

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE HON. KENT J. DAWSON, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Case No. CR-S-04-119-KJD(LRL)
)
 vs.)
)
 IRWIN SCHIFF, CYNTHIA NEUN,)
 and LAWRENCE COHEN,)
)
 Defendants.)
)

REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 13)

Monday, October 3, 2005

APPEARANCES: (See Page 2)

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

1 APPEARANCES:

2 For the Plaintiff:

3 JEFFREY A. NEIMAN
4 DAVID IGNALL
5 Trial Attorneys
6 U.S. Department of Justice
7 Southern Criminal Enforcement Section
8 Tax Division
9 P.O. Box 972
10 Washington, DC 20044
11 (202) 514-5351

8 For the Defendant, Cynthia Neun:

9 MICHAEL V. CRISTALLI, ESQ.
10 Michael V. Cristalli, Ltd.
11 3960 Howard Hughes Parkway, Suite 850
12 Las Vegas, Nevada 89109
13 (702) 386-2180

12 For the Defendant, Irwin A. Schiff:

13 IRWIN A. SCHIFF, PRO PER
14 444 East Sahara Avenue
15 Las Vegas, Nevada 89104
16 (702) 385-6920

17 TODD M. LEVENTHAL, ESQ.
18 Flangas & Leventhal
19 600 South Third Street
20 Las Vegas, NV 89101
21 (702) 384-1990

18 For the Defendant, Lawrence Cohen:

19 CHAD A. BOWERS, ESQ.
20 Albert D. Massi, Ltd.
21 3202 West Charleston Boulevard
22 Las Vegas, Nevada 89102
23 (702) 878-8778

22 Also Present:

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

1 I N D E X

2	WITNESS:	Direct	Cross	Redirect	Recross	Voir Dire
3	Government's:					
4	William Waller	3413I	3439C 3447S 3496C	3502I	3508C 3509S	--
5						
6	Kay Irely	3543I	3567S 3581C	--	--	--
7	Anthony Aguiar	3603N 3618N	3624S	--	--	3615C

8

9

EXHIBITS

10

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

12 Government's:

13	93	--	3554
	94	--	3559
14	98 and 102	--	3561
	100	--	3564
15	101	--	3565
	103	--	3566
16	155	--	3618
	294	--	3421
17	295	--	3424
	296	--	3426
18	298	--	3432
	299	--	3436

19

Defendant Schiff's:

20	2114	3452	--
----	------	------	----

21

22

23

24

25

1 LAS VEGAS, NEVADA; MONDAY, OCTOBER 3, 2005; 9:29 A.M.

2 --oOo--

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

4 THE CLERK: All rise.

5 THE COURT: Please be seated.

6 Matters of business?

7 MR. SCHIFF: Your Honor, I have a very important matter
8 to bring to the attention of the Court.

9 THE COURT: Go ahead.

10 MR. SCHIFF: Okay.

11 Throughout the Government's case in chief, you have
12 prevented me from discussing the law because you apparently
13 believe that the Cheek decision was concerned only with my
14 subjective belief. However, on page 201 of the Cheek decision,
15 the Supreme Court stated as follows:

16 "Willfulness, as construed by our prior decisions in
17 criminal tax cases, requires the Government to prove
18 that the law imposed a duty on the defendant, [B] that
19 the defendant knew of this duty, and [3] that he
20 voluntarily and intentionally violated that duty."

21 In other words, during the Government's case in chief,
22 I had a right to discuss the law, uh, referred to by Government
23 witnesses, such as fraudulent penalties, deficiencies, liens and
24 levies, the statutory authority to act in a manner that they
25 were testifying, and introduce statutes that might impeach their

1 testimony. And throughout the Government's case in chief,
2 without referring to specific instances, you continually
3 prevented me from doing so.

4 Therefore, this Court illegally interfered with my
5 right to show that no law impose such duties as are referred to
6 in the Indictment. Therefore, I move that, A, we strike all of
7 the testimony of every Government witness who referred to any
8 statutes where I was not allowed to cross-examine him on the
9 statute referred or to recall all Government witnesses and to
10 allow me to re-question them or to declare a mistrial on the
11 grounds that my rights under the Supreme Court Cheek decision
12 have been violated and irreparably impaired. And I so move.

13 THE COURT: Does the Government have any response to
14 the motion?

15 MR. IGNALL: I'm not sure how much response we need. I
16 think the cases are clear that Mr. Schiff can say what he relied
17 on and what he misunderstood or understood in good faith. But,
18 when it comes to actually introducing whether the law is right
19 or wrong, that's a matter of law for the court. And to instruct
20 the jury or to question a witness about whether the law is right
21 or wrong invades in the province of the Court. So I think the
22 only evidence we've had of the law in the Government's case has
23 A, been accurate and, B, had been introduced for the purposes of
24 notice.

25 MR. SCHIFF: The Government has put on no witness that

1 has testified that the law imposed a duty on me to do anything.
2 They haven't qualified as an expert anyone who was even capable
3 of making such, uh, a statement. However, the Government has
4 introduced witnesses who they claim were not experts who
5 referred to various statutes. Now, the Government just
6 misstated what the statute- -- what the law says. The Cheek
7 decision clearly states that the Government has the burden to
8 prove that the law impose a duty. Now, they have not even begun
9 to meet that burden.

10 Now, do they expect the Court to remove them from that
11 burden and -- and the Court to -- to shoulder the burden that
12 the law imposes -- or the Supreme Court imposed on the
13 Government?

14 Now, unless the Government -- well, first of all, as I
15 said earlier, they gotta recall all these witnesses and allow me
16 to cross-examine them on the law. Because if the Government has
17 a burden to prove that the law imposed a duty on me during their
18 case in chief, I have a legal right to show that the law did not
19 impose such a duty during their case in chief.

20 THE COURT: Well, you're --

21 MR. SCHIFF: And if --

22 THE COURT: -- you're --

23 MR. SCHIFF: -- you prevent me from doing that --

24 remember, I'm not saying what the law is. But I recall one

25 witness, uh, explaining what a deficiency notice was, how they

1 impose deficiencies, and she's telling me, well, they call the
2 attorney for the IRS and they -- they set up parameters and
3 if -- and if the -- and if the return falls within the
4 parameters, then it's a frivolous penalty.

5 And I specifically said to her, you mean to tell me
6 nobody takes responsibility for imposing the penalty? And she
7 basically said no. And I had a statute that says that if a
8 penalty is imposed the -- the document imposing the penalty has
9 to be signed by the immediate supervisor of the person imposing
10 the penalty. So that statute discredited her entire testimony
11 and you prevented me from introducing --

12 THE COURT: Mr. Bowers --

13 MR. SCHIFF: -- all I'm saying --

14 THE COURT: -- is there a reason you're standing up
15 right now?

16 MR. BOWERS: I'm sorry, Judge. I...

17 MR. SCHIFF: All I'm saying is this: I have been
18 frustrated by the Court in doing what the Supreme Court said I
19 had every right to do, that is, showing that no law impose any
20 such duty on me as the Government has indicated in the
21 Indictment. And the Court -- and the Government just now
22 misstated what I said and misstated what the Cheek decision
23 said. The Government has a duty, the Government has a, uh --
24 the Government's burden is to prove during their case in
25 chief --

1 THE COURT: Well, is --

2 MR. SCHIFF: -- that the imposed --

3 THE COURT: -- wait --

4 MR. SCHIFF: -- a duty on me.

5 THE COURT: You've made enough speeches.

6 MR. SCHIFF: Okay. All right. I -- so --

7 THE COURT: You've repeated yourself --

8 MR. SCHIFF: All right.

9 THE COURT: -- three or four times.

10 MR. SCHIFF: Okay. I'm sorry. I have a tendency --

11 THE COURT: Is the Government's case over?

12 MR. SCHIFF: Pardon me?

13 THE COURT: Is the Government's case over? Has the
14 Government rested?

15 MR. SCHIFF: No.

16 THE COURT: Well, then what are you doing addressing
17 this now?

18 MR. SCHIFF: Because you prevented me all during the --
19 all during the Government's case in chief I had a right to do
20 this.

21 THE COURT: You did not.

22 MR. SCHIFF: Well --

23 THE COURT: You did not have a right to go into the law
24 with these witnesses and to -- and to ask them to answer legal
25 questions.

1 You have a right under the Cheek decision to adduce
2 evidence of your good-faith misunderstanding of the law or
3 whatever you want to do in your own case. But you cannot tell
4 the Government the sequence in which to present its witnesses.
5 It has not finished, uh, its case. And so your motion is
6 premature at best.

7 MR. SCHIFF: Okay.

8 Let me clarify -- because you've been imposing prison
9 sentence -- so you're saying, now, that the Government's gonna
10 have to put on a witness to meet its burden to prove --

11 THE COURT: No, I'm not saying any such thing. I'm
12 saying your motion is premature. You're saying what the
13 Government has a burden to prove in its case in chief and the
14 Government has not rested.

15 MR. SCHIFF: Okay.

16 Well, the only thing I want to say is this: Even in
17 your recapping here, again, you raise the issue of my good-faith
18 belief. But the Supreme Court said apart from my good-faith
19 belief -- there are three things that the Government has to
20 prove: A, I -- I had a duty to do -- that the -- that the law
21 imposed a certain duty on me --

22 THE COURT: The Government --

23 MR. SCHIFF: -- B, I knew of that duty.

24 THE COURT: -- the Government has not finished its
25 case.

1 MR. SCHIFF: Okay.

2 THE COURT: So as to that one...

3 MR. SCHIFF: Okay.

4 Now, are you gonna allow me, therefore, when the
5 Government puts on a witness saying that I have -- that the law
6 imposed a duty, can I cross-examine the Government --

7 THE COURT: Yes --

8 MR. SCHIFF: -- on its claim?

9 THE COURT: -- yes, you may. If they do that, you may.

10 MR. SCHIFF: Okay.

11 And you're not gonna impose sanctions on me if I raise
12 the law to impeach a Government's witness?

13 THE COURT: Listen, the only reason that sanctions have
14 been imposed on you -- and you full know it -- is because after
15 ruling three or four times on objections and you continue to
16 answer you got sanctions because that's the only thing that
17 would convince you to honor the rulings of the Court.

18 MR. SCHIFF: Okay.

19 THE COURT: You do not honor the rulings of the Court.
20 That's your problem.

21 MR. SCHIFF: As long as we clarified that I can raise
22 issues. All right.

23 MR. IGNALL: Your Honor, just to be clear, the
24 Government does not intend to call a witness to express what the
25 legal duties are. The duty's implied -- it's imposed by law.

1 We've had witnesses who've instructed all of the defendants what
2 their legal duty is. As a matter of law, the Court is gonna
3 instruct the jury on what the law is.

4 MR. SCHIFF: Well --

5 THE COURT: I -- I -- I --

6 MR. SCHIFF: -- what the Government --

7 THE COURT: -- I certainly will instruct the jury on
8 what the law is. And so far you have -- you have objected
9 whenever the Court has --

10 MR. SCHIFF: Well, your Honor --

11 THE COURT: -- has made an attempt to -- or --

12 MR. SCHIFF: -- did I understand --

13 THE COURT: -- made a suggestion the jury needed to be
14 informed.

15 MR. SCHIFF: Did I understand the Government to admit
16 that it's not -- not gonna meet its burden of proving that the
17 law imposed a duty on me?

18 THE COURT: Well, you just --

19 MR. SCHIFF: Is that what the Government --

20 THE COURT: -- you wait --

21 MR. SCHIFF: -- just admitted?

22 THE COURT: -- you wait until they rest their case and
23 then you can renew your motion. It's premature at this time.

24 MR. SCHIFF: Well, if they don't -- all right. I'm
25 gonna say I'll put the Government on notice. If they don't --

1 if they don't prove that I have a duty, then I should get a
2 direct verdict of acquittal. If they don't meet -- there's a
3 three-prong obligation the Government has.

4 THE COURT: Mr. Schiff --

5 MR. SCHIFF: All right.

6 THE COURT: -- you're not gonna repeat it a fourth --

7 MR. SCHIFF: All right.

8 THE COURT: -- or fifth time.

9 MR. SCHIFF: All right, your Honor.

10 THE COURT: Mr. Bowers, did you have something you
11 wanted to say or were you just stretching over there?

12 MR. BOWERS: I -- I think I was just stretching, your
13 Honor.

14 THE COURT: Okay.

15 All right. Let's bring in the jury.

16 THE CLERK: Yes, sir.

17 (Pause in the proceedings.)

18 (Jury enters the courtroom at 9:41 a.m.)

19 THE COURT: Please be seated.

20 Will counsel stipulate to the presence of the jury?

21 MR. NEIMAN: Yes.

22 MR. BOWERS: Yes.

23 MR. CRISTALLI: Yes, your Honor.

24 MR. SCHIFF: Yes, your Honor.

25 THE COURT: Thank you.

1 THE COURT: Government, you may call your next witness.

2 MR. IGNALL: The United States calls William Waller.

3 (Pause in the proceedings.)

4 THE COURT: Step right up here, sir. Remain standing.

5 (William Waller takes the witness stand.)

6 THE CLERK: Please raise your right hand.

7 You do solemnly swear that the testimony you shall give

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

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

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated.

12 Please state for the record your full name and spell
13 your last name.

14 THE WITNESS: Bill Waller, W-a-l-l-e-r.

15

16 WILLIAM WALLER,

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

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

19

20 THE COURT: Go ahead.

21

22 DIRECT EXAMINATION

23 BY MR. IGNALL:

24 Q. Good morning, Mr. Waller.

25 A. Good morning.

1 Q. Where do you live?

2 A. Here in Las Vegas.

3 Q. What do you do for a living?

4 A. Sell real estate.

5 Q. And do you have your own real estate firm?

6 A. No, I do not.

7 Q. Who do you work with?

8 A. Century 21.

9 Q. Did you ever have any involvement in the, uh, uh, sale or
10 lease of property at 444 East Sahara?

11 A. Yes, I did.

12 Q. Can you tell us when you first had any involvement with that
13 property? What year?

14 MR. SCHIFF: Objection. It's irrelevant to any of the
15 charges here.

16 THE COURT: What is the relevance?

17 MR. SCHIFF: What's the relevance of it?

18 MR. IGNALL: The relevance of this is that that is
19 property that Mr. Schiff bought not in his own name, A, because
20 of his -- because of his federal tax liens. So it's relevant to
21 the evasion of payment.

22 THE COURT: Overruled.

23 MR. SCHIFF: Your Honor, there's nothing in the
24 Indictment that even gets into 444 East Sahara.

25 MR. IGNALL: That's correct --

1 MR. SCHIFF: It's a very --

2 MR. IGNALL: -- your Honor. But --

3 MR. SCHIFF: -- complicated issue which has nothing to
4 do with any charge in the Indictment.

5 THE COURT: Is that the present location, or was?

6 MR. SCHIFF: Pardon?

7 THE COURT: Was that the location that witnesses have
8 testified to?

9 MR. IGNALL: That's -- that's the present location.

10 THE COURT: Yes.

11 MR. NEIMAN: No, it's not. 544 is the present
12 location.

13 MR. IGNALL. It's not the present location.

14 MR. IGNALL: I'm sorry. Yes. This is the present
15 location.

16 MR. SCHIFF: There is nothing in the Indictment that
17 even mentions the building.

18 MR. IGNALL: That's correct because this is a further
19 affirmative act of evasion to payment.

20 THE COURT: Overruled.

21 MR. SCHIFF: Well, it's irrelevant.

22 THE COURT: I've already ruled it's relevant.

23 Go ahead.

24 BY MR. IGNALL:

25 Q. Mr. Waller, when did you have your first involvement with

1 anything to do with this property at 444 East Sahara?

2 A. I believe it was a couple years ago, '01, '02.

3 Q. Okay. How did you first have any involvement in this --
4 something to do with this property?

5 A. I'm sorry?

6 Q. How did you first have any involvement? Did someone call
7 you about it?

8 A. Uh, yes. Irwin was interested in possibly leasing the
9 building.

10 Q. All right. And he contacted you about doing what?

11 A. Seein' if the building was for lease.

12 Q. And was the building for lease?

13 A. No, it was not. It was for sale.

14 Q. All right. At that point, did you [sic] make any efforts to
15 try and buy the building?

16 A. Did I?

17 Q. Did -- did Mr. Schiff ask you to make any efforts to buy the
18 building?

19 A. No. We actually drew up a lease agreement and the seller
20 rejected it. They weren't interested in leasing it. And then I
21 believe there was a lease purchase drawn up. And the seller --
22 the seller wanted to sell the building outright.

23 Q. All right. Did Mr. Schiff ever make they effort to buy the
24 building after that?

25 A. Yeah. He wanted the building because his building was being

1 torn down, it was sold, and he had to move, uh, and he was
2 interested in this building for the location. And he was
3 interested in it, yes.

4 Q. All right. Did, uh -- was Mr. Schiff able to buy the
5 building himself?

6 A. No, he was not.

7 Q. Why not?

8 A. Uh, his creditworthiness and the lack of funds wouldn't
9 allow him to do so.

10 Q. Did Mr. Schiff ever tell you what his credit problem was,
11 what it stemmed from?

12 A. Uh, I believe he had bad credit. I think there was federal
13 tax liens on it.

14 Q. All right. Did you ever actually consummate a sale on this
15 property at 444 East Sahara?

16 A. Uh, yes. His son bought it.

17 Q. And -- and in what name?

18 A. I believe it was Euro Capital or Euro Financial. Somethin'
19 like that.

20 Q. Was there anyone else ever involved in potentially buying
21 this building?

22 A. Uh, there was one Russell Jay who was -- intended to buy it,
23 but then he wasn't able to qualify.

24 Q. All right. And then Mr. Schiff's son bought it. And --

25 A. Correct.

1 Q. -- what was the name you said? I'm sorry.

2 A. Euro Pacific or Euro Financial.

3 Q. Okay. Do you know what's currently located at 444 East
4 Sahara?

5 A. Yes. Freedom Books, sir.

6 Q. Thank you.

7 How did you first meet Mr. Schiff?

8 A. Uh, I think I heard him on the radio.

9 Q. Do you remember when that was?

10 A. 1997.

11 Q. All right. What did you hear on the radio?

12 A. His radio program.

13 Q. Saying what?

14 A. Just, um, talkin' about the income tax laws and how nobody
15 is liable to pay the income tax.

16 Q. After you heard him talk about the income tax laws, did you
17 take any action?

18 A. Yeah. I started, uh, listening to him and I started to do
19 my own research and found out that it was very accurate.

20 Q. Did you ever visit Freedom Books?

21 A. I'm sorry?

22 Q. Did you ever visit Freedom Books?

23 A. Yes, I did.

24 Q. When did you first visit Freedom Books?

25 A. 1997.

1 Q. Did you purchase anything when you went to Freedom Books?

2 A. Yeah.

3 Q. What did you purchase?

4 A. Uh, The Federal Mafia, different tapes, different books.

5 Q. Tapes talking about what? What was the subject matter?

6 A. The laws on the income tax.

7 Q. And whether you had to pay income tax or not?

8 A. Correct.

9 MR. IGNALL: May I approach the witness, your Honor?

10 THE COURT: You may.

11 (Discussion between Mr. Neiman and

12 Mr. Ignall.)

13 MR. BOWERS: Could we have identified what he's
14 approaching with?

15 THE COURT: Documents you're handing to the witness.

16 MR. IGNALL: I'm handing documents identified as
17 Exhibits 294 through 299.

18 BY MR. IGNALL:

19 Q. After purchasing materials from Freedom Books, at some point
20 did you follow Mr. Schiff's teachings?

21 A. Yes, I did.

22 Q. Do you remember when that was, the first time?

23 A. 1998.

24 Q. And what did you do in 1998 or was it just for the 1998 tax
25 year we're talking --

1 A. I followed -- I filed a zero tax return.

2 Q. Let me turn your attention to Exhibit 294. It should be
3 right in front of you, Mr. Waller.

4 A. (Complies.)

5 Q. Do you recognize Exhibit 294?

6 A. Yes, I do.

7 Q. What is Exhibit 294?

8 A. It's a copy of my tax return and the attachments and the
9 first page of the 4340. There's no second page to it.

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

11 THE COURT: You may.

12 BY MR. IGNALL:

13 Q. Mr. Waller, you said something about a 4340 in there.

14 A. The Certificate of Assessment.

15 Q. That's part of 294? I'm sorry. Is that part of
16 Exhibit 294?

17 A. I don't know. This is...

18 Q. I'm asking if you recognize what's in Exhibit 294.

19 A. Yes, I do.

20 Q. And what's -- what's contained in Exhibit 294?

21 A. A copy of my tax return and the attachments.

22 Q. All right.

23 MR. IGNALL: At this point, the Government moves into
24 evidence Exhibit 294.

25 MR. CRISTALLI: No objection.

1 THE COURT: Any --

2 MR. BOWERS: I have no objection.

3 MR. SCHIFF: 294 is the return. Okay. No objection.

4 THE COURT: 294 is received.

5 (Government's Exhibit No. 294, received into
6 evidence.)

7 MR. IGNALL: May we publish that to the jury, your
8 Honor?

9 THE COURT: You may.

10 BY MR. IGNALL:

11 Q. Mr. Waller, did you consult with anyone at Freedom Books
12 before filling out this 1998 Form 1040?

13 A. Yes, I did.

14 Q. Who did you consult with?

15 A. Um, Irwin, Cindy --

16 Q. We need to -- I'm sorry.

17 A. -- and Larry.

18 Q. Excuse me?

19 A. The three defendants.

20 Q. Who are?

21 A. Irwin, Cindy, and Larry.

22 Q. All right. Thank you.

23 MR. IGNALL: I'll put that on the screen momentarily.

24 (Pause in the proceedings.)

25 (Document displayed in open court.)

1 BY MR. IGNALL:

2 Q. Now, Mr. Waller, what did you put down as your total income
3 on line 22 of the year 1998 1040?

4 A. Zero.

5 Q. Were you working during the calendar year 1998?

6 A. Yes, I was.

7 Q. What were you doing?

8 A. Selling real estate.

9 Q. Did you earn any money selling real estate during 1998?

10 A. I'm sorry?

11 Q. Did you earn any money selling real estate during 1998?

12 A. Yes, I did.

13 Q. All right. Did you discuss with Cindy -- with -- with
14 Mr. Cohen, Ms. Neun, or Mr. Schiff what you did for a living at
15 any point?

16 A. I believe so.

17 Q. If I could turn your attention to the third page of
18 Exhibit 294. It's a two-page attachment. Do you recognize
19 that?

20 A. Yes, I do.

21 Q. Did you, uh, draft the language that's contained in that
22 two-page attachment?

23 A. No, I did not.

24 Q. Who did?

25 A. Uh, Freedom Books.

1 Q. Did you purchase this from Freedom Books?

2 A. Uh, yes, I did.

3 Q. All right. Did you send this attachment along with your tax
4 return into the IRS?

5 A. Yes, I did.

6 Q. After sending in that 1998 tax return, did you ever get any
7 correspondence from the IRS as a result of that?

8 A. Yes, I did.

9 Q. What did you get from the IRS?

10 A. I believe I got a frivolous penalty notice.

11 Q. All right. If I could turn your attention to Exhibit 295.
12 It should be, hopefully, the next exhibit on the pile in front
13 of you.

14 A. (Reviewing document.)

15 Q. Do you recognize Exhibit 295?

16 A. Yes, I do.

17 Q. And what is Exhibit 295?

18 A. It's a -- I believe it's a 30-day letter.

19 Q. Is this the frivolous penalty notice you just mentioned?

20 A. Yes. It's one of 'em.

21 Q. All right. Did you take a copy of this letter down to
22 anyone at Freedom Books after you got it?

23 A. I'm sure I did.

24 MR. IGNALL: At this point Government moves into
25 evidence Government Exhibit 295.

1 MR. CRISTALLI: No objection.

2 MR. BOWERS: That's fine.

3 MR. SCHIFF: No objection.

4 THE COURT: 295 is received.

5 (Government's Exhibit No. 295, received into
6 evidence.)

7 BY MR. IGNALL:

8 Q. Do you remember who you spoke to at Freedom Books about
9 letters you got from the IRS?

10 A. Uh, I spoke to all of 'em at different times, various
11 letters.

12 Q. "All of them" meaning who in particular?

13 A. Cindy, Larry, and Irwin.

14 Q. Okay. If I could -- when you -- now, if I could turn your
15 attention to Exhibit 296, do you recognize this document?

16 A. (Reviewing document.) Yes, I do.

17 Q. What is Exhibit 296?

18 A. Notice of Deficiency.

19 MR. SCHIFF: I object. It's -- the document is
20 incomplete. We need the supporting pages.

21 THE COURT: Do you move for admission?

22 MR. IGNALL: Uh, I'll ask one more foundational
23 question --

24 THE COURT: Go ahead.

25 MR. IGNALL: -- your Honor.

1 BY MR. IGNALL:

2 Q. Did you ever bring this letter into anyone at Freedom Books?

3 A. I'm sure I did.

4 Q. All right.

5 MR. IGNALL: At this point, the Government moves into
6 evidence Exhibit 296.

7 THE COURT: Cristalli?

8 MR. CRISTALLI: I don't have any objection.

9 MR. SCHIFF: Well, your Honor --

10 THE COURT: Bowers?

11 MR. BOWERS: Yeah, that's fine.

12 THE COURT: Now, Mr. Schiff, your objection is noted.
13 It's incomplete. Objection's overruled.

14 MR. SCHIFF: Well, could I ask: In order to
15 cross-examine the witness concerning the validity of this
16 document, we -- we need the supporting pages.

17 MR. IGNALL: Your Honor, the issue is not the validity
18 of this document or not merely that he got this letter from the
19 IRS, brought it to Freedom Books, and then what they did in
20 response to that.

21 THE COURT: Sustained -- or the objection's overruled.
22 You may ask --

23 MR. IGNALL: All right.

24 THE COURT: -- the question.

25 MR. IGNALL: So is the Court receiving 296 into

1 evidence?

2 THE COURT: It is.

3 MR. IGNALL: All right.

4 (Government's Exhibit No. 296, received into
5 evidence.)

6 BY MR. IGNALL:

7 Q. If I could turn your attention to the first page. What --
8 what's the date of this letter, Mr. Waller?

9 A. (Reviewing document.) January 25th, 2002.

10 Q. All right. And who is this letter addressed to?

11 A. To me and Cindy Neun.

12 Q. What -- what involvement did Ms. Neun have in your dealings
13 with the IRS as of January 25th, 2002?

14 A. Uh, well, she accompanied me on the due process hearing.

15 Q. But had -- had you retained her to do anything for you?

16 A. Just that, just when I went for my due process hearing if
17 she'd accompany me.

18 Q. Do you remember what items you purchased at Freedom Books?

19 A. Again, it was The Federal Mafia, uh, Lien and Levy Packet,
20 um, The Power to Destroy written by Senator Roth. There's
21 probably a few others.

22 Q. Did you -- if you could look at Exhibit 297. I think there
23 are probably four documents in there. Can you tell me if you
24 recognize any of those documents?

25 A. (Reviewing documents.) Okay. Yeah.

1 Q. Do you recognize any of those documents?

2 A. Any of the documents?

3 Q. Yeah. I think there's 297A, B, C, and D. Have you ever
4 seen those before?

5 A. Uh, I may have. It looks like a receipt for items that I
6 purchased there.

7 Q. Does this -- let me ask it this way. If you look through
8 these four pages, does that refresh your recollection about what
9 you purchased from Freedom Books?

10 A. Yeah, it's about right.

11 Q. And could you tell us what it is that you purchased from
12 Freedom Books?

13 A. Series 7, Tax Court Tool Kit; IRS Code book; The Power to
14 Destroy.

15 Q. Roughly how much money did you spend -- spend at Freedom
16 Books?

17 A. Gosh, I don't know; couple, two, three hundred dollars.

18 Q. Do you want to see if those documents refresh your
19 recollection?

20 A. (Reviewing documents.) Well, let's see. There's 125.
21 There's 80 -- there's --

22 Q. Read them and tell us if reading them now refreshes your
23 recollection.

24 A. Yes.

25 Q. Okay. So, with your recollection refreshed, how much

1 approximately do you remember that you spent at Freedom Books?

2 A. Roughly the same, couple, two, three hundred dollars; four
3 hundred dollars, five hundred.

4 Q. Okay.

5 A. I don't know.

6 Q. All right. You said something about Ms. Neun accompanying
7 you to a collection due process hearing.

8 A. Correct.

9 Q. Did you pay her to do that?

10 A. I paid Freedom Books a hundred dollars for that, yes.

11 Q. Did you pay cash? check? charge?

12 A. I don't recall.

13 Q. Okay.

14 A. Probably a check.

15 Q. Uh, did Ms. Neun attend this collection due process hearing
16 with you?

17 A. Yes, she did.

18 Q. What happened at that hearing?

19 A. What happened at the hearing?

20 Q. What was the -- yeah.

21 A. Well, at the hearing -- uh, my request at the due process
22 hearing was, uh, as a result of Internal Revenue Code 6330 where
23 all the documents and all the other items that I asked to be
24 present the Appeals officer had none of 'em available at the
25 hearing.

1 Q. Did you discuss any collection alternatives at the
2 collection due process hearing?

3 A. I sure did. I said, "If you could show me which law makes
4 me liable, I'd be happy to pay in full."

5 Q. Did you ever discuss a payment plan versus lien or levy
6 or...

7 A. No.

8 Q. Okay. On whose advice, if anyone's, did you ask to see this
9 documentation from the IRS?

10 A. On whose advice?

11 Q. Yeah.

12 A. I -- no one's advice. I got it out of the IRS Code book,
13 6330 and 6331.

14 Q. Did anyone direct you to those Code sections?

15 A. Well...

16 MR. BOWERS: Asked and answered. Leading.

17 THE WITNESS: I'm sorry?

18 THE COURT: Overruled.

19 Answer the question.

20 THE WITNESS: I'm sorry. What was the question?

21 BY MR. IGNALL:

22 Q. Did anyone direct you to those particular Code sections?

23 A. Uh, I found those Code sections on my own research after
24 listening to Irwin and reading some of these materials, yes.

25 Q. What was the result of your collection due process hearing?

1 A. Well, the Appeals officer basically produced none of the
2 documents that the law entitled me to have at my hearing and
3 then he gave me an adverse determination.

4 Q. Did you tell anyone at Freedom Books that you had gotten
5 this adverse determination?

6 A. Yes, I did.

7 Q. Who did you tell?

8 A. Irwin, Cindy, Larry.

9 Q. Did you talk to them about doing anything in response to
10 this adverse determination?

11 A. Uh, yes.

12 Q. What was that?

13 A. We did an appeal.

14 Q. Who did you talk to about doing an appeal?

15 A. Irwin, Cindy, Larry.

16 Q. All right. Did anyone help you prepare an appeal for this
17 collection due process hearing?

18 A. Yes, the three of 'em.

19 Q. All right. If I could turn your attention to Exhibit 298.

20 (Discussion between Mr. Ignall and
21 Mr. Neiman.)

22 BY MR. IGNALL:

23 Q. Do you recognize Exhibit 298?

24 A. Yes, I do.

25 Q. What is Exhibit 298?

1 A. It's the appeal.

2 Q. Did you draft the language in this appeal?

3 A. No, I did not.

4 Q. Where did you get the language in this appeal?

5 A. From Freedom Books.

6 Q. Who in particular at Freedom Books?

7 A. Um, I don't even remember the lady's name.

8 Q. Did you --

9 A. To be honest --

10 Q. I'm sorry.

11 A. -- to be honest, I don't remember her name.

12 Q. Did you pay any money for this?

13 A. I believe I did.

14 Q. How much?

15 A. Maybe a hundred bucks, hundred and fifty bucks.

16 Q. And did you discuss -- I think you said you discussed filing
17 this appeal with Mr. Schiff, Ms. Neun, and Mr. Cohen; is that --

18 A. Correct.

19 Q. -- correct?

20 And did they advise you to do it? not do it?

21 A. They -- they recommended that I do it.

22 Q. And did you in fact file an appeal of this due process
23 hearing?

24 A. Yes, I did.

25 Q. And where did you file that appeal?

1 A. With District Court.

2 Q. The Federal Court?

3 A. Yes.

4 Q. Here in Las Vegas?

5 A. Correct.

6 Q. All right. And is Exhibit 298 a copy of the document you
7 filed with the Federal Court in Las Vegas?

8 A. Yes.

9 MR. IGNALL: At this point, the Government moves into
10 evidence Exhibit 298.

11 THE COURT: Cristalli?

12 (Discussion between Mr. Cristalli and
13 Mr. Modafferi.)

14 MR. CRISTALLI: I have no objection.

15 MR. BOWERS: Nothing, your Honor.

16 MR. SCHIFF: No objection.

17 THE COURT: 298 is received.

18 (Government's Exhibit No. 298, received into
19 evidence.)

