. Did the way you handled these meetings change over time  
13 personally?

14 A. Yes, it did.

15 Q. Can you, I guess, briefly explain the evolution of how you  
16 handled these -- these arguments that you faced at these CPD  
17 hearings?

18 A. Well, we --

19 MR. BOWERS: Judge -- I'm sorry -- foundation again. I  
20 don't believe we got a year that this document became available.  
21 That's all I'm lookin' for.

22 MR. NEIMAN: Your Honor, she said the last 30 or so  
23 meetings. We can get a year.

24 MR. BOWERS: That's it. That's all I need.

25 THE WITNESS: Yeah. I'm sure that it was all of, um --

1 it was almost all of 2003 and into 2004.

2 MR. BOWERS: Thank you.

3 THE WITNESS: It may be earlier. I can't --

4 MR. CRISTALLI: Your Honor --

5 THE WITNESS: -- recall.

6 MR. CRISTALLI: -- 2003 and two -- the end of 2003 and  
7 into 2004? I'm not quite sure how that's relevant to these  
8 particular proceedings.

9 MR. BOWERS: Yeah, this is --

10 MR. NEIMAN: Your Honor, the Indictment goes up into  
11 April -- April 2004.

12 THE COURT: It's relevant. It does. It's relevant.

13 THE WITNESS: So we would -- when we first started,  
14 because the law was new, we didn't have a lot -- we didn't know  
15 what kinds of arguments would be raised by taxpayers and we  
16 didn't have data together to --

17 MR. BOWERS: I'm sorry. Judge, I hate to interrupt the  
18 witness. But, with respect to relevance, although the  
19 Indictment alleges it ran until, I guess, the time of the  
20 Indictment that the conspiracy ran, uh, these parties were  
21 civilly enjoined prior to when this witness --

22 MR. CRISTALLI: Right. That's the concern I have.

23 MR. BOWERS: Can I -- let me finish, please. I'm  
24 sorry, Mike.

25 MR. CRISTALLI: I'm sorry.

1           MR. BOWERS:  These witnesses were enjoined.  And  
2           there's no evidence presented nor that will be presented that I  
3           understand that suggests that whatever, uh, this witness has to  
4           testify about with respect to this document occurred after the  
5           injunction.  So --

6           MR. NEIMAN:  She's testified she gave it to them at  
7           some point.  It's coming in for notice purposes and notice  
8           purposes only.

9           MR. SCHIFF:  But --

10          MR. BOWERS:  Well, we keep --

11          MR. NEIMAN:  They can attack the credibility --

12          THE COURT:  Well --

13          MR. NEIMAN:  -- on cross-examination whether or not she  
14          gave it to them.  That --

15          MR. BOWERS:  Well, if it turns out --

16          THE COURT:  Yes.  The -- as pointed out, the Indictment  
17          covers up till April of 2004.

18          MR. SCHIFF:  Your Honor --

19          THE COURT:  So it is relevant.

20          MR. SCHIFF:  There -- there are some statements in here  
21          that I agree with, but we never raised on a collection due  
22          process hearing.

23          THE COURT:  Mr. Schiff, I already said if it addresses  
24          any of the matters that you -- you or the other defendants were  
25          contending, uh, and promoting it is relevant.

1 MR. SCHIFF: All right.

2 THE COURT: It doesn't have to -- you don't have to  
3 have done all of these or contravened all of these in order for  
4 it to be relevant.

5 MR. CRISTALLI: And, your Honor, just so we're clear on  
6 the record, they were enjoined from going to any IRS hearings in  
7 March of 2003.

8 THE COURT: Well --

9 MR. NEIMAN: Your Honor, there's testimony that she  
10 gave it to them.

11 THE COURT: She testified that she gave it to them in  
12 all of 2003. That was her testimony. So if it was one day in  
13 2003, uh, before that injunction, it's -- it's relevant.

14 MR. CRISTALLI: The problem I have she said she gave it  
15 to her at least 30 -- on 30 occasions. I believe that was --

16 THE COURT: That's right.

17 MR. NEIMAN: That's fair game for cross-examination,  
18 your Honor.

19 MR. CRISTALLI: Okay. All right. Okay.

20 BY MR. NEIMAN:

21 Q. I think we are discussing how the way you handled these  
22 hearings evolved over time --

23 A. Yes.

24 Q. -- I think.

25 A. It did change because we weren't certain when the law first

1       came into effect what sorts of arguments the taxpayers would be  
2       bringing forth to the Appeals function. And when we -- and  
3       Appeals normally didn't get these types of arguments on their  
4       normal examination cases because they were not allowed to be  
5       heard because they've all been tested through the courts before  
6       and found to be without merit.

7               So, when we started getting these kinds of arguments,  
8       then we thought, well, we probably need to, um, give taxpayers  
9       some information so that they know that these arguments have  
10       been heard before and that there is no basis to these arguments.  
11       And so we collected this data, our counsel collected it, some of  
12       it went through our national office, and so this was prepared so  
13       we could give this and help taxpayers understand that these  
14       arguments had no basis.

