

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 14)

Tuesday, October 4, 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	Further Redirect
3	Government's:					
4	Anthony Aguiar	--	3665C 3683B 3686S	3679N	3680C	--
5						
6	David Holland	3695I	3789C 3819S 3844B	--	--	--
7						
8						

9 EXHIBITS

10	EXHIBIT NO.:	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
11	Government's:		
12	333	3703	--
13	Defendant Neun's:		
14	2512 through 2516	3672	--
15	2517 and 2518	3804	--
	2519	3806	--
16	2520 through 2524	3815	--
17	Defendant Cohen's:		
18	2845	--	3846
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23			
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1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 4, 2005; 9:15 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 before we bring the jury in?

7 MR. NEIMAN: Not on behalf of the United States, your
8 Honor.

9 THE COURT: Thank you.

10 MR. SCHIFF: Yes, I have some business, your Honor.

11 Yesterday, when I cross-examined the Government witness
12 and I asked him isn't the IRS bound by regulations, he said no.
13 I have here IRS document manual, uh, 4.10.7 and it shows the
14 material that the IRS has to give way to.

15 The first thing they point out -- I can give you this
16 document -- the Internal Revenue Code is generally binding on
17 all courts.

18 The next thing the manual says, the importance of
19 committee reports, "The reasoning establishes the legislative
20 intent behind the finalized law."

21 The next thing the manual states is "The Service is
22 bound by ... regulations. The courts are not."

23 Then it gets into court decisions in paragraph 4.10.1
24 [sic] on page 17 of this 19-page document. And it says, "The
25 Internal Revenue Service must follow Supreme Court decisions.

1 For . . . , Supreme Court decisions [has] the same weight as the
2 Code."

3 The following paragraph state, "Decisions made by lower
4 courts, such as Tax Court, District Court[], Claims Courts" --
5 and -- and appellate courts they say in another paragraph --
6 "are binding on the Service only for the particular taxpayer and
7 the years litigated. Adverse decisions of lower courts do not
8 require the Service to alter its position for other taxpayers."

9 So when you says people in CPD hearings are given this
10 document, which he introduced, citing all these court decisions,
11 the IRS is not bound by court decisions. And they are trying to
12 intimidate the tax -- the -- the person into thinking that they
13 are bound by decisions that the IRS themselves are not bound by.

14 Now, I asked him, also, what was the effect of the, um,
15 Service not complying with the regulations. He didn't answer.
16 The fact is everything they do after that is null and void. He
17 didn't answer the question.

18 Now, what he was doing is deliberately trying to
19 obviascate [sic] -- and he's lying. His statement is
20 perjurious. And that should wipe out all the other -- his other
21 testimony.

22 Now, in addition to which, he hands me this showing all
23 of these cases that presumably make you liable. The only cases
24 that are relevant to the payment of income taxes are the cases
25 cited in the Privacy Act Notice of a tax return. And the

1 taxpayer is directed to Section 6001, 6011 and 6012.

2 I will put you on notice. If these cases were relevant
3 to the payment of income tax, the government was duty bound by
4 law to include these sections in the Privacy Act Notice. By law
5 they were required to do it. They didn't do it because in none
6 of these sections, in none of these sections does it say you're
7 liable for the tax in addition to which.

8 So his whole testimony was false, fraudulent. And you
9 sent me to jail for tryin' to clarify this for the jury.

10 Now -- and I -- I want the record to reflect this for
11 appeal purposes. This is very important.

12 Also, I handed you a case which states, the Court in
13 U.S. v. Gerber, Fifth Circuit, 607 -- I know you're gonna say,
14 well, you're not bound by the case. Well, neither are these
15 cases binding on the taxpayer. When there were two legitimate
16 theories of tax law, the trial court should have -- should not
17 have withhold this fact and its powerful impact on this issue of
18 the defendant's willfulness from the jury. In a case where the
19 element of willfulness is critical to the defense, the defendant
20 is entitled to wide latitude in the introduction of evidence
21 tending to show lack of intent.