20 MR. IGNALL: If we could publish just the first page.

21 (Document displayed in open court.)

22 BY MR. IGNALL:

23 Q. And what -- what's the title of -- of this pleading that you
24 filed with the Federal Court here?

25 A. "Complaint for Damages and Request that [the District] Court

1 Set Aside An Invalid Collection Due Process 'Determination'
2 Lawlessly issued Pursuant to 26 USC 6330."

3 Q. Did the Court rule on your appeal?

4 A. Yes, they did.

5 Q. Did you receive a copy of that ruling?

6 A. Yes, I did.

7 Q. And what was that ruling?

8 A. Uh, that the Court ruled against me.

9 Q. If I could turn your attention to Exhibit 299.

10 A. (Complies.)

11 MR. CRISTALLI: Your Honor, I have an objection with
12 regard to this particular document. I don't want to put the,
13 uh, objection on the record before the jury. If we could have a
14 sidebar with regard to this I would appreciate it.

15 THE COURT: All right.

16 (Sidebar conference was held as follows:)

17 THE COURT: All right.

18 MR. CRISTALLI: Thank you, your Honor. I'm sorry to
19 interrupt so early in this this morning.

20 But this particular Order is the Order, um, basically
21 denying that particular appeal. Um, it -- it does contain
22 obviously, um, citations in support of the, uh, ruling. My
23 bigger -- biggest concern with regard to this it was executed by
24 your Honor. It carries your Honor's signature. I'm concerned
25 about that particular Order, um, being taken into consideration

1 by this particular jury. Um, I think it could be highly
2 prejudicial. And, uh, I would have to lodge an objection not
3 only because your Honor executed it, but there is some language
4 in the conclusion of this paragraph which suggests that if,
5 um -- that it -- that the plaintiff simply lacks marriage [sic]
6 and had the defendants moved for Rule 11 sanctions this Court
7 would have freely granted such motion. I just have a concern
8 about that going before the jury.

9 MR. BOWERS: Just in addition to what Mike's already
10 discussed, we precluded similar orders in this case that haven't
11 been signed by your Honor on the same grounds as well. I just
12 wanted to draw that to the Court's attention.

13 MR. MODAFFERI: Yes.

14 MR. IGNALL: On which order?

15 MR. BOWERS: Well, I'll go dig it out if you give me a
16 second. But there was another order --

17 MR. SCHIFF: Um, I have --

18 MR. IGNALL: Okay, your Honor, if I may.

19 I'm sorry, Mr. Schiff.

20 THE COURT: Go ahead.

21 MR. SCHIFF: I have no objection to it going in.

22 THE COURT: Okay.

23 MR. IGNALL: Your Honor, if I may address it.

24 I think I need to ask one more foundational question
25 before admitting it which is -- could we ask the witness not

1 to -- he's staring at us right now.

2 THE COURT: Well...

3 MR. IGNALL: All right. Kinda rude.

4 MR. BOWERS: Whether he gave it --

5 MR. IGNALL: Whether he discussed it with anyone at
6 Freedom Books. That's the relevance here is notice.

7 THE COURT: Yeah.

8 MR. IGNALL: And, indeed, the language that
9 Mr. Cristalli considers most prejudicial is probably fairly
10 prejudicial insofar as it gives the defendants notice that the
11 Federal Court hear in Nevada --

12 THE COURT: Yeah.

13 MR. IGNALL: -- finds his position frivolous.

14 THE COURT: Any others? Okay.

15 It's coming in with the foundational question.

16 MR. CRISTALLI: Okay.

17 MR. IGNALL: Thank you, your Honor.

18 (Sidebar conference concluded and the
19 following is held in open court:)

20 THE COURT: Next question.

21 BY MR. IGNALL:

22 Q. Mr. Waller, you said you got an Order from the Court denying
23 your appeal; is that correct?

24 A. Correct.

25 Q. Did you discuss that -- uh, the Court's ruling with anyone

1 at Freedom Books?

2 A. Yes, I did.

3 Q. With whom did you discuss the ruling?

4 A. Irwin, Cindy, Larry.

5 Q. Did you bring the ruling itself in with you?

6 A. Yes.

7 MR. IGNALL: At this point, the Government moves into
8 evidence Exhibit 298.

9 THE COURT: The objections have already been noted at
10 sidebar. 299 is received.

11 (Government's Exhibit No. 299, received into
12 evidence.)

13 BY MR. IGNALL:

14 Q. Did you have a discussion with anyone at Freedom Books about
15 whether they agreed with the Court's ruling?

16 A. No one agreed with it.

17 Q. And when you say "no one," who does that include?

18 A. Everybody I showed it to.

19 Q. And could you tell -- tell the jury specifically who that
20 is?

21 A. Irwin, Cindy, Larry.

22 Q. If I could turn your attention to, uh, the final page,
23 "Conclusion."

24 MR. IGNALL: I'm sorry. If we could publish this to
25 the jury. I'm sorry.

1 (Document displayed in open court.)

2 BY MR. IGNALL:

3 Q. Did you -- if we look at the last page of the Court's Order,
4 did you discuss the conclusion part of the Court's Order with
5 anyone at Freedom Books?

6 A. Independently I doubt it. I believe we covered the whole
7 Order.

8 Q. Did you ever discuss the Court's finding that your complaint
9 was purely meritless?

10 MR. CRISTALLI: Objection. Move to strike. It was
11 already asked and answered. He said he didn't discuss it
12 independently.

13 THE COURT: He said he discussed the whole document,
14 not just focussing on one part. Overruled.

15 MR. BOWERS: Could we have a time, place, and
16 circumstance as a foundation objection before you ask another
17 question.

18 THE COURT: Foundation --

19 BY MR. IGNALL:

20 Q. How long --

21 THE COURT: -- further foundation.

22 BY MR. IGNALL:

23 Q. -- after receiving this Order from the Court did you go into
24 Freedom Books?

25 A. Probably within the week.

1 Q. And what's the date of this Court's order?

2 A. 9-15-04 -- or wait a minute. Oh, it was dismissed on, uh,
3 August 6th, 2002.

4 Q. All right. And, when you went into Freedom Books -- I think
5 you stated shortly after August 6, 2002 -- did you discuss with
6 anyone there the Court's determination that your arguments were
7 purely meritless?

8 A. Did I discuss it with them? Yes.

9 Q. You did?

10 A. Sure.

11 Q. You mentioned that the Court had found that?

12 A. Absolutely.

13 Q. And what did -- and let's do individually -- what did
14 Mr. Schiff say in response to that?

15 A. That it was erroneous because "meritless" or "frivolous"
16 means without basis. But in this appeal there's some 30 legal
17 references. And, uh, there was nothing meritless about it;
18 there was nothing frivolous about it. It's actually a very
19 solid appeal.

20 Q. That's what Mr. Schiff said?

21 A. That's what we all -- that's what they all said.

22 Q. How about -- how about Mr. Cohen?

23 A. Same thing.

24 Q. How about Ms. Neun?

25 A. Same thing.

1 Q. So all three of them disagreed with the Court's ruling?

2 A. Correct.

3 Q. Do you still owe any money to the IRS?

4 A. Do I owe any money to the IRS?

5 Q. (Nods head affirmatively.)

6 A. They say I owe them, yes.

7 Q. Do you still follow the teachings of Mr. Schiff and Freedom
8 Books?

9 A. Him and many others.

10 MR. IGNALL: No further questions.

11 THE COURT: Cross-examination?

12 MR. CRISTALLI: Thank you, your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. CRISTALLI:

16 Q. Good morning, Mr. Waller.

17 A. Good morning.

18 Q. Uh, Mr. Waller, you first heard of -- you heard about
19 Mr. Schiff through the radio; correct?

20 A. I believe so.

21 Q. You listened to his, uh, radio program. True?

22 A. Correct.

23 Q. Basically when you were listening to him on his radio
24 program, he was -- he was stating how one has no legal liability
25 to pay income tax; correct?

1 A. Correct.

2 Q. And when he would say, uh, that, uh, he would support his
3 position, uh, with citations to the Internal Revenue Code;
4 correct?

5 A. Absolutely.

6 Q. Um, he would also cite, um, case law; correct?

7 A. Correct.

8 Q. Cases from the United States Supreme Court decisions; right?

9 A. Correct.

10 Q. Um, so after you had an opportunity to listen to him on the
11 radio, at the very least you wanted to get more, uh, information
12 regarding that philosophy; correct?

13 A. Correct.

14 Q. Okay. And so you went to Freedom Books and you purchased
15 material. True?

16 A. True.

17 Q. And the material you purchased you took home and you read;
18 correct?

19 A. True.

20 Q. So, after you, um, digested that material, you understood
21 the teachings; correct?

22 A. Correct.

23 Q. Okay. Based on the review of the material, um, it further
24 supported, uh, your position at that particular time that there
25 was no law requiring one to pay income tax; correct?

1 A. Absolutely.

2 Q. Okay. Um, and it wasn't -- it wasn't solely on what was
3 provided to you from Freedom Books. You went out and did your
4 own independent legal research to support, uh, the positions
5 that you -- you adopted; correct?

6 A. True.

7 Q. Okay. And, during the course of your research and your
8 investigation, did you find any -- anything that would suggest
9 to you that you did have a legal liability to pay the federal --
10 the -- the income tax?

11 A. No.

12 Q. Um, as of today, do you -- have you, uh, acquired
13 information convincing you that you do not have to pay income
14 tax?

15 A. Yes.

16 Q. Okay. So, at this particular time, you -- I think that was
17 a bad -- badly worded question.

18 Is -- is your testimony that you have obtained
19 information that, uh, convinces you you have to -- you have a
20 liability to pay income tax? Is that what you --

21 A. No.

22 Q. -- testified to?

23 A. -- I have found nothing --

24 Q. Okay.

25 A. -- anywhere that establishes a liability for me to pay

1 taxes.

2 Q. And that's -- you know, with or without --

3 A. I should say the income tax.

4 Q. Okay. With or without Irwin Schiff's philosophy, you
5 independently have come to your own conclusion with regard to
6 this; correct?

7 A. Absolutely.

8 Q. Okay. Now, obviously during the course of reading Irwin's
9 material, you learned that following these practices, um,
10 there -- there -- there comes risks with following these
11 practices. True?

12 A. True.

13 Q. In fact, you've probably, um, been a, uh -- a subject of
14 some of those, um, negative things that could happen to you or
15 befall you as a result of following that philosophy; correct?

16 A. True.

17 Q. And, um, that would be obviously, um, liens and levies; um,
18 things of that nature. Correct?

19 A. Correct.

20 Q. Um, tell -- could you tell me a little bit about some of the
21 things that have occurred to you as a result of following the
22 philosophies of Mr. Irwin Schiff and then also following your
23 own philosophies as a result of your own independent research?
24 What types of run-ins have you had with the IRS with regard to
25 that?

1 MR. IGNALL: Objection, your Honor, insofar as it goes
2 beyond the scope of what any of the defendants did here.

3 MR. CRISTALLI: Um...

4 THE COURT: Sustained.

5 MR. CRISTALLI: Okay.

6 BY MR. CRISTALLI:

7 Q. Um, you've had some difficulties with the IRS; correct?

8 A. Correct.

9 Q. Okay. They've liened, they have levied you. True?

10 A. Uh, Notices of Lien, Notices of Levy.

11 Q. Okay. Despite that, um, your belief is -- continues to
12 remain steadfast today with regard to, um, the lack of
13 information that you have received with regard to whether one
14 has a legal responsibility to pay federal income tax; correct?

15 A. Correct.

16 Q. Okay. Um, now, you've said that you went to the, uh, due
17 process hearing with Cindy; correct?

18 A. Correct.

19 Q. And the Government asked you whether or not you had paid
20 anybody for that particular service and you indicated that you
21 paid Freedom Books's for that; correct?

22 A. Correct.

23 Q. You have no information whether or not Cindy had received
24 any of the proceeds from what you gave to, uh, Freedom Books, do
25 you?

1 A. No idea.

2 Q. Okay. Now, um, when you went to the due process hearing,
3 um, I would assume that Ms. Neun wasn't able to speak on your
4 behalf; correct?

5 A. Not at all.

6 Q. Okay. Um, and so when you went there, though, I would -- I
7 would assume, also, that you had a pretty good understanding of
8 positions that you adopted at that particular time. And so you
9 were able to have a, um, intelligent conversation with the agent
10 representing the Internal Revenue Service at that hearing;
11 correct?

12 A. Correct.

13 Q. And so you asked for, um, certain information from them;
14 correct?

15 A. Correct.

16 Q. You asked for verification from them, from -- you asked for
17 verification from the attorney, uh --

18 A. From the secretary.

19 Q. -- from the Secretary of Treasury?

20 A. Yes. I asked for everything that the law allowed me to ask.

21 Q. And you did not get any information, um, to your
22 satisfaction in response to your inquiries; correct?

23 A. I got nothing.

24 Q. Um, did -- when you went to your -- your hearing at the --
25 your due process hearing, did the hearing's agent or officer

1 give you documentation in an effort to try to support, uh, the
2 Internal Revenue's position that there is a legal liability to
3 pay income tax?

4 A. He gave me some documentation that was irrelevant. He gave
5 me court cases that were not, uh, anything like mine. He gave
6 me no copy of the Notice and Demand. He gave me no copy of the
7 supporting document that imposed a penalty with signatures. He
8 gave me no verification from the -- he didn't give me anything.

9 Q. When you went to the due process hearing, did you have an
10 opportunity to engage the officer in a dialogue with -- with
11 regard to the holdings, um, of the cases that you relied on?

12 A. He -- they don't acquiesce to court cases. They don't --
13 no.

14 Q. Did you ever -- did you ever have a dialogue with regard to
15 whether or not you had a legal liability to pay income tax?

16 A. Yes. All -- the last seven years that dialogue is in every
17 correspondence, every letter, every phone call. No one can
18 identify the law that makes me liable to pay the tax.

19 Q. No one in the Internal Revenue Service had -- has convinced
20 you that you have a legal liability to pay income tax?

21 A. No, they wouldn't address it. They just -- they don't even
22 approach it. They laugh. They say it's frivolous. It's
23 like -- it's like it's preprogrammed. They say the courts have
24 ruled. Sometimes they try to say 61, 62, and 63, uh, lumped
25 together that's where your liability is, which is not true.

1 Q. Um, when you were goin' through this process, uh, and when
2 you were adopting certain philosophies that you gathered from
3 your own legal research and the research that was provided to
4 you from Freedom Books, did there ever come a time when you, uh,
5 believed you were in violation of the law?

6 A. No.

7 Q. Did you believe that you were complying with the law?

8 A. Yes. The law is pretty clear.

9 Q. Okay. Um, throughout the course of your interactions with
10 Cindy Neun, did she ever do anything or, uh, say anything that
11 would suggest that she was violating the law or committing some
12 type of crime?

13 A. No.

14 Q. Um, did she, through the course of your dialogue with her,
15 um, um, engage you in discussions with regard to the Internal
16 Revenue Service -- Internal Revenue Code or case laws or
17 holdings with regard to different cases in support of the
18 position that you do not have a legal liability to pay income
19 tax?

20 A. Yes.

21 MR. CRISTALLI: I have no further questions, your
22 Honor.

23 Thank you, sir.

24 THE COURT: Mr. Bowers.

25 MR. BOWERS: I'll go after Mr. Schiff.

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SCHIFF:

Q. Good morning, Mr. Waller.

A. Good morning.

Q. Now, the Government brought up the question of the building purchased by myself. Do you recall that -- and he pointed out I tried to lease that building initially, not to buy it.

A. Correct.

Q. And you pointed out that you -- I couldn't get a mortgage because of a substantial lien placed against me by the government.

A. Correct.

Q. So I could never get a mortgage to buy the building. Right?

A. Right.

Q. And I tried to lease it from the owner. But they just didn't wanna lease it; they wanted to sell it. Is that correct?

A. Correct.

Q. Do you recall about how many properties you took me to to see if I can lease space in other buildings and properties, approximately?

A. Um, there was -- there was quite a few. 10 to 15.

Q. And none of those properties could come close to that building which wouldn't have to be touched or renovated and none of those buildings had anywhere near the location; is that correct?

1 A. Correct.

2 Q. And did -- did I tell you how sorry I was that I couldn't
3 lease that building? Do -- do you recall how -- do you
4 recall -- if you don't recall.

5 A. I don't recall.

6 Q. Didn't you recall that the building was sold and you told me
7 that the building had been sold?

8 A. Correct.

9 Q. And you remember my reaction when you told me the building
10 was sold?

11 A. Uh, yeah. You were pretty upset.

12 Q. And then subsequently what did you tell me that -- that --

13 A. That that previous sale had fallen out of escrow.

14 Q. Right.

15 Now -- and the building that I was in was gonna be
16 demolished; is that correct?

17 A. Correct.

18 Q. And I had a very short time to either find another place or
19 I have no place to go. Do you remember that?

20 A. Yes.

21 Q. So, when the building came on sale and I couldn't buy it,
22 do -- do you remember me saying maybe I could find another
23 purchaser?

24 A. Yes.

25 Q. And I got somebody who wanted to purchase the building; is

1 that correct?

2 A. Yes.

3 Q. And you mentioned his name, Russell Jay --

4 A. Correct.

5 Q. -- who owns property. And he indicated he would buy the
6 building.

7 A. Correct.

8 Q. Is that correct?

9 A. Yes.

10 Q. But then that fell through because...

11 A. He wasn't able to qualify.

12 Q. So then -- so then I contacted my son.

13 A. Correct.

14 Q. And he -- and...

15 A. And he purchased it.

16 Q. You know, he purchased it because Russell couldn't do it; I
17 couldn't purchase it and the location --

18 MR. IGNALL: Objection, your Honor. It's not clear
19 from this line of questioning whether Mr. Waller is talking
20 about his personal observations or something that Mr. Schiff
21 told him.

22 THE COURT: Sustained.

23 MR. SCHIFF: Well, he -- he brought up the -- he's
24 trying to infer that I -- I was concealing money or something
25 because I purchased the building and I couldn't purchase the

1 building.

2 THE COURT: You're testifying --

3 MR. SCHIFF: Okay.

4 THE COURT: -- again.

5 BY MR. SCHIFF:

6 Q. Also, Mr. Waller, you mentioned that when you came to
7 Freedom Books you discussed various problems with me, Larry, and
8 Cindy. Isn't it -- wouldn't it be safe to say that you
9 primarily discussed things with me and only tangentially with
10 Larry and Cindy?

11 A. True.

12 Q. Pardon me?

13 A. True.

14 Q. I mean, it wasn't equal.

15 A. No, not at all.

16 Q. Primarily you discussed your tax problems and what was
17 happening -- who did you primarily discuss them with?

18 A. You.

19 Q. Me. Right. Okay.

20 Uh, now, the Government asked you when you filed your
21 zero return -- oh. All right -- the Government asked you did
22 you -- I wanted you to look at Exhibit 294.

23 A. (Complies.)

24 Q. Okay. Okay. Do you see 294?

25 A. Yeah.

1 Q. Okay. The Government asked you if you drafted that document
2 and you indicated you didn't draft it; is that correct?

3 A. The 1040 I did but not the attachment.

4 Q. Oh, you filled out -- all right. So you filled out the 1040
5 on your own; right?

6 A. Correct.

7 Q. Okay. And then you attached the attachment; is that
8 correct?

9 A. Correct.

10 Q. Now, when you attached the attachment, did you believe every
11 paragraph in the attachment?

12 A. Absolutely.

13 Q. Well, if you believed every paragraph in the attachment but
14 wanted to write out the attachment on your own, wouldn't it have
15 taken you a long time to do it?

16 A. I would have never have attempted it.

17 Q. So it would have been easier for you to simply adopt the
18 sample attachment that was already prepared --

19 A. Correct.

20 Q. -- is that correct?

21 A. Yes.

22 Q. But you believed that, that became your attachment when you
23 filled in the dates and the amounts; is that correct?

24 A. Yeah. When I signed it, I made it mine.

25 Q. It was your attachment?

1 A. Correct.

2 Q. I didn't tell you to file it?

3 A. No.

4 Q. Now, the purchase order that you had -- you purchased an
5 Internal Revenue Code from us; is that correct?

6 A. Correct.

7 Q. When you purchased the Internal Revenue Code, were there
8 instruction -- you purchased a code that was tabbed: red tabs,
9 green tabs?

10 A. Yes.

11 Q. And, when you purchased the Code, there were instructions
12 that came along with it.

13 A. Correct.

14 MR. SCHIFF: Can I -- was this -- can I show him? I
15 wanna ask him if he recognizes it.

16 (Discussion among Mr. Schiff and Government
17 counsel.)

18 MR. SCHIFF: You can mark it. I don't think I have it
19 as an exhibit.

20 THE CLERK: This is 2114.

21 (Defendant Schiff's Exhibit No. 2114, marked
22 for identification.)

23 (Document handed to the Court.)

24 (Exhibit handed to the witness by the clerk.)

25

1 BY MR. SCHIFF:

2 Q. Do you recognize that document?

3 A. Yes, I do.

4 Q. Now, when you purchased a Code from Freedom Books, it came
5 with these tabs; is that correct?

6 A. Correct.

7 Q. Different colored tabs?

8 A. Correct.

9 Q. Red tabs, yellow tabs, green tabs -- and that document
10 explains what the tabs meant; is that correct?

11 A. Correct.

12 Q. Without reading the whole document, can you just read what
13 the red tabs mean?

14 MR. IGNALL: Objection, your Honor. The document's not
15 in evidence. I'm not sure what the relevance would be even if
16 it were offered.

17 MR. SCHIFF: Well, your Honor, it's as much relevant
18 than a building I couldn't purchase. This is directly relevant
19 to his understanding of the law. It's relevant to his
20 understanding.

21 THE COURT: Have you identified this as something you
22 received from Freedom Books?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 THE CLERK: Your Honor, this was already marked as

1 2108.

2 MR. SCHIFF: Oh, yeah. But -- oh, that's right. But
3 he couldn't read it or something. I didn't think it was in as
4 evidence.

5 THE CLERK: It's not in as evidence, but it was marked
6 as 2108.

7 THE COURT: Yeah.

8 MR. SCHIFF: Okay.

9 THE CLERK: So I'll just provide 2108 to --

10 MR. SCHIFF: Your Honor, I'm not gonna have him read
11 the whole document, just the first paragraph.

12 THE COURT: Let me see the document.

13 (Document handed to the Court.)

14 MR. NEIMAN: Mr. Schiff, can we see it again?

15 (Pause in the proceedings.)

16 THE COURT: Okay. Do you move for admission? You'll
17 have to answer out loud for the reporter.

18 MR. SCHIFF: Yeah, it's --

19 THE COURT: Do you move for admission?

20 MR. SCHIFF: I didn't hear what you said.

21 THE COURT: Do you move for admission --

22 MR. SCHIFF: Yeah, I move --

23 THE COURT: -- of the document?

24 MR. SCHIFF: -- for admission of the document.

25 MR. IGNALL: And, your Honor, we also would add a 403

1 objection to this that, insofar as it misstates the law, I think
2 it's potentially confusing when it comes to instructing the jury
3 about what the law accurately is. And, given its limited
4 relevance, we move for its exclusion under 403 as well.

5 THE COURT: Sustained. The objection is sustained on
6 both grounds.

7 MR. SCHIFF: Your Honor, could I just -- I -- I --
8 you're not allowing that document to go in?

9 THE COURT: I've ruled.

10 MR. SCHIFF: Pardon me?

11 THE COURT: I've ruled. The objection is sustained.

12 MR. SCHIFF: Can I have a sidebar on this?

13 THE COURT: Uh, at the break you may.

14 MR. SCHIFF: Well, we -- you're allowing all kinds of
15 documents --

16 THE COURT: No speeches.

17 MR. SCHIFF: -- that some -- some --

18 THE COURT: No speeches. No speeches.

19 MR. SCHIFF: He cannot read from that document?

20 THE COURT: It is a misstatement of the law, sir.

21 MR. SCHIFF: Well, then -- okay. Okay.

22 BY MR. SCHIFF:

23 Q. So, Bill, did you -- there are a number of statutes that are
24 earmarked here; is that correct?

25 A. Correct.

1 Q. Did you go through the Code book and analyze it?

2 A. Yes.

3 Q. Yes.

4 Now, I noted when you submitted your -- your zero
5 return -- can you read the first two lines of the zero return?

6 THE COURT: Of what? Of the zero return?

7 MR. SCHIFF: Yeah. It's already in. The Government
8 admitted it.

9 THE COURT: I just wanted to know which document you're
10 referring to.

11 MR. SCHIFF: It's Document 294.

12 THE COURT: All right.

13 THE WITNESS: Of the return or of the attachment?

14 BY MR. SCHIFF:

15 Q. The first two lines.

16 A. Of the attachment?

17 Q. Yeah.

18 A. "I, Bill Waller, am submitting this as part of my 1998
19 income tax return, even though I know that no section of the
20 Internal Revenue Code:

21 "[Number] 1) Establishes an income tax 'liability' as, for
22 example, Code Sections 4401, 5005, 5703 do with respect to
23 wagering, alcohol, and tobacco taxes."

24 Q. Mr. Waller, did you check Sections 4401, 5005, 5703?

25 A. Yes, I did.

1 Q. And what did you find when you checked those sections?

2 A. Those were mandatory taxes.

3 Q. I didn't hear your answer.

4 A. That those were mandatory taxes.

5 Q. Well, did you find that there was a liability expressed in
6 each of those statutes with respect to those three types of
7 taxes?

8 A. Yes.

9 MR. IGNALL: Objection, your Honor -- we'll object in a
10 moment -- but this opens the door on redirect to a much fuller
11 explanation of the law with this witness and his
12 misunderstanding or misconstruing of it. I don't know if
13 Mr. Schiff wants to go down that road.

14 MR. SCHIFF: That's okay. I can open the door as wide
15 as he wants. I'll take the door off if he wants. Okay.

16 BY MR. SCHIFF:

17 Q. So -- so you checked the law and you found that there was no
18 reference to a liability with respect to those three taxes; is
19 that correct?

20 A. Correct.

21 Q. Okay. Now, you just want to read the next two lines in
22 that? That's paragraph 2.

23 THE COURT: Well, your answer just contradicted your
24 previous answer, sir. I'm not sure you understood the question.

25 The question was: So you checked the law and found

1 that there was no reference to liability with respect to these
2 three taxes; is that correct?

3 THE WITNESS: Correct.

4 THE COURT: Your earlier answer said there was a
5 liability, a mandatory tax.

6 THE WITNESS: I misunderstood the question.

7 THE COURT: Are you confused about what the question
8 was?

9 THE WITNESS: Apparently.

10 THE COURT: Do you want to re-ask the question?

11 MR. SCHIFF: You mean on the first four lines or the
12 next lines? All right.

13 BY MR. SCHIFF:

14 Q. When you put down in this document that you found that there
15 was no reference to liability with respect to Code sections
16 4401, 5005, and 5703, did you check those three sections to see
17 whether or not there was a liability established with respect to
18 wagering, alcohol, and tobacco taxes? Did you check them?

19 A. Yes.

20 Q. And what did you find? Did you -- did you find that there
21 was a liability in the law with respect to those taxes?

22 A. Yes, I did.

23 Q. Okay. So as I understand you correctly -- but you couldn't
24 find such a liability when you checked the laws with respect to
25 income tax?

1 A. Correct.

2 Q. How did you determine that there was no liability in the
3 Code with respect to income tax? How did you make that
4 determination?

5 A. Because I looked it up --

6 MR. IGNALL: Objection --

7 THE WITNESS: -- in the index --

8 MR. IGNALL: -- your Honor.

9 THE WITNESS: -- under liabil- --

10 MR. IGNALL: Now we're going beyond the scope of what
11 his reliance was on Mr. Schiff's teachings.

12 MR. SCHIFF: The -- the Government put a document into
13 evidence. The Government tries to pretend that he just -- that
14 it was my document. He made certain statements on the document.
15 And I'm trying to determine how he -- why he made these
16 statements on the document.

17 The Government is free to cross-examine the witness and
18 show that his understanding was false. But I have a right to
19 cross-examine him on the document the Government introduced into
20 evidence and which the witness says is his document. He made
21 his document.

22 MR. IGNALL: Your Honor, may we request a sidebar? I
23 suspect that there may be some other opinions on this when it
24 comes to redirect that you might want to address now before we
25 continue the cross-examination.

1 THE COURT: We're going to take a recess. We've been
2 going an hour. We started late because of problems with
3 counsel. But we're going to -- we're going to take a recess
4 now. We'll address it outside the presence of the jury and the
5 witness.

6 We're in recess for 15 minutes.

7 (Jury leaves the courtroom at 10:36 a.m.)

8 THE COURT: Okay. Mr. Weller -- Waller, step out.

9 (Witness leaves the courtroom.)

10 THE COURT: Okay.

11 MR. IGNALL: Your Honor --

12 THE COURT: Yes.

13 MR. IGNALL: -- if I may briefly, I think the only
14 relevance to this document really is that he got it from Freedom
15 Books and, because of his reliance on what he got from Freedom
16 Books, he sent this in. It is erroneous as a matter of law.
17 And we can address that with the Court and the Court can address
18 the jury on that.

19 Mr. Schiff wants to go into why he did this. I don't
20 know what the exact relevance of this, if he's saying he did his
21 own research. But I believe that opens the door to the
22 Government on redirect going through with whatever paragraphs we
23 want to and introducing what the law accurately is. I think
24 that's perfectly appropriate, and we're perfectly happy to
25 introduce that law.

1 My concern is that Mr. Schiff has said he doesn't care
2 if we do that. But I think it's important that the Government
3 not be hamstrung on that if Mr. Bowers and Mr. Cristalli would
4 to be that on redirect [sic]. So I think we need to address
5 that before we reach some sort of a tacit understanding with
6 Mr. Schiff that we're not gonna object any further to this line
7 of inquiry.

8 MR. SCHIFF: My -- my -- I'm perfectly willing for the
9 Government to introduce as much law as they want. But, second,
10 he made a misstatement here. He said he relied on this
11 document.

12 Mr. Waller has already stated that he did his own
13 research; he didn't rely on this document. And the Government
14 throughout this trial is trying to -- is trying to, uh,
15 represent to the jury that people took these documents, signed
16 their names, and relied solely on the document. Mr. Waller will
17 testify that he went to the Code, he checked it out.

18 THE COURT: He has already done that --

19 MR. SCHIFF: So all right. So the Government
20 misstated --

21 THE COURT: -- several times. He's already done that
22 several times. It's up to the jury whether they believe him or
23 not and to also decide how much reliance they place on this
24 document because he also said he -- he adopted your document
25 because he wouldn't even have attempted to put such a thing

1 together.

2 MR. SCHIFF: But -- but he said --

3 THE COURT: So it's a jury question as to what reliance
4 he placed on his own research and what he placed on yours. You
5 have asked the question. It has been answered. And you want
6 to -- you want to continue to beat it and beat it and beat it.
7 And --

8 MR. SCHIFF: No. But the Government --

9 THE COURT: -- it's been asked and answered.

10 MR. SCHIFF: But the Government --

11 THE COURT: I know you don't object. I wanna hear from
12 other counsel.

13 MR. SCHIFF: No. But I just want to say: But the
14 Government has just misstated again. You're right. I agree
15 with you. That's what he said. But, in his objection, the
16 Government simply changed what the defendant said.

17 THE COURT: I heard what they said --

18 MR. SCHIFF: Okay.

19 THE COURT: -- and it wasn't inaccurate.

20 MR. SCHIFF: Okay.

21 THE COURT: Mr. Cristalli.

22 MR. CRISTALLI: Um, your Honor, with regard to
23 Mr. Ignall's position with regard to what he would have to do in
24 terms of the law, I mean, my only -- my problem is I think the
25 law's already come in. The law's come in in the order that was

1 executed by your Honor that was just admitted, I believe, in
2 contrary to a previous order that was made by this particular
3 court on an almost identical order. Be that --

4 THE COURT: No, that's not right.

5 MR. CRISTALLI: It may not be. That's my --

6 THE COURT: I don't think the Government tried to move
7 another order in.

8 MR. IGNALL: Your Honor, just to be clear --

9 MR. CRISTALLI: That's my recollection.

10 MR. IGNALL: -- we didn't because there was no
11 foundation that any of the defendants had gotten notice of that
12 order.

13 THE COURT: That's right. That's why it didn't come in
14 and --

15 MR. CRISTALLI: I'm just -- I am --

16 THE COURT: It wasn't moved in.

17 MR. CRISTALLI: I'm just -- that's my recollection of
18 the evidence. My recollection --

19 THE COURT: It's incorrect.

20 MR. CRISTALLI: Well, my recollection may be incorrect
21 and may not be incorrect. I'm not quite sure.

22 THE COURT: Okay.

23 MR. CRISTALLI: But, in addition to that, um, there has
24 been -- I have never objected, I don't think, during the course
25 of the Government's direct examination about an examination on

1 the law. It came through Internal -- Internal Revenue agents;
2 it came through a source of other testimony as well.