15       Q. And part of the documentation you gave them was -- you gave  
16       them the Pearson case?

17       A. The Pearson case; the, um, list of the Internal Revenue Code  
18       sections; "The Truth About Frivolous Tax Arguments"; some other  
19       relevant court cases that talked about these arguments and where  
20       taxpayers had been sanctioned; um, copies of transcripts, uh,  
21       provided to them, certified transcripts of their assessments;  
22       and, uh, any additional information we thought would help  
23       clarify the position of the courts on these types of arguments.

24               And, when I gave them this, I always referred them to  
25       please read the last few pages especially because that talked



1 about court cases where taxpayers had been sanctioned by the  
2 courts, charged very large penalties --

3 Q. For --

4 A. -- for bringing forth these --

5 MR. BOWERS: Judge, I have to object --

6 THE WITNESS: -- arguments.

7 MR. BOWERS: -- on a foundation issue. This witness  
8 is -- is jumping back and forth between we and I. I understand  
9 the "I" part fine. But who's -- who is "we"? Is that the  
10 Service? Is that...

11 THE WITNESS: What -- I'm -- may I answer that?

12 BY MR. NEIMAN:

13 Q. Who is "we"? I can ask the questions.

14 A. Okay. I --

15 Q. Who is "we"?

16 A. -- I do jump back and forth because I was actually an  
17 on-the-job instructor for two new Settlement officers. So, in  
18 addition to the hearings that I had on my own with my own  
19 taxpayers, I also sat in on -- with -- on hearings with my  
20 trainees. And so sometimes it was we and sometimes it was I.

21 Q. Thank you.

22 Looking at what's been marked as Government -- or,  
23 actually without looking at it, do you know -- since it's not in  
24 evidence -- do you know whether or not Government Exhibit 330  
25 addresses arguments about, uh, no verification being given or

1 delegation of authority being given at these collection due  
2 process hearings?

3 A. To the best I recall, yes, it does.

4 Q. If you're not certain, I can direct your -- if it would be  
5 easier to refresh your recollection, you could look at page 3  
6 and let me know whether or not it's in there. And you could  
7 testify if that refreshes your recollection.

8 A. (Reviewing document.)

9 You asked me to look at page 3?

10 Q. Well...

11 A. I'm sorry.

12 Q. Does that refresh your recollection of whether or not it's  
13 definitely in, uh -- whether or not it's in Government  
14 Exhibit 330, the argument of no verification given?

15 A. Yes.

16 MR. CRISTALLI: It's -- it's -- you're referring to it  
17 as Government's Exhibit 330?

18 MR. NEIMAN: Yes.

19 MR. BOWERS: But it's not --

20 MR. CRISTALLI: It's not a Government's exhibit though;  
21 correct?

22 MR. NEIMAN: For identification purposes.

23 THE COURT: It's marked for identification as 330.

24 BY MR. NEIMAN:

25 Q. Do you know whether or not this publication addresses the

1 issue of what the meaning of income is?

2 A. It -- it does talk about the meaning of income.

3 Q. How about the voluntary nature of the federal tax system?

4 Do you know whether or not that --

5 MR. CRISTALLI: Objection. Leading.

6 THE COURT: Overruled. Foundational.

7 THE WITNESS: Yes, it does.

8 MR. SCHIFF: I -- I object. It...

9 THE COURT: Overruled.

10 MR. SCHIFF: Pardon me?

11 THE COURT: It's overruled. The objection's overruled.

12 BY MR. NEIMAN:

13 Q. And does this document also address the issue of whether or

14 not the use of unauthorized represent -- representatives is

15 allowed?

16 A. Yes, it does.

17 Q. Ms. Fisher, approximately how much -- how many CPD hearings

18 in total did you handle? Did you say?

19 A. We never did keep track of these and -- but easily, easily

20 300.

21 Q. What -- what percentage of those 300 put forth arguments

22 like those, uh, that were put forth in the CPD hearings with

23 Defendant Neun?

24 A. Over a hundred. Maybe more than a hundred.

25 Q. Percentage? I'm asking percentage --

1 A. Oh, percentage?

2 Q. Yes.

3 A. A third.

4 Q. A third?

5 A. Easily a third, maybe a half.

6 MR. BOWERS: I'm sorry, Judge. I hate to -- I don't  
7 know what -- did she state what arguments Ms. Neun put forward  
8 or just she put forward some arguments and they were the same?

9 MR. NEIMAN: We could go through the arguments again if  
10 we need to.

11 MR. BOWERS: No. If it's been asked and answered, then  
12 it's my --

13 THE COURT: She did -- she did go through the  
14 arguments.

15 MR. BOWERS: Okay. Then I apologize.

16 THE COURT: The constitutional arguments she did  
17 earlier in her testimony, three.

18 MR. BOWERS: She said Cindy made constitutional  
19 arguments?

20 THE COURT: She said she made constitutional arguments  
21 and then she outlined the arguments: no legal income tax, no  
22 delegation of authority, wages are not income tax. Those are --

23 MR. BOWERS: Thank you, Judge.

24 THE COURT: -- the areas.

25

1 BY MR. NEIMAN:

2 Q. I --

3 A. Yes?

4 Q. -- I believe we were discussing the percentage -- or the  
5 number of --

6 A. Yes.

7 Q. -- CPD hearings that put forth these arguments.

8 A. A third to a half.

9 Q. Did -- did that impact your ability to assist other  
10 taxpayers?

11 A. Yes, it did.

12 Q. How so?

13 A. Because our caseloads were so heavy with these types of  
14 cases that we weren't able to get to taxpayers with legitimate  
15 issues on a timely basis. Some of these other taxpayers had had  
16 federal liens filed against them that were already shown -- will  
17 be showing up on their credit reports. Things of that nature.