22 And I'm saying that this Court is preventing me -- not
23 only giving me wide latitude, giving me no latitude.

24 Everything, irrelevant. And all of the issues I try to raise --
25 I'm not a lawyer. I don't know how to do this with the skill of

1 a lawyer. But everything I'm raising I raise because I think
2 it's relevant and I think it's relevant to my beliefs. And
3 whether I'm attempting to violate -- willfulness is violation of
4 a known legal duty. I don't have any legal duty to pay income
5 taxes. And so far the Government hasn't put on one witness that
6 has cited a court section that -- that makes me liable for tax.

7 Now, the other thing I would bring up --

8 THE COURT: Well, I pointed out court cases to you.

9 You choose to disregard them like everything --

10 MR. SCHIFF: I --

11 THE COURT: -- else.

12 MR. SCHIFF: -- well, I cite --

13 THE COURT: You choose to disregard what doesn't fit
14 with your -- your notions and to seize on things that you
15 believe fit with your notions, even if it requires you to cite a
16 case -- cases that are over a hundred years old. So...

17 MR. SCHIFF: Well, the -- well, Margaret v. Madison is
18 a hundred and fifty years old. That doesn't mean -- as long as
19 it's not reversed or revoked or overturned, it's still good
20 law --

21 THE COURT: It's not --

22 MR. SCHIFF: -- as far as I know.

23 THE COURT: You pointed out already you're not a
24 lawyer.

25 MR. SCHIFF: All right.

1 THE COURT: And the cases that you have relied on are
2 not good law for the points that you raise.

3 MR. SCHIFF: Are you --

4 THE COURT: And, in fact --

5 MR. SCHIFF: Are you --

6 THE COURT: -- as I said, later cases have repudiated
7 your views on -- on the tax law.

8 MR. SCHIFF: No -- no -- with -- with -- I do respect
9 there is no Supreme Court case that has overturned Pollack, the
10 Pollack decision, which is the 1895 case that said income from
11 private property must be apportioned. That case, if you
12 shepardize it, has never been reversed or overturned --

13 THE COURT: Well, what --

14 MR. SCHIFF: -- and is still good law.

15 THE COURT: -- are you citing that for? That was long
16 before the amendment -- Sixteenth Amendment was adopted.

17 MR. SCHIFF: Yeah. But the Brushaber court said --

18 THE COURT: So it's not good law for what you say it
19 is. You've correctly pointed out you're not a lawyer. You have
20 cobbled together a bunch of, uh, excerpts of things that you
21 think support your position. They don't. And, moreover, the
22 courts -- the courts of the United States, the federal courts,
23 have repudiated your position and your views over and over and
24 over again.

25 MR. SCHIFF: I beg to differ with you. The case of

1 Brushaber v. Union Pacific Railroad --

2 THE COURT: You don't even --

3 MR. SCHIFF: -- 240 U.S. 1 --

4 THE COURT: -- know how to read a case, Mr. Schiff.

5 MR. SCHIFF: All right.

6 THE COURT: So I'm not going to argue the law with you.

7 MR. SCHIFF: All right.

8 THE COURT: I've ruled.

9 MR. SCHIFF: All right.

10 THE COURT: I hope that the -- I hope that you take it
11 to the Ninth Circuit. I hope that they are able to figure out
12 what you just told me a few minutes ago because I can't. There
13 have been no infringement on your ability to -- to establish a
14 defense. You're just not going to bring --

15 MR. SCHIFF: Okay.

16 THE COURT: -- put the IRS on trial in this case --

17 MR. SCHIFF: Okay.

18 THE COURT: -- and do a showboat --

19 MR. SCHIFF: Okay.

20 THE COURT: -- operation, which is what your intent is.

21 MR. SCHIFF: Now, the other issue I would bring up --
22 because I don't want to go to jail again --

23 THE COURT: You haven't been to jail yet.

24 MR. SCHIFF: Well, all right.

25 THE COURT: But I'm warning you: If you continue to

1 argue the law with me and disregard my rulings, disregard
2 anything that you don't, uh, agree with, you are going to serve
3 the time.

4 MR. SCHIFF: Okay. Let me just bring up another issue.

5 When Mr. Wethje was testifying, I brought up the
6 question of his job description and you cut me off and you
7 wouldn't let me raise it. Uh, when I asked if he carried a
8 weapon, you again cut me off and you wouldn't let me raise it.
9 You wouldn't let me raise these issues.