3 Um, my -- and I've been up there and I've been cut off.
4 My biggest concern was to get into some of these areas just in
5 an effort to demonstrate that there is -- there's a reliance
6 base. You have to -- you have to be able in the course of this
7 defense to establish a reliance base.

8 The reliance base is the, um -- the Internal Revenue
9 Code, or the lack of language therein; the, uh, case law; uh,
10 and whatever other base may exist. It's not whether or not that
11 base is -- is -- is -- is -- is a legal base or -- or not a --
12 not a legal base. That's not the question.

13 THE COURT: So --

14 MR. CRISTALLI: It's whether or not there was a
15 reliance on --

16 THE COURT: So, shortening it up because you're taking
17 up the 15-minute break, you don't object to it coming in. You
18 don't object to the questions that Mr. Schiff is answering [sic]
19 and his --

20 MR. CRISTALLI: Well, I think it all should be limited
21 to -- I've been limited, so I think the Government should be
22 limited. I have been limited.

23 THE COURT: What is your position?

24 MR. CRISTALLI: My position is --

25 THE COURT: State it succinctly.

1 MR. CRISTALLI: I think I have said it succinctly and I
2 don't think I've taken up 15 minutes with all due --

3 THE COURT: No --

4 MR. CRISTALLI: -- respect --

5 THE COURT: -- I didn't say you have.

6 MR. CRISTALLI: -- to this Court. And I have a job to
7 do with regard to representing my client.

8 THE COURT: I understand that. But I'm just telling
9 you we're not going to be in recess a half hour. I'd like you
10 to --

11 MR. CRISTALLI: I think --

12 THE COURT: -- succinctly state what --

13 MR. CRISTALLI: -- I think --

14 THE COURT: -- your position is.

15 MR. CRISTALLI: -- I think am succinct and I think I
16 was very clear. And I have to represent my clients to the
17 best -- my client to the best of my ability and that's what I'm
18 trying to do here.

19 THE COURT: I'm trying to get your position,
20 Mr. Cristalli, and I don't think I've heard it yet.

21 Do you object to the questions coming in or not?

22 MR. CRISTALLI: I can't at this -- this is -- we're in
23 the eleventh hour of the trial. We've already been precluded
24 from doing it at --

25 THE COURT: Do you object or not?

1 MR. CRISTALLI: -- this particular time.

2 Object to what? I don't understand what I'm objecting
3 to.

4 THE COURT: We just had a request for a sidebar --

5 MR. CRISTALLI: Right.

6 THE COURT: -- because the Government objected to
7 Mr. Schiff going into these questions. Do you object to it or
8 not?

9 MR. CRISTALLI: I don't -- I mean, object in exchange
10 for what? A whole -- we're gonna have -- what are we gonna do
11 in response to this? That's my concern.

12 THE COURT: Well, if he goes into his understanding of
13 the law, uh, which Mr. Schiff is attempting to bring out, then
14 the Government is going to redirect on the -- the law.

15 MR. BOWERS: Judge --

16 THE COURT: Mr. Bowers, go ahead.

17 MR. BOWERS: -- I can brief this. And, for the record,
18 I don't believe that myself or any of us has ever objected to
19 the Government asking any witness any question about the law. I
20 believe our objection has come from having any statements to the
21 law or -- or questioning the law by the Court. So, at this
22 point in time, I don't know where we're headed. But I don't
23 object -- the Government should be able to ask any witness
24 anything they want about any law. In response, we should be
25 able to ask any witness anything we want about any law.

1 THE COURT: Well --

2 MR. BOWERS: So I don't have an objection to that.

3 THE COURT: It's the other way around. It's the other
4 way around with this particular witness. It is not the defense
5 that is -- that is following up after the Government. It is
6 the -- it's the defense that is asking the initial questions
7 about what the law is.

8 So I'm -- you know, given the fact that, uh, you don't
9 object, Mr. Schiff doesn't object, Mr. Cristalli I still don't
10 know what his position is, I'm going to allow the -- allow the
11 questioning to go on with the --

12 MR. BOWERS: Well, let me --

13 THE COURT: -- understanding that --

14 MR. BOWERS: Your Honor let me add one thing just so
15 we're clear, I -- I don't object to the Government asking the
16 question if we have equal reign but I do object to this
17 threatened instruction that's floating around out there. So if
18 this -- if this opens the door to that, then I don't know.
19 Maybe I object to it. But --

20 MR. CRISTALLI: Well, I --

21 MR. BOWERS: -- that instruction I don't want.

22 MR. CRISTALLI: That is correct.

23 MR. BOWERS: The questioning I'm not afraid of.

24 MR. CRISTALLI: And that's my position. If the Court
25 is going to take the initiative to instruct this jury prior to

1 them getting the case, then I would object to any further injury
2 with regard to that. Thank you.

3 MR. IGNALL: Your Honor, after hearing the objections,
4 I think I'd like to reconsider my position. Maybe I'd like to
5 reiterate: We'd simply have an objection to this. We don't
6 want to get into anything that's going to confuse the jury and
7 then try and clarify it later, that the only relevance to this
8 line of inquiry is what did Mr. Waller do -- or what did he get
9 from Freedom Books. If he did his own independent research,
10 Mr. Schiff has already asked that. And, if that's why he filed
11 the return, then that's fine.

12 But going into the details of this, uh, attachment
13 right now with this witness I don't think advances the ball in
14 any way in terms of what these defendants did and what these
15 defendants knew. And, therefore, in the interest of keeping
16 this record as clean as possible, I'm gonna renew our objection
17 to going into the details of what Mr. Waller tried to learn on
18 his own and limit it only to what Mr. Schiff, Ms. Neun, uh,
19 Mr. Cohen or anyone else at Freedom Books told him; advised him;
20 or what he told or advised them.

21 MR. SCHIFF: No, no, no.

22 Can I respond to that last Government statement?

23 THE COURT: No.

24 MR. SCHIFF: This is a Government's witness. It's a
25 document the Government --

1 THE COURT: I've already heard -- I've already heard
2 this. Don't --

3 MR. SCHIFF: All right.

4 THE COURT: -- don't --

5 MR. SCHIFF: All right.

6 THE COURT: -- repeat --

7 MR. SCHIFF: All right.

8 THE COURT: -- yourself.

9 MR. SCHIFF: All right.

10 THE COURT: You've given me nothing new.

11 MR. BOWERS: Judge, I don't want to waste your time,
12 but I'd like to respond directly to what Mr. Ignall just said.

13 MR. SCHIFF: I just want --

14 MR. BOWERS: He just changed --

15 MR. SCHIFF: -- to say --

16 MR. BOWERS: Irwin, please.

17 He seems to have changed his position to suggest that
18 now this witness should -- is only being offered and should only
19 be able to talk about what he knew or heard from Freedom Books.
20 Unfortunately, his actions are offered in furtherance of the
21 conspiracy in 2001.

22 He acknowledges being exposed to Freedom Books between
23 '97 and 2001 where he goes out and he does all kinds of other
24 things. So there's four or five years where this man's exposed
25 to the cause, for lack of a better phrase, of nontraditional

1 taxation. Mr. Schiff's cross-examination to find out what
2 exactly motivated him as to Freedom Books and what actions
3 occurred as a result of motivations from other places I believe
4 is completely appropriate without having to incur this
5 instruction the Government keeps requesting. Thank you.

6 MR. SCHIFF: One other thing I would say. He says I'm
7 trying to confuse the jury. It's my position the Government's
8 trying to confuse the jury and is objecting because I'm gonna
9 unconfuse the jury. But, if his understanding of the law is
10 incorrect, the Government can cross-examine him and show him why
11 his understanding is incorrect.

12 But how can the -- the Government is putting one
13 document after another in from Freedom Books. But, when I
14 cross-examine somebody on one of these documents, they don't
15 like it. Cross-examine him on everything he says. Make sure he
16 doesn't confuse the jury. They are using this
17 confusing-the-jury argument to prevent me from getting the truth
18 to the jury.

19 THE COURT: You're -- Mr. Schiff, your idea of -- of
20 the law has already been found, uh, not meritorious by this
21 Court and by all of the courts that have considered it. That's
22 the bottom line.

23 MR. SCHIFF: I don't agree with that statement, your
24 Honor.

25 THE COURT: I know you don't agree with it. That's too

1 bad.

2 MR. SCHIFF: Well, I don't agree with it.

3 THE COURT: That is the law. That is the law of this
4 country. Whether you like it or not, that is the law.

5 MR. SCHIFF: I will take the stand in this trial and
6 say -- and I will testify as to my understanding of the law and
7 the Government can show me why my understanding is incorrect.
8 That's okay.

9 But here is a Government witness saying that he adopted
10 this, it's his document. And I'm trying to find out why he put
11 certain statements on this document. And a lot of it was based
12 on his independent research.

13 THE COURT: You've already elicited that from him.

14 MR. SCHIFF: Okay. I've got a few more questions on
15 this which is gonna establish that it's his document and his
16 research and the Government doesn't wanna show me that he --

17 THE COURT: You have --

18 MR. SCHIFF: -- got to that --

19 THE COURT: -- you have already --

20 MR. SCHIFF: -- conclusion on his own.

21 THE COURT: -- done that, sir.

22 MR. SCHIFF: All right.

23 THE COURT: And what you want to do is you want to put
24 the -- your version of the law before the jury. And, as I have
25 told you already, this Court will decide what is the law. The

1 Court has already decided --

2 MR. SCHIFF: Well, here's the --

3 THE COURT: -- what the law is.

4 MR. SCHIFF: -- Code book. I'll -- it's -- let the
5 jury look at the law itself. I'll -- here it is. Here's the
6 law. I'll -- I'll give each juror a Code book on his own so he
7 can look at the law himself. Do you want --

8 THE COURT: The Court --

9 MR. SCHIFF: Me to bring in --

10 THE COURT: -- instructs the jury as to what the law
11 is.

12 MR. SCHIFF: I agree with you.

13 THE COURT: They don't try to figure it out for
14 themselves. The Court instructs the jury --

15 MR. SCHIFF: All right.

16 THE COURT: -- what the law is.

17 MR. SCHIFF: I have no problem with that.

18 But what I'm trying to establish here, your Honor, is
19 that this Government witness -- why do I sell a Code book?
20 Don't you understand, your Honor? The Government is trying to
21 prove that I tell people what to do and they do it. I sell more
22 Codes than anybody in the country. You can call up Research
23 Institute of America. I 'em buy 500 at a clip. I say, "Don't
24 take my word for it. Check it out." That's what he did.

25 Now, I should have a right --

1 THE COURT: All of this is before the jury. The jury
2 knows by now that you have marked the Code, that they are
3 following your blueprint of how to read the Code and what -- how
4 to interpret it. That's all before the jury. And they can make
5 up their minds how much they relied on their own research and
6 how much they relied on what you provided.

7 MR. SCHIFF: Well, let him testify on how much he
8 relied on his own --

9 THE COURT: He already has done that.

10 MR. SCHIFF: All right. So you're gonna -- you're
11 gonna let me question him about --

12 THE COURT: No, I'm not.

13 MR. SCHIFF: Huh?

14 THE COURT: No, I'm not because the question has
15 already been asked and answered.

16 MR. SCHIFF: I -- well, there are other statements on
17 his return.

18 THE COURT: This, uh -- if you're referring to the
19 attachment that he adopted --

20 MR. SCHIFF: No.

21 THE COURT: -- from you, those are false statements --

22 MR. SCHIFF: Your Honor --

23 THE COURT: -- of the law.

24 MR. SCHIFF: -- your Honor, I must object. You are
25 trying in conspiracy with the Government -- and what I want the

1 record to reflect this -- you are trying to get me convicted.
2 Uh, apparently you -- you said earlier that this is a
3 adversarial proceeding. It's obviously not. You're my
4 adversary as well as the Government.

5 THE COURT: Well, when you state --

6 MR. SCHIFF: And you're not being neutral.

7 THE COURT: When you --

8 MR. SCHIFF: I wanted the record --

9 THE COURT: -- try to get in --

10 MR. SCHIFF: -- to reflect --

11 THE COURT: -- incorrect statements of the law --

12 MR. SCHIFF: Well, then if he misstates --

13 THE COURT: I'm going to respond to you, sir.

14 And your statements of the law have been found
15 frivolous and, uh, unmeritorious by all of the courts that have
16 considered them. You pick and choose phrases, you've excerpted
17 statements, and you make statements about cases that are not
18 supported.

19 MR. SCHIFF: But anybody can get the case and read it
20 on their own. I can't reproduce every case in full in a book.

21 In The Great Income Tax Hoax, in The Federal Mafia, I
22 cite no less than a hundred court decision. Do you suggest that
23 I print --

24 THE COURT: Yeah. I'm suggesting you excerpted and
25 that you cobbled together something that is not recognized as

1 valid by any court in this country.

2 We are in recess. I'm not going to argue the law with
3 you. That is --

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

5 THE COURT: -- that is legal garbage that you have in
6 your hand. Legal garbage.

7 MR. SCHIFF: These hundred cases are legal garbage?

8 THE COURT: The way you've used them they are.

9 MR. SCHIFF: The Pollock case is legal garbage?

10 THE COURT: You have salvaged and cobbled things out of
11 them out of context. I have ruled, the courts of this country
12 have ruled. You just don't wanna hear it.

13 MR. SCHIFF: The Pollock case is shepardized. It's
14 never been overturned. The Pollock case says that --

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: -- shepardize --

17 THE COURT: Mr. Schiff --

18 MR. SCHIFF: -- the Pollock case.

19 THE COURT: Mr. Schiff, you have cited those cases for
20 things that are not really the holdings; they are dicta. They
21 have nothing to do with the issues in this case. You've done
22 that over and over again. You've made a career out of it. I am
23 not going to allow you to make false statements about the law to
24 the jury. That is it.

25 (Recess from 10:52 a.m. to 11:06 a.m.)

1 THE CLERK: All rise.

2 THE COURT: Ms. Clerk, will you bring in the jury?

3 THE CLERK: Yes.

4 (Pause in the proceedings.)

5 (Mr. Waller resumes the witness stand.)

6 (Jury enters the courtroom at 11:07 a.m.)

7 THE COURT: Please be seated.

8 Will counsel stipulate to the presence of the jury?

9 MR. IGNALL: Yes, your Honor.

10 MR. CRISTALLI: Yes, your Honor.

11 MR. BOWERS: Yes, your Honor.

12 THE COURT: Go ahead.

13 BY MR. SCHIFF:

14 Q. Um, Mr. Waller, did you stop paying income taxes because of
15 what you read in The Federal Mafia?

16 A. No.

17 Q. You didn't stop paying income taxes.

18 What -- so what did you -- what caused you to stop
19 paying income taxes?

20 A. Uh, upon my own research, I was not able to find any law
21 that made me liable to pay the tax.

22 Q. Did you find any law that said you had to keep books and
23 records for income tax purposes?

24 A. No.

25 Q. Did you find any law that even gave the IRS any authority to

1 collect a tax?

2 A. No.

3 Q. Did you find a definition of income in the Internal Revenue
4 Code?

5 A. No.

6 Q. Did you read this book?

7 A. Not all of it.

8 Q. All right. Did you -- did you do any independent research
9 other than what you found in my -- did you go to a law library?

10 A. I did most of my research on line.

11 Q. So did you use your online research to -- to verify or help
12 your state of mind with respect to whether or not you owed
13 income taxes?

14 A. Yes.

15 Q. So, as I understand you're saying, your approach to income
16 tax was based on your own research?

17 A. Correct.

18 Q. But my -- but my books stimulated that research, as I
19 understand?

20 A. Correct.

21 Q. Before you stopped paying income taxes, how many years would
22 you say you paid income taxes?

23 A. I would probably have to say -- well, I stopped -- last time
24 I paid was 1997.

25 Q. Would you -- well, approximately how many years did you pay

1 income taxes?

2 A. 20 years.

3 Q. Before -- while you were paying income taxes, did you ever
4 look into the law to see if you had to pay income taxes?

5 A. No. I assumed it was --

6 MR. IGNALL: Objection. Relevance.

7 THE WITNESS: I'm sorry?

8 THE COURT: What is the relevance?

9 MR. SCHIFF: Pardon me?

10 THE COURT: What is the relevance?

11 BY MR. SCHIFF:

12 Q. Well, who told you --

13 THE COURT: Sustained.

14 BY MR. SCHIFF:

15 Q. Before you read my book, who told you you had to pay income
16 taxes?

17 A. I just thought you had to pay.

18 Q. Pardon me?

19 A. I just thought you had to pay.

20 Q. You just thought you had to pay?

21 A. Correct.

22 Q. So, when you first read my books, did your thoughts change?

23 A. Yes.

24 Q. All right. It triggered an interest in whether or not you
25 had to pay; is that correct?

1 A. Correct.

2 Q. And my book cited statutes and court decisions.

3 A. Correct.

4 Q. And these stimulated your interest to do additional
5 research?

6 MR. IGNALL: Objection. Asked and answered.

7 THE COURT: Sustained.

8 MR. SCHIFF: Okay.

9 BY MR. SCHIFF:

10 Q. Now -- now, let me see the Government documents.

11 So -- now, the -- the Government sent you a document
12 that your return was frivolous; is that correct?

13 A. Correct.

14 Q. The Government introduced 295.

15 Did you consider the doc- -- did you consider the
16 return you filed as being frivolous?

17 MR. IGNALL: Objection. Relevance.

18 MR. SCHIFF: Pardon me?

19 THE COURT: What is the relevance?

20 MR. SCHIFF: I -- I...

21 BY MR. SCHIFF:

22 Q. Did -- did --

23 MR. SCHIFF: It's relevant. He got the document. He
24 got -- I'm trying to understand what he believed this to be, not
25 what the Government believed it to be.

1 MR. IGNALL: Objection, your Honor. The relevance of
2 that document is notice to the defendants when this witness
3 brings it to Freedom Books.

4 THE COURT: Sustained.

5 BY MR. SCHIFF:

6 Q. Okay. When you looked at this document, when you looked at
7 this letter that you got from the Government calling your return
8 frivolous, what was your reaction?

9 A. I kind of expected it. I figured it was typical.

10 Q. Well, what was your reaction to the document?

11 THE COURT: He just told you --

12 MR. IGNALL: Objection. Relevance.

13 THE COURT: Asked and answered.

14 MR. SCHIFF: All right.

15 THE COURT: Sustained.

16 THE WITNESS: It was just proof to me that the IRS
17 doesn't obey the law.

18 BY MR. SCHIFF:

19 Q. In other words --

20 MR. IGNALL: Objection. Move to strike.

21 BY MR. SCHIFF:

22 Q. All right. In --

23 THE COURT: Strike. Sustained.

24 BY MR. SCHIFF:

25 Q. In response --

1 THE COURT: Strike.

2 MR. SCHIFF: What?

3 THE COURT: Sustained.

4 MR. SCHIFF: Okay.

5 THE COURT: Strike.

6 MR. SCHIFF: Okay.

7 BY MR. SCHIFF:

8 Q. In this letter to you about your zero return, did the
9 Government answer any of the questions raised in your zero
10 return?

11 A. No.

12 Q. No.

13 Did you bring this return in to see -- did I discuss
14 this with you?

15 A. Yes.

16 Q. Do you recall what I told you about this response?

17 A. Vaguely. It was seven years ago.

18 Q. Okay. Did you believe -- now, you could have answered this
19 letter yourself, is that correct, if you had to?

20 A. If I had to, yes.

21 Q. But I showed you -- since this was a standard government
22 response, I showed you a letter that we used in response to this
23 response; is that correct?

24 A. Correct.

25 Q. And, when you read our standard response, did you agree

1 with -- with everything in our standard response?

2 A. Well, I researched it. And then, after I studied for
3 myself, then I accepted it and agreed to it.

4 Q. You agreed with it.

5 A. Correct.

6 Q. And did you conclude that it was easier to send in our
7 response than to start from scratch and write your own?

8 A. Absolutely.

9 Q. Okay. So it was just easier for you to do it?

10 A. Correct.

11 Q. But you agreed with everything in the response?

12 A. Correct.

13 MR. IGNALL: Objection. Asked and answered.

14 THE COURT: Sustained.

15 MR. SCHIFF: Okay.

16 BY MR. SCHIFF:

17 Q. Now, the Government kept asking you how much you paid for
18 various items you got from Freedom Books. Did you ever consider
19 that you overpaid for anything?

20 A. No.

21 Q. Did you ever find anything you got from Freedom Books -- did
22 you ever have a sentence, a line in any of my books -- that you
23 didn't agree with?

24 A. No.

25 Q. You never found a statement that you thought promoted

1 violations of law?

2 A. No.

3 Q. Did I ever give you any indication that I didn't agree with
4 the material in my books?

5 A. No.

6 Q. Okay. Uh, did you think the information you were getting
7 from Freedom Books was a bargain, as a matter of fact?

8 A. Absolutely.

9 MR. IGNALL: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MR. SCHIFF:

12 Q. Now, we've heard a lot of talk about this collection due
13 process hearing that you went to and -- which generated your
14 lawsuit. And you recall -- did you recall getting this book?

15 A. Yes.

16 MR. SCHIFF: I would like to put this book into
17 evidence.

18 MR. IGNALL: Objection. Relevance.

19 THE COURT: Sustained.

20 MR. SCHIFF: The relevance is that this explains --
21 well, I want to ask him to read a page from it.

22 THE COURT: Sustained.

23 MR. SCHIFF: Your Honor, this explains why the due
24 process hearings were created by Congress. All right.

25

1 BY MR. SCHIFF:

2 Q. Do you happen to recall from this book and other books why
3 Congress in 1998 established the collection due process
4 hearings?

5 MR. IGNALL: Objection. Relevance to this witness's
6 testimony.

7 THE COURT: Sustained.

8 BY MR. SCHIFF:

9 Q. When you requested your collection due process hearing, did
10 you request that the Appeals officer have certain documents at
11 that hearing?

12 A. Yes.

13 Q. Did you believe that you had a right under the law to
14 request those documents?

15 A. Yes.

16 Q. What were some of the documents you requested, as you
17 recall?

18 A. Verification from the Secretary that all laws and applicable
19 procedures had met been.

20 Q. Well, hold on a second.

21 Why did you think that you could ask for such a
22 statement?

23 A. Because it's in the law. 63330 says --

24 Q. The law says --

25 A. -- that at the hearing the Appeals officer shall obtain

1 verification from the Secretary of the Treasury that all laws
2 and applicable procedures had been met.

3 Q. Now, what was your collection due process hearing about?
4 Was it about a tax or penalty? What?

5 A. It was over the penalty.

6 Q. Penalty.

7 Did your collection due process hearing make a request
8 with respect to the penalty?

9 A. Um, I don't understand the question.

10 Q. Well, did you request a copy of the document imposing the
11 penalty?

12 A. Oh, yes, I did.

13 Q. Did you believe you had a right to see such a document?

14 A. Yes. That's in the law.

15 Q. Okay. So you asked for verification -- what else did you
16 ask for?

17 A. Uh, I asked for verification from the Secretary; the
18 document imposing the penalty with the two signatures from the
19 superior; uh, challenging the underlying tax liability.

20 Q. Did you believe you had a right to challenge the underlying
21 tax liability?

22 A. That's what the law said, yes.

23 Q. So your understanding that that was in the law?

24 A. Correct.

25 Q. What else did you ask for?

1 A. Um, uh, a copy of the Notice and Demand.

2 Q. Copy of the Notice and Demand. Why was that important?

3 A. Well --

4 MR. IGNALL: Objection. He can testify what he did at
5 the collection due process hearing. I'm not sure what the
6 relevance of why is.

7 MR. SCHIFF: Well, I can ask him why he thought it's
8 important.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. Okay. So -- so you asked for a copy of the Notice and
12 Demand, copy of the document imposing the penalty, verification
13 of the liability, and verification from the Secretary. Is that
14 correct?

15 A. Correct.

16 Q. When you got to the collection due process hearing, did the
17 Appeals officer provide you with any of those documents?

18 A. No, he did not.

19 Q. He didn't?

20 A. No.

21 Q. Not -- not one?

22 A. Nothing.

23 Q. Nothing.

24 So, even though he didn't provide you with any of the
25 documents that you understood the law provided, he still made an

1 adverse determination?

2 A. Correct.

3 Q. Which means what? What's an adverse determination?

4 A. That they were moving for --

5 Q. Sei- --

6 A. -- seizure of property.

7 Q. How much was involved here?

8 A. \$500.

9 Q. So this was a \$500 penalty and you were trying to determine
10 whether the penalty was imposed legally.

11 A. Correct.

12 Q. And he couldn't give you one document to justify that it was
13 imposed legally?

14 A. Correct.

15 Q. Okay. So when you came and you showed me the adverse
16 determination, what did I say?

17 A. I don't recall. Just said it was --

18 Q. What would I -- okay. You don't recall.

19 Did I suggest you have a right to appeal -- or what did
20 you think of the determination when you saw it yourself?

21 A. The adverse determination?

22 Q. Yeah -- no -- yeah, the adverse determination.

23 A. Well, I -- I couldn't believe I got one. For one, the
24 Appeals officer didn't, uh, obtain anything that I had requested
25 in advance which the law allowed me to request.

1 Q. So it was your own belief before you even talked to me that
2 the adverse determination was totally off the wall; is that
3 right?

4 A. Correct.

5 Q. So, when you -- when you came to see me, you already made up
6 your mind.

7 A. Correct.

8 Q. Is that correct?

9 A. True.

10 Q. But you wanted to appraise me of what had happened?

11 A. Correct.

12 Q. And I agreed with you; isn't that correct?

13 A. Yes.

14 Q. And I told you you can appeal it because the -- did the law
15 allow you to make an appeal?

16 A. Yes, it did.

17 Q. And did you appeal?

18 A. Yes.

19 Q. As a matter of fact, a copy of that appeal is in here; is
20 that correct?

21 A. Yes.

22 Q. And what did you allege in your appeal?

23 A. Just all the items that were -- all the issues at fact that
24 were never addressed. They just skipped over everything.

25 Q. Well, it's been introduced into evidence --

1 THE COURT: He has t in front of him.

2 MR. SCHIFF: So you have a copy.

3 THE WITNESS: What exhibit?

4 BY MR. SCHIFF:

5 Q. I don't know if it's easy for you to indicate -- oh,
6 incidentally, the Government made a big deal about --

7 THE COURT: No speeches.

8 MR. SCHIFF: I'm sorry.

9 THE COURT: Ask him a question.

10 BY MR. SCHIFF:

11 Q. The Government stated that we prepared this appeal for you;
12 is that correct?

13 A. Correct.

14 Q. Could you -- could you have prepared it on your own?

15 A. Um, no.

16 Q. If you believed [sic] every paragraph, how long might it
17 have taken you to prepare this appeal?

18 A. I don't know. Probably 30 days or better.

19 Q. Well, how much time did you have to make your appeal?

20 A. 30 days.

21 Q. You had to get it in in 30 days.

22 Could you ever have gotten your own appeal in within 30
23 days?

24 A. No way.

25 Q. No way.

1 So either we prepared the appeal for you or you
2 wouldn't have appealed. Is that a fair statement?

3 A. Correct.

4 Q. Okay. And -- and I think you testified that Freedom Books
5 charged you a hundred dollars for the appeal.

6 A. I believe so.

7 Q. Did you think that was a fair --

8 A. That's more than fair.

9 Q. More than fair.

10 You had to explain to the person at Freedom Books what
11 occurred at your collection due process hearing so we could
12 prepare the appeal; is that correct?

13 A. Well, I had a transcript of the hearing.

14 Q. Oh, I see. You had a transcript.

15 Now, do you recall the issues that you raised in this
16 appeal?

17 A. For the most part, yes.

18 Q. Well, just look through it.

19 A. (Reviewing document.) Okay.

20 Q. Do you see the issues? Huh?

21 A. Yes.

22 Q. So, in the appeal, you raised those issues and claimed that
23 you were not given the documents that you believed the law
24 required you?

25 A. Correct.

1 Q. And in your appeal you stated -- I don't -- that you did not
2 receive even one document.

3 A. Not one.

4 Q. Not one.

5 In the courts -- in the, uh -- in the -- in the -- in
6 the -- I think the Government said that it was a frivolous
7 appeal and that you could be sanctioned for raising it? Was
8 that -- oh, oh. A claim for damages --

9 MR. IGNALL: Objection, your Honor. I think Mr. Schiff
10 is referring to the court's order --

11 MR. SCHIFF: Yeah, I don't --

12 MR. IGNALL: -- not that the Government said it.

13 MR. SCHIFF: Was the court's order in there?

14 MR. IGNALL: Exhibit 299 is the court's order.

15 THE COURT: Sustained.

16 MR. SCHIFF: 299. Oh, I don't have it. All right.

17 Here it is.

18 BY MR. SCHIFF:

19 Q. So -- so, in your understanding, did you believe that your
20 appeal was totally justified? In your understanding.

21 A. Yes.

22 Q. Did you believe it was frivolous in any way?

23 A. No.

24 Q. So, when the court threatened you with sanctions -- oh. Uh,
25 the, uh, court's order claimed that your appeal was meritless;

1 is that right? I think it's shown on page 5.

2 A. Correct.

3 Q. The fact that the IRS didn't give you one document, you --
4 you think it was meritless?

5 A. No.

6 Q. So what was your opinion of the court's order?

7 A. Well, I -- I felt the court order was, uh -- I felt it was
8 off base.

9 Just to give you an example, in the order itself, on,
10 um, page 3 at the very bottom, item No. 3 says, the Appeals
11 officer -- the law says in 6330 that, uh, the Appeals officer
12 shall obtain verification from the Secretary that all laws and
13 procedures had been met. In the order, it was misquoted and it
14 said that the Appeals office obtain verification from the IRS
15 that the requirements of any applicable law or administrative
16 procedures have been met. And that's not -- that's not what
17 6330 states.

18 Q. So was it your opinion that the court misstated the law?

19 A. Correct.

20 Q. So this Court's order didn't alter your understanding or
21 your belief in the validity of your appeal at all, did it?

22 A. No, not at all.

23 Q. Did it seek to affirm some of the things -- some of the
24 things you had concluded before you made the appeal?

25 A. Yes.

1 Q. What had you concluded before you --

2 A. Well, I was shocked when I got the order because I figured
3 for, one, to even get an adverse determination when the Appeals
4 officer -- it was almost like a formality. There wasn't any --
5 it was almost like a foregone conclusion. They knew where they
6 were goin' with this even though they violated my rights, they
7 violated the law. But I thought on appeal, when it got to the
8 court level, that it might be rectified.

9 And I was kinda shocked when the order that I got just
10 basically lambasted me and said it was frivolous. But, you
11 know, again, "frivolous" means "without merit." But the appeal
12 itself had, you know, 30 legal references; uh, Supreme Court
13 cases. Everything -- it was -- it was kind of shocking.

14 Q. So you got no relief from the court?

15 A. No, none.

16 Q. Now, did you go on and do additional research on the IRS's
17 authority to collect income taxes from you?

18 MR. IGNALL: Objection, your Honor. Seems to be
19 outside the scope of what may or not [sic] be related to the
20 conduct of defendants.

21 BY MR. SCHIFF:

22 Q. Did you -- all right. Did you pay to have --

23 THE COURT: Sustained.

24 MR. SCHIFF: Oh.

25 THE COURT: Sustained.

1 BY MR. SCHIFF:

2 Q. All right. Did you pay for your master file decoded?

3 A. Yes, I did.

4 MR. IGNALL: Objection. Relevance.

5 THE COURT: What is the relevance?

6 MR. SCHIFF: Pardon me?

7 THE COURT: What is the relevance?

8 MR. SCHIFF: Well, the relevance is I think -- I
9 believe he said he's not paying income taxes and I believe that
10 the reason is more than just what he read in my books. And I
11 think I have a right to put into evidence before the jury the
12 additional research and additional expenses that Mr. Waller --

13 THE COURT: No, no, you don't because the Court has
14 already ruled on what the law is in this case.

15 MR. SCHIFF: Well --

16 THE COURT: And that's what you're attempting to do
17 is -- is put in something other than the reason for his
18 testimony, which was notice to you. So the objection's
19 sustained.

20 MR. SCHIFF: Your Honor, this has nothing --

21 THE COURT: Sustained.

22 MR. SCHIFF: -- to do with what the law is.

23 THE COURT: Sustained.

24 BY MR. SCHIFF:

25 Q. Now, you've already testified, Mr. Waller -- oh. Did you

1 continue to file zero returns? I think the return in evidence
2 is a 1998 zero return. Did you file a zero return in 1999?