18 Q. Ms. Fisher, is it possible that you handed this out in 2002  
19 as well?

20 A. It is possible, yes.

21 MR. NEIMAN: Nothing further, your Honor.

22 THE COURT: Cross-examination?

23 MR. CRISTALLI: Thank you, your Honor.

24 (Pause in the proceedings.)

25

## CROSS-EXAMINATION

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BY MR. CRISTALLI:

Q. Uh, Ms. Fisher, you testified that, um, during the course of these collection due process hearings that were attended by Ms. Neun you, um, engaged in a dialogue with, um, the -- the -- her as a representative, I guess, and, um, whoever the taxpayer may have been and tried to explain to them the, um -- the provisions and the law that requires one to pay income tax; correct?

A. Well --

Q. Uh, yeah, that's correct.

A. Initially that was the case. But I've just started handing out the -- the Internal Revenue Code sections and referring her in the later hearings to request that information through the Freedom of Information Act.

Q. Right.

Um, and -- and the collection due process hearing --

A. Yes.

Q. -- is not a hearing to discuss the liability of the tax; correct?

A. Not -- only in some situations. Yes, that's correct.

Q. When the person conducting the hearing from the Internal Revenue Service, um, desires to engage that particular taxpayer on that issue; correct?

A. Normally it's when the taxpayer hasn't had an opportunity to

1 challenge the lia- -- the assessment before.

2 Q. Okay.

3 A. Okay? Or when -- when we -- when a representative of the  
4 Service, such as myself, could see that the liability on its  
5 face was erroneous.

6 Q. Okay. And Cynthia Neun came in on, uh, a number of cases.  
7 I think you testified, um, to about approximately a hundred.  
8 Correct?

9 A. I would say yes.

10 Q. Okay. Um, so you got familiar with her; correct?

11 A. Yes.

12 Q. And it'd be safe to say that you got familiar with the  
13 philosophy, um, that, um, she put forth when she went to the  
14 hearings; correct?

15 A. Correct.

16 Q. Okay. And that was, um -- it wasn't necessarily a  
17 constitutional argument. It was more of a show me where  
18 there -- there is in the law that requires one to legally pay  
19 income tax; correct?

20 A. Cindy would go forward much further than that. She'd say  
21 there is no such law --

22 Q. Okay.

23 A. -- there is nothing. She would state that clearly --

24 Q. Okay.

25 A. -- on many occasions.

1 Q. But it wasn't -- you testified it was a constitutional  
2 argument. It wasn't a constitutional argument. It was --  
3 wasn't it more that, um, her position was there was -- there was  
4 no law that required one, a taxpayer, to have legally pay income  
5 tax; correct?

6 A. I'm not really -- I'm not an attorney myself. So, if I've  
7 used constitutional argument where I shouldn't have, then I  
8 apologize.

9 Q. Okay. So --

10 A. Um-hum.

11 Q. -- you would agree that it wouldn't -- it wouldn't  
12 necessarily mean that she went in there and argued the  
13 constitutional issue. She basically -- would it be safe to say  
14 that the position that was espoused was that there was no legal  
15 liability to pay income tax?

16 A. Correct.

17 Q. Okay.

18 A. Um-hum.

19 Q. Um, during those, uh, periods for which, um, she came in --  
20 the periods for which she came in you testified were what  
21 periods? If you can recall.

22 A. The periods that I recall?

23 Q. That Cynthia came in as a representative.

24 A. I think the first time that I saw Cindy as a representative  
25 was in 2001.



1 Q. Okay. Uh, do you know approximately what time during 2001?

2 A. It seems to me that it was approximately the summer of 2001.

3 Q. Okay. Um, and she always -- she always brought with her her  
4 Code book; correct?

5 A. Yes.

6 Q. Okay.

7 THE CLERK: Mr. Cristalli.

8 MR. CRISTALLI: Yes, thank you. I'm sorry.

9 BY MR. CRISTALLI:

10 Q. I'm gonna show you what's been admitted as Defendant's  
11 Exhibits 2500. Does this book look consistent with the book  
12 that Cindy would bring into the hearings?

13 A. Did it look consistent?

14 Q. Well, I mean, it's an Internal Revenue Code book; correct?

15 A. Yes, it is.

16 Q. I guess, did Cindy's book look ragged and disheveled like  
17 this?

18 A. I don't remember it looking like this.

19 Q. Okay. Do you agree with me that this book appears to have  
20 been gone through and gone through and gone through; correct?