10 THE COURT: Yeah. They are not relevant.

11 MR. SCHIFF: I don't want to raise these issues in
12 front of the jury, so I wanna -- I wanna do it right now.

13 I understand Mr. Holland is gonna be a witness. Now I
14 have Mr. Holland's job description. If it's wrong, he can
15 correct me. His job description says that he is authorized to
16 gather information with respect to, uh, excise taxes, employment
17 taxes, gift taxes involving United States citizens residing in
18 foreign countries and nonresident aliens subject to federal
19 income tax filing requirements. His very job description
20 precludes him from gathering information with respect to income
21 tax of Americans living in the United States.

22 There's nothing in his job description that says he can
23 gather -- well, he also can gather information of money
24 laundering, criminal investigations. But nothing in here.

25 Okay. Secondly --

1 THE COURT: Well, if he's got -- if he's authorized to
2 do criminal investigations, it fits.

3 MR. SCHIFF: No, not income tax. Criminal
4 investigations involving --

5 THE COURT: Oh.

6 MR. SCHIFF: -- let me read what it says.

7 THE COURT: Just --

8 MR. SCHIFF: No. He can assist --

9 THE COURT: -- just speeding and things like that?

10 MR. SCHIFF: Racketeering, stock fraud, illegal
11 financial activity. But there's -- as far as income tax is
12 concerned, he can -- he's only authorized uh, to gather
13 information involving -- this is clear -- involving United
14 States citizens residing in foreign countries and nonresident
15 aliens.

16 THE COURT: Again, I think, just based on what you've
17 told me without hearing from him --

18 MR. SCHIFF: Well, okay.

19 THE COURT: -- I think you've, again, twisted something
20 to fit your own purposes.

21 MR. SCHIFF: Well, I'll be happy to give --

22 THE COURT: You just read --

23 MR. SCHIFF: -- you --

24 THE COURT: -- that he's authorized to do criminal
25 investigations. That's what this is all about, criminal --

1 MR. SCHIFF: Not involving --

2 THE COURT: -- violations.

3 MR. SCHIFF: -- not involving income tax, your Honor.

4 THE COURT: Nah, it doesn't have to say that.

5 MR. SCHIFF: All right.

6 THE COURT: Again, you're not a lawyer. You don't know
7 how to read the law.

8 MR. SCHIFF: Okay. I just want --

9 THE COURT: You don't.

10 MR. SCHIFF: All right.

11 The other thing is if he carries a gun, which he does,
12 Section 7608 only allows the carrying of weapons involving
13 subtitle (e) and other laws pertaining to liquor, tobacco, and
14 firearms. Subtitle (b), which involves, uh, subtitles other
15 than subtitle (e), says involving internal -- other than
16 subtitle (e) --

17 THE COURT: So what's your point, if he carries --

18 MR. SCHIFF: He's not authorized --

19 THE COURT: -- a gun or doesn't carry a gun?

20 MR. SCHIFF: He's not --

21 THE COURT: So what?

22 MR. SCHIFF: Well, the relevance is he -- he's not
23 authorized to investigate income tax violations.

24 THE COURT: Now you're going back to the other argument
25 which --

1 MR. SCHIFF: All right.

2 THE COURT: -- I've just rejected.

3 MR. SCHIFF: All right. I'm --

4 THE COURT: Carrying a gun has nothing to do with
5 whether you are guilty of the charges that are alleged --

6 MR. SCHIFF: The fact --

7 THE COURT: -- in the Indictment.

8 MR. SCHIFF: He's not -- he was not authorized to carry
9 a weapon when he raided Freedom Books.

10 The other thing is this --

11 THE COURT: Listen to me.

12 MR. SCHIFF: All right.

13 THE COURT: You haven't told me why it's relevant.

14 MR. SCHIFF: Okay. The other document is -- well, also
15 remember, uh --

16 THE COURT: Look. Look. Don't --

17 MR. SCHIFF: Section 7608 --

18 THE COURT: -- don't jump around on me.

19 MR. SCHIFF: Section --

20 THE COURT: Stop jumping around.

21 MR. SCHIFF: -- 70- -- pardon me?

22 THE COURT: Stop jumping around.

23 MR. SCHIFF: Okay.

24 In addition, Section 7608 says who the Secretary
25 charges with the duty of enforcing any of the criminal statutes.

1 Besides falling into the -- into either section, he must have a
2 delegation order from the Secretary.

3 Now, I have here a regulation, 70.33, uh, from CFR 27
4 saying the authority of enforcement officers of the ATF. And
5 there's a regulation giving, uh, uh, officers of the ATF the
6 authority to carry firearms and execute and serve search
7 warrants and arrest warrants and serve subpoenas.