3 A. No. I filed a zero return for '98 and I haven't filed
4 since.

5 Q. You haven't filed since?

6 A. Correct.

7 Q. Which is contrary to the recommendations of my book that you
8 file a zero return.

9 A. Correct.

10 Q. Why did you stop filing altogether?

11 A. Uh, again, it comes down to the liability of filing the
12 income tax. In seven years of correspondence, I have not been
13 able to get an answer on what law makes me liable to pay the
14 tax. And, until I do, I'm not gonna pay a tax. As a matter of
15 fact, on redirect if somebody wants to give me the law --

16 MR. IGNALL: Objection, your Honor.

17 THE WITNESS: -- that makes me liable to pay the tax --

18 THE COURT: Sustained. Speech.

19 THE WITNESS: -- I'd be happy to do so.

20 THE COURT: Sustained.

21 You don't make speeches in here, sir.

22 THE WITNESS: I'm just answerin' his question.

23 THE COURT: Mr. Waller, you do not make speeches.

24 THE WITNESS: Okay.

25 MR. SCHIFF: No further questions.

1 THE COURT: Mr. Bowers.

2

3 CROSS-EXAMINATION

4 BY MR. BOWERS:

5 Q. Good morning, Mr. Waller. My name's Chad Bowers. I
6 represent Lawrence Cohen.

7 A. Good morning.

8 Q. Do you recognize Mr. Cohen over here?

9 A. Yes, I do.

10 Q. Okay. Um, your tax return wherein you filed a zero return
11 in 1998 that was dated February 15th, 2000. Does that sound
12 correct to you?

13 A. I believe so.

14 Q. Do -- do you have the document? Maybe you can just quickly
15 look and verify that that date was -- is accurate.

16 A. (Reviewing document.) Correct.

17 Q. Okay. So do you have any reason to believe that you didn't
18 sign that, uh, return and file it in February of 2000?

19 A. No. I signed it.

20 Q. And filed it thereabouts?

21 A. Correct.

22 Q. Okay. Um, I -- I'd like to hand you what's been marked as
23 Defendant's Exhibit 2845.

24 (Document handed to witness by the clerk.)

25

1 BY MR. BOWERS:

2 Q. And I'll represent that that's IRS Publication 2105. Take a
3 moment to review that document, if you could.

4 A. (Complies.) Okay.

5 Q. Do you recall receiving a document similar to that with
6 your, uh, notice of frivolous penalty?

7 A. I believe so.

8 Q. Okay. And did you rely on the IRS's answers or -- or
9 nonanswers as provided in that document in making your decision
10 on how to proceed with your ideas about taxation?

11 A. I checked it out. But did I rely on it? No. I checked it
12 out and...

13 Q. Okay. So I'm asking: Did you -- did you rely on the
14 information provided by the IRS in there to evaluate their
15 statements in deciding what to do about, hey, maybe Irwin's
16 wrong and I need to get back into compliance or maybe I need to
17 do some additional research? Anything to that effect. Did that
18 document affect your reliance on what you were doing one way or
19 another?

20 A. No.

21 Q. Um, when you filed the attachment to your zero return, did
22 you understand that you were asking for an appeals conference
23 should any liability be assessed to you?

24 A. Yes.

25 Q. Did you ever get that appeals conference?

1 A. Yes.

2 Q. Not -- not the collection due process hearing; an appeals
3 conference. Do you understand that there's --

4 A. Oh, not --

5 Q. -- a difference?

6 A. -- in relation to the penalty? No, I did not.

7 Q. Okay. So you do understand there's a difference?

8 A. Yes, I do.

9 Q. You are testifying that you never had an appeals conference?

10 A. Correct.

11 Q. Do you know why?

12 A. I never got one.

13 Q. Do you know why you never got one?

14 A. No, I don't.

15 Q. Do you believe that you're entitled to one?

16 A. Yes.

17 Q. Has the IRS explained -- anybody from the IRS ever explained
18 to you why you didn't get one?

19 A. No.

20 Q. Has -- let's go back to the order which is marked -- it's
21 299. This was the order issued by the Federal Court in response
22 to your action in this building. Do you recall that?

23 A. Yes.

24 Q. I don't know that we need the lights out or anything. I
25 just want to ask the witness to, uh, review the document, if

1 necessary.

2 Is there anything in there that answers your question
3 on what imposes a liability on you?

4 A. No, there isn't.

5 Q. At any point, from any time, did anyone from the IRS ever
6 answer that question for you?

7 A. No.

8 Q. Do you recall at any time ever discussing returns that
9 rather than having all zeroes on them would have the words "not
10 liable" written on them with Lawrence Cohen?

11 A. Ask the question again.

12 Q. Your current return -- maybe we could show that, Agent. But
13 we could probably leave the lights on because I'll just go
14 through it really quick. Or maybe we could turn the lights off
15 real quick. It won't take long.

16 Looking at your zero return, Mr. Waller, just the first
17 page that was filed, there's all zeroes there; right?

18 A. Correct.

19 Q. Okay. And -- and you haven't written "not liable" in big
20 letters anywhere on that page; right?

21 A. Correct.

22 Q. Okay. And that's good. That's all I was getting at.

23 Do you ever recall having a conversation of any kind
24 with Lawrence Cohen about filing a return that would have "not
25 liable" written on it in big letters?

1 A. No, I don't recall.

2 Q. How about, uh, a return, either a zero return or another
3 return, that assessed no liability because of anything relating
4 to OMB numbers?

5 A. No.

6 Q. How about foreign-source income or the 1040 Instruction
7 Manual? Do you remember any conversation with Mr. Cohen to that
8 effect?

9 A. No.

10 Q. Uh, you testified a woman prepared your appeal, uh, the
11 document you filed here in District Court; correct?

12 A. Correct.

13 Q. Does -- would it -- was it Toni Mitchell? Does that ring a
14 bell?

15 A. Yeah, it rings a bell.

16 Q. Okay. You think that -- to the best of your recollection,
17 was that her?

18 A. I believe so.

19 Q. Okay. You -- the Government walked you through a number of
20 steps you took in association with coming to whatever current
21 tax belief you have. And you indicated that you met with the
22 people from Freedom Books on several occasions. Is that
23 correct?

24 A. Correct.

25 Q. You met with 'em about filing your zero return; correct?

1 A. Yes.

2 Q. You met with them before the collection due process hearing;
3 correct?

4 A. Correct.

5 Q. You met with them before taking the appeal here in this
6 building; correct?

7 A. Correct.

8 Q. Were there any other steps that you engaged in where you met
9 with the folks at Freedom Books besides purchasing materials? I
10 mean, any other acts you did.

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

12 Q. Okay. And each time the Government asked you, uh, who they
13 was or who you met with that Irwin, Larry, Cindy; Irwin, Larry,
14 Cindy; Irwin, Larry, Cindy. Do you recall that?

15 A. Yes.

16 Q. Okay. And that's your best recollection as we sit here
17 today; correct?

18 A. Correct.

19 Q. Okay. Does it change your testimony if you were to learn
20 that Larry had nothing to do with Freedom Books in February of
21 2000?

22 MR. IGNALL: Objection. Assumes facts not in evidence.

23 THE COURT: Sustained.

24 MR. BOWERS: I'll withdraw the question.

25 Thanks, Mr. Waller. Have a nice day.

1 THE WITNESS: Thanks.

2

3 REDIRECT EXAMINATION

4 BY MR. IGNALL:

5 Q. Mr. Waller, do I understand that before you first met Irwin
6 Schiff you were paying taxes and filing tax returns?

7 A. Correct.

8 Q. Is Mr. Schiff the first one to suggest to you that you
9 didn't have any obligation to pay taxes?

10 A. Well, I had -- I had heard it before from various sources.
11 But, since he was local and on the radio all the time, I started
12 listening to him.

13 Q. And was he the first one to get you doing your own research
14 to determine that you didn't have to pay?

15 A. Yes.

16 Q. You testified that you weren't able to find anything in the
17 law that says you have to pay taxes in your research; is that
18 correct?

19 A. Anything that made me liable. Correct.

20 Q. Have you ever raised that argument in court? You said the
21 IRS is trying to collect money from you.

22 A. Outside of what we've been talking about here? No.

23 Q. So you've never tried to raise an argument in court that
24 might determine whether you were right or wrong?

25 A. No, I have not.

1 Q. Ever had any discussions with Mr. Schiff about whether other
2 people have raised that argument in court?

3 A. No.

4 Q. So Mr. Schiff never told you whether that argument had come
5 up before and the courts had rejected it?

6 A. I don't believe so.

7 Q. You testified, um, a moment ago when Mr. Bowers was talking
8 to you -- he showed you ex- -- what he'd marked as Exhibit 2845.
9 You said you got that with your frivolous letter; is that
10 correct?

11 A. I believe so.

12 Q. Does, uh, that IRS document show any Web sites that talk
13 about information for those who don't believe they have to pay
14 any taxes?

15 A. Yes.

16 Q. Do you remember reading that?

17 A. Yes.

18 Q. In your research, did you surf those Web sites?

19 A. I believe so.

20 Q. And you didn't find anything in there that said that you
21 were responsible to pay taxes?

22 A. I didn't find anything that made me liable to pay, no.

23 Q. You -- so liable is different than responsible to pay taxes?

24 A. Well, the law says that -- in the 1040 booklet that you are
25 responsible to pay any taxes that you are liable for.

1 Q. So if a tax is imposed is that different than being liable
2 for a tax?

3 A. It's very different.

4 Q. And where did you get that distinction? Who told you about
5 that distinction the first time?

6 A. Well, in Section 1, it's the imposition of the tax.

7 Q. If I may, Mr. Waller, who told you the first time about that
8 distinction? Where did you first learn about that distinction
9 that you now make in your mind?

10 A. I believe Irwin.

11 Q. Thank you.

12 You mentioned on Mr. Schiff's cross-examination that
13 you asked for certain documents during your collection due
14 process hearing --

15 A. Correct.

16 Q. -- that you felt like you were entitled to.

17 A. Correct.

18 Q. Did you raise that, uh, in your appeal to the court?

19 A. Yes.

20 Q. And did the court rule for you or against you on that?

21 A. Against.

22 Q. Do you know of any court that's ever ruled in favor of
23 someone who has raised the same position that you have?

24 A. Um, yeah. There was actually a FedEx pilot that --

25 Q. No, no, no. I'm sorry.

1 MR. BOWERS: Objection. Argumentative.

2 MR. IGNALL: Okay. I'm sorry.

3 MR. BOWERS: He asked him a question. He should be
4 able to answer it.

5 MR. IGNALL: You can answer the question. I apologize.
6 That was...

7 THE COURT: Go ahead.

8 THE WITNESS: Yes.

9 BY MR. IGNALL:

10 Q. You're aware of a case in which someone said in an appeal
11 to a collection due process hearing that the IRS violated some
12 sort of rule to give you documents?

13 A. I believe so, yes.

14 Q. And what -- what -- what case? Where did you see that case?

15 A. Well, the -- the one with the FedEx pilot that -- I don't
16 have all the specifics on it.

17 Q. Do you know whether that FedEx pilot was a civil case? a
18 criminal case?

19 A. No, I don't.

20 Q. All right. So, after you got the Court's order rejecting
21 your position, you disagreed with the Court?

22 A. Correct.

23 Q. So you know more about the law than the courts do?

24 MR. CRISTALLI: Objection.

25 MR. BOWERS: Argumentative.

1 THE COURT: Sustained.

2 BY MR. IGNALL:

3 Q. And the research you said you did, who directed you as to
4 where to look for this -- to start your research?

5 A. Who directed me to do my research?

6 Q. Where to start, what -- what Code sections to look at,
7 what...

8 A. Well, I started with the Internal Revenue Code that was
9 dabbed from Irwin's place.

10 Q. And when you, uh, asked for certain documents at this
11 collection due process hearing, were those the documents that
12 anyone at Freedom Books suggested that you ask for at the
13 hearing?

14 A. No. They were documents that 6330 and 6331 said I was
15 entitled to.

16 Q. Did anyone at Freedom Books tell you that 6330 entitled you
17 to these documents?

18 A. I read it.

19 Q. Did anyone at Freedom Books ever say that?

20 A. I -- I don't recall.

21 Q. You came up with that on your own -- your own reading?

22 A. Yes.

23 Q. Mr. Schiff ever tell you whether anyone else who asked for
24 documents or did what you did at a collection due process
25 hearing and got an adverse determination? Did he ever talk

1 about other people getting adverse determinations?

2 A. No.

3 Q. Did he ever talk about other people getting adverse
4 determinations and appealing to the District Court?

5 A. Not that I recall.

6 Q. So he never said how those cases turned out, whether those
7 people won or lost?

8 A. No.

9 MR. IGNALL: One -- one moment, your Honor.

10 THE COURT: Yes.

11 (Discussion between Mr. Neiman and
12 Mr. Ignall.)

13 BY MR. IGNALL:

14 Q. Did Mr. Schiff ever tell ya about any of the hundreds of
15 cases rejecting his position?

16 A. No.

17 Q. Did he talk about any case rejecting his position?

18 A. No.

19 Q. And, uh, earlier I think Mr. Schiff asked you how much you
20 paid to, uh, have this, uh, District Court appeal prepared. If
21 I could turn your attention to what we have previously marked as
22 Exhibit 297C.

23 A. (Complies.)

24 Q. If you look at that document, does that refresh your
25 recollection about how much you paid?

1 A. (Reviewing document.) Yes.

2 Q. How -- how much did you pay?

3 A. Uh, 300.

4 Q. All right.

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

6 (Pause in the proceedings.)

7

8

RECROSS-EXAMINATION

9 BY MR. CRISTALLI:

10 Q. Um, Mr. Waller, with regard to, um, the adverse decision on
11 the collection due process hearing, you said that you did
12 file -- and -- and we talked about it and it's in evidence --
13 the, uh, appeal in response to the collection due process
14 hearing; correct?

15 A. Correct.

16 Q. Okay. And then you received an adverse order from the Court
17 ruling against you with regard to your appeal. True?

18 A. Correct.

19 Q. Okay. Um, you did not have -- you were not afforded an
20 opportunity to have a hearing on that matter; correct?

21 A. Oh, I could have appealed it.

22 Q. Right.

23 What I'm trying to get at: You didn't come into court
24 and argue your positions that were, uh, contained in the
25 brief --

1 A. No.

2 Q. -- true?

3 A. No. They had granted summary judgment.

4 Q. So you never stood before a court and the court never
5 directly told you or explained to you the reasons why your
6 positions were -- were -- were valid or invalid; correct?

7 A. No.

8 MR. CRISTALLI: I have no further questions, your
9 Honor.

10 THE COURT: Mr. Schiff.

11

12 RE CROSS-EXAMINATION

13 BY MR. SCHIFF:

14 Q. Mr. Waller, you said you came to a seminar that I put on.

15 THE COURT: That was not part of --

16 MR. SCHIFF: No. Pardon me?

17 THE COURT: That was not part of the redirect.

18 BY MR. SCHIFF:

19 Q. Well, the question was, was Section 1 -- we covered at my
20 seminar the validity of the --

21 THE COURT: Now, you're testifying.

22 MR. SCHIFF: All right.

23 THE COURT: You can only ask questions --

24 BY MR. SCHIFF:

25 Q. The question is --

1 THE COURT: -- on recross that were asked on redirect.

2 MR. SCHIFF: He -- he raised the issue of -- of the --
3 of -- of assessment --

4 THE COURT: Listen to me.

5 MR. SCHIFF: -- of the assessment and we covered this.

6 THE COURT: Listen to me.

7 He has not asked any question about seminars on
8 redirect.

9 MR. SCHIFF: Okay.

10 THE COURT: You can only go into the very areas -- the
11 same areas that he went into on redirect.

12 MR. SCHIFF: Okay.

13 BY MR. SCHIFF:

14 Q. The Government just asked you whether or not you might have
15 been persuaded that Section 1 of the Code, which talks about
16 assessments, would have any impact on your understanding -- on
17 your thinking that you were required to pay taxes.

18 MR. IGNALL: Objection, your Honor. I believe that the
19 question on redirect was the defendant made -- the witness made
20 a distinction between liable and imposed.

21 MR. SCHIFF: Right.

22 MR. IGNALL: The question was simply where he got that
23 from.

24 MR. SCHIFF: I'm sorry. I'm sorry.

25 THE COURT: That's correct.

1 MR. SCHIFF: I made a mistake.

2 THE COURT: That was the question.

3 MR. SCHIFF: Imposed. Right.

4 BY MR. SCHIFF:

5 Q. Would it be that you're disregarding the fact that a tax was
6 imposed based upon your understanding of the Privacy Act Notice
7 in a 1040 booklet?

8 A. Correct.

9 Q. In any case, you recalled from my seminar that we made a
10 dis- -- a big --

11 THE COURT: Mr. Schiff, I've already sustained the
12 objection --

13 BY MR. SCHIFF:

14 Q. Okay. You're familiar with --

15 THE COURT: -- with respect to a question about
16 seminars.

17 MR. SCHIFF: Okay. Well, this is where he would have
18 learned it.

19 THE COURT: Well, don't tell him --

20 MR. SCHIFF: In any case.

21 THE COURT: Don't tell him where he would have learned
22 it. Ask him a question.

23 BY MR. SCHIFF:

24 Q. All right. The question is: You're familiar with the 1040
25 booklet and the reference to liability?

1 A. Correct.

2 Q. You're familiar with this?

3 A. Yes.

4 MR. SCHIFF: Do I have to make this an exhibit, your
5 Honor?

6 THE COURT: You do if you want to -- if it hasn't been
7 already.

8 MR. SCHIFF: All right. I don't know. I'll make it an
9 exhibit.

10 (Document shown to Mr. Ignall.)

11 MR. BOWERS: What year is that?

12 MR. IGNALL: 1993.

13 MR. BOWERS: 1993?

14 MR. IGNALL: Your Honor, we have a couple objections.
15 We don't object in general to an instruction book coming into
16 evidence. But this was 1993 and it's marked up. So --

17 MR. SCHIFF: It was -- uh, the first one I grabbed.

18 MR. BOWERS: Judge, I have an unmarked 2001 if you need
19 to use it.

20 MR. SCHIFF: All right. Is this is a better one?

21 THE COURT: What year are we talking about?

22 MR. IGNALL: I don't object to that in general either,
23 but I think this witness testified that he filed a 1998 tax
24 return.

25 THE COURT: That's right.

1 MR. SCHIFF: They are all about the same.

2 THE COURT: Well, if you can --

3 BY MR. SCHIFF:

4 Q. All right. At the seminar --

5 THE COURT: If one's --

6 MR. SCHIFF: We have -- all right. This -- this has
7 gone in already as an exhibit.

8 THE COURT: Mr. Schiff, don't --

9 MR. SCHIFF: So this is in as an exhibit.

10 THE COURT: Mr. Schiff, I've asked you not to overtalk
11 me while I'm trying to rule on objections and you insist on
12 doing it. As I've already pointed out, it is -- it makes it
13 very difficult --

14 MR. SCHIFF: All right.

15 THE COURT: -- for the court reporter to take down your
16 statements while you're trying to overtalk me.

17 The objection is sustained.

18 MR. SCHIFF: I'm sorry.

19 All right. Your Honor, my seminar documents are
20 already in as an exhibit. And, in these exhibit, there is the
21 disclosure statement from a 1040 booklet. So can I use that
22 one?

23 THE COURT: No, because I don't know what your -- you
24 excerpted it from and -- and it's not in the original form.

25

1 BY MR. SCHIFF:

2 Q. Do you remember from memory what the disclosure statement in
3 a 1040 booklet says with respect to whether or not you can
4 conclude whether you owed or should file a tax return? From the
5 disclosure statement in a 1040 booklet.

6 A. Well --

7 Q. Do you ever remember discussing that with me?

8 A. No, I don't recall. But the disclosure statement in a 1040
9 booklet talks about how they can use the information that I put
10 on a tax return. Is that...

11 Q. Do you recall that the disclosure statement mentions
12 three --

13 MR. IGNALL: Objection --

14 BY MR. SCHIFF:

15 Q. -- specific tax returns?

16 MR. IGNALL: -- your Honor, to Mr. Schiff reading from
17 this.

18 THE WITNESS: Oh.

19 MR. IGNALL: I'm not sure what the relevance is this
20 the witness's testimony on redirect.

21 MR. SCHIFF: He's -- he's the Government's witness.
22 Don't I have an opportunity to lead him a little bit?

23 THE COURT: You have the opportunity to lead; you've
24 been doing so. But the objection is on relevance grounds.

25 MR. SCHIFF: Well, your Honor, isn't it difficult for a

1 witness to remember exactly what's in a disclosure statement?

2 THE COURT: Well, he said he doesn't remember. So
3 that's the -- that's the end of it.

4 THE WITNESS: No. I didn't know -- I didn't understand
5 the question.

6 BY MR. SCHIFF:

7 Q. All right.

8 A. In the disclosure statement, it talks about what laws are
9 applicable to me in --

10 Q. Exactly --

11 A. -- in filing out the return.

12 Q. Exactly right. The disclosure statement --

13 THE COURT: Mr. Schiff --

14 MR. IGNALL: Objection --

15 THE COURT: -- you are now testifying.

16 MR. SCHIFF: All right.

17 BY MR. SCHIFF:

18 Q. The disclosure -- he just said the disclosure statement --

19 MR. IGNALL: Objection, your Honor.

20 THE COURT: Sustained.

21 MR. IGNALL: Sounds like he's testifying again.

22 THE COURT: He is.

23 BY MR. SCHIFF:

24 Q. Okay. Did I understand you to say...

25

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

3 BY MR. SCHIFF:

4 Q. Would it have refreshed your recollection if I showed you
5 the Code sections that you just indicated you saw in the Privacy
6 Act Notice?

7 MR. IGNALL: Objection to relevance and the potential
8 to misstate the law. But the first objection is relevance.

9 THE COURT: Sustained.

10 MR. SCHIFF: Your Honor, the relevance is -- can I say
11 what the relevance is?

12 THE COURT: Go ahead.

13 MR. SCHIFF: The relevance is that the Privacy Act
14 talks about liability of the tax and not the imposition of the
15 tax. So the public is told to look for the statute that makes
16 them liable, not the statute that imposes the tax. There's a
17 distinction. And the distinction --

18 MR. IGNALL: Objection, your Honor.

19 MR. SCHIFF: -- is right in the --

20 MR. IGNALL: That's a misstatement --

21 MR. SCHIFF: -- in the 1040 booklet.

22 MR. IGNALL: -- of the law.

23 THE COURT: Sustained.

24 BY MR. SCHIFF:

25 Q. You don't remember?

1 A. I don't remember what? I didn't -- it was sustained. I
2 missed the question.

3 Are you asking me what --

4 Q. Do you recall --

5 A. -- Code section --

6 Q. -- do you recall having discussions with me on the
7 importance of the disclosure statement in a 1040 booklet?

8 A. Yes, I do.

9 Q. Do you recall why I said the disclosure statement is
10 important?

11 A. Yes.

12 Q. Why did I tell you it was important?

13 A. Because the government has to tell you what laws pertain to
14 you in the filing of the tax return and they are in the...

15 Q. Do you recall what laws are in the disclosure statement that
16 the Government directs you to read?

17 MR. IGNALL: Objection, your Honor. This is outside
18 the scope of redirect. I don't know what the relevance is.

19 MR. SCHIFF: The relevance --

20 MR. IGNALL: And it also has the potential to mislead
21 the jury.

22 MR. SCHIFF: The relevance is the Government --

23 MR. IGNALL: I think that the appropriate question that
24 Mr. Schiff could ask, which I think was already asked and
25 answered on -- on redirect, is did Mr. Schiff have a discussion

1 with this witness about some distinction between the tax being
2 imposed and the liability for the tax.

3 MR. SCHIFF: Very good.

4 MR. IGNALL: That was the question asked on redirect.

5 MR. SCHIFF: I'll accept his question. Thank you very
6 much.

7 MR. IGNALL: You're welcome.

8 BY MR. SCHIFF:

9 Q. Did you hear what the prosecutor said?

10 A. Yes.

11 Q. Okay. Does that make sense to you?

12 A. Yes.

13 Q. Okay. What is the distinction that I made in the seminar
14 and the 1040 booklet makes?

15 A. Well, the 1040 booklet gives me the three laws that I need
16 to look to in regards to filing the tax. It has nothing to do
17 with Section 1, Section 62, 63. None of those are in the
18 disclosure statement of the 1040 booklet, meaning they do not
19 apply.

20 Q. Okay. If the imposition of the tax had anything to do with
21 filing, the Code section that imposed a tax would have been in
22 the --

23 MR. IGNALL: Objection, your Honor.

24 THE WITNESS: Correct.

25

1 BY MR. SCHIFF:

2 Q. -- Privacy Act?

3 MR. IGNALL: Testimony and misstatement of the law.

4 THE COURT: Sustained.

5 BY MR. SCHIFF:

6 Q. Was that your understanding?

7 THE COURT: Testimony.

8 MR. SCHIFF: All right.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. All right. If you were gonna do research, what Code
12 sections does the Privacy Act direct you to look at? What are
13 the Code sections that the Priv- -- do you recall the Code
14 sections --

15 MR. IGNALL: Objection, your Honor.

16 BY MR. SCHIFF:

17 Q. -- that --

18 MR. IGNALL: Sorry.

19 Objection. Beyond the scope of redirect.

20 THE COURT: Compound as well. Sustained.

21 BY MR. SCHIFF:

22 Q. Okay. Did you believe that the imposition of -- when you
23 looked at the Code, did you see that -- did you notice that a
24 number of laws impose a tax?

25 MR. IGNALL: Objection, your Honor.

1 THE WITNESS: Yes.

2 MR. IGNALL: Beyond the scope of redirect.

3 THE COURT: Sustained.

4 MR. SCHIFF: The Government was talkin' about the
5 imposition of the tax as opposed to being liable for the tax.
6 I'm just trying to show --

7 THE COURT: Sustained.

8 MR. SCHIFF: -- whether that's relevant.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. Um, when you, um -- when you referred to these red tabs in
12 my Code book, do you recall what these red tabs, uh, revealed to
13 you?

14 MR. IGNALL: Objection. Beyond the scope of redirect.

15 THE COURT: Sustained.

16 BY MR. SCHIFF:

17 Q. Did you think the fact that an income tax was imposed in
18 Section 1, did you believe that had any relevance to whether you
19 were liable for the tax?

20 A. No. It would have been in the 1040 booklet and the
21 disclosure statement.

22 MR. SCHIFF: Thank you very much. No further
23 questions.

24 THE COURT: Redirect -- oh, I guess we have Mr. Bowers,
25 yes, yet to go.

1 MR. BOWERS: Thanks.

2 THE COURT: Do you have any?

3 MR. BOWERS: No. I'm good. Thank you, Judge.

4 THE COURT: Recross or redirect?

5 MR. IGNALL: No, reredirect, your Honor.

6 THE COURT: Witness is excused.

7 We're close enough to the noon hour we're going to take
8 our lunch break.

9 When is your next witness scheduled to arrive?

10 MR. IGNALL: Our next witness is here, your Honor.

11 THE COURT: How long?

12 MR. IGNALL: We're gonna play two tapes with her, so
13 the direct could be more than an hour.

14 THE COURT: All right. We'll take our lunch break.
15 We'll -- I have -- I have a meeting right now. So we'll be in
16 lunch until -- until 1:30 this afternoon.

17 The standard admonition continues.

18 (Jury leaves the courtroom at 11:55 a.m.)

19 MR. IGNALL: Your Honor?

20 THE COURT: Yes.

21 MR. IGNALL: If we may -- and we might want to do this
22 after the lunch break -- but we're gonna reiterate our request
23 for an instruction on the income tax legal question before. I
24 think his testimony was, again, confusing.

25 And I don't know if I provided the Court with the

1 latest version of the instruction that I believe that no one had
2 agreed to but that I had crafted after some discussions with
3 Mr. Cristalli and Mr. Bowers. I believe they object to the
4 Court giving any instruction at all. But I think I had changed
5 it -- maybe I mis- -- am incorrect. But I think I had added a
6 little bit of a second paragraph on good faith that I don't
7 think is in what I previously provided to the clerk. So I could
8 do that after the lunch break.

9 THE COURT: Well, why don't you provide it -- your
10 proposed instruction now so that counsel can look at it. And
11 we'll --

12 MR. IGNALL: Okay.

13 THE COURT: -- come back a little bit early before we
14 bring the jury in so -- so we can discuss it. 1:15.

15 MR. IGNALL: Okay.

16 THE COURT: And provide me with a copy of it and
17 opposing counsel and Mr. Schiff.

18 MR. IGNALL: Thank you.

19 THE COURT: Thank you.

20 (Lunch break, 11:57 a.m. to 1:19 p.m.)

21 THE CLERK: All rise.

22 THE COURT: Thank you. Please be seated.

23 Court has the proposed instruction, interim
24 instruction. We'll address that now.

25 Is there any agreement on it?

1 MR. IGNALL: Uh, there's still no agreement on it, your
2 Honor.

3 THE COURT: Okay. All right.

4 Well, since this is proposed by the Government, let me
5 hear from the parties.

6 MR. IGNALL: Okay.

7 MR. CRISTALLI: Um, your Honor, first of all, this -- I
8 mean, we've addressed this issue previously. And I think the
9 Court through instructing Mr. Schiff during the course of his
10 examination has tried to limit this and I think ultimately has
11 been very successful in limiting him from getting into
12 substantive areas of law even though he has tried desperately.
13 Um, so I don't know at the eleventh hour the necessity of having
14 this particular instruction.

15 THE COURT: I -- I -- I hope you're correct about the
16 eleventh hour.

17 MR. CRISTALLI: I hope so. You know what? I think
18 that's just, uh, wishful thinking.

19 MR. BOWERS: The alleged eleventh hour.

20 MR. CRISTALLI: But I hope that's the case as well,
21 your Honor.

22 In any event, um, in terms of our position, obviously
23 we don't want any type instruction to the jury until, uh,
24 subsequent to the jury actually getting the case and then having
25 an opportunity to have the instructions in its entirety, not

1 only the instruction as it relates to the law but also the
2 instruction as it relates to reliance, good-faith belief, so
3 forth and so on. So we would want the entirety of that
4 instruction to come in as well. By giving the Court -- the jury
5 an instruction on the law at this particular time without giving
6 them the law as to the belief or the reliance issue is certainly
7 undermining to the defense in this particular case.

8 THE COURT: You don't think that the proposed
9 instruction, uh, addresses that?

10 MR. BOWERS: If I may just briefly here.

11 Judge, the proposed instruction doesn't even include
12 the Government's version of good faith. I mean, I -- I don't
13 wanna acquiesce to this process by contributing to it. But, if
14 I have no choice, I would submit at a minimum we take at least a
15 portion of what the Government has submitted as a good-faith
16 instruction. I mean, I'd obviously want ours. But...

17 MR. CRISTALLI: Well, that's -- and that's what --

18 MR. BOWERS: This doesn't even cover theirs.

19 MR. CRISTALLI: Well, that's the point I was gonna make
20 is that --

21 MR. BOWERS: Sorry about that.

22 MR. CRISTALLI: That's okay.

23 -- is that I do have a proposed jury instruction as it
24 relates to the good-faith defense. Now, obviously the
25 Government's gonna disagree with this instruction and the

1 Court's ultimately going to make a determination as to the
2 appropriate instruction that comes in before the jury. Um, so,
3 at this particular time, I can't agree on the language as it
4 relates to the, uh, good-faith misunderstanding of the law
5 because we have an entire instruction that speaks directly to
6 that point.

7 But, finally, with regard to the citation that was
8 cited by the Government, um, my concern with regard to that is
9 it appears that the instruction in that particular case -- and
10 it's a cautionary instruction -- this goes a little bit further,
11 I think, than cautioning the jury but rather instructing him on
12 the substance of the law.

13 I don't disagree with the Government's position that
14 the Court certainly has the ability to caution the jury during
15 the course of their -- of the case; however, I am concerned a
16 little bit in terms of instructing them on the substance of the
17 law which that instruction is definitely gonna come in at the
18 close of the evidence.

19 Um, I -- I just can't agree to the instruction, your
20 Honor, at this time. I have to just be steadfast in my position
21 with regard to that.

22 THE COURT: Thank you.

23 Anything to add --

24 MR. BOWERS: Just very briefly --

25 THE COURT: -- Mr. Bowers?

1 MR. BOWERS: -- Judge.

2 The first thing is whether it's the eleventh --
3 eleventh hour or not, the Government's made repeated assertions
4 about who's left here. And there doesn't appear to be anybody
5 left that we would have to invoke this instruction over. So
6 I -- I have to object to the instruction in general. Um, and I
7 don't want any input into the instruction to be construed as
8 having waived that objection.