21 A. Yes, I do.

22 Q. Okay. Um, it would be also accurate, ma'am, would it not,  
23 that Cindy, uh -- Cindy would always try to support her position  
24 when she came in there with some type of legal foundation?

25 Would that be accurate to say?

1 A. I'm not sure what you mean by that.

2 Q. Well, in support of her position, she would refer to certain  
3 sections in the Internal Revenue Code; correct?

4 A. No, I don't believe -- no, she would not always do that, no.

5 Q. Well, okay. Would she, then -- well, she brought the  
6 Internal Revenue Code in; correct?

7 A. Yes, she did.

8 Q. Okay. There would be at times discussions about certain  
9 sections in the Code; correct?

10 A. We would discuss 6320 and 6330 mainly.

11 Q. Okay. And then there was --

12 A. Um-hum.

13 Q. -- um, a dialogue between you and Cynthia -- it would be  
14 safe to say there was a -- a misunderstanding between you and  
15 Cynthia in terms of the law itself; correct?

16 A. Correct.

17 Q. It would be the Internal Revenue's position that the law  
18 states you have to pay income tax and it would be Ms. Neun,  
19 based on the philosophies, uh, through Mr. Irwin Schiff and  
20 Freedom Books, that one would not have a legal liability to pay  
21 income tax; correct?

22 MR. NEIMAN: Objection. Calls for speculation.

23 BY MR. CRISTALLI:

24 Q. Well, did they have that discussion?

25 THE COURT: You can ask the question.

1 BY MR. CRISTALLI:

2 Q. That was the gist --

3 THE COURT: Yes. Overruled.

4 BY MR. CRISTALLI:

5 Q. -- of the dialogue between the two of you; correct?

6 A. Um, Cindy would say that there was no legal requirement --

7 Q. Right.

8 A. -- yes.

9 Q. And, in addition to going over certain sections of the

10 Internal Revenue Code, she also would, um, discuss --

11 A. Excuse me.

12 Q. Yes.

13 A. Now, I don't recall that she actually went over sections. I

14 mean, it's not like she came in and said there's a section in

15 this section. She would come in and say show me where.

16 Q. Exactly. Because it would be their position -- "their"

17 meaning the philosophy of Freedom Books -- that there is no

18 section that supports a position that one would be legally

19 responsible to pay federal income tax; correct?

20 A. Right.

21 Q. Okay. And then she also would cite certain, um, court

22 decisions; correct?

23 A. I think there may have been one or two.

24 Q. Okay. Um, there was a court decision attached to -- to the

25 1040 returns that they -- that were submitted that was basically

1 recall -- called the "1040 Long returns"; correct?

2 A. Correct.

3 Q. Okay. And you're familiar that the Long decision is a Ninth  
4 Circuit Court of Appeals decision?

5 A. But that was -- I believe that was taken out of context.

6 Q. And that may be the case. I'm not dis- -- I'm not going to  
7 have a dialogue with you with regard to whether or not, um, what  
8 that particular case stood for. However, that was one of the  
9 cases that was relied on by, uh, Cynthia when she went in to  
10 represent a -- a taxpayer; correct?

11 A. Correct.

12 Q. Okay. Um, and you never had a discussion with her as to why  
13 that particular, um, decision and/or holding was taken out of  
14 content [sic]? Um, you basically -- you never had a discussion  
15 with her as it related to the holding in the Long decision;  
16 correct?

17 A. I believe that we -- that -- that had been discussed with  
18 her by some of our other Settlement officers and that she was  
19 well aware of that. And I believe it was also put in some  
20 correspondence to her.

21 Q. Yeah. Ma'am, the question was directly: Did you ever have  
22 a dialogue with Ms. Neun specifically with regard to the holding  
23 in Long and why it didn't support her position that she was not  
24 responsible --

25 A. Yes. If --

1 Q. -- to pay federal income tax?

2 A. At the occasions that she would have brought that up, I

3 would have responded that it was not -- that it was not a valid

4 conclusion --

5 Q. And -- and each one of these hearings were tape recorded;

6 correct?

7 A. I -- I don't believe all of them were recorded. I think

8 most of them were record.

9 Q. Um, were they transcribed?

10 A. Some of them were transcribed, not all of them.

11 Q. So, um, obviously if there was a discussion in terms of the

12 holding in Long and the Internal Revenue Service advising her as

13 to, um, why she was misunderstood about that particular, um,

14 holding, that would be in the transcripts; correct?

15 THE COURT: She just got through testifying not all of

16 them were recorded --

17 MR. CRISTALLI: Okay. Well --

18 THE COURT: -- not all of them --

19 BY MR. CRISTALLI:

20 Q. Some of 'em --

21 THE COURT: -- were transcribed.

22 BY MR. CRISTALLI:

23 Q. -- right?

24 A. I -- I can't recall which were and were not.

25 Q. Some of them were though; correct?

1 A. Some of the meetings -- hearings were recorded?

2 Q. Right.

3 A. Yes, some of the hearings were recorded.

4 Q. You don't have anything that we could discuss today in terms  
5 of verifying that that discussion was actually had?

6 A. You kind of lost me now.

7 Q. You don't have -- you don't have a transcription or a tape  
8 that would support your position that there was a dialogue as it  
9 related to the Long decision with Ms. Neun, do you?

10 A. I don't -- I don't have anything like that.

11 Q. Okay. Um, you said that you, um, would give Cynthia this  
12 handout, um, that the Government had discussed with you, uh.  
13 And you initially testified it was in 2003 and then you  
14 corrected yourself; you said that it was -- it could have been  
15 2002.

16 A. No. I initially said it was at least all of 2000- -- mostly  
17 2003. I -- I've tried to be very conservative in my answers --

18 Q. Okay.

19 A. -- as far as, uh, I didn't -- I haven't wanted to say  
20 anything that was inaccurate. So I did not -- I've been very  
21 conservative. But it easily could have gone into 2002.

22 Q. Okay. And your testimony was that you believed that -- and,  
23 by the way, you didn't directly give this document to  
24 Ms. Cynthia Neun. You gave it to the taxpayer. Correct?

25 A. I -- on those occasion -- yes, I did give it to the taxpayer

1 that she was advocating for.

2 Q. Correct.

3 A. Yes.

4 Q. So it was never given to her directly; it was given to the  
5 taxpayer. Right?

6 A. It was given to her directly but not by myself.

7 Q. And you're sure about that?

8 A. Yes, I am because I sat in on hearings with the other  
9 Settlement officers who gave it to her.

10 Q. Okay. Um, and you test- -- you testified you're not --  
11 you're not an attorney; correct?

12 A. Pardon? Yes, that's --

13 Q. You're not --

14 A. -- correct.

15 Q. -- an attorney?

16 A. That's correct.

17 Q. And there's a --

18 A. Um-hum.

19 Q. -- there's a number of cases that have been cited in this  
20 particular document. You have -- you have not read these cases;  
21 correct?

22 A. Right. I have not read the cases. I've read --

23 Q. You have not read all these cases, have you?

24 A. No, I have not. I've read the summaries.

25 Q. Right. And you, as you testified, you're not a lawyer. So

1 you don't know how to analyze a particular holding in a court  
2 decision, do you?

3 A. Only from an Appeals perspective --

4 Q. Okay.

5 A. -- only from a Service perspective, yes.

6 Q. Okay.

7 A. Um-hum.

8 Q. You don't know, um -- and it would -- it would be safe to  
9 say that there's only portions of the cases cited in this  
10 particular handout; correct?

11 A. That's correct.

12 Q. Okay.

13 A. But there were -- but other cases we gave in totality, like  
14 the Pearson case.

15 Q. Okay. Well, let's talk about the Pearson case a little bit.

16 The Pearson case is not a zero Long return case;  
17 correct?

18 A. Correct.

19 Q. Okay. And, um, you know, in terms of a notice, it doesn't  
20 put specifically zero Long return filings on notice that, um,  
21 they are doing something incorrect. Correct?

22 A. Correct.

23 Q. Okay.

24 A. Um-hum.

25 Q. And nothing in Long -- nothing in Long suggests that -- um,



1 nothing in Pears- -- Pearson -- excuse me -- suggested that  
2 Mr. Pearson was doing something illegal; correct?

3 MR. NEIMAN: I have an objection to, I guess,  
4 speculation, relevance, conclusion.

5 THE COURT: Speculation.

6 MR. BOWERS: Speculation?

7 THE COURT: Sustained.

8 BY MR. CRISTALLI:

9 Q. Well, you testified you read the Pearson decision; correct?

10 A. Correct.

11 Q. And you handed the Pearson decision out to taxpayers to put  
12 them on notice that their claims may or may not be frivolous.  
13 True?

14 A. Correct.

15 Q. Okay. Um, you testified that that handout, um, was sometime  
16 in 2003, could have been 2002. You know, ma'am, do you not,  
17 that, um, Ms. Cynthia Neun was enjoined from going into the IRS  
18 on these issues in -- in March of 2003? You understand that;  
19 correct?

20 A. All right.

21 Q. Okay. So it would be safe to say, or you wouldn't disagree  
22 with me, that she would not have been in the Internal Revenue  
23 Service discussing these issues subsequent to March of 2003?

24 A. Then that's -- if that's the dates, um-hum.

25 Q. So whatever handout you may have given her it would have

1       been prior to March of 2003 but subsequent to late 2002.  Would  
2       that be an accurate time frame?

3       A.  It -- I don't recall the time frame.  It could easily have  
4       been a good portion of 2002.

5       Q.  Okay.

6               THE COURT:  How much longer, Mr. Cristalli?

7               MR. CRISTALLI:  I think I'm pretty much done, your  
8       Honor.

9               THE COURT:  Okay.

10              MR. CRISTALLI:  Court's indulgence.

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

13              THE COURT:  Looks we're gonna need to --

14              MR. CRISTALLI:  I have probably one more question.

15              THE COURT:  Go ahead, ask it.  Then we'll take our  
16       break.

17              Are you Las Vegas or...

18              THE WITNESS:  Connecticut.

19              THE COURT:  -- out of state?

20              MR. CRISTALLI:  I'm sorry, your Honor.  I'm almost --  
21       I'm done.

22       BY MR. CRISTALLI:

23       Q.  Ms., uh, Fisher, you just spoke briefly with regard to the  
24       Long decision that was cited on the 1040 returns that, um --  
25       that Ms. Neun had went in there on.  Um, and you said you had a

1 dialogue with her with regard to that particular decision.