9 But I don't want to fight out the Government's version
10 of good faith versus ours right now. But I would suggest at a
11 bear minimum the salient portion of the Government's proposed
12 good-faith instruction needs to be included. I mean, this is a
13 rather -- and the other thing I have to point out, Judge, is
14 this -- this bit that constitutes, for lack of a better phrase,
15 their portion of the instruction isn't even in the jury
16 instructions. I mean, this is like, you know, we design
17 whatever we wanna tell the jury about the law and then, oh, by
18 the way we recognize we should tack something on about good
19 faith.

20 Their proposed jury instruction, at least just the
21 first paragraph, at least elaborates a little bit on what good
22 faith is rather than simple mistake or inadvertence. I feel
23 like I'm in between a rock and a hard place because I -- I don't
24 want to put a lot of input into this and have that be seen as
25 acquiescence.

1 But, if this the route the Court's heading over, you
2 know, my objection, at least, I think at a bear minimum we
3 should use the Government's portion of the instruction. I mean,
4 I prefer our instruction and we have 'em both here for the
5 Court. But I think if you're gonna be instructing the jury at
6 this length on the law, uh, it would not be out of line to
7 dedicate the same amount of time and space to, uh, what good
8 faith is in conjunction with that.

9 Again, I -- I think it's all unnecessary but if that's
10 how the Court's gonna do it.

11 MR. SCHIFF: Okay. Can I have -- all right.

12 The Government's request that the Court issue this jury
13 instruction is to request the Court to give a false, uh, jury
14 instruction. First of all, the Government says that federal
15 income tax is imposed in Internal Revenue Code Section 1 and it
16 mentions Section 63.

17 If these two statutes had anything to do with the
18 payment of income tax, they would have to be mentioned in the
19 Privacy Act of the 1040 booklet. The 1040 booklet only
20 mentioned three Code sections: 6001, 6011 and 6012. And the
21 instructional booklet says -- they say you must file a return or
22 statement with any tax you are liable for.

23 Now, how would the public know that Section 1 requires
24 them to pay an income tax? How would the public know that
25 Section 61 requires them to pay an income tax? The only Code

1 sections that the Government directs the public to check out are
2 Sections 6001, 6011, and 6012. The public doesn't have a Code
3 book at home; they have a 1040 booklet. The 1040 booklet
4 tells 'em what Code sections they have to look at.

5 This is a totally illegal and erroneous jury
6 instruction. The Government wants the Court to conspire with
7 them to give a false jury instruction to the public. In
8 addition, they want you to say that Section 61 includes wages
9 and salaries. There is nothing in Section 61 that says anything
10 about wages and salaries. It did say it in -- in, um, the '39
11 Code and it was specifically removed.

12 So what the Government wants you to do -- and I want
13 the record to show that -- is to give the jury a false, totally
14 false, jury instruction. And I vigorously object. And, if the
15 judge ever gives this jury instruction, then the judge would be
16 knowingly and willfully instructing the jury contrary to law and
17 contrary to what the government was required to tell people in
18 this Disclosure Act notice.

19 If Section 1 and Section 61 had anything to do with the
20 payment of income tax, then it was incumbent upon the government
21 to put it in the Privacy Act notice. And it's not there. All
22 the Privacy Act notice says, you got to file a return for any
23 tax you are liable for. It doesn't say you gotta file a return
24 for any tax imposed.

25 And, in addition, in addition throughout the Code --

1 and these people can't be expected to know that -- for instance,
2 Section -- Section, um -- here. Here -- Section, um, 4402(c)
3 [sic] says, "Each person who is engaged in the business of
4 accepting wages shall be liable for and shall pay the tax." The
5 wagering tax was imposed in Section 4401 which says there hereby
6 imposed a tax. However, the provision of who is liable for the
7 tax does not appear until, uh, paragraph (c).

8 But a more graphic example is, um, Section 5703. It
9 says, "The manufacturer or importer of tobacco products and
10 cigarette[s] ... shall be liable for the taxes imposed thereon
11 by section 5701."

12 Section 5701 imposes tobacco taxes. And it -- it lists
13 the various taxes on each, uh, type of cigarette. However, it's
14 not until 5703 that the statute says, and such, um -- that
15 tobacco manufacturers shall be liable for the tax. And further
16 on it states, and such taxes shall be paid on the basis of a
17 return.

18 So the imposition of the tax and the liability of a tax
19 are two different things. Of course, the public doesn't know
20 that. So the government wants to pull the wool over their eyes,
21 with your help, to let the jury think that the imposition of a
22 tax is what makes them liable.

23 All I want to say is this: There are a number of taxes
24 imposed in the Code. There are beer taxes, fuel taxes, wagering
25 taxes. They are all imposed. Does that mean I'm liable for

1 those taxes? Of course not. There has to be a section that
2 makes them liable. And the imposition of a tax -- as a matter
3 of fact, Section 6001 and Section 6011 say -- say -- which
4 directs your attention -- the Privacy Act directs your attention
5 to Section 6001 and 6011 -- and those sections say that you only
6 have to pay a tax for which you are liable.

7 So what the -- when the Government says I'm confusing
8 the jury about the law, it's the Government that's trying to
9 confuse the jury. And, since I have researched the law more
10 than any other person probably in the country and I know what
11 the law is, they are trying to get you to muzzle me with their
12 help and your help so that the jury will know what the law is.

13 So this jury instruction, I want to be clearly
14 understood, is contrary to law. And, if you were to ever give
15 such a jury instruction, you would be knowingly, wantonly, and
16 deliberately misleading the jury as to what the law provides.

17 THE COURT: Government's response.

18 MR. IGNALL: Uh, briefly, your Honor.

19 I think this is just some evidence of the need for the
20 jury instruction now. I don't think there's any dispute among
21 at least the lawyers here that the first paragraph of this jury
22 instruction is an accurate statement of the law. And I
23 understand that Mr. Schiff disagrees with that, but that goes to
24 his belief and his good-faith reliance or misunderstanding.

25 And I don't think any one of the lawyers, at least,

1 disagree, correct me if I'm wrong, it's appropriate and
2 necessary to give this instruction at some time. Certainly I
3 would -- at a minimum at the end of the case. I think the issue
4 right now is how important is it to give this instruction now?

5 And the instruction that we're requesting on the law is
6 not an instruction concerning the elements of the offense of
7 anything charged in the Indictment, but merely a statement as to
8 what the law is given that there have been any number of
9 statements and misstatements back and forth about the
10 requirement to pay income taxes.

11 And, even though it sounds ludicrous to anyone in the
12 jury probably that this may not be the law, leaving that
13 inference hanging out there I think has the potential to confuse
14 the jury and move the jury away from the real issue which is
15 what did the defendants do and what was their state of mind at
16 the time they did it; that just because it turns out that what
17 they were telling people is clearly erroneous according to the
18 law truly is, I suppose, some evidence of their, you know, lack
19 of good faith. But, nonetheless, they can still introduce
20 evidence, they can testify as to what their good-faith
21 misunderstanding of the law was.

22 But I don't think there's dispute here that the
23 paragraph we proposed is an accurate statement of the law and we
24 say that it's important to make sure the jury's not confused at
25 any point as I fear they have been up to this point about, you

1 know, the -- the optional nature of income taxes and that
2 there's no law that -- that requires that. And I think giving
3 this instruction would help prevent, uh, either party going into
4 this issue anymore on, you know, direct or cross-examination.

5 The next few witnesses that are coming up, although we
6 only have a few left, are an undercover IRS agent, an IRS
7 Appeals officer, Special Agent Holland, and Revenue Agent
8 Lowder. I think there is a substantial danger that if we don't
9 nip this one in the bud now that this may come up again. And I
10 think given that it's a clear statement of the law, it's
11 appropriate to give it now.

12 The only reason we provided the Semlar (phonetic) case
13 was I believe defense counsel at some point raised the argument
14 of whether Rule 30 prohibited the Court from doing this. I
15 don't think the Court does.

16 THE COURT: I've already done my own research on
17 that --

18 MR. IGNALL: Okay.

19 THE COURT: -- independent of your --

20 MR. IGNALL: Although --

21 THE COURT: -- case and have confirmed that the Court
22 has authority to -- to issue interim instructions.

23 MR. IGNALL: Although I do think it's probably prudent
24 given the Semlar case that the Court give an instruction like
25 this at the end as well. So this would not be a substitute nor

1 any final instruction.

2 Thank you.

3 MR. CRISTALLI: Your Honor, just one thing. I mean,
4 the only reason we're havin' this discussion is not because of
5 what I have done on cross -- cross-examination. It's not
6 because of what Mr. Bowers has done on cross-examination. It's
7 what Mr. Schiff has done on cross-examination. And, once again,
8 I'm suffering as a result of a spillover situation here.

9 The fact that you're instructing the jury is almost a
10 reinforcement and it could undermine the argument of
11 reasonableness. And that's my biggest concern here obviously.

12 THE COURT: Thank you.

13 MR. BOWERS: Judge, maybe I could provide your clerk
14 with a copy of -- I've marked a section of the Government's jury
15 instruction that they have seen on good faith. I, again, don't
16 want this to be construed as acquiescence. But I think we have
17 to afford some weight to this portion of the instruction.

18 (Document handed to the Court.)

19 MR. BOWERS: This first part of the instruction is all
20 fairly detailed. And I just submit to the Court that that --
21 that is not the instruction that we would prefer on good faith
22 but, you know, sort of sensing the direction of the tide here
23 would like something rather than nothing.

24 MR. IGNALL: Your Honor, if I may. I think we'd object
25 to giving the full good-faith argument -- or instruction on

1 either side at this point because the Court will not be
2 instructing the jury on the elements of any offense. It's just
3 simply stating is what the law is in terms of liability to pay
4 income taxes.

5 I do think it's appropriate, however, to have a little
6 bit at the end of that making clear to the jury that they
7 shouldn't draw any conclusions from this instruction all by
8 itself, that there are gonna be instructions about what the
9 elements are. And I do think it's appropriate to at least make
10 some comment here that even though the Court has said what the
11 law is that one element or one issue for the jury to decide to
12 keep their minds open is, you know, mistake, accident,
13 inadvertence, or good-faith misunderstanding of the law; that is
14 not conclusive.

15 MR. BOWERS: I'm sorry, Judge. My last point --
16 Mr. Ignall, not rudely, but you kinda jumped in there --

17 MR. IGNALL: I'm sorry.

18 MR. BOWERS: That's all right. No, no.

19 -- I think we're selling this jury short as well,
20 Judge. I mean, the -- the one afternoon where you sort of said,
21 hey, you could ask questions, that question that came from the
22 jury indicated a level of following these proceedings I think
23 that far surpassed what any of these lawyers -- maybe not the
24 Court. I don't know the Court's experience -- but as attorneys
25 I think we're all rather surprised with just how much attention

1 they had been paying and their ability to focus on what's
2 happening here.

3 So, again, if you're gonna give the instruction, it
4 would be over my objection. But I would ask that at a minimum
5 you include some of the Government's language. But I don't -- I
6 don't know that it's necessary, both due to timing and I think
7 this jury has indicated a level of paying attention to this
8 trial that is such that they are perfectly capable of figuring
9 out when Irwin is -- is ranting about something and when a
10 government agent is talking about a Code section that's
11 interpreted by the IRS.

12 THE COURT: Thank you.

13 MR. SCHIFF: I have a further comment to make.

14 Okay. Here's what the Government -- here's what the
15 statute says. Section -- the public is directed in the Privacy
16 and Disclosure Act to Section 6001 to 6011. Section 6011 says,
17 "When required by regulations prescribed by the Secretary any
18 person made liable for any tax imposed by this title."
19 Therefore, Section 6011 makes a distinction specifically between
20 the tax being imposed and the liability for the tax.

21 Section 6001 also says, "Every person liable for any
22 tax imposed." So, therefore, the statute -- the law is passed
23 by Congress, which apparently the U.S. Attorney is not paying
24 any attention to, specifically makes a distinction between being
25 liable for a tax and a tax being imposed. And now the jury

1 wants you -- the Government wants you to tell the jury that the
2 imposition of a tax makes them liable when the statutes
3 themselves make a distinction and where the public is
4 specifically told that they have to look for a statute that
5 makes them liable.

6 Now, in various -- in connection with the wagering tax
7 return, which is a part of this exhibit, bookmakers are told
8 specifically the Code section that makes them liable, the Code
9 section, uh, uh, that requires them to pay it, and that they got
10 to file a Form 730. The Privacy Act notice in the 1040 booklet
11 is what the public has to rely on and the public is told these
12 are the three statutes. And, if the public goes to these three
13 statutes, the statutes reaffirm that they have to find a statute
14 that makes them liable. And the Government -- when the
15 Government accuses me of trying to confuse the jury, who is
16 trying to confuse the jury?

17 And this is a total -- oh, one other further thing.
18 The, um -- the, uh, 1939 Code in describing what is taxable as
19 income specifically mentioned wages and salaries. I can show it
20 to you if you want to see it. I should grab it. Congress
21 specifically took out 61, they specifically took out wages and
22 salaries, and now the Government wants you to tell the jury that
23 Section 61 contains something that Congress specifically
24 removed.

25 Now, if that's not fraud, I don't know what is. And,

1 if you want to give a fraudulent instruction to the jury and if
2 you can live with that, that's up to you.

3 MR. CRISTALLI: Your Honor, unrelated to, um,
4 Mr. Schiff's position, if the Court is considering, uh, this, I
5 do, um, after looking at my proposed jury instruction have one
6 sentence, um, that I would request to add in there. I don't
7 think it's, uh, overly cumbersome and it's the last portion of
8 our -- our instruction. It kinda fits right into where -- where
9 the Government left off on their instruction because it says
10 right here at the end, "I will instruct you after the close of
11 the ev-" -- this is the Government's proposed jury instruc- -- I
12 mean, instruction to the jury -- "I will instruct you after the
13 close of all the evidence on the elements of each offense that
14 the Government must prove beyond a reasonable doubt, which
15 includes proving that each defendant willfully violated the law
16 and did not act by mistake, accident, inadvertence, or due to a
17 good-faith misunderstanding of the law." And it stops there.

18 What I would ask to be added in because it -- it -- it
19 kinda comes right into the good-faith misunderstanding of the
20 law is that "in considering the defendant's claimed good-faith
21 belief and the lawfulness of his or her conduct you must make
22 your decision based on the defendant's actual" -- "what the" --
23 "what the defendant actually believed and not upon what you or
24 someone else believed or think the defendant ought to believe."

25 And that would -- that's, uh, I think a true statement

1 of the law. It was cited in *Cheeks v. U.S.*, 489 U.S. 192, um,
2 (1991); *U.S. v. Powell*, 936 F.2d 1056 (9th Cir. 1991).

3 MR. BOWERS: And, I guess, if it mattered to the Court,
4 again over my objection, I'd be happy to join with Mr. Cristalli
5 in that request if the Court's inclined to, uh, instruct the
6 jury.

7 MR. SCHIFF: One further comment.

8 I found the distinction. In the '39 Code Section 22
9 says, Gross income includes games, profits, income derived from
10 sales, wages, or compensation for personal service. The '54
11 Code took out wages and salaries and also took out compensation
12 for personal service and only left in compensation for service.

13 In addition, the Court is fully aware that in adopting
14 the '54 Code in House Report No, um, 1337 and Senate Report, uh,
15 1635, the U.S. Congress showing its intent in these committee
16 reports specifically said that income is used in the
17 constitutional sense.

18 Therefore, you want to instruct the jury in violation
19 of these committee reports that income is being used in the
20 ordinary sense and not in the constitutional sense. And,
21 therefore, you have totally disregarded the intent of Congress
22 when it wrote Section 61.

23 And I want the -- the -- the record to reflect that you
24 understand these distinctions, these distinctions are clear, and
25 despite these distinctions you want to charge the jury in

1 violation of the law and in violation of the clear intent of
2 both the House of Representatives and -- and the Senate when
3 they adopted the '54 Code.

4 THE COURT: Anything further?

5 MR. IGNALL: Nothing from the Government, your Honor.

6 THE COURT: All right. The Court is going to give the
7 instruction requested by the Government. The instruction is a
8 correct statement of the law. Mr. Schiff's version of the law
9 has been rejected by the courts in many, many decisions -- do
10 not -- do not interrupt me.

11 MR. SCHIFF: I'm not interrupting. But, as far as I
12 know, no court --

13 THE COURT: Sit down.

14 MR. SCHIFF: -- has said this is not -- all right.

15 THE COURT: I can cite you those cases. You pay no
16 attention to them. They have been cited in numerous decisions.
17 You choose which court decisions you will accept and then you
18 excerpt sections out of them and cobble together an argument
19 that, as I said, has been rejected by every court that has
20 considered it.

21 So I'm going to give the instruction. The Court will
22 give the -- the instruction at the -- the end regarding the, uh,
23 fact that there'll be further instruction. It'll be given in
24 the form that the Government has presented it.

25 Ms. Clerk, will you bring in the jury?

1 THE CLERK: Yes, sir.

2 MR. CRISTALLI: Your Honor, can I just have my proposal
3 marked just so we have it?

4 THE COURT: You may.

5 MR. CRISTALLI: Okay. Thank you.

6 MR. BOWERS: I actually -- the part I marked --

7 MR. CRISTALLI: On this one?

8 MR. BOWERS: -- that I gave to the judge, it's marked
9 already.

10 MR. CRISTALLI: Okay.

11 MR. BOWERS: So you can keep that.

12 MR. CRISTALLI: Okay.

13 MR. BOWERS: If I can get mine back, though, Judge, if
14 you have a moment.

15 THE COURT: Well, we need one for the record. Which
16 one are we gonna use?

17 MR. BOWERS: Keep 'em both. The Government has one
18 copy --

19 MR. CRISTALLI: I can get you one copy.

20 MR. BOWERS: No, no. He's got that. I just -- maybe
21 Peggie could copy the one page that I gave you from the
22 Government's, Judge, that I had marked.

23 THE COURT: The one that you gave me was from you.

24 MR. BOWERS: Well, she can keep that one and then I
25 also gave you a packet of 'em.

1 MR. IGNALL: Chad, for the Government's one you might
2 be able to just --

3 THE COURT: Do you want this back? Do you want this
4 back?

5 MR. BOWERS: Yeah. But you could copy that page and
6 then you have two for the record. And if I could get one back.

7 MR. IGNALL: Your Honor, I believe that's something
8 we've already filed with the Court. So I think Mr. Bowers could
9 just reference it by the Government's Proposed Jury Instruction
10 number.

11 MR. BOWERS: We'll take care of this later. It's not a
12 big deal, Judge.

13 THE COURT: You need this back?

14 MR. BOWERS: Okay. Yeah.

15 Just for the record, it's page 47 of the Government's
16 jury instruction, first paragraph.

17 MR. SCHIFF: Are we arguing jury instructions now?

18 MR. BOWERS: No, we're not.

19 MR. SCHIFF: Oh, oh.

20 THE COURT: Bring in the jury.

21 (Jury enters the courtroom at 1:44 p.m.)

22 THE COURT: Please be seated.

23 Will counsel stipulate to the presence of the jury?

24 MR. IGNALL: Yes, your Honor.

25 MR. CRISTALLI: Yes, your Honor.

1 THE COURT: Ladies and gentlemen of the jury, um, I am
2 going to give you an interim instruction on the law as follows:

3 The law makes individuals liable to pay income taxes.
4 The federal income tax is imposed in Internal Revenue Code
5 Section 1 on the taxable income of every individual. Tax --
6 taxable income is defined in Section 63 as gross income less
7 deductions. Gross income is defined in Internal Revenue Code
8 Section 61 to mean all income from whatever source derived and
9 includes wages and salaries.

10 Every individual whose gross income exceeds specified
11 amounts is required to file an income tax return under Internal
12 Revenue Code Section 6012. When a return is required, the
13 person required to make such return is required without
14 assessment or Notice and Demand of the Secretary of the Treasury
15 to pay such tax along with his or her return. These sections
16 working together make an individual liable for income taxes.

17 I will instruct you after the close of all of the
18 evidence on the elements of each offense that the Government
19 must prove beyond a reasonable doubt which includes proving that
20 each defendant willfully violated the law and did not act by
21 mistake, accident, inadvertence, or due to a good-faith
22 misunderstanding of the law.

23 The Government will call its next witness.

24 MR. IGNALL: United States calls Kay IreY.

25 (Kay IreY takes the witness stand.)

1 THE CLERK: Please raise your right hand.

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

5 THE WITNESS: I do.

6 THE CLERK: Please be seated.

7 Please state for the record your full name and spell
8 your last name.

9 THE WITNESS: Kay Irey, I-r-e-y.

10 THE COURT: Go ahead.

11

12 KAY IREY,

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

15

16 DIRECT EXAMINATION

17 BY MR. IGNALL:

18 Q. Good afternoon, Ms. Irey.

19 A. Hi.

20 Q. What do you do for a living?

21 A. I'm a special agent with the Criminal Investigation Division
22 of the IRS.

23 Q. How long have you been a special agent?

24 A. 14 --

25 MR. SCHIFF: Your Honor, is this witness being offered

1 as an expert in the law?

2 THE COURT: We don't know yet. We'll find out in a
3 little --

4 MR. SCHIFF: Okay.

5 THE COURT: -- while.

6 BY MR. IGNALL:

7 Q. I'm sorry. How long have you been a special agent?

8 A. 14 years.

9 Q. All right. And what type of work do you do as a special
10 agent, just briefly?

11 A. I investigate, um, violations of the Tax Code, money
12 laundering, currency transaction violations.

13 Q. Do you ever work undercover?

14 A. Yes, I do.

15 Q. Have you gotten any special training to work undercover?

16 A. Yes. I intend -- attended a two-week training class.

17 Q. All right. Have you ever done any undercover work that
18 involved Irwin Schiff or Freedom Books?

19 A. Yes, I did.

20 Q. When did that take place?

21 A. In the year 2002, January through the end, off and on
22 contacts.

23 Q. Did you use a different name when you went undercover?

24 A. Yes, I did.

25 Q. What name did you use?

1 A. Kathy Dalton.

2 Q. And what was your first contact with anyone at Freedom Books
3 as Kathy Dalton?

4 MR. SCHIFF: Your Honor --

5 THE COURT: What?

6 MR. CRISTALLI: -- when -- when do I get to ask -- you
7 said -- when do I get to ask if the Government is offering her
8 as an expert in the law?

9 THE COURT: Well, you wait and see if they do offer
10 her.

11 MR. IGNALL: I'll break the --

12 MR. BOWERS: Irwin --

13 MR. IGNALL: -- suspense.

14 MR. BOWERS: Irwin --

15 MR. IGNALL: No.

16 MR. SCHIFF: Are they offering her as an expert?

17 MR. BOWERS: No, no, no.

18 MR. SCHIFF: I mean, well, then what -- how are they
19 offering her? Does she have any knowledge in my belief in taxes
20 or something? I wanna know --

21 THE COURT: She said she had contact with you at
22 Freedom Books.

23 MR. SCHIFF: She had contact with me at Freedom Books?

24 THE COURT: She had contact with someone at Freedom
25 Books as Kathy Dalton.

1 THE WITNESS: Can you repeat the question?

2 BY MR. IGNALL:

3 Q. Yeah, I'm not sure I remember the last question either.

4 When did you first have any contact with anyone at
5 Freedom Books?

6 A. I believe my first contact was January 11th, 2002, at
7 Freedom bookstore here in town.

8 Q. Here in Las Vegas?

9 A. Correct.

10 Q. And who did you meet with?

11 A. Uh, we spoke with Larry Cohen at the bookstore.

12 Q. Do you recognize Mr. Cohen here in the courtroom?

13 A. Yeah. He's in the middle of the back table over there.

14 Q. Can you identify him by what he's wearing?

15 A. Uh, he has a grey suit and tie, glasses.

16 Q. All right.

17 MR. IGNALL: May the record reflect identification of
18 Defendant Cohen?

19 THE COURT: It will.

20 BY MR. IGNALL:

21 Q. Did you speak with Mr. Cohen when you met with him?

22 A. Yes, we did.

23 Q. What was the substance of your conversation?

24 A. Um, we went in and we went through the literature, the books
25 he had for sale, and talked to him about the seminar that was

1 gonna happen the following day at San Reno.

2 Q. And did you have any discussion about tax returns?

3 A. Yeah. They talked about the zero tax return and the
4 literature that taught you how to do it and Mr. Schiff's
5 philosophy and the books that he was selling that showed you how
6 to do it.

7 Q. Did Mr. Cohen talk to you in particular about the wisdom of
8 filling out a zero tax return at that first meeting?

9 A. A little bit. I mean, he went generally over; invited us to
10 the seminar the following day.

11 Q. Did you attend the seminar the following day?

12 A. Yes, I did.

13 Q. Did you have to pay to attend the seminar?

14 A. I paid \$50, which was a reduced price because I went with
15 another person.

16 Q. Who -- was the other person another IRS agent?

17 A. Correct.

18 Q. And you guys got a packet -- I'm sorry. Why did you say --

19 A. I think it was --

20 Q. -- you paid a reduced price?

21 A. -- \$200 for two people.

22 Q. I'm sorry?

23 A. I think it was \$200 for the two people.

24 Q. Who did you, uh, pay the money to to attend the seminar?

25 A. I paid Mr. Cohen.

1 Q. In what form did you make the payment?

2 A. I gave him a check.

3 Q. All right. Uh, who spoke at the seminar?

4 A. It was mostly Mr. Schiff.

5 Q. Was he introduced by anybody else?

6 A. I believe Cindy Neun introduced him on the first day.

7 Q. Do you see Ms. Neun here in the courtroom?

8 A. Yes. She's behind you in the peach sweater and the long
9 blond hair, black dress.

10 MR. IGNALL: Thank you.

11 THE COURT: Record will reflect identification.

12 BY MR. IGNALL:

13 Q. How many people were at the seminar?

14 A. I would estimate maybe 80.

15 Q. All right. And what was the -- the -- how long did the
16 seminar last?

17 A. It was a full two days.

18 Q. And what was the gist of what Mr. Schiff was talking about?

19 A. He was, um, talking about how that taxes were not illegal
20 and how to file the zero return to avoid paying them. Um, he
21 went off in different areas.

22 Q. Did he ever talk about the Form W-4 at all?

23 A. Yes.

24 Q. What did he say about the Form W-4?

25 A. He -- he talked about puttin' exempt on it so you didn't

1 have them take your taxes out of your paycheck.

2 Q. Did Mr. Schiff ever, uh, recommend that people there buy any
3 products from him?

4 A. Yeah. It was a two-day sales pitch to buy his books.

5 Q. Did he, uh, sell anything other than books at that seminar?

6 A. He had tapes --

7 MR. SCHIFF: I object to the characterization of a
8 two-day seminar as a sales pitch.

9 THE COURT: Overruled.

10 MR. SCHIFF: But --

11 THE COURT: Be seated.

12 Overruled. You can cross-examine her if you wish.

13 BY MR. IGNALL:

14 Q. I'm sorry. Now I've forgotten my question too. I think
15 I -- did he sell anything other -- was he selling anything other
16 than books at the seminar?

17 A. He had books, videos, tapes, pamphlets.

18 Q. After the seminar, did you have any other contact with
19 anyone at Freedom Books?

20 A. I called the bookstore again in April of that same year and
21 spoke to Mr. Cohen on the phone.

22 Q. And what did you talk about on the phone?

23 A. We set up an appointment for my -- for me to come in and
24 have a tax return prepared by Mr. Cohen at the Freedom bookstore
25 here in Las Vegas.

1 Q. Did you come back to do that?

2 A. Yes, I did. In May 2002.

3 Q. And, when you met with Mr. Cohen, were you recording the
4 conversation?

5 A. Yes, I was.

6 Q. And, basically, what did you talk to Mr. Cohen about that
7 first time you went in there in May?

8 A. I, um, requested that he fill out the tax return for me on a
9 zero -- the zero-tax-return-type format.

10 Q. All right. And have you listened to the tape recording that
11 you made of that meeting on --

12 A. Yes, I have.

13 Q. And does that tape recording accurately reflect what took
14 place during that meeting?

15 A. Yes, it does.

16 Q. Did you have a chance to initial the tape after you listened
17 to it?

18 A. Yes, I did.

19 MR. IGNALL: If I could have, uh, one moment your
20 Honor.

21 THE COURT: Okay.

22 (Pause in the proceedings.)

23 MR. CRISTALLI: Your Honor, I'm just gonna lodge an
24 objection. I think this evidence is cumulative. I mean we've
25 heard these things before. We're gonna -- I assume I know

1 what's gonna be said before it's said. So...

2 THE COURT: Government's response, cumulative?

3 MR. IGNALL: Uh, this tape is not cumulative. This is
4 separate conduct that I think, if anything else, it's
5 corroborative and in some ways new.

6 MR. BOWERS: Your Honor, I -- I was gonna wait. I
7 guess assuming this evidence is gonna be published, I don't have
8 any objection. I'd like -- there were several recordings made
9 and maybe the Government could lay some foundation as to
10 which -- which one this was in the series.

11 MR. IGNALL: Okay.

12 MR. BOWERS: But a more specific objection would be: I
13 have no problem playing the tape. But I request that the tape
14 be played in its entirety, that we not have selections of the
15 tape taken out.

16 THE COURT: How long is the tape?

17 MR. IGNALL: Uh, your Honor, we're planning to play
18 three tapes. I believe -- if I may have one --

19 THE COURT: You may.

20 MR. IGNALL: -- one moment to confer with Agent Steiner
21 and confirm.

22 (Off-the-record discussion.)

23 MR. BOWERS: Judge, if I may ask, I suspect in this
24 particular instance they are plannin' on playing most of each
25 tape, which is fine. But it's really -- regardless of the

1 length of the tape, it's really not fair to take selected
2 portions that are out of context with a Government witness that
3 I can't necessarily bring them back to. So I would ask even if
4 the entire tape isn't played that I be allowed to publish
5 without this witness returning at a later date if I feel --

6 MR. IGNALL: Government wouldn't --

7 MR. BOWERS: -- the need during --

8 MR. IGNALL: -- object to that.

9 MR. BOWERS: -- my case.

10 THE COURT: Government will agree to that.

11 MR. BOWERS: For this witness or for --

12 MR. IGNALL: Your Honor --

13 THE COURT: Yeah. No. She doesn't have to come back.

14 The Government says you can play it later if you --

15 MR. BOWERS: Any and all --

16 THE COURT: -- if you need to --

17 MR. BOWERS: -- of her tape; is that correct?

18 THE COURT: -- without having her on the stand. I
19 believe that's what the Government is agreeing --

20 MR. IGNALL: Yeah.

21 THE COURT: -- to.

22 MR. IGNALL: Once the tape is in evidence, I don't
23 think --

24 THE COURT: Yeah.

25 MR. IGNALL: -- there's any --

1 THE COURT: Yeah.

2 MR. IGNALL: -- reason for us to object.

3 THE COURT: Well, that's -- I guess the question
4 addressing Mr. Cristalli's objection: Has this tape been played
5 before?

6 MR. IGNALL: This tape has not been played before.

7 THE COURT: Oh, okay. Then it's not cumulative.

8 MR. CRISTALLI: Is the -- is the tape of the seminar
9 coming into evidence or are portions of the seminar going to
10 be --

11 MR. IGNALL: No, we're not introducing those.

12 MR. CRISTALLI: Do we have a copy of the seminar as --
13 as a defendant -- as a Government's exhibit?

14 MR. IGNALL: No, it's not been made a Government's
15 exhibit.

16 May I approach the witness, your Honor?

17 THE COURT: You may.

18 BY MR. IGNALL:

19 Q. Agent Irej, I'm handing you what we've marked as Exhibit 93.

20 Do you recognize Exhibit 93?

21 A. Yes, I do.

22 Q. What is that?

23 A. It's a copy of the tape from that meeting. It has my
24 initials on it.

25 Q. Which meeting? The first day?

1 A. It's on -- for May 9th, 2002.

2 Q. Okay.

3 MR. IGNALL: At this point, the Government moves into
4 evidence Exhibit 93.

5 THE COURT: Same will be received.

6 (Government's Exhibit No. 93, received into
7 evidence.)

8 MR. IGNALL: And may we publish Exhibit 93 to the jury,
9 your Honor?

10 THE COURT: You may.

11 (Audiotape played in open court.)

12 MR. BOWERS: Your Honor, can I stop this for a second
13 and make an objection?

14 I don't know if I'm out of line here. But I can't -- I
15 can't hear what's on the tape. I mean, I obviously can read
16 what's on the transcript. But, as we're all aware, the tape's
17 the evidence. I mean, it's unintelligible what -- what the
18 conversation is, at least in this portion. I -- the Government
19 has -- that's my objection.

20 MR. CRISTALLI: Is there a transcript?

21 MR. BOWERS: I mean, the transcripts on the screen.
22 But to me it doesn't reflect what's being said on the tape.
23 That's my objection.