2 Do you know what you told her in, uh, regard to why  
3 that particular decision was not applicable to, uh, her or those  
4 individuals that believed in the philosophy of Freedom Books  
5 and/or Mr. Irwin Schiff?

6 A. May I say that I -- I seldom remember her bringing up  
7 that -- the Long case.

8 Q. Okay.

9 A. And so I -- I'm sure that what I replied to you is that it  
10 was taken out of context and that cases after that found, uh --  
11 explained it and did not agree with that determination. And  
12 I'm -- I don't remember discussing it with her on many occasions  
13 at all --

14 Q. Okay.

15 A. -- and...

16 Q. Okay. Fair enough. Thank you, ma'am. I appreciate it.

17 MR. CRISTALLI: No further questions, your Honor.

18 Thank you.

19 THE COURT: Mr. Bowers, any questions?

20 MR. BOWERS: I'm sure I have a couple, but I believe  
21 Mr. Schiff has many.

22 THE COURT: We're gonna recess if -- unless you're just  
23 going to be a few minutes.

24 MR. SCHIFF: Well --

25 MR. BOWERS: Your Honor --

1 THE COURT: What did you say?

2

3

CROSS-EXAMINATION

4 BY MR. SCHIFF:

5 Q. Ms. Fisher --

6 THE COURT: Mr. Schiff --

7 MR. SCHIFF: Pardon me?

8 THE COURT: -- we're at a quarter to 5:00 right now.

9 MR. SCHIFF: I'll try to be -- I'll try to be as brief  
10 as I can.

11 THE COURT: Well, we're going to recess if you're going  
12 to be any longer than five minutes.

13 MR. SCHIFF: Well, I'm -- I think -- well, let me see  
14 how long it takes. I don't know.

15 MR. BOWERS: Judge, with all due respect, Mr. Schiff  
16 hasn't done anything in this trial in five minutes.

17 MR. SCHIFF: Well, we'll see. I don't know. I'll try  
18 to be as brief as I can. Okay. All right. Let's -- let's see.

19 BY MR. SCHIFF:

20 Q. Ms. Fisher, wouldn't you say that the purpose of the  
21 collection due process hearing is to see if all the  
22 administrative procedures have been done prior to the IRS  
23 seizing your property?

24 A. That is a part of it, yes.

25 Q. That's the purpose.

1           It's not to debate the validity of your return or your  
2 philosophy on -- it's to determine if all the procedures were  
3 done?

4     A.   That was part of it, yes.

5     Q.   Okay.  Now, we've heard a lot -- or a few people have  
6 mentioned, uh, sometimes the IRS prepares substitute for  
7 returns; is that correct?

8     A.   That is correct.

9     Q.   Well, would it be proper at the collection due process  
10 hearing for the person to say I'd like to see that return?

11    A.   Yes.

12    Q.   Would that be a proper question?

13    A.   Yes.

14    Q.   Okay.  In order for all the applicable procedures to have  
15 been done, would you agree that one of the applicable procedures  
16 would be an assessment would have had to have been made?

17    A.   Correct.

18    Q.   Okay.  Would another procedure have been a return would have  
19 had to have been filed from which the assessment was made?

20    A.   Correct.

21    Q.   Okay.  Would another procedure have been a notice and demand  
22 would have had to have been sent?

23    A.   Yes.

24    Q.   Okay.  If a -- if a penalty had been imposed, a normal  
25 request would be for the person to see the document imposing the

1 penalty?

2 A. That is not absolutely correct.

3 Q. But that would be a reasonable request?

4 A. Yes, it would. Um-hum.

5 Q. Okay.

6 A. Um-hum.

7 Q. So -- and does the law say that at -- at the due process  
8 hearing that the Appeals officer will have verification from the  
9 Secretary that all of the applicable laws have been met?  
10 Doesn't the law say that?

11 A. The law says the Appeals officer will have verified at the  
12 hearing.

13 Q. Yeah. Well --

14 A. Yes.

15 Q. -- if he has verified it from the Secretary --

16 A. Yes.

17 Q. -- a reasonable request would be let's see verification from  
18 the Secretary. Wouldn't that be a reasonable request?  
19 A. For the taxpayer to ask for verification?

20 Q. Yeah.

21 A. The verification is done by the Appeals or Settlement  
22 officer. It's not -- there's no requirement in the law to  
23 provide that verification to the taxpayer.

24 Q. Well, are you familiar with IRS regulations?

25 THE COURT: You're not going to argue it.

1           MR. SCHIFF: I'm not gonna argue anything.

2           THE COURT: Her statement is correct. Move on.

3 BY MR. SCHIFF:

4 Q. But does the regulation say --

5           THE COURT: Move on.

6 BY MR. SCHIFF:

7 Q. All right. So --

8           THE COURT: The Appeal -- the hearings officer --

9 BY MR. SCHIFF:

10 Q. -- so --

11           THE COURT: -- is not required --

12 BY MR. SCHIFF:

13 Q. -- so anybody who was debating all these things --

14           THE COURT: -- to produce such things.

15 BY MR. SCHIFF:

16 Q. -- that's not the purpose of the collection due process

17 hearing is to argue the validity of my return or whether I have

18 income or not. The question is: Were certain procedures

19 followed? Is that correct?

20 A. The -- the question -- one of the responsibility of the

21 hearings officer is to determine that the administrative

22 procedures were followed.

23 Q. Have been met?

24 A. Yes.

25 Q. Not to debate the validity of the return that was filed?

1 THE COURT: We're going over to the same --

2 BY MR. SCHIFF:

3 Q. Okay. So --

4 THE COURT: -- question again and again.

5 BY MR. SCHIFF:

6 Q. -- if the Appeals off- -- if the taxpayer says, let me see a  
7 copy of the notice and demand --

8 A. Yes.

9 Q. -- he should be shown it, shouldn't he be?

10 A. The taxpayer -- it's not required that the taxpayer be shown  
11 a copy of the notice and demand.

12 Q. Well --

13 A. It's only -- it's only required that the hearings officer  
14 determine that notice and demand was issued.

15 Q. Was sent?

16 A. Correct.

17 Q. Okay. How does the Appeals officer prove that a notice and  
18 demand has been sent?

19 A. The Appeals officer can look at certified transcripts or  
20 internal transcripts. That's usually how it's done.

21 Q. Would the internal transcript show that a notice and demand  
22 had been sent?

23 A. Yes.

24 Q. Would that be shown on his 4340?

25 A. His 4340?



1 Q. Yeah. Where would it be shown? Where would the IRS have  
2 shown that a notice and demand has been sent?

3 A. It's on the transcript.

4 Q. What transcript?

5 A. It's on the MFTRA.

6 Q. Pardon me?

7 A. It's called a MFTRA, M-F-T-R-A. There's a trans- --

8 Q. Do you show --

9 A. -- there's internal --

10 Q. -- that to the --

11 A. -- and they are certified -- sometimes we can -- we can  
12 certainly show that to the taxpayer. Sometimes we -- we did get  
13 certified transcripts as a courtesy to the taxpayer.

14 Q. Would it be shown -- if a notice and demand had been sent,  
15 would it be shown on the 4340?

16 A. Yes.

17 Q. It would be shown on the 4340?

18 A. Yes.

19 Q. Okay. So if Mr. -- if a notice and demand had been sent to  
20 Mr. Diamond, that would be shown on his 4340?

21 MR. NEIMAN: This witness was not at Mr. Diamond's --

22 THE COURT: That's correct.

23 MR. NEIMAN: -- CPD hearing.

24 MR. SCHIFF: Well, they -- I am suggesting that no --  
25 that there is no entry on Mr. Diamond's 4340 that a notice and

1 demand was sent because they have --

2 MR. NEIMAN: Objection.

3 THE COURT: She was not here. She is not witness to --

4 MR. SCHIFF: Pardon me?

5 THE COURT: She is not a witness to any of the

6 things --

7 BY MR. SCHIFF:

8 Q. All right. All right. Before I --

9 THE COURT: -- that dealt with Mr. Diamond.

10 BY MR. SCHIFF:

11 Q. -- I would have more questions. But the point is none of

12 your -- I have been charged in the Indictment --

13 MR. NEIMAN: Objection to this --

14 BY MR. SCHIFF:

15 Q. I have been charged --

16 THE COURT: Sustained.

17 BY MR. SCHIFF:

18 Q. I --

19 THE COURT: You're testifying.

20 BY MR. SCHIFF:

21 Q. Does -- there is nothing in your testimony that suggests

22 that my beliefs with respect to taxes are false; is that right?

23 MR. NEIMAN: Objection.

24 MR. SCHIFF: Well, the relevance is that the jury's

25 liable to think that she's -- her testimony goes to whether or

1 not my beliefs are false.

2 MR. NEIMAN: Your Honor, we may need an instruction at  
3 some point soon as to whether or not his beliefs are indeed true  
4 or false.

5 MR. SCHIFF: This is a relevant question.

6 THE COURT: I don't think you want her to answer that  
7 question.

8 MR. SCHIFF: Well, she can answer it --

9 THE COURT: No.

10 MR. SCHIFF: -- if she believes they are false. That's  
11 all right.

12 BY MR. SCHIFF:

13 Q. But none of your testimony here has to do with the validity  
14 of my belief with respect to taxes; is that right?