24 MR. CRISTALLI: Join, your Honor.

25 THE COURT: I -- I'm following it. I can follow it. I

1 know they are not catching everything. But, uh, it's pretty
2 close.

3 MR. IGNALL: And the Government doesn't object to
4 giving the instruction again that it's the tape, not the
5 transcript that's the evidence.

6 THE COURT: The tape is the evidence, not the
7 transcript.

8 (Audiotape continued.)

9 MR. BOWERS: Judge, I'm sorry. I've gotta make -- I've
10 gotta renew the objection. You can't hear anything there. I
11 mean, if it weren't for this transcript up on the screen -- it's
12 one thing to make it clear. You catch a smattering of words
13 here and there. I mean, it is what it is and I guess I'm making
14 my objection for the record. But particularly, when there's any
15 kind of background noise, you can't hear anything.

16 MR. CRISTALLI: Well, my -- the bigger concern I have
17 is where the transcriptions came from because I don't know if
18 anybody could have transcribed it from that tape.

19 THE COURT: Government wish to respond?

20 MR. IGNALL: I think it's the same response, that --
21 that the -- the tape is the evidence; the transcript is as much
22 as an aid to the jury as the jury finds it to be. And whatever
23 they hear or don't hear controls, not what may or may not be on
24 the screen.

25 THE COURT: The jury decides whether it's intelligible

1 and whether it follows the transcript. And I've already
2 instructed them that the tape is the controlling evidence. The
3 background, uh, noises are distracting. But, nonetheless, I can
4 hear and understand what is going on myself. So I assume that
5 the jury can -- can hear some of the tape and make their own
6 decision.

7 Go ahead.

8 (Audiotape continued.)

9 BY MR. IGNALL:

10 Q. Agent Irely, who else -- was Mr. Schiff present in the office
11 when you were talking to Mr. Cohen?

12 A. As I recall, he was like in the back office and came out a
13 couple times. You can hear him on the tape. But I did not deal
14 with him directly.

15 Q. Was Ms. Neun present?

16 A. Yes, she was.

17 Q. Where was she located?

18 A. She was in the -- like, the front reception area and back
19 and forth between the back offices and the front.

20 Q. How many people were in the office at the time that you were
21 in there?

22 A. You know, there was several. It was quite hectic for a
23 while. Maybe, you know, up to 10, 12.

24 Q. People appeared to be working there or customers?

25 A. Both.

1 Q. All right. And did you, uh, get your tax return to take
2 with you when you left that day?

3 A. No, I did not. I left it and I had an appointment to pick
4 it up the next day.

5 Q. All right. And did you -- was there -- we listened to a
6 little discussion there about -- I don't want -- I don't want to
7 misquote anything.

8 Did you talk to Mr. Cohen about some advancements he
9 was making?

10 A. He was suggesting that stapling the letter to the form as in
11 the original W-4 package.

12 Q. Did he show you that letter when you had that conversation?

13 A. I think he did.

14 MR. CRISTALLI: Your Honor, I'm gonna object. The
15 evidence speaks for itself. We just --

16 MR. BOWERS: The tape's --

17 MR. CRISTALLI: -- listened to the --

18 MR. BOWERS: -- the record --

19 MR. CRISTALLI: -- entire tape --

20 MR. BOWERS: -- your Honor.

21 MR. CRISTALLI: -- and watched the transcripts. Now
22 we're goin' over it again.

23 MR. IGNALL: Your Honor, it's an audio. What he showed
24 her certainly wouldn't be on the audio.

25 THE COURT: Sustained. If you give background -- ask

1 another background question and I may allow it. Objection is
2 sustained.

3 BY MR. IGNALL:

4 Q. Did you have a discussion with Mr. Cohen about whether or
5 not to attach something to your tax return?

6 A. Yes, I did.

7 MR. BOWERS: Objection, your Honor. The tape speaks
8 for itself.

9 BY MR. IGNALL:

10 Q. Did Mr. Cohen show you that attachment during that
11 discussion?

12 A. Yes, he did.

13 Q. Did you go back to pick up your tax return?

14 A. Yes, I did.

15 Q. When did you go back?

16 A. The very next day on the 10th.

17 Q. And who did you meet with when you went back the next day?

18 A. Mr. Cohen again.

19 Q. Did you tape-record this meeting?

20 A. Yes, I did.

21 Q. Have you had a chance to listen to the tape recording of
22 that meeting?

23 A. Yes, I did.

24 MR. IGNALL: All right. May I approach the witness,
25 your Honor?

1 THE COURT: You may.

2 BY MR. IGNALL:

3 Q. I've handed you what we've marked as Government Exhibit 94.

4 Do you recognize Government Exhibit 94, Agent Ireys?

5 A. Yes. This is the tape from that date with my initials on
6 it.

7 Q. Have you listened to that tape?

8 A. Yes, I have.

9 Q. Does that tape accurately reflect what took place during the
10 meeting on -- what's the tape?

11 A. May 10th.

12 Q. Does it accurately reflect the contents of your meeting on
13 May 10th?

14 A. Yes, it does.

15 MR. IGNALL: At this point, the Government moves into
16 evidence Exhibit 94.

17 MR. BOWERS: Your Honor, I -- I hope the tape is better
18 quality than the last one or I'll object based on the fact that
19 you can't hear the tape. So for whatever that's worth.

20 THE COURT: 94 is received.

21 (Government's Exhibit No. 94, received into
22 evidence.)

23 MR. IGNALL: At this point, we've actually -- just for
24 clarification, we're only go gonna play two portions of
25 Exhibit 94. But we don't object to defendants playing the other

1 part that they may want to at any time.

2 Can we play -- may we publish the first clip --

3 THE COURT: You may.

4 MR. IGNALL: -- which we've marked as Government
5 Exhibit 94A?

6 (Audiotape played in open court.)

7 MR. IGNALL: May I approach the witness, your Honor?

8 THE COURT: I'm sorry.

9 MR. IGNALL: May I approach the witness?

10 THE COURT: You may.

11 BY MR. IGNALL:

12 Q. Approaching the witness with exhibits we've marked, numbers
13 95 through 103.

14 Agent Irej, did you pay for any materials -- I'm sorry.
15 Let me back up a second.

16 If I could turn your attention to Exhibit 98.

17 A. (Complies.)

18 Q. Do you recognize Exhibit 98?

19 A. Yes, I do.

20 Q. What is Exhibit 98?

21 A. It's a cop- -- it's the copy of -- it's the original of the
22 tax return that Mr. Cohen prepared for me during May 2002.

23 Q. Did you pay Mr. Cohen to prepare that tax return?

24 A. Yes, I did.

25 Q. Do you recall how much you paid for that?

1 A. I believe it was \$40.

2 Q. If I could turn your attention to Exhibit 102 and ask you if
3 you recognize that document.

4 A. (Complies.) Yes, I do.

5 Q. What is Exhibit 102?

6 A. That was the check I -- I paid for the return -- it was
7 \$50 -- dated May 10th, 2002.

8 MR. IGNALL: Government moves into evidence Exhibits 98
9 and 102.

10 THE COURT: Cristalli?

11 MR. CRISTALLI: I don't have any objection.

12 MR. BOWERS: I don't have any objection.

13 THE COURT: Bowers?

14 MR. BOWERS: No.

15 MR. SCHIFF: No objection.

16 THE COURT: 98 and 102 are received.

17 (Government's Exhibit Nos. 98 and 102,
18 received into evidence.)

19 MR. IGNALL: May we publish Exhibit 98 to the jury?

20 THE COURT: You may.

21 BY MR. IGNALL:

22 Q. If I can turn your attention, Agent Irej, to the third page
23 of Exhibit 98.

24 A. (Complies.)

25 Q. Do you recognize this page?

1 A. Yes, I do.

2 Q. What is this page?

3 A. This is a W-2 form with my name at the bottom with a
4 employer's name of Luna Painting and Drywall.

5 Q. Did you create this?

6 A. Yes, I did.

7 Q. This W-2?

8 A. Correct.

9 Q. Did you provide this W-2 to Mr. Cohen?

10 A. Yes, I did.

11 Q. There is a discussion on the last clip we heard about
12 stapling something to the return and calling this income. Do
13 you remember that discussion?

14 A. Yes.

15 Q. Did Mr. Cohen refer to anything in particular? Was he
16 showing you something at that time?

17 A. He was suggesting not to staple the W-2 to the spot where it
18 says "Income" on the first page of the 1040 but to attach it
19 somewhere other than the Income section.

20 Q. Thank you.

21 MR. IGNALL: All right. May we play --

22 BY MR. IGNALL:

23 Q. What we heard was not the end of your meeting with
24 Mr. Cohen, was it?

25 A. No.

1 Q. All right.

2 A. I think we chatted for a while after that.

3 Q. All right.

4 MR. IGNALL: We are going to play the second clip. And
5 I think we skipped over a bit again. The defendants can play
6 that if they wish. It's clip 94B.

7 May we publish that to the jury, your Honor?

8 THE COURT: You may.

9 (Audiotape played in open court.)

10 BY MR. IGNALL:

11 Q. Agent Irely, did you ever buy anything else from Freedom
12 Books other than the, uh -- paying for your tax return to get
13 done?

14 A. Yeah. We bought some material that very first day back in
15 January when we spoke to Mr. Cohen at the Freedom Books store
16 location.

17 Q. What did you buy back there?

18 A. It was some various materials. You know, I can't tell you
19 offhand exactly what they were without looking at them.

20 Q. All right. If I could, uh, ask you to look at Exhibit --
21 maybe -- I may be mistaken -- if I could have you look at
22 Exhibit 101 -- I'm sorry. I may have misspoken there. I'm
23 sorry. Exhibit 1 -- 100.

24 Do you recognize Exhibit 100?

25 A. Yeah. The check for \$38 that I wrote to Freedom Books on

1 January 10th, 2002.

2 Q. And is this a real bank account?

3 A. Yes, it is.

4 Q. But this is not your real name?

5 A. No. It's my undercover name.

6 Q. But was there any money in the bank account?

7 A. Yes, there was.

8 Q. Who put the money in there?

9 A. It's government funds --

10 Q. Okay.

11 A. -- in there that I deposit.

12 Q. And do you recall what this check was for?

13 A. It was from various materials and a book --

14 Q. All right.

15 A. -- at that first meeting in January.

16 MR. IGNALL: Government moves into evidence

17 Exhibit 100.

18 MR. CRISTALLI: No objection.

19 MR. BOWERS: No objection.

20 BY MR. IGNALL:

21 Q. Do you recognize Exhibit 101?

22 THE COURT: 100 is received.

23 (Government's Exhibit No. 100, received into
24 evidence.)

25 MR. IGNALL: I'm sorry, your Honor.

1 THE COURT: Go ahead.

2 THE WITNESS: Yeah. It's a check dated January 12th,
3 2002, for \$50 to Freedom Books.

4 BY MR. IGNALL:

5 Q. Do you know what this check -- what you wrote this check
6 for?

7 A. That was for my share of the seminar fee.

8 MR. IGNALL: At this point, the Government moves into
9 evidence Exhibit 101.

10 MR. CRISTALLI: No objection.

11 MR. BOWERS: No objection.

12 MR. SCHIFF: No objection.

13 THE COURT: 101 is received.

14 (Government's Exhibit No. 101, received into
15 evidence.)

16 BY MR. IGNALL:

17 Q. Did you have any other contact with anyone at Freedom Books
18 after you had your zero return done?

19 A. I called down, I wanna say maybe in October, and spoke to
20 Mr. Cohen on the phone about buyin' a W-4 package.

21 Q. What discussion did you have with Mr. Cohen about the W-4
22 package?

23 A. It was so the next year I wouldn't have to file for a
24 refund; it was just automatically -- they wouldn't have pulled
25 out my income taxes --

1 Q. And what --

2 A. -- in my paycheck.

3 Q. -- did Mr. Cohen say about that?

4 A. To go ahead and buy the W-4 package and it would show me how
5 to do the steps to take it to my employer.

6 Q. Did you indeed buy the W-4 package?

7 A. Yes, I did. It arrived in November --

8 Q. All right.

9 A. -- 2002.

10 Q. If I could turn your attention to Exhibit 103, do you
11 recognize Exhibit 103?

12 A. It's a cancelled check for \$40, dated November 25th -- or
13 October 25th, 2002, to Freedom Books, the notation for the W-4
14 packet.

15 Q. And do you know what you used this check to buy?

16 A. They sent me the whole packet, the W-4 packet, with the
17 letters that go to the Congressman and...

18 MR. IGNALL: Government moves into evidence
19 Exhibit 103.

20 MR. CRISTALLI: No objection.

21 MR. BOWERS: No objection, your Honor.

22 MR. SCHIFF: No objection.

23 THE COURT: 103 is received.

24 (Government's Exhibit No. 103, received into
25 evidence.)

1 MR. IGNALL: May I have one moment, your Honor?

2 THE COURT: You may.

3 (Discussion between Mr. Ignall and
4 Mr. Neiman.)

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

6 THE COURT: Cross-examination?

7 MR. CRISTALLI: Your Honor, I don't have any questions
8 of this witness.

9 THE COURT: Thank you.

10 MR. BOWERS: I have a few. But I'll let Mr. Schiff go
11 first in the event he covers them for me.

12 THE COURT: Okay.

13 (Pause in the proceedings.)

14

15 CROSS-EXAMINATION

16 BY MR. SCHIFF:

17 Q. Okay. Um, I forgot your name.

18 A. Agent Irely.

19 Q. Agent Irely.

20 Okay. You said you attended a two-day seminar of mine;
21 is that correct?

22 A. Correct.

23 Q. And that was taped by the IRS?

24 A. Yes, it was.

25 Q. At that seminar, did you ever hear me make any statements

1 that promoted tax evasion or promoted violations of law?

2 A. There were several statements implying that paying the
3 income tax was not legal.

4 Q. I didn't hear what -- my question is: Did you ever -- did
5 you ever -- did I make at the seminar any representations or
6 encouraging anybody to make false statements to the IRS or
7 encourage anybody to -- to -- to violate the law as you
8 understand the law?

9 A. I believe you did actually.

10 Q. Well, then why didn't you -- you were playing excerpts and
11 all kinds of tapes and since you had a transcript, why don't you
12 play the transcript [sic] of those, um, portions of my seminar
13 in which I promoted violations of law? Why didn't the
14 Government play it?

15 MR. IGNALL: Objection, your Honor.

16 MR. SCHIFF: And, your Honor --

17 THE COURT: You'll have to ask the Government that
18 question.

19 MR. SCHIFF: Okay.

20 THE COURT: Okay.

21 MR. SCHIFF: I'm gonna ask them another thing.

22 BY MR. SCHIFF:

23 Q. I want --

24 THE COURT: Go ahead.

25

1 BY MR. SCHIFF:

2 Q. I want -- did you characterize my seminar as a sales pitch?

3 A. There were several comments once you get passed this step
4 then buy the next book and, if you have a problem, then buy this
5 book.

6 Q. Did you hear me go over the history of the income tax?

7 A. Yes, I did.

8 Q. Did you hear me try to explain the difference of the meaning
9 of income for tax purposes?

10 A. Yes, I did.

11 Q. Did you hear me explain the difference between regulations
12 and statutes?

13 A. Yes, I did.

14 Q. Did you hear me explain how IRS seizes property using liens
15 and levies?

16 A. Yes, I did.

17 Q. I already submitted documents that were submitted at the
18 two-day seminar. I wanna know if you recall receiving those
19 documents.

20 THE CLERK: Exhibit 2009?

21 MR. SCHIFF: Yeah, I guess so. Yeah.

22 (Document placed before the witness by the
23 clerk.)

24 BY MR. SCHIFF:

25 Q. Now, I passed out a number of documents, didn't I?

1 A. I -- I've seen these documents. I don't know if I got them
2 at the seminar.

3 Q. In any case, you --

4 A. I think these came with the packet.

5 Q. In any case, you received documents; right?

6 A. Yes, I did.

7 Q. Did you find anything when you -- when you left the seminar,
8 did you take those documents and lists of documents with you?

9 A. Yes, I did.

10 Q. Did you point out to the Government, uh, that some of those
11 documents promoted violations of law?

12 A. I didn't -- I provided them with what I was given at the
13 law. I did not point out anything.

14 Q. Is there anything in those documents that promoted
15 violations of law?

16 A. I have not reviewed these detailed. I turned them over to
17 the Government --

18 Q. Well --

19 A. -- after my assignment.

20 Q. -- if any of those documents did promote violations of law,
21 wouldn't the Government have introduced them?

22 MR. IGNALL: Objection, your Honor.

23 THE COURT: Sustained.

24 MR. SCHIFF: Well, your Honor, first of all, I'm gonna
25 move that the -- since she characterized a two-day seminar as a

1 sales pitch and the Government has the entire tran- -- on tape
2 I'm gonna move that the Government play my -- my seminar so --
3 so the jury can decide whether that was a mere sales pitch to --
4 to promote violations of law. The Government has it. And I
5 move that the jury hear it.

6 THE COURT: You move to -- you move to run the
7 Government's case for it?

8 MR. SCHIFF: I would like to play it. I would like to
9 play it because the Government provided me with a copy of the
10 recording of my two-day seminar. And I would like to play it.
11 However, I don't have it -- I didn't bring it with me.

12 THE COURT: Well, then we obviously can't play it --

13 MR. SCHIFF: It's at --

14 THE COURT: -- if you don't have it.

15 MR. SCHIFF: Well, I would like to play it tomorrow.

16 THE COURT: We'll deal --

17 MR. SCHIFF: I'll recall the witness.

18 THE COURT: -- we'll deal with it when you try to play
19 it.

20 MR. SCHIFF: Pardon me?

21 THE COURT: We'll deal with it when you have it and are
22 ready to propose its admission.

23 BY MR. SCHIFF:

24 Q. Now, in connection with --

25 MR. SCHIFF: I want to get my copy. Excuse me.

1 (Pause in the proceedings.)

2 MR. SCHIFF: Can I approach the witness and ask to see
3 those documents?

4 THE COURT: You may retrieve the documents.

5 (Pause in the proceedings.)

6 BY MR. SCHIFF:

7 Q. Okay. I'm gonna ask you questions about it. Okay. Let
8 me --

9 A. You can take it.

10 Q. Can I take it? Okay. Can I take -- I'll get my copy.

11 Document -- Exhibit 3 in these documents was an excerpt
12 from United States Attorney's bulletin of April --

13 MR. IGNALL: Objection, your Honor. I'm not sure the
14 witness said she recognizes these documents.

15 MR. SCHIFF: She said she --

16 THE COURT: You're now testifying. She said she didn't
17 recognize them. She picked them up, didn't look at them, took
18 them, and turned them over to the Government.

19 MR. SCHIFF: Well, why -- I -- I understood her to say
20 she recognized receiving these documents.

21 BY MR. SCHIFF:

22 Q. Did you --

23 A. I recognize there was a packet of papers I got. I could not
24 tell you it was exactly every piece of paper nor did I review
25 'em. I turned them over immediately to the Government.

1 Q. Well, wasn't I during the course of the seminar conducting
2 my seminar and as I did I referred to the document I was talking
3 about?

4 A. Yes. We had --

5 Q. And you were listening to the seminar. But you didn't turn
6 to the document?

7 A. The other agent and I had one copy of that to -- to share.
8 And our job was not to evaluate what you were presenting; it was
9 just to be there and to gather the information.

10 Q. So you were sittin' there and listening to me discuss a
11 document, but you didn't look at the document?

12 A. I'm sure we paged through to see if we had it.

13 Q. It would have been -- well, that... Well, take another look
14 at this document.

15 (Document handed to the witness by
16 Mr. Schiff.)

17 BY MR. SCHIFF:

18 Q. Can you just read -- do you recognize that document being
19 from the -- from the, uh, U.S. Attorney's Office bulletin?

20 MR. IGNALL: Objection, your Honor. I think the
21 appropriate question is does she recognize the document period.

22 THE COURT: Sustained.

23 BY MR. SCHIFF:

24 Q. Well, doesn't that refresh your recollection?

25 A. I did not look at this in detail during your seminar.

1 Q. Okay. The seminar that you attended -- this is -- the
2 seminar that you attended to [sic] was I introduced by Cindy
3 Neun at that seminar?

4 A. Yes, you were.

5 Q. Okay. Was that the seminar that was right after 9-11?

6 A. It was in January 2002. So...

7 Q. Did I discuss at that seminar the significance of 9-11?

8 A. I cannot tell you in detail what you said during those two
9 days without looking at the transcript.

10 Q. Well...

11 Now, I think you testified earlier that you were --
12 that you are a special agent?

13 A. Yes, sir.

14 Q. And what do special agents do again?

15 A. We work in the criminal side of the -- of the tax law.

16 Q. And what does that mean?

17 A. Instead of looking at civil violations; we look at criminal
18 violations.

19 Q. In other words, you investigate violations of the Internal
20 Revenue laws?

21 A. Yes.

22 Q. Okay. So I assume as part of your training you go through
23 the Internal Revenue Code so that you understand what the
24 statutes are so you can investigate violations of those
25 statutes; is that correct?

1 MR. IGNALL: Objection, your Honor. I think Mr. Schiff
2 is trying to tender this witness as an expert when in fact her
3 testimony deals with what she observed as an undercover officer.

4 MR. SCHIFF: Your Honor, she's a Government witness who
5 is a special agent and I'm simply trying to determine what kind
6 of training she's had in order to do this kind of surveillance.
7 Why should the Government object for me to --

8 THE COURT: I'll allow you to ask her what training she
9 has had. But the Government is correct. She was not tendered
10 as an expert witness and so you will not question her on the
11 law.

12 MR. SCHIFF: I'm not questioning her on the law.

13 THE COURT: Go ahead ask --

14 MR. SCHIFF: I just asked --

15 THE COURT: -- ask your question.

16 MR. SCHIFF: -- if she had any training in the law.
17 Why is she --

18 THE COURT: You may answer.

19 MR. SCHIFF: Why is the Government reluctant --

20 THE COURT: No, no, no. No speeches.

21 MR. SCHIFF: Okay.

22 Well, did you sustain the objection?

23 THE COURT: No.

24 MR. SCHIFF: Oh.

25 THE COURT: I said she can answer the question.

1 BY MR. SCHIFF:

2 Q. Okay. I just wanna know: Did you get any training in the
3 Internal Revenue Code so you'd know what you're investigating?

4 A. We were trained on the criminal violations. I do not know
5 the Code as well as the civil agents do.

6 Q. Well, wait a minute. You got training -- you got training
7 in -- in investigating criminal violations.

8 A. Correct.

9 Q. Criminal violations of what?

10 A. Tax laws, money laundering laws, currency transaction
11 violations.

12 Q. So, as I understand what you're saying, you got training to
13 understand criminal violations of the Internal Revenue laws.

14 A. Correct.

15 Q. Okay. So did they bother to point out the provisions of the
16 Internal Revenue Code that might be criminally violated?

17 A. Yes.

18 Q. Okay. So part of your training was going over the
19 provisions of the Internal Revenue laws; is that correct?

20 A. Yes.

21 Q. Okay. About how many hours would you say you spent going
22 over the provisions of the Internal Revenue Code?

23 A. I have no idea -- it's --

24 Q. Make --

25 A. -- it's a six-month training course to become a special

1 agent. It's --

2 Q. Okay.

3 A. -- not all on the Tax Code though.

4 Q. Did you spend more than one hour?

5 A. I'm sure we did.

6 Q. Did you spend more than 10 hours?

7 A. I'm sure we did.

8 Q. Did you spend more than 10 hours?

9 MR. IGNALL: Objection. Relevance to this line of
10 questioning.

11 THE COURT: What is the relevance?

12 MR. SCHIFF: All right.

13 THE COURT: Sustained.

14 MR. SCHIFF: All right.

15 BY MR. SCHIFF:

16 Q. In your going through the Internal Revenue Code, did you
17 ever see a section in the Internal Revenue Codes that mentions
18 the Internal Revenue Service?

19 MR. IGNALL: Objection. Relevance.

20 THE COURT: What is the relevance?

21 MR. IGNALL: She's testified on direct about --

22 MR. SCHIFF: You're --

23 MR. IGNALL: -- what she observed.

24 MR. SCHIFF: It's -- it's -- it's relevant to the
25 first, um -- we are charged with a conspiracy of interfering

1 with the duties of the IRS. And, if the IRS is not mentioned in
2 the Internal Revenue Code, then they couldn't have had any
3 duties. So it's directly relevant --

4 MR. IGNALL: Objection. It's a speech that
5 misstates --

6 THE COURT: Again --

7 MR. IGNALL: -- the law, your Honor.

8 THE COURT: -- you're making a legal argument.

9 MR. SCHIFF: Pardon me?

10 THE COURT: Sustained.

11 MR. SCHIFF: Okay.

12 THE COURT: This witness is a percipient witness.

13 MR. SCHIFF: Okay.

14 THE COURT: She is a fact witness.

15 MR. SCHIFF: Okay.

16 THE COURT: Question her regarding her testimony.

17 MR. SCHIFF: I'm just asking what she observed in the
18 Internal Revenue Code. I'm not asking her to comment on the
19 law.

20 THE COURT: You can cross-examine her on what she
21 testified to earlier.

22 BY MR. SCHIFF:

23 Q. Well, as I gather, um, you have made no representations,
24 then, that you never heard me say anything that was in violation
25 of the law?

1 A. I wasn't there to judge if you violated the law or not. I
2 was there to gather the information.

3 Q. Well, it's important that I understand what your testimony
4 is all about.

5 So you were just there as a sponge sucking up this
6 information without any understanding of what the information
7 was all about?

8 A. My understanding didn't have any revelance [sic] in what the
9 Government assigned me to do.

10 MR. SCHIFF: Well, your Honor, I'm gonna wanna play the
11 tape. I just don't have the tape. The Government has the tape.
12 It's really strange that they never even played an excerpt --

13 MR. IGNALL: Objection, your Honor.

14 MR. SCHIFF: -- in a two-day seminar.

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: All right. I'll bring --

17 THE COURT: -- Mr. Schiff --

18 MR. SCHIFF: -- it in tomorrow.

19 THE COURT: You do not decide what the Government
20 presents in its case in chief. It is not up to you.

21 MR. SCHIFF: Well, I wanna play the tape because she
22 characterized --

23 MR. CRISTALLI: Your Honor --

24 MR. SCHIFF: -- that -- that two-day seminar as a sales
25 pitch when the people could -- all right.

1 THE COURT: You can cross-examine her as to that
2 perception if you wish.

3 MR. CRISTALLI: Your Honor, just so --

4 MR. SCHIFF: I have no further questions.

5 MR. CRISTALLI: Okay.

6 THE COURT: Mr. Cristalli.

7 MR. CRISTALLI: I just wanted to make sure before the
8 witness left I think the Government is in agreement that, um,
9 they -- they would not object to the authenticity of the tape
10 coming into evidence. However, there is -- there may be some
11 other objections that we would have to deal with the Court. But
12 in --

13 THE COURT: You mean the authenticity of what tape?

14 MR. CRISTALLI: The seminar. I'm sorry. The tape of
15 the seminar.

16 THE COURT: I didn't hear him say that. We were
17 talking earlier about the -- the remaining portions of the
18 undercover tape that was made.

19 MR. IGNALL: Your Honor, what I said to Mr. Cristalli
20 outside of the hearing of the Court was just to avoid the
21 necessity of calling Agent Irely back -- she's from out of
22 town -- that she wouldn't be necessary here to authenticate what
23 was actually said --

24 MR. CRISTALLI: That's my only --

25 MR. IGNALL: -- on the tape.

1 MR. CRISTALLI: -- issue, your Honor.

2 THE COURT: Okay.

3 MR. CRISTALLI: Thank you.

4 THE COURT: Thank you.

5 Yes. I understand. I didn't hear your conversation.

6 MR. CRISTALLI: I'm sorry.

7 THE COURT: Go ahead, Mr. Bowers.

8

9

CROSS-EXAMINATION

10 BY MR. BOWERS:

11 Q. Good afternoon, Agent Dalton [sic]?

12 A. It's Irely.

13 Q. Sorry.

14 A. That's okay.

15 Q. That's an alter ego thing. I apologize.

16 Um, if I understand this correctly, you first had

17 contact with Freedom Books in January of 2002; correct?

18 A. Correct.

19 Q. And those tape recordings that we heard were made in May of

20 2002 after you had attend a seminar; is that correct?

21 A. Correct.

22 Q. And you said you had one last contact with Larry in October

23 of 2002?

24 A. I can't remember if I just e-mailed or if I called him to

25 buy the packet. I -- that I'm not sure about.

1 Q. All right. Well, to make it --

2 A. It could be in my notes.

3 Q. -- to make it as cursory as possible, is it fair to say that
4 contact basically involved some request for a packet which was
5 sent to you?

6 A. Correct.

7 Q. Okay. And he didn't have anything in particular to do with
8 your attendance at the seminar in January either; is that
9 correct?

10 A. No.

11 Q. Okay. So your contact with Larry is best summarized by the
12 tapes that we've heard here today. Is that --

13 A. Correct.

14 Q. -- fair to say? Okay.

15 Um, I -- I wasn't paying attention. I apologize.

16 How long have you been a CID agent?

17 A. 14 years.

18 Q. Okay. Were you employed by the Service in another capacity
19 prior to that?

20 A. No, I was not.

21 Q. Okay. So is that your -- I'm not trying to be tricky -- but
22 that's your whole tenure with the IRS is --

23 A. Yes.

24 Q. -- as a criminal investigator? Okay.

25 Um, now, you said you -- you'd had a couple weeks of

1 on-the-job training or pretraining regarding undercover work?

2 A. They send us to a two-week intensive undercover school at
3 Glynco, Georgia, where we do role playing and they teach us the
4 paperwork and some of the law and the electronics part of it.

5 Q. How far along in your career was that? Was it right away?
6 Was that a few years ago?

7 A. No. Ten years into my career.

8 Q. Okay. So is undercover work then -- is it fair to say that
9 not every CID agent is able to do undercover work?

10 A. Correct. You have to be certified every year.

11 Q. Okay. And do they select -- "they" meaning whoever makes
12 these decisions at the IRS -- select certain people to continue
13 doing undercover work and some people to not do it? Do you know
14 how that process works?

15 A. Every year you go in and you're recertified on your past
16 duties, your workload.

17 Q. Um, is it fair to say that a lot of your training as an
18 undercover agent is developed on the job?

19 A. I would say those two weeks we probably did six hours of
20 role playing every single day and then you go out, also, with a
21 partner and you go along. So it's both.

22 Q. Okay. So your training is as helpful as your on-the-job
23 experience?

24 A. Yes.

25 Q. Okay. Um, do you testify in court very often?

1 A. Uh, whenever needed.

2 Q. How often is that on a monthly basis?

3 A. On -- it's not monthly.

4 Q. Yearly?

5 A. Yearly.

6 Q. How many times per year would you say you testify?

7 A. Uh, two or three.

8 Q. Uh, after you testify, are you -- do you have the
9 opportunity to review your testimony with the U.S. Attorneys or
10 other agents that are involved?

11 A. If I would request it, yes.

12 Q. If you request it or if they request it?

13 A. Either way.

14 Q. How often after you testify do you go over your testimony
15 with the agents?

16 A. Seldom, I would say.

17 Q. How about before you testify? Do you spend some time with
18 the agents reviewing your testimony?

19 A. Very little.

20 Q. Time with the U.S. Attorney or the agents?

21 A. I'd say, on this occasion, 15 minutes prior to this.

22 Q. Um, do you have any training you receive as part of your job
23 about, uh, testifying in court?

24 A. Yes, we do at our basic training.

25 Q. I'm sorry. What was that?

1 A. At our basic training, we have a little bit of court
2 testimony class.

3 Q. Was that the one 14 years ago or is that --

4 A. Correct.

5 Q. -- an ongoing thing?

6 A. 14 years ago.

7 Q. Okay. Um, are you trained to be deceptive?

8 A. Are we trained to give a different name than what is on our
9 birth certificate? Yes.

10 Q. No. I mean, I think that's deceptive. We all know that.

11 I mean, are you trained to adopt a role that requires,
12 uh, gathering the information you're sent to acquire?

13 A. I guess somewhat, yes.

14 Q. I mean, for example, I would characterize your interchange
15 with Mr. Cohen as being somewhat flirtatious. I don't --

16 MR. IGNALL: I object, your Honor.

17 BY MR. BOWERS:

18 Q. -- know if you agree or not.

19 MR. IGNALL: I'm not sure what the relevance to this
20 line of inquiry is.

21 MR. BOWERS: Oh, okay.

22 We have somebody on behalf of the government going in
23 to get a specific piece of information and it's not relevant
24 what she did to get that?