15 MR. NEIMAN: Same objection, your Honor.

16 THE COURT: Sustained.

17 MR. SCHIFF: Well, I'll ask the question.

18 THE COURT: Sustained.

19 (Discussion between Mr. Leventhal and

20 Mr. Schiff.)

21 MR. SCHIFF: No. I'm gonna ask the question.

22 THE COURT: Sustained.

23 MR. SCHIFF: Okay.

24 BY MR. SCHIFF:

25 Q. All right. None of your testimony here --

1 THE COURT: Sustained.

2 MR. SCHIFF: All right. I'm asking her --

3 THE COURT: Are you hearing me?

4 MR. SCHIFF: -- another question. All right.

5 THE COURT: Sustained.

6 MR. SCHIFF: I'm not asking the question. I'm asking  
7 another question.

8 BY MR. SCHIFF:

9 Q. None of your testimony has to do with whether I believe my  
10 beliefs are valid?

11 MR. NEIMAN: Objection again.

12 MR. SCHIFF: That's another question.

13 MR. NEIMAN: Speculation and --

14 THE COURT: Speculation. Sustained.

15 MR. SCHIFF: Are you gonna sustain that one too?

16 THE COURT: Yes.

17 MR. SCHIFF: Okay.

18 Can I have that, uh -- that document with all those...

19 THE COURT: Is there anyone in the jury that cannot --

20 BY MR. SCHIFF:

21 Q. Very quickly --

22 THE COURT: -- wait a few more minutes? (Hand raised.)

23 BY MR. SCHIFF:

24 Q. Very quickly I just wanna say --

25 THE COURT: You need to go?

1 JUROR NO. 1: Yeah, I do.

2 THE COURT: Okay.

3 MR. BOWERS: Your Honor, I hate to do this. But, even  
4 if Mr. Schiff finishes now, I've gotta -- I gotta run through  
5 this because I'm the bad guy for keepin' the jury late and --

6 MR. SCHIFF: Well, I'm gonna be a minute.

7 All right. No more questions.

8

9 CROSS-EXAMINATION

10 BY MR. BOWERS:

11 Q. Um, I'm sorry. You're a Settlement officer? Is that an  
12 Appeals officer or you were both at some time?

13 A. I was a Settlement officer.

14 Q. And how is that different from an Appeal officer?

15 A. A Settlement officer has a collection background versus the  
16 accounting background.

17 Q. Is there a different role?

18 A. Yes, essentially. Uh, collection officers, uh, do not do  
19 examination cases.

20 Q. Do you -- did you work for Mr. Menaugh or do you know Tom  
21 Menaugh?

22 A. Yes, I did.

23 Q. Was he your supervisor?

24 A. For -- for part of the time, yes.

25 Q. Okay. Um, this -- this document the Government's passing

1 around, this 330 -- do you have that up there?

2 A. Yes.

3 Q. -- did you -- you said "we," which I understand now to be  
4 some trainees of yours and yourself --

5 A. Yes.

6 Q. -- went and had that document prepared by legal counsel?

7 A. No. It was prepared. The -- I remember getting --

8 Q. Well, let me stop you. And I hate to fight with you and I  
9 hate the hour.

10 But, when it was prepared -- you know, that's -- that's  
11 the passive voice -- who prepared it, when did they prepare it,  
12 why did they prepare it --

13 A. Okay.

14 Q. -- to the best of your knowledge?

15 A. Okay. To the best of my knowledge, we received this from  
16 our legal counsel. And the first time I saw this document was  
17 in one of our continuing professional education classes.

18 Q. Okay. So you don't know why it was originated or where that  
19 decision was made or anything else. It just showed up and said  
20 here it is; this is what it is?

21 A. The -- we --

22 Q. I --

23 A. -- to my knowledge, I received this document in one of our  
24 training classes --

25 Q. Okay.

1 A. -- and it was prepared by our IRS legal counsel, or at least  
2 it was forwarded --

3 Q. Who is "our"?

4 A. -- provided by them.

5 Q. Is that area counsel here in Nevada? Is that area counsel  
6 in Las Vegas? Is that national counsel? Who -- who do you  
7 mean?

8 THE COURT: Just shorten it up.

9 BY MR. BOWERS:

10 Q. -- when you say "our counsel"?

11 THE COURT: Shorten it up, Mr. Bowers. This witness  
12 has to come back from Connecticut. We've got a juror who needs  
13 to go.

14 MR. BOWERS: Well --

15 THE COURT: Ask one question rather than making a  
16 long --

17 MR. BOWERS: I won't ask --

18 THE COURT: -- speech.

19 MR. BOWERS: -- any more.

20 Thank you, ma'am.

21 MR. NEIMAN: Nothing further on behalf of the United  
22 States.

23 THE COURT: The witness is excused.

24 Ladies and gentlemen of the jury, we're in recess until  
25 Monday.

1           What do we have Monday morning?

2           THE CLERK: 9:00 o'clock. Nothing.

3           THE COURT: 9:00 a.m. Monday morning.

4           The admonition is a continuing one.

5           Does anyone need to be reminded of what it is? (No  
6 response.) Thank you.

7                       (Proceedings adjourned at 4:56 p.m.)

8                                       --oOo--

9           I hereby certify that pursuant to Section 753, Title 28, United  
10 States Code, the foregoing is a true and correct transcript of  
11 the stenographically reported proceedings held in the  
12 above-entitled matter.

13

14 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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