25 MR. IGNALL: Objection. This doesn't impeach her

1 credibility I don't --

2 MR. BOWERS: I'm not --

3 MR. IGNALL: -- think.

4 MR. BOWERS: -- trying to impeach her credibility. I'm
5 asking her what happened.

6 THE COURT: Well, ask her a question.

7 MR. BOWERS: I did ask her a question. Did you sustain
8 the objection to that one?

9 THE COURT: No, I didn't. Go ahead and ask the
10 question.

11 MR. BOWERS: Can I have the court reporter read it
12 back? I don't recall exactly what --

13 THE COURT: She doesn't -- she doesn't have
14 read-back --

15 BY MR. BOWERS:

16 Q. Would you --

17 THE COURT: -- capability.

18 BY MR. BOWERS:

19 Q. -- characterize your -- would you characterize your persona
20 during your interchange with Mr. Cohen as being somewhat
21 flirtatious?

22 A. I'd say that my personality during that day reflected
23 whatever he was -- your -- your character comes out as
24 whatever -- whoever you're dealing with. If he would have been
25 rude, I probably would have been cold to him. But he was very

1 friendly and open.

2 Q. And you engaged him in the same way?

3 A. I responded as anybody would meeting him on the street, I
4 would think.

5 Q. You would agree that certainly the way you handled Larry
6 Cohen that day is different than you present yourself in court
7 here today. Is that fair?

8 A. It's not much different. Somewhat. Because you're not
9 throwin' a joke at me so I have nothin' to chuckle back.

10 Q. Okay. Maybe we'll get to that here in a minute.

11 Um, what were your instructions that day when you went
12 to see Larry Cohen?

13 A. To go in and ask if Larry -- or if Mr. Cohen would prepare a
14 1040 return for me.

15 Q. Who gave you those instructions?

16 A. It would have been a case agent and his supervisors.

17 Q. Are you saying it would have been or it was? Do you have --

18 A. It was.

19 Q. -- an independent --

20 A. It was.

21 Q. -- recollection of who gave you those instructions?

22 A. It was the case agent and the --

23 Q. Who was --

24 A. -- supervisors.

25 Q. -- the case agent?

1 A. I believe it was, um, Sam Holland.

2 Q. Is Mr. Holland here in court today?

3 A. Yes, he is.

4 Q. Could you identify him for us?

5 A. He's the second one in from the left. There, raising his
6 hand.

7 MR. BOWERS: Sorry, Sam.

8 BY MR. BOWERS:

9 Q. Um, and do you know why you were speaking to Larry?

10 A. I don't -- I think it was whoever I encountered in the
11 office. I don't know if Mr. Cohen was, like, specifically who I
12 was supposed to talk to.

13 Q. Well, I guess that's my instruction [sic]. Do you have an
14 independent recollection of what you were told to do that day?

15 MR. IGNALL: Objection to relevance.

16 THE COURT: What is the relevance?

17 MR. BOWERS: I'm trying to get the circumstances
18 surrounding why she was there and made this tape and what she
19 was doing.

20 THE COURT: She's answered the question to the best of
21 her recollection. She doesn't --

22 MR. BOWERS: That's what --

23 THE COURT: -- recall.

24 MR. BOWERS: -- I'm trying to figure out. Was she
25 there to talk to Larry or was she there to talk to --

1 THE COURT: She answered --

2 MR. BOWERS: -- who she encountered.

3 THE COURT: -- she wasn't -- she didn't know if she was
4 specifically there to talk to Larry Cohen. That's her answer.

5 MR. BOWERS: Your Honor, if I could have the Court's
6 indulgence for just a moment.

7 THE COURT: Yes.

8 (Pause in the proceedings.)

9 BY MR. BOWERS:

10 Q. Was that your first contact with him in May?

11 A. No. It was January.

12 Q. Was that the time that Agent Holland had just asked you to
13 go in there and speak to whomever was January or May or both?

14 Do you recall?

15 A. Probably both.

16 Q. But you don't know?

17 A. Well, the first time we were sent to go into Freedom Books
18 stores and look around and see the materials --

19 Q. Right.

20 A. -- and talk to them about the upcoming seminar.

21 Q. Okay. And the second time you don't recall?

22 A. I -- I don't recall exactly if I was supposed to talk to
23 Mr. Cohen. I'm assuming I was because that's who I had talked
24 to at the seminar and that's who I talked to on the phone. I
25 made an appointment with Mr. Cohen over the phone.

1 Q. That's right. You made a phone call, didn't you?

2 A. Correct.

3 Q. And you don't recall your instructions surrounding that
4 phone call, whether you were to speak to Larry or whoever
5 answered the phone?

6 A. I don't. I'm sure it's in notes somewhere. But I don't --
7 I don't want to mis-say one way or another.

8 Q. Refreshing your recollection with the existence of that
9 phone call, is it fair to say that you were at the May 9th
10 meeting there to talk to Larry then?

11 A. Correct.

12 Q. Okay. Um, now, these transcripts that were made, do you --
13 of -- of these tapes we're heard, were you involved in that
14 process at all?

15 A. Yes.

16 Q. In making the transcripts?

17 A. No, I don't type 'em up. I review 'em after they are
18 prepared.

19 Q. Okay. So did you see a draft of the transcripts and make
20 revisions based on your recollection or something?

21 A. Yes.

22 Q. And then those changes were made and incorporated into what
23 we saw here today?

24 A. Correct.

25 Q. Did you make notes at the time those -- after you left that

1 encounter, did you make notes as to what happened there that you
2 later used to edit the transcripts?

3 A. No.

4 Q. So you just listened to the tape at some later date after
5 the seeing the transcripts and made your changes?

6 A. Yes, because sometimes I could make out what was said more
7 so than somebody who never heard our voices before.

8 Q. How long was the time difference in that process? In other
9 words, you made the tapes, uh, on May 9th and May 10th; correct?

10 A. Correct.

11 Q. When do you recall to your best estimate changing the
12 transcripts based on your recollection?

13 A. It might have been a couple years.

14 Q. So there was a couple-year gap up to that point --

15 A. Yes.

16 Q. -- between when you heard the tapes and -- made the tapes
17 and made the changes?

18 A. Correct.

19 Q. Was your appearance at the time you met with Mr. Cohen the
20 same as or similar as to what it is today? And, I mean,
21 basically in the way you're attired and dressed and so forth,
22 not --

23 A. I would say no, I have gained weight --

24 Q. I was gonna say --

25 A. -- and I'm a little bit older.

1 Q. -- we all get older and...

2 A. I think I had blue jeans on and a regular top. I --

3 Q. Would it be --

4 A. -- wouldn't have been in a business suit, no.

5 Q. Would it be fair to say you were dressed more casually --

6 A. Correct.

7 Q. -- than you present yourself here today?

8 When Larry mentioned something revolutionary, you took
9 that to be dropping the -- the two page attachment from the
10 return; is that correct?

11 A. Correct.

12 Q. Did you ever at a later time, or sometime we didn't hear on
13 the tape, discuss with Larry the notion of a return that
14 indicated not liable as opposed to a zero return?

15 A. I don't recall that.

16 Q. Did you ever discuss with him returns based on a bad OMB
17 number?

18 A. No.

19 Q. How about the 1040 manual or foreign-source income?

20 A. I -- I don't recall.

21 Q. None of those --

22 A. No.

23 Q. -- conversations come to mind; is that correct?

24 A. Correct.

25 Q. Um, you wrote a number of checks to Freedom Books that we

1 reviewed; is that correct?

2 A. Correct.

3 Q. Um, none of those checks were made to Larry Cohen
4 individually; is that correct?

5 A. No. They were all to Freedom Books.

6 Q. At no time did Larry Cohen individually ever ask you to make
7 a check payable to him; is that correct?

8 A. Correct.

9 Q. And I believe the first check was for some materials you
10 ordered in the seminar at or about the same time; is that right?

11 A. The first check was for materials we bought at the book
12 store.

13 Q. That was for \$38?

14 A. Correct.

15 Q. If the price of The Freedom [sic] Mafia was \$38, would that
16 refresh your recollection that that's probably what you bought?

17 A. It might have been. The other agent bought some material
18 too. So that's why I can't be sus- -- sus- -- it's not exactly
19 what I bought. There you go.

20 Q. Um, and then you wrote a check for a seminar?

21 A. The \$50 for my share of the seminar.

22 Q. And then you wrote a check for the W-4 packet?

23 A. Correct.

24 Q. And then you wrote a check for the return?

25 A. Correct.

1 Q. Any more checks that you recall?

2 A. No, sir.

3 Q. Do -- I mean, the evidence speaks for itself. Nothing that
4 I've seen in the evidence suggests Larry sold you any of those
5 products. Is there something that we haven't seen on those
6 tapes or that happened in the October contact where you
7 solicited him wherein Larry induced you into purchasing some
8 product?

9 A. He was a salesman in -- in the bookstore. But the checks
10 were not written to Larry, no.

11 Q. No, no, no. I understand that. I know that you
12 characterize him as a salesman.

13 What I'm saying is that the tape speaks for itself.
14 So, unless there was something that was in the tape that
15 occurred outside of the tape, was there anything that Larry did
16 that persuaded you to purchase a product on May 9th or 10th?

17 A. Outside the tapes, no.

18 Q. All right. Whatever happened on the tapes happened.

19 How about back in January? Did Larry do anything to
20 persuade you to purchase any of Irwin's products?

21 A. Well, sure. He was pointin' out the materials in the
22 bookstore and at the front table in front of the seminar.

23 Q. Okay. So he said these materials are here; these are our
24 materials?

25 A. Yes.

1 Q. Okay. And that's what you're characterizing as a sales
2 effort on Larry's behalf?

3 A. Yes.

4 Q. Okay. And then how about the request for the W-4 packet?
5 You contacted him; correct?

6 A. Correct.

7 Q. And you said: This is what I wanna do. How do I do it?
8 Correct?

9 A. Correct.

10 Q. And Larry didn't say, well -- well, that's fine. I mean,
11 he -- he -- he supplied the product that answered the question
12 you gave him; correct?

13 A. Correct.

14 Q. Um, is it generally a criminal offense in your understanding
15 to create a false W-2?

16 MR. IGNALL: Objection. Relevance.

17 THE COURT: What is the relevance?

18 MR. BOWERS: Um, she testified that she created a false
19 W-2. If the Government's willing to have an agent engage in
20 criminal conduct as part of its investigation, I think we should
21 know that.

22 MR. IGNALL: Objection, your Honor. This implies --

23 MR. BOWERS: I'm sorry. What would --

24 MR. IGNALL: -- that there's --

25 MR. BOWERS: -- what would normally --

1 MR. IGNALL: -- something illegal --

2 MR. BOWERS: -- be criminal --

3 MR. IGNALL: -- about what the IRS did.

4 MR. BOWERS: -- conduct.

5 MR. IGNALL: And that's an incorrect statement of the
6 law.

7 THE COURT: Sustained.

8 MR. BOWERS: I'm sorry. So that question's not getting
9 answered.

10 THE COURT: I've sustained the objection.

11 MR. BOWERS: Well, on the -- can I re-ask it another
12 way or I didn't hear his exact objection.

13 THE COURT: Uh, she is not a legal expert. She hasn't
14 been tendered as one.

15 MR. BOWERS: Okay. Um, well, now I'm -- I'm confused.
16 Um...

17 THE COURT: Move on. Next question.

18 BY MR. BOWERS:

19 Q. Do you have any -- did you have any understanding of the
20 scope of this investigation when you were involved?

21 A. In the very beginning, they'd send me a summary, yes, and
22 discuss it somewhat with me. I'm not privy to the details.

23 Q. Did you understand whether it was criminal or civil?

24 A. It was criminal because we're with the Criminal
25 Investigation Division.

1 Q. Okay. So you knew it was criminal.

2 Did you know who the targets of it were?

3 A. Yes, I did.

4 Q. Was Larry Cohen a target?

5 A. I think his name was in the original packet, yes.

6 Q. Was anybody else besides the defendants here a target?

7 MR. IGNALL: Objection. Relevance.

8 THE COURT: Relevance?

9 MR. BOWERS: Again, I'm -- I'm trying to figure out the
10 cor- -- or the circumstances surrounding her involvement with
11 Mr. Cohen. She doesn't recall whether she was sent directly to
12 talk to him or just happened to talk to him. She thinks he
13 might have been a subject, but she's not sure. She doesn't know
14 who else would have been a subject. I mean, if she doesn't
15 know, she doesn't know. But I'd like her to be able to answer
16 the question if she can.

17 THE COURT: Well, as to others, it's irrelevant. You
18 can certainly ask as to these defendants.

19 MR. BOWERS: I -- I thought that was the question I got
20 an objection to. Was there --

21 THE COURT: No. You asked if there were others.

22 MR. BOWERS: Okay.

23 BY MR. BOWERS:

24 Q. So it was these defendants and we don't know if there were
25 others.

1 A. That had --

2 Q. Is that fair?

3 A. -- been identified as associates. I don't know if they were
4 identified as targets at the beginning of the document.

5 Q. Who had been identified as associates?

6 A. Mr. Cohen and Ms. Neun.

7 Q. You -- you made an evaluation of -- of Mr. Schiff's seminar
8 as a sales pitch; is that correct?

9 A. That was a personal observation. Correct.

10 Q. And, when you say that's a personal observation, that means
11 outside the scope of your assignment?

12 A. It's not a government, you know...

13 Q. Position?

14 A. Correct.

15 Q. Uh, you weren't there to evaluate the legality of the
16 seminar; is that correct?

17 A. Correct.

18 Q. And did you -- so you formed no opinion about that?

19 A. I'm not a lawyer. I was just there to gather the
20 information.

21 Q. At the close of your May encounters with Mr. Cohen, he was
22 quite clear that he encouraged you to call him with any
23 questions; is that correct?

24 A. Yes.

25 Q. And he didn't indicate there was a further fee or anything

1 to that effect; he just made it clear he was available to talk
2 to you if you had questions about this material. Right?

3 A. Correct.

4 Q. Uh, you -- were you aware of the presence of -- you were
5 aware of the presence of a number of employees in Freedom Books
6 on both these encounters in May; correct?

7 A. There were other people in the office, yes.

8 Q. Yeah. And I probably shouldn't use the term "employees."
9 But there were other people working there; correct? There were
10 other people in the building?

11 A. Yes.

12 Q. Appeared to be engaged in the business of whatever it is
13 Freedom Books does?

14 A. Yes.

15 Q. Was there anything furtive or secretive about what you did
16 with Larry? I mean, was this done in a back room or --

17 A. No.

18 Q. -- behind a closed door?

19 A. No.

20 Q. Was it done in the public view of whoever might be in the
21 store at the time?

22 A. Yes.

23 Q. Done in a whisper?

24 A. No.

25 Q. The -- the poor quality of that tape recording has nothing

1 to do with anything Larry was doing to hide the contents of your
2 conversation?

3 A. No.

4 Q. You never actually saw Larry prepare the return, did you?

5 A. I did not.

6 Q. You left and you came back and it was done; correct?

7 A. Correct.

8 Q. And it was never actually signed, was it?

9 A. Correct.

10 Q. Neither by him nor by you; is that correct?

11 A. Correct.

12 MR. BOWERS: Court's indulgence for just a moment.

13 THE COURT: Okay.

14 (Pause in the proceedings.)

15 BY MR. BOWERS:

16 Q. Um, I just have one last question, Agent.

17 For those -- do you know how many CID officers there
18 are that are licensed to do undercover work?

19 MR. IGNALL: Objection. Relevance.

20 THE COURT: What is the relevance?

21 MR. BOWERS: Again, your Honor, I'm trying to establish
22 the circumstances surrounding the making of this recording. You
23 know, I just -- it's amazing to me that I -- I can't establish,
24 you know, time, place, and circumstance. But if I can't, I
25 can't.

1 THE COURT: With the recordings, we've established time
2 and that is May --

3 MR. BOWERS: Well, this -- this speaks specifically to
4 circumstance. It would speak to whether there was a reason why
5 this particular agent went to this particular location at this
6 particular time and made these particular tapes with my client.

7 THE COURT: And --

8 MR. BOWERS: I mean, presumably there's any -- any
9 number of CID agents who could have done this. And the
10 Government wants us to accept that, you know, you sort of reach
11 into a hat and Agent Irey doesn't live in Las Vegas, so she's
12 the one who does it. I'm trying to find out if that's -- that's
13 the reason or not.

14 THE COURT: Well, you -- you -- you asked a number of
15 agents licensed. And I don't --

16 MR. BOWERS: Licensed to do --

17 THE COURT: -- I don't think that --

18 MR. BOWERS: -- licensed to do undercover work.

19 THE COURT: I don't think licensed is the --

20 MR. BOWERS: Certified. I misspoke, your Honor.
21 Certified would be the question.

22 MR. IGNALL: But objection, your Honor. That still
23 doesn't tend to prove or disprove any fact at issue.

24 THE COURT: It doesn't. It's --

25 MR. BOWERS: Well, you know --

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

2 MR. BOWERS: Okay. Okay.

3 Thank you, Ms. Irely. Have a nice afternoon.

4 MR. IGNALL: No redirect, your Honor.

5 THE COURT: Witness is excused.

6 We're going to take our recess. Be in recess for 15
7 minutes.

8 (Jury leaves the courtroom at 3:29 p.m.)

9 THE COURT: Okay. Thank you.

10 MR. IGNALL: Thank you, your Honor.

11 (Recess from 3:30 p.m. to 3:47 p.m.)

12 THE COURT: Bring them in.

13 (Jury enters the courtroom at 3:47 p.m.)

14 THE COURT: Please be seated.

15 Will counsel stipulate to the presence of the jury?

16 MR. CRISTALLI: Yes, your Honor.

17 MR. NEIMAN: Yes, your Honor.

18 THE COURT: Thank you.

19 MR. BOWERS: Yes, Judge.

20 THE COURT: Thank you.

21 MR. SCHIFF: Yes, your Honor.

22 THE COURT: Thank you.

23 Mr. Neiman, you may proceed with the next Government
24 witness.

25 MR. NEIMAN: Thank you, your Honor.

1 The United States would call Tony Aguiar to the stand.

2 (Anthony Aguiar takes the witness stand.)

3 THE CLERK: Go ahead to the top of the stairs, please.

4 Remain standing. Raise 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: I do.

9 THE CLERK: Please be seated.

10 Please state for the record your full name and spell

11 your last name.

12 THE WITNESS: Anthony Joseph Aguiar, A-g-u-i-a-r.

13 THE COURT: You maybe seated.

14 MR. NEIMAN: Thank you very much.

15

16 ANTHONY AGUIAR,

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

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

19

20 DIRECT EXAMINATION

21 BY MR. NEIMAN:

22 Q. Good afternoon, Mr. Aguiar.

23 A. Good afternoon.

24 Q. Mr. Aguiar, how are you employed?

25 A. I'm employed with the Internal Revenue Service as an Appeals

1 officer.

2 Q. How long have you been an Appeals officer with the IRS?

3 A. 17 years.

4 Q. Prior to being an Appeals officer, what -- what did you do
5 for the previous 13 years?

6 A. Prior to that, I was a Revenue agent.

7 Q. And what is a -- what does it mean to be a Revenue agent?

8 A. As a Revenue agent, I conducted audits on individual and
9 business tax returns.

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

11 A. I've been in Las Vegas since 1968.

12 Q. As part of your duties as an Appeals officer with the IRS,
13 did you -- did you have the opportunity to sit in collection due
14 process hearings?

15 A. Yes, I did.

16 Q. Approximately how many collection due process hearings -- or
17 excuse me. If I could strike that last question.

18 Uh, can you explain what the significance is or the
19 purpose of a collection due process hearing?

20 A. Collection due process came about with the Taxpayer Bill of
21 Rights giving individuals an opportunity to appeal levy or lien
22 notices that have been issued to them.

23 Q. And, at this point, has the amount of tax that the taxpayer
24 owes already been determined?

25 A. Yes.

1 Q. Is the taxpayer allowed to challenge the amount of tax that
2 they owe in one of these collection due process hearings?

3 A. The taxpayer can challenge the amount of tax only if they
4 did not have a previous opportunity to question the amount of
5 tax that was due.

6 Q. At a collection due process hearing, is the taxpayer given
7 the opportunity to enter into, uh, like an installment agreement
8 with the IRS?

9 A. Yes. One of the main purposes of collection due process is
10 to discuss collection alternatives, installment agreements,
11 offer and compromises, other type of collection alternatives.

12 Q. Approximately how many collection due process hearings have
13 you personally sat in, either as the hearings officer or as a
14 witness?

15 A. That's a tough number, but I would say approximately 800
16 cases.

17 Q. Have you ever sat in any hearings with Defendant Cynthia
18 Neun?

19 A. Yes, I have.

20 Q. Approximately how many collection due process hearings did
21 you sit in with Defendant Neun?

22 A. I would say anywhere from a hundred to a hundred and fifty.

23 Q. Focusing on those hundred to a hundred and fifty hearings
24 you had with Defendant Neun, what time period are we talking
25 about?

1 A. You mean --

2 Q. Years.

3 A. -- in years?

4 Q. Yeah, years.

5 A. Well, probably over -- probably over a three-year period.

6 Q. What years? Do you have -- do you know?

7 A. Uh, I'd say 1999, 2000, 2001.

8 Q. Do you know who Donna Fisher is?

9 A. Yes, I do.

10 Q. Did you ever sit in with -- or who is Donna Fisher? I guess
11 I should ask that first.

12 A. Donna Fisher is a Settlement officer with Appeals.

13 Q. And did she also conduct collection due process hearings?

14 A. Yes, she did.

15 Q. Did you ever sit in with Donna Fisher in the collection due
16 process hearings with Defendant Neun?

17 A. There were a number of cases where I did sit in as a
18 witness, yes.

19 Q. Approximately how many?

20 A. Maybe 20 -- maybe 20 to 50.

21 Q. Okay. With these collection due process hearings you had
22 with Defendant Neun present, what was her role or in what
23 capacity was she at this meeting?

24 A. Can you repeat the question, please?

25 Q. I'm sorry.

1 What was Defendant Neun's role at these collection due
2 process hearings that she sat in at with you?

3 A. She sat in predominantly as a witness to the hearings.

4 Q. Who did she accompany?

5 A. The taxpayer individuals.

6 Q. Now, did -- were these hearings that you had with Defendant
7 Neun similar?

8 A. Yes.

9 Q. Explain the similarities as to what occurred at these
10 hearings with Defendant Neun?

11 A. As we conducted the collection due process hearings, um,
12 what we did was go through all of the administrative procedures
13 regarding the issuance of a levy or a lien and the proper
14 administrative steps that had been taken and then presented
15 documentation to Ms. Neun and the taxpayers as to the -- as to
16 the law of those liens and levies that have been issued.

17 Q. Did they make any arguments -- or did the taxpayers make any
18 arguments to you as to your authority to act as a -- or an agent
19 of the Internal Revenue Service?

20 A. One question was relevant in all of the cases is a question
21 of our authority on a variety of areas as to the issuance of a
22 notice and conducting of the -- the hearing.

23 Q. And did this happen in every single meeting you had with
24 Defendant Neun?

25 A. Yes.

1 Q. What other types of arguments did you hear in every meeting
2 with Defendant Neun?

3 A. That the individuals were not liable for any income tax.

4 Q. What percentage of the 800 or so collection due process
5 hearings that you personally handled put forth these same types
6 of arguments that we -- we just discussed with Defendant Neun?

7 A. A good 90 to 95 percent.

8 Q. When a taxpayer would raise an argument challenging your
9 authority, how would you respond?

10 A. What I would do is that I would go to the particular Code
11 section, which was 6330, and give the individual a copy of the
12 certified transcript of what took place. And that was my
13 authority in the collection due process arena.

14 Q. And did you ever do that with Defendant Neun present?

15 A. Yes, I did.

16 Q. Approximately how many times?

17 A. Every time.

18 Q. And how about -- when the taxpayer put forth an argument
19 that they weren't liable for income taxes, how would you respond
20 to that argument?

21 A. What I would do is, again under the collection due process,
22 if the individual had a prior opportunity to raise issue with
23 that underlying liability, it was not raised again at the
24 collection due process hearing.

25 Q. Well, did you ever challenge -- did you ever discuss with

1 them or -- certain Code sections which indeed make them
2 responsible to pay income taxes?

3 A. Yes, I did.

4 MR. CRISTALLI: Objection. Leading.

5 MR. SCHIFF: Is he -- is he testifying as an expert?
6 He's testifying as to requirements of the law. Now --

7 THE COURT: No. He's testifying as to what he told
8 others.

9 MR. SCHIFF: Is he testifying as an expert in the law?

10 THE COURT: No, he hasn't been tendered as an expert.
11 He's being tendered as a --

12 MR. SCHIFF: Your Honor, I didn't --

13 THE COURT: -- fact witness.

14 MR. SCHIFF: I wanna know -- has he testified -- no, he
15 hasn't been tendered as an expert.

16 So, if he's not identified as an expert, then anything
17 he says is hearsay that he heard from an expert.

18 THE COURT: No. Wrong.

19 MR. SCHIFF: Your Honor, I must object to any, uh,
20 reference that he makes as to what the law requires. Or, if he
21 does make reference to the law, then I reserve the right to
22 cross-examine him --

23 THE COURT: He's testifying --

24 MR. SCHIFF: -- on the law itself.

25 THE COURT: -- as to what he told you.

1 MR. NEIMAN: Or the other defendants, your Honor.

2 THE COURT: Or the other defendants. Correct.

3 Yes, my mistake. He's testifying --

4 MR. SCHIFF: He's testifying --

5 THE COURT: -- as to what he --

6 MR. SCHIFF: -- as to what he told me?

7 THE COURT: -- told Neun, Defendant Neun.

8 MR. SCHIFF: As to what he told me?

9 THE COURT: No. Neun.

10 MR. SCHIFF: Oh.

11 But let me understand it so I understand it clearly:

12 He is not testifying as to the specific requirements of the law?

13 THE COURT: He's testifying as to what he told

14 Defendant Neun at these hearings.

15 The objection's overruled. Both objections are

16 overruled.

17 You may answer.

18 THE WITNESS: Could you repeat the question again,

19 please?

20 BY MR. NEIMAN:

21 Q. Sure. I'll try my best to...

22 Did you ever show or did you -- when people would --

23 when the taxpayer would put together the argument that they

24 weren't responsible to pay taxes, did you ever show them where

25 in the Code they actually were responsible to pay taxes?

1 A. Yes. I had gone through different sections of the Code
2 explaining why they were liable for the income tax.

3 Q. How -- I'm sorry. How many times did you do this with
4 Defendant Neun present?

5 MR. SCHIFF: Objection, your Honor. He just said he
6 showed the individuals where are they were liable for the income
7 tax.

8 THE COURT: That doesn't mean he's been tendered as an
9 expert.

10 MR. SCHIFF: But --

11 THE COURT: He showed then Code sections that he
12 believed made them liable. Overruled.

13 MR. SCHIFF: Well, he's testifying on the law.

14 THE COURT: Overruled.

15 MR. SCHIFF: Then I can cross-examine him on those Code
16 sections?

17 THE COURT: No, you can't. I've overruled the
18 objection.

19 Go ahead.

20 THE WITNESS: The question was how many times --

21 BY MR. NEIMAN:

22 Q. How many times with Defendant Neun did you go through the
23 Code?

24 A. I would say at least half of the time.

25 Q. And can you -- was the speech or what you had told the

1 taxpayer with Defendant Neun similar every time?

2 A. Yes, it was.

3 Q. What was the speech, if you wouldn't mind?

4 A. What I did was that we went through the Code, um, part 1,
5 Section 1; then went through Code Section 61, 62, 63 and for
6 payment of -- from income tax. And there was actually, uh, a
7 listing of Code sections that were given to the individuals.

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

9 THE COURT: You may.

10 MR. NEIMAN: I'm approaching with what's been marked as
11 Government Exhibit 155.

12 BY MR. NEIMAN:

13 Q. Mr. Aguiar do you -- excuse me -- do you recognize
14 Government Exhibit 155?

15 A. Yes.

16 Q. How do you recognize Government Exhibit 155?

17 A. It identifies a number of the Code sections that were gone
18 over at the collection due process hearings.

19 Q. And is this the sheet that you provided the taxpayers in
20 Defendant Neun's presence at collection due process hearings
21 that you just testified about?

22 A. Yes.

23 MR. NEIMAN: Your Honor, at this time the United States
24 would move into evidence Government Exhibit 155.

25 MR. SCHIFF: Your Honor, the Government is trying to

1 put in the law through somebody who is not, uh, uh -- who is not
2 qualified as an expert.

3 THE COURT: No, they are not.

4 MR. SCHIFF: The Government is trying to sneak the law
5 in --

6 THE COURT: No.

7 MR. SCHIFF: -- with somebody who is not an expert.

8 THE COURT: No, they are not trying to sneak the law
9 in. The law the Court has already read to the jury. What he's
10 doing is he's providing the document that he gave Neun which is
11 relevant on the issue of notice to Defendant Neun.

12 MR. SCHIFF: I'm gonna be able to --

13 THE COURT: Overruled.

14 MR. SCHIFF: -- cross-examine anybody --

15 THE COURT: Overruled.

16 MR. SCHIFF: -- who testifies as to the law in this
17 case?

18 THE COURT: Overruled. Do you understand?

19 MR. BOWERS: Your Honor, just foundationally. Is this
20 it? It's just, like, a blank page or --

21 THE COURT: One page.

22 MR. BOWERS: -- no heading or letter or anything? 155.
23 This just looks pretty strange for a government document. I
24 don't know if we're missing more or...

25 THE COURT: Well --

1 MR. SCHIFF: Your Honor --

2 THE COURT: -- ask the witness.

3 MR. SCHIFF: -- can I -- your Honor, a number of these
4 statutes have nothing to do with income taxes.

5 THE COURT: Mr. Schiff, your opinion of what the law is
6 does not change what the law is. I've ruled on the law.

7 MR. CRISTALLI: Your Honor, I -- I don't think I had an
8 opportunity to assert an objection. It's not a -- it doesn't
9 appear to be a complete document.

10 Can I take the witness on voir dire for foundational
11 purposes?

12 MR. NEIMAN: Or I could do it, either-or. It
13 doesn't --

14 THE COURT: Either way. Do you want to take him or do
15 you want the Government to --

16 MR. CRISTALLI: If the Government can try to establish
17 a better foundation, that's fine.

18 BY MR. NEIMAN:

19 Q. Mr. Aguiar, is this the entire document you would provide
20 them citing case -- cases -- or Code sections?

21 A. Yes.

22 Q. And did you prepare that yourself?

23 A. No.

24 Q. Who prepared that?

25 A. This was prepared by the Taxpayer Advocates Office.

1 Q. Here in Las Vegas?

2 A. Yes.

3 Q. And is this the doc- -- this one-page document, was that the
4 only document you provided taxpayers at these conferences?

5 A. No.

6 Q. What other documents did you provide them?

7 A. Provided them court cases as to the law, interpretation of
8 what authority meant with the certified transcript. There were
9 a number of cases that were also given to the individual.

10 Q. Do you recall a case by the name of Pearson?

11 A. Yes, I do.

12 Q. Is that one of the cases that you've handed out at these
13 collection due process hearings?

14 A. Yes, it is.

15 Q. And is this one of the documents you handed out along with
16 the Pearson case?

17 A. Correct.

18 MR. NEIMAN: Your Honor, at this time the Government
19 would again seek the admission of Exhibit 155.

20 MR. CRISTALLI: If I may just one -- just momentarily.

21 THE COURT: Go ahead.

22

23 VOIR DIRE EXAMINATION

24 BY MR. CRISTALLI:

25 Q. Mr. Aguiar, was it? Mr. Aguiar, can you testify to the time

1 frame when you -- first of all, the time frame in terms of your
2 interactions with Cynthia Neun was when?

3 A. You mean when did it start?

4 Q. Yeah. When it started, when it --

5 A. What year did it start?

6 Q. Yes.

7 A. You know, I want to say 1999 --

8 MR. SCHIFF: Your Honor --

9 THE WITNESS: -- 2000.

10 BY MR. CRISTALLI:

11 Q. Okay. So --

12 THE COURT: Don't interpret.

13 BY MR. CRISTALLI:

14 Q. -- so 1999 and/or 2000 is when you first had your initial
15 interactions with Ms. Neun, correct, at the due pros- -- the
16 collection due process hearings?

17 A. I believe that's when it started.

18 Q. Okay. And it's safe to say that Exhibit -- Government's
19 Exhibit 155 has no date on it; correct?

20 A. It doesn't have a date, no.

21 Q. And your interactions, as it related to Ms. Neun, went from
22 either late 1999/early 2000 until what date?

23 A. Um, 2000 -- 2002, 2003.

24 Q. Okay. Um, can you testify here today as to what time period
25 you began handing this information out to the taxpayers at the

1 collection due process hearings?

2 A. I can't give you a specific -- specific date.

3 Q. And so, therefore, you could not tell us with certainty as
4 to, um, when, if at all you handed this out to a taxpayer that
5 was accompanied, uh, by Ms. Neun; correct?

6 A. No. I can tell you that I did hand them out in the presence
7 of Ms. Neun.

8 Q. But you don't know what time frame that was; correct?

9 A. I -- I can't come up with a particular date, no.

10 Q. It could have been anywhere between late 1999 to 2002;
11 correct?

12 A. Could be.

13 Q. Um, but you -- but you don't remember -- but your testimony
14 here today is specifically that you can -- you do recall handing
15 them out to taxpayers in the -- in the presence of Ms. Neun?

16 A. Correct.

17 Q. You can't testify as to how many times?

18 A. A large percentage of the --

19 Q. I mean, I don't want you to guess. I just -- I mean,
20 we're --

21 A. Yeah. I know I handed them out as sort of my process during
22 the collection due process cases.

23 Q. Okay. And would it be safe to say that initially this was
24 not handed out and it was handed out later on, maybe 2001/2002?
25 Is that...

1 A. I couldn't say with any certainty.

2 Q. You just don't have any real recollection in terms of when
3 you started handin' this stuff out?

4 A. Correct.

5 MR. NEIMAN: Your Honor, the evidence is clear that he
6 handed it out in Defendant Neun's presence. The exact time
7 period is inconsequential. It goes to weight more so than
8 admissibility. Defendant Neun was given this at some point
9 during the time of the conspiracy.

10 THE COURT: The -- uh, the objection does go to the
11 weight, not the admissibility. Accordingly, 155 is received.

12 (Government's Exhibit No. 155, received into
13 evidence.)

14 MR. NEIMAN: Thank you.

15 If we may publish Government's Exhibit 155 --

16 THE COURT: You may.

17 MR. NEIMAN: -- please.

18 Just blow up the top third or so.

19 (Document displayed in open court.)

20

21 DIRECT EXAMINATION (Continued)

22 BY MR. NEIMAN:

23 Q. Mr. Aguiar, did you explain what this sheet was when you
24 handed it to the taxpayers in Defendant Neun's presence?

25 A. Yes, I did.

1 Q. What would you tell the taxpayer that this sheet was?

2 A. That these Code sections that were on these sheets go over
3 particular Code sections that make the individual liable for
4 income tax.

5 Q. And did the taxpayer respond in the same manner when you
6 would give them these -- give them this sheet?

7 A. Yes, they did.

8 Q. How would they respond?

9 A. We are not liable. You haven't shown us anything.

10 Q. They disagreed with the information on this sheet?

11 A. Yes.

12 Q. Did Defendant Neun disagree with the information on this
13 sheet?

14 A. Yes.

15 Q. Did you ever have any, uh --

16 MR. CRISTALLI: Objection. Foundation. Calls for
17 speculation in terms of what she did or didn't do during the
18 course of those hearings. I don't think she did anything.

19 BY MR. NEIMAN:

20 Q. Did she express disagreement in any way?

21 A. Yes, she did.

22 Q. How so?

23 A. Her belief.

24 Q. By saying what?

25 A. That this is not showing that the individuals are liable for

1 any income tax.

2 Q. Did there come a time when Defendant Neun -- initially at
3 these hearings was Defendant Neun allowed to speak at these
4 collection due process hearings?

5 A. When collection due process first came into being, Ms. Neun
6 was allowed to speak at the hearings, yes.

7 Q. And did that policy change over time?

8 A. Yes, it did.

9 Q. Uh, when did it change, if you recall?

10 A. I -- I'm not sure on the time frame when it changed.

11 Q. Early? Middle -- late?

12 A. Probably late -- later more than early.

13 Q. And why did that policy change, if you know?

14 A. A determination was made that Ms. Neun had no authority to
15 speak at the collection due process hearings. She was not an
16 enrolled agent. She had no authority at all to do any
17 representation.

18 Q. Did you ever have any collection due process hearings when
19 Defendant Cohen was present?

20 A. I believe I only had one and I was just there as a witness.

21 Q. And you were there as the witness?

22 A. Yes.

23 Q. Were the arguments put forth in that one collection due
24 process hearing similar to the ones put forth when Defendant
25 Neun was present?

1 A. Yes.

2 Q. Do you remember approximately when this one hearing was?
3 Beginning, middle, or end of your -- your -- of these hearings?

4 A. Uh, no, I -- I can't...

5 Q. Were you ever present when Defendant Schiff appeared at a
6 collection due process hearing?

7 A. I attended one hearing with Mr. Schiff present and, again, I
8 was a witness.

9 Q. And do you remember approximately when that was?

10 A. Um, no -- no, I don't.

11 Q. Were the arguments put forth by Mr. Schiff in that one
12 hearing the same as the arguments put forth by Defendant Cohen
13 and Defendant Neun at their respective meetings?

14 A. Yes.

15 Q. In the hundred and fifty collection due process hearings or
16 hundred, hundred and fifty collection due process hearings you
17 were present in with Defendant Neun, what determination did you
18 make at the conclusion of those meetings?

19 A. That...

20 Q. With regards to the collection due process hearing itself?

21 A. On all of those cases the collection due process
22 determination was made, the Government was sustained.

23 Q. "Government" being the IRS was allowed to continue with
24 collection activity?

25 A. Correct. A determination that collection activity should

1 proceed.

2 Q. Are you aware of a taxpayer ever prevailing on the merits of
3 their argument at one of these collection due process hearings
4 at the appeals level?

5 A. No.

6 Q. Does the taxpayer have a right to appeal your determination?

7 A. Taxpayers have a right to appeal my determination as long as
8 they do it in a timely manner. If it's income tax, to Tax
9 Court; and, if it's a penalty case, to District Court.

10 Q. Of the hundred or hundred and fifty collection due process
11 hearings which Defendant Neun was present and you issued your
12 determination, do you know whether or not those were appealed?

13 A. I believe at least one-half of 'em were appealed.

14 Q. And do you receive some sort of notice when they are
15 appealed?

16 A. I receive Tax Court notification that they are on the
17 calendar.

18 Q. And how about if they come to District Court? Do you
19 receive some sort of notification from those?

20 A. No.

21 Q. So it's possible that it could be greater if appeals came to
22 District Court as opposed to just Tax Court?

23 A. Yes.

24 Q. Are you aware of any taxpayer ever prevailing at Tax Court
25 on the merits of their argument, uh, appealing your

1 determination?

2 MR. CRISTALLI: Objection. Calls for speculation.
3 Foundation.

4 THE COURT: He asked if he's aware.

5 MR. NEIMAN: If he -- he knows, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 BY MR. NEIMAN:

9 Q. No, you're not aware or no, nobody prevailed?

10 A. Nobody prevailed.

11 MR. NEIMAN: If I may have a moment, please, your
12 Honor?

13 THE COURT: You may.

14 (Pause in the proceedings.)

15 BY MR. NEIMAN:

16 Q. Mr. Aguiar, what percent of your time would you say you
17 spent in dealing with these collection due process hearings
18 putting forth the arguments of the defendants?

19 A. There was a good period of time over the course of a year,
20 year and a half where it was a hundred percent of the time.

21 Q. And what time period was that?

22 A. When initially -- 19- -- 1999, 2000.

23 Q. And did that prevent you from being able to assist other
24 taxpayers who may have needed assistance?

25 A. Oh, yes, definitely.

1 MR. NEIMAN: Nothing further, your Honor.

2 MR. CRISTALLI: Your Honor, if I may just defer to
3 Mr. Schiff.

4 THE COURT: Okay.

5 MR. CRISTALLI: I would like to reserve my right to
6 cross-examination, however.

7 THE COURT: Okay.

8 (Pause in the proceedings.)

9

10 CROSS-EXAMINATION

11 BY MR. SCHIFF:

12 Q. Mr. Aguiar, as I understand it, you're not an expert in tax
13 law; is that correct?

14 A. I don't claim to be an expert.

15 Q. Speak a little louder.

16 A. No.

17 Q. You're not an expert in tax law.

18 A. No.

19 Q. Do you know the difference between tax law and regulations?

20 A. Yes.

21 Q. Are you aware that Section 6320, which is the -- which is
22 the statute that provides for collection due process hearing has
23 regulations; is that correct?

24 A. 6320 deals with the lien part of the Code.

25 Q. Liens. And 6330 provides with levies; right?

1 A. Correct.

2 Q. 6330 provides with levies; right?

3 A. Correct.

4 Q. And 6330 has regulations involved; is that correct?

5 A. Correct.

6 Q. And is the IRS bound by its regulations?

7 A. The Rec- -- the regulations interpret the Code sections.

8 Q. The question was: Is the IRS bound by regulations?

9 A. No.

10 Q. Pardon me?

11 A. The regulations are there to interpret the Code.

12 Q. My question was --

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

14 MR. SCHIFF: He's not --

15 MR. NEIMAN: -- the relevance of --

16 MR. SCHIFF: -- he's being unresponsive.

17 MR. NEIMAN: -- this line of questioning.

18 BY MR. SCHIFF:

19 Q. The question was: Is the IRS bound to follow its own
20 regulations? Yes or no.

21 THE COURT: What is the relevance?

22 MR. SCHIFF: It's relevant.

23 BY MR. SCHIFF:

24 Q. Are you telling me that the IRS --

25 THE COURT: I'm asking you to tell me what the

1 relevance is. That's --

2 MR. SCHIFF: I'm gonna tell you. Well, I'm gonna get
3 it once he tells me whether or not the IRS is bound --

4 THE COURT: No, he doesn't --

5 MR. SCHIFF: -- by regulations.

6 THE COURT: -- have to answer because --

7 MR. SCHIFF: He doesn't --

8 THE COURT: -- the issue of relevance has been raised.

9 BY MR. SCHIFF:

10 Q. Well, isn't it a fact that if the IRS --

11 THE COURT: No. Wait a minute.

12 Sustained.

13 Go ahead. Next question.

14 MR. SCHIFF: I don't understand what his answer was.

15 THE COURT: He didn't give an answer because I
16 sustained the objection.

17 MR. SCHIFF: Okay.

18 BY MR. SCHIFF:

19 Q. So is it my understanding that the IRS can or -- can -- can
20 follow regulations or not follow regulations depending upon
21 whether it likes the regulation or not?

22 THE COURT: Mr. Schiff --

23 MR. SCHIFF: Well --

24 THE COURT: -- he doesn't know what your understanding
25 is, first of all, and, second, the objection was sustained. You

1 can't ask the same question over again.

2 BY MR. SCHIFF:

3 Q. Are IRS regulations required to be published in the Federal
4 Register?

5 MR. NEIMAN: Objection. Relevance again.

6 MR. SCHIFF: The relevance is --

7 MR. NEIMAN: We're getting close to another
8 misstatement --

9 MR. SCHIFF: This is --

10 MR. NEIMAN: -- of the law, your Honor.

11 MR. SCHIFF: -- this is the Government's witness.
12 What's the purpose of...

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

15 BY MR. SCHIFF:

16 Q. Aren't you supposed to know what the regulations say?

17 THE COURT: Sustained. The objection's sustained.

18 BY MR. SCHIFF:

19 Q. Do you know whether or not the regulations are published in
20 the Federal Register?

21 THE COURT: That objection --

22 MR. NEIMAN: Same objection --

23 THE COURT: -- was sustained.

24 MR. NEIMAN: -- your Honor.

25 MR. SCHIFF: That's sustained also.

1 THE COURT: It was sustained earlier.

2 MR. SCHIFF: Okay.

3 THE COURT: It's sustained again.

4 BY MR. SCHIFF:

5 Q. Are you familiar with --

6 MR. SCHIFF: Can I have a sidebar on this, your Honor?

7 THE COURT: No.

8 MR. SCHIFF: We can't?

9 THE COURT: Go ahead.

10 MR. SCHIFF: Can I have a sidebar?

11 THE COURT: I've ruled. Go ahead. Proceed with your
12 next question.

13 BY MR. SCHIFF:

14 Q. Do -- do you know what the initials "CFR index" mean, "CFR"?

15 MR. NEIMAN: Objection --

16 BY MR. SCHIFF:

17 Q. Do you know what the difference CFR 26 and, um -- and CFR
18 27?

19 MR. NEIMAN: Objection --

20 BY MR. SCHIFF:

21 Q. Do you know the distinction between these two designations?

22 MR. NEIMAN: This has no relevance to any fact before
23 this jury.

24 THE COURT: It has no relevance. Sustained.

25 MR. SCHIFF: The relevance is --

1 THE COURT: Sustained.

2 MR. SCHIFF: Oh, boy. So he can testify and not be
3 cross-examined. All right. All right.

4 THE COURT: That is --

5 BY MR. SCHIFF:

6 Q. Were you aware --

7 THE COURT: -- that is a contemptuous statement.
8 Sanctions.

9 MR. SCHIFF: Can I -- can I have a sidebar on this?

10 THE COURT: No.

11 MR. SCHIFF: Your Honor, the reason I want a sidebar
12 and the reason why it's relevant is that --

13 THE COURT: Mr. Schiff, I've already sustained the
14 objection. When I ask you to give me a statement of
15 relevance --

16 MR. SCHIFF: All right.

17 THE COURT: -- I expect it timely not --

18 MR. SCHIFF: All right.

19 THE COURT: -- five minutes after I ask --

20 MR. SCHIFF: All right.

21 THE COURT: -- for relevance.

22 MR. SCHIFF: All right.

23 BY MR. SCHIFF:

24 Q. Mr. Aguiar, you said a good amount of the -- a good amount
25 of the activity came from people who were represented by people

1 from Freedom Books; is that correct?

2 A. Can you repeat your question?

3 Q. You stated that a number of the activity with respect to
4 collection due process hearings was a result of people coming
5 from Freedom Books; is that correct?

6 A. Uh, the question, as I recalled, was representation by
7 Ms. Neun on a number of cases. But I don't recall --

8 Q. Well, all right. Ms. Neun we'll say.

9 A. Yes.

10 Q. All right. Ms. Neun.

11 Now, um, how does a person get a collection due process
12 hearing?

13 A. There is tax that is assessed on an individual return. And
14 then, when all collection activity proves fruitless, the IRS can
15 issue a levy or lien notice. Once that levy or lien notice is
16 issued to the taxpayers, then they have got a right to appeal
17 that lien or levy issue to Appeals on a Form 12153. And it
18 comes to appeals and they have a right to a hearing on their
19 case.

20 Q. But, before they can go to collection due process, you
21 understand, don't they have to be sent a letter by the IRS
22 telling them they have a right to a collection due process
23 hearing?

24 A. That letter is with the lien or levy notice.

25 Q. Are you sure about that?

1 A. It's Form 3172 for the lien letter; 1058, for the levy.

2 Q. But isn't there a different method of notifying them if it's
3 a lien or a levy? Isn't there a different procedure?

4 A. Not that I know of.

5 Q. Well, isn't it a fact that once they put -- they can put on
6 the lien before they send out a re- -- before they notify you
7 that you have a right to a collection due process hearing. In
8 other words, can't they put a lien on and then send out the
9 notice that you have a right to a collection due process
10 hearing?

11 A. Not that I know of.

12 Q. Well, isn't the law that within five days after putting on a
13 lien they have to send out the right of -- of a -- you have a
14 right to ask for a, uh, collection due process hearing?

15 MR. NEIMAN: Judge --

16 BY MR. SCHIFF:

17 Q. In other words, isn't it a fact --

18 THE COURT: There's an objection. You've asked one
19 question.

20 MR. SCHIFF: All right.

21 THE COURT: Wait for --

22 MR. NEIMAN: Objection to Mr. Schiff stating what the
23 law is. Invades upon the province of this Court.

24 THE COURT: It does.

25 MR. SCHIFF: Well, he's making representations --

1 THE COURT: It does.

2 MR. SCHIFF: -- about the law --

3 THE COURT: Sustained.

4 MR. SCHIFF: -- that I know to be false. Or maybe his
5 understanding is not correct.

6 THE COURT: He's answered --

7 MR. SCHIFF: All right.

8 THE COURT: -- your question. Move on.

9 MR. SCHIFF: All right.

10 BY MR. SCHIFF:

11 Q. You've testified earlier that there are two statutes
12 involved in providing for collection due process hearings; is
13 that correct?

14 A. Yes.

15 Q. Okay. If I showed you Section 6320, would -- would it
16 refresh your recollection as to when a notice for a collection
17 due process hearing is sent if a lien is involved? Would that
18 refresh your recollection?

19 A. I don't know what you're --

20 MR. SCHIFF: Can I approach?

21 THE WITNESS: -- refreshing my recollection about. If
22 an individual wants a collection due process hearing --

23 MR. SCHIFF: Yes.

24 THE WITNESS: -- they have a right to request a hearing
25 on either a lien or a levy regardless.

1 BY MR. SCHIFF:

2 Q. Right.

3 A. The -- the --

4 Q. Well, isn't -- isn't -- isn't the --

5 A. So --

6 Q. -- isn't the procedure slightly different?

7 MR. NEIMAN: Objection. Asked and answered and
8 relevance as well.

9 THE COURT: Sustained.

10 MR. NEIMAN: It does not go --

11 THE COURT: Sustained.

12 MR. NEIMAN: -- to any fact --

13 MR. SCHIFF: Well --

14 THE COURT: Sustained.

15 MR. SCHIFF: -- the procedure --

16 THE COURT: Asked and answered and irrelevant.

17 MR. SCHIFF: -- is different.

18 BY MR. SCHIFF:

19 Q. In any case, doesn't Section 6330 state -- well, how much --
20 how much time does the taxpayer have to request a hearing from
21 the -- from the date that he's notified that he has a right to a
22 hearing? How much -- how much time does he have?

23 A. He has 30 days to file a collection due process request.

24 Or, if he files -- he or she files within that 30 days and

25 Appeals makes the determination that collection activity should

1 continue, then the individual has the right to take that issue
2 to either Tax Court or to District Court. If they file after
3 that 30 days, then whatever decision is made by the Appeals
4 officer or the Settlement officer is final.

5 Q. Final.

6 In other words, if the taxpayer files a request more
7 than 30 days from the date notifying him, the Appeals officer
8 can make any kind of a determination he wants and he can't
9 appeal it?

10 MR. NEIMAN: Objection to this whole entire line of --

11 MR. SCHIFF: I'm trying --

12 MR. NEIMAN: -- questioning.

13 MR. SCHIFF: -- clarify what he just said.

14 THE COURT: Well, it's not relevant to his testimony.

15 MR. SCHIFF: Well, it's relevant to why they get so
16 many from Freedom Books and not from the public in -- in
17 general.

18 BY MR. SCHIFF:

19 Q. If --

20 THE COURT: No --

21 BY MR. SCHIFF:

22 Q. -- if somebody --

23 THE COURT: -- it's not relevant. It is not relevant.

24 MR. SCHIFF: All right.

25 THE COURT: That's the ruling.

1 MR. SCHIFF: Well -- all right.

2 BY MR. SCHIFF:

3 Q. If an ordinary taxpayer, waitress or truck driver, who had
4 no understanding of the Internal Revenue Code got this notice,
5 is it clear to him that he has to appeal within 30 days?

6 A. Yes.

7 Q. It is?

8 A. Yes.

9 Q. Well, suppose he's not home for the first two weeks; that he
10 gets it two weeks after the date of the notice. How much time
11 does he have?

12 MR. NEIMAN: Objection. Relevance.

13 MR. SCHIFF: The relevance is --

14 MR. NEIMAN: There are no facts before this jury.

15 MR. SCHIFF: No. Look, he has testified at great
16 length as to why they get so many appeals from Freedom Books.
17 And the reason is --

18 THE COURT: You're not going to testify. And the --

19 MR. SCHIFF: I'm not --

20 THE COURT: -- objection is --

21 MR. SCHIFF: -- testifying.

22 THE COURT: -- sustained.

23 MR. SCHIFF: I'm trying to get the information --

24 THE COURT: The objection is sustained.

25 MR. SCHIFF: -- from the witness.

1 THE COURT: And I've told you --

2 MR. SCHIFF: All right.

3 THE COURT: -- to move on now --

4 MR. SCHIFF: All right. Okay.

5 THE COURT: -- and you keep digging --

6 MR. SCHIFF: Okay.

7 THE COURT: -- at the same area.

8 MR. SCHIFF: Okay.

9 THE COURT: Move on.

10 BY MR. SCHIFF:

11 Q. What was the purpose -- I think you alluded to it in your
12 original testimony -- what was the purpose of the collection due
13 process hearing, which started in 1968 [sic]? It was -- it was
14 a new procedure; is that correct? 1968 [sic].

15 A. 1968?

16 Q. Yeah. 19-- -- I'm sorry. 1998.

17 A. Okay.

18 In 1998, when the Taxpayer Bill of Rights came into
19 play, it gave individuals the right to appeal levy and lien
20 notices that were issued.

21 Q. Why did they do that? Why did they suddenly do that?

22 A. I have no idea.

23 Q. You have no idea that it may have stemmed from the --

24 MR. NEIMAN: Objection.

25 THE COURT: I'll --

1 MR. SCHIFF: All right.

2 BY MR. SCHIFF:

3 Q. Are you familiar --

4 THE COURT: No testifying.

5 MR. SCHIFF: All right.

6 THE COURT: Sustained.

7 BY MR. SCHIFF:

8 Q. Were you familiar with the fact that in 1990- -- you were
9 with the IRS in 1997; is that correct?

10 A. Yes.

11 Q. Were you aware that in 1997 the activities of the IRS were
12 investigated by the Senate Committee of Money and Banking? Were
13 you aware of that?

14 MR. NEIMAN: Objection. Relevance.

15 THE COURT: Irrelevant.

16 MR. SCHIFF: It's irrelevant; right?

17 THE COURT: Yes.

18 MR. SCHIFF: It's irrelevant why the collection due
19 process hearings were initiated.

20 THE COURT: It is --

21 MR. SCHIFF: All right.

22 THE COURT: -- irrelevant. The issue here is --

23 BY MR. SCHIFF:

24 Q. Now, you said --

25 THE COURT: -- the issue here is --

1 BY MR. SCHIFF:

2 Q. You said --

3 THE COURT: -- notice --

4 MR. SCHIFF: Okay.

5 THE COURT: -- Mr. Schiff.

6 I'm going to --

7 MR. SCHIFF: Okay.

8 THE COURT: -- ask you to --

9 MR. SCHIFF: Okay.

10 THE COURT: -- confine your questions --

11 MR. SCHIFF: All right.

12 THE COURT: -- to cross-examination.

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. Now, you said that -- well, isn't the purpose of the
16 collection due process hearing really to ask for documents and
17 not to argue about whether the man's tax return is valid? Let
18 me backtrack. I'm sorry. I'll withdraw the question.

19 Before a man would get the offer of a collection due
20 process hearing, what procedures would he have already gone
21 through before he reached that point? Before he reached that
22 point.

23 A. In order to request a collection due process hearing --

24 Q. No -- yeah.

25 A. -- there -- there had to be tax assessed. I guess I

1 don't -- I don't understand your --

2 Q. Okay.

3 A. -- your question.

4 Q. Have you ever heard of a 30-day letter?

5 A. Yes.

6 Q. What's a 30-day letter?

7 A. 30-day letter is giving the -- the taxpayers a right to
8 appeal a particular issue or tax.

9 Q. So, before he got a CPD request, presumably he would have
10 had an audit at the IRS pursuant to a 30-day letter; is that
11 correct?

12 A. I don't see what you're talking about a 30-day letter. A
13 30-day letter has nothing to do with a collection due process
14 hearing.

15 Q. I understand.

16 But wouldn't he have gotten a 30-day letter, that is,
17 an opportunity to discuss his tax liability?

18 MR. NEIMAN: Objection. Relevance. Again --

19 MR. SCHIFF: The relevance --

20 MR. NEIMAN: -- the testimony was what the defendants
21 did, what they were told, and how it affected him from doing
22 his --

23 MR. SCHIFF: No --

24 MR. NEIMAN: -- other job --

25 MR. SCHIFF: -- no.

1 MR. NEIMAN: -- other duties --

2 MR. SCHIFF: The Government has been --

3 MR. NEIMAN: -- nothing further.

4 MR. SCHIFF: No.

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

7 MR. BOWERS: Your Honor?

8 THE COURT: Yes.

9 MR. BOWERS: May I request a brief sidebar on a
10 related --

11 THE COURT: Well, we're going to take our recess.
12 Doesn't look like we're going to finish.

13 MR. BOWERS: That was all --

14 MR. SCHIFF: Let me --

15 MR. BOWERS: I'm sorry. That's all I needed.

16 MR. SCHIFF: No.

17 BY MR. SCHIFF:

18 Q. Let me say this: The collection --

19 THE COURT: No. You're not going to say --

20 BY MR. SCHIFF:

21 Q. -- due process hearing --

22 THE COURT: No. You're not --

23 BY MR. SCHIFF:

24 Q. -- was set up --

25 THE COURT: -- going to make a statement.

1 BY MR. SCHIFF:

2 Q. -- just prior to the seizure of the man's property; is that
3 right?

4 THE COURT: Mr. --

5 BY MR. SCHIFF:

6 Q. In other words --

7 THE COURT: -- Mr. Schiff, a request for a sidebar has
8 been made. And, as I indicated a moment ago, we are going to
9 excuse the jury for the evening.

10 Ms. Clerk, what do we have on tomorrow morning?

11 THE CLERK: Nothing.

12 THE COURT: Okay.

13 We'll be in recess until 9:00 a.m.

14 The instruction not to discuss the case among
15 yourselves or with others or to view or listen to any media
16 accounts is still -- uh, still in effect and not to form any
17 conclusions until all of the evidence has been submitted to you
18 and I have directed you to commence your deliberations.

19 (Jury leaves the courtroom at 4:29 p.m.)

20 THE COURT: Okay. You can step down now. Just leave
21 that there.

22 THE CLERK: Just don't worry about it. Thanks.

23 (Witness leaves the courtroom.)

24 THE COURT: Mr. Bowers.

25 MR. BOWERS: I'm good. That's it, Judge.

1 THE COURT: Oh, I thought you wanted to address an
2 issue?

3 MR. BOWERS: No. I -- I was just gonna say I -- I have
4 to -- I have an issue I have to take care of, so I couldn't go
5 till 5:00.

6 THE COURT: Oh.

7 MR. BOWERS: I was gonna see if I could get --

8 THE COURT: Oh.

9 MR. BOWERS: -- five minutes to make a call.

10 THE COURT: Oh. All right. That's fine.

11 MR. BOWERS: I didn't want to do that in front of the
12 jury. I just...

13 THE COURT: I understand. That's fine.

14 MR. BOWERS: Thank you, your Honor.

15 THE COURT: We're in recess.

16 MR. BOWERS: Thank you.

17 MR. SCHIFF: Your Honor, can I raise an issue here?

18 THE COURT: You may.

19 MR. SCHIFF: Okay. The Government's witness has been
20 totally unresponsive. When I asked him is the IRS bound by the
21 regulations -- I can show you documents -- they are bound by
22 them and he knows it.

23 THE COURT: Mr. Schiff, you're --

24 MR. SCHIFF: And the significance is --

25 THE COURT: -- you just wanna -- you want to argue the

1 law; you want to get into an area that you want to make your
2 speeches. And I've already ruled it irrelevant. And you
3 continue to go into it. And you are very, very fortunate that I
4 have not sanctioned you more than I did today because you,
5 again, are disrespecting the orders of the Court and you insist
6 on going into areas that I've ruled are irrelevant.

7 The -- the witness testified as to the information that
8 was provided to Ms. Neun at the collection due process hearings.
9 That was the relevance, not -- not your argument with him about
10 what the law actually is or other procedures. And, um, I'm not
11 going to allow you to --

12 MR. SCHIFF: Okay. For the record --

13 THE COURT: -- turn this into a -- a dialogue about
14 your views on the Tax Code.

15 MR. SCHIFF: Your Honor --

16 THE COURT: As I've already indicated, your views have
17 been rejected not only by me but by every court that has
18 addressed them. And I'm not going to let you go into --

19 MR. SCHIFF: Let me --

20 THE COURT: -- the law repeatedly.

21 MR. SCHIFF: -- I would like to get into the record one
22 thing. I asked him here -- here is the Code from [sic] Federal
23 Regulations which shows that the implementing regulations for a
24 number of these statutes are in CFR 27 but only have to do with
25 liquor, tobacco, and firearms.

1 Now, when he said -- when he said --

2 THE COURT: Mr. Schiff, your views of -- your views of
3 the Code and liquor, alcohol, and tobacco, and firearms are --
4 are not -- are not good law. They are -- they are just bologna.

5 That's -- that's the ruling of the Court. I don't care
6 if you can shake -- you can shake a lot of things at me. But
7 your views have been rejected by all --

8 MR. SCHIFF: I've never --

9 THE COURT: -- of the courts --

10 MR. SCHIFF: -- I've never raised --

11 THE COURT: -- that have addressed them.

12 MR. SCHIFF: -- these issues in any court.

13 THE COURT: And I'll tell you something else,
14 Mr. Schiff, while we're at it.

15 MR. SCHIFF: Yes.

16 THE COURT: If you -- if you make any further
17 references to the bias of the courts or conspiracy of the courts
18 in this matter, which, uh, you have done in the past, I'm going
19 to sanction you very heavily.

20 MR. SCHIFF: Well, your Honor, let me just say this:
21 The Government has a burden of proving that I have a liability.
22 If they have a burden of proving that I have a tax liability, I
23 have a right to prove I don't have a tax liability. And what
24 you're doing is you're allowing the Government to infer that
25 certain statutes establish a liability. And there's not one

1 reference --

2 THE COURT: I've already made the ruling and you're
3 wrong on your view of the law.

4 MR. SCHIFF: Your Honor, show me --

5 THE COURT: I've made the ruling. And the courts --
6 the courts back me up. They don't back you up; they back me up.
7 That's the ruling.

8 MR. SCHIFF: Okay.

9 THE COURT: You're not going to argue it.

10 MR. SCHIFF: I just wanna make one statement. Then
11 I'll leave.

12 He has been talking about giving people court
13 decisions. The IRS is not bound by court decisions; they are
14 bound by the regulations. So you're telling me I don't have to
15 ask him questions about regulations, which they are bound by,
16 and if the IRS doesn't follow their regulations anything they do
17 after that the courts have ruled is null and void --

18 THE COURT: Your questions are relevant to the
19 testimony he gave. And, until someone gets up and, uh, gives
20 some testimony that he is relevant, you're not to go into those
21 areas.

22 MR. SCHIFF: I just want the record to show that the
23 IRS is bound by regulations; they are not bound by Tax Court and
24 even Appellate Court decisions. They are bound by regulations.

25 And what they do when these people go before them they

1 disregard the regulations, which they are bound by, and claim
2 that court decisions absolve them from providing documents when
3 court decisions --

4 THE COURT: Well --

5 MR. SCHIFF: -- when the IRS --

6 THE COURT: -- they were not --

7 MR. SCHIFF: -- is not bound by court decisions.

8 THE COURT: -- they are not required to provide
9 documents. The Hughes case shows that they are required to make
10 an internal look to see if they have the authority. It is --
11 you're wrong on that law too. The Hughes case --

12 MR. SCHIFF: Their regulation --

13 THE COURT: -- makes it clear that you are out to lunch
14 in your view.

15 MR. SCHIFF: Your Honor -- your Honor, the regulation
16 says that --

17 THE COURT: Mr. Schiff --

18 MR. SCHIFF: -- that before they are required to
19 provide --

20 THE COURT: Mr. Schiff --

21 MR. SCHIFF: -- verification from the office from
22 which -- before -- it says they are required to provide
23 verification from the office collecting the tax.

24 THE COURT: No.

25 MR. SCHIFF: That's what their regulation says.

1 THE COURT: Mr. -- Mr. Hugh -- Mr. Schiff, the Hughes
2 case contradicts you and your views. And so you don't know --

3 MR. SCHIFF: Oh, okay.

4 THE COURT: -- you don't know the law. You're citing
5 it incorrectly. The courts have ruled against you.

6 MR. SCHIFF: No. I never raised this issue in any
7 court.

8 THE COURT: That's why you're here.

9 MR. SCHIFF: I haven't been to court in 15 years.

10 THE COURT: These very same views that you have the
11 courts have found to be frivolous and without merit, the
12 identical claims.

13 MR. BOWERS: Is the Court in recess, your Honor?

14 THE COURT: Court is in recess.

15 (Proceedings adjourned at 4:35 p.m.)

16 --oOo--

17 I hereby certify that pursuant to Section 753, Title 28, United
18 States Code, the foregoing is a true and correct transcript of
19 the stenographically reported proceedings held in the
20 above-entitled matter.



21

22 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

23

24

25