8 I'm saying that the Government cannot produce any
9 similar regulation for Mr. Holland, which means this:

10 Mr. Holland has no more legal authority to testify in income tax
11 than I do. And I want the record -- now --

12 THE COURT: You want the record what?

13 MR. SCHIFF: Are you gonna allow me to cross --

14 THE COURT: Mr. Schiff.

15 MR. SCHIFF: Now, I -- yes.

16 THE COURT: Finish your statement.

17 MR. SCHIFF: Okay.

18 THE COURT: You --

19 MR. SCHIFF: Now, are you gonna allow me to impeach
20 Mr. Holland with these documents?

21 THE COURT: No.

22 MR. SCHIFF: Okay.

23 THE COURT: They are irrelevant.

24 MR. SCHIFF: Okay. Let the record show I have the
25 documents to impeach him --

1 THE COURT: Listen --

2 MR. SCHIFF: -- and you will not allow me to impeach --

3 THE COURT: -- listen to me. Every word is being taken
4 down. You do not need to say "let the record show." The record
5 is always going to show what happens --

6 MR. SCHIFF: All right.

7 THE COURT: -- in this case.

8 MR. SCHIFF: All right.

9 THE COURT: Again --

10 MR. SCHIFF: All right.

11 THE COURT: -- stop your showboating.

12 MR. SCHIFF: I'm defending --

13 THE COURT: You do not know what you're doing. Stop
14 your showboating.

15 Anything further before we bring in the jury?

16 MR. SCHIFF: I just pointed out that the Government's
17 witness committed perjury and apparently that doesn't make any
18 difference.

19 THE COURT: That's your opinion, sir.

20 MR. SCHIFF: I asked him if they're bound by
21 regulations --

22 THE COURT: Sir, that is --

23 MR. SCHIFF: -- he said no.

24 THE COURT: -- your opinion. And that's --

25 MR. SCHIFF: Thank you very much --

1 THE COURT: -- the end of it.

2 MR. SCHIFF: -- your Honor.

3 (Pause in the proceedings.)

4 MR. SCHIFF: Oh. Oh, the other thing, your Honor, I
5 would just mention. I thought the Government provided me with
6 the tape of the two-day seminar. I -- I -- I didn't -- they did
7 provide me with the tape of the one-day. They had an undercover
8 agent at my seminar in New York. They provided me with that
9 tape.

10 So I would -- I would like to be permitted -- and I
11 brought those tapes in -- to either play the tape of the
12 New York seminar, which is only a one-day, or I would want the
13 Government to use their undercover tape of the two-day seminar
14 because I don't have it. So that's what I'm requesting.

15 MR. IGNALL: Your Honor, I think we could address this
16 at another time --

17 THE COURT: Yeah.

18 MR. IGNALL: -- at a later time. We -- we have the
19 tape. So the fact that Mr. Schiff doesn't have the two-day
20 seminar is not relevant. We -- we do object to relevance,
21 hearsay, and 403 grounds to playing it. But I think we can
22 address that when the jury's not sitting right outside.

23 THE COURT: We'll do it --

24 MR. SCHIFF: Well --

25 THE COURT: -- then.

1 MR. SCHIFF: -- well, I address the relevancy of the
2 tape? They are able to send undercover agents to the seminar
3 because they believed that some criminal activity is going to be
4 discussed. The fact is that the tape will show that no criminal
5 activity was discussed. That's the relevancy. And, according
6 to this case I just gave you, I have to be given wide latitude
7 when willfulness is at issue.

8 The fact is this is proof that in the two-day seminar
9 or the one-day seminar I don't advocate violations of law. And
10 I think it's very relevant. The whole case is based on that
11 tape.

12 THE COURT: No, it isn't.

13 MR. SCHIFF: So I believe it ought to be played, either
14 the two-day seminar or the one-day seminar.

15 THE COURT: Okay. It's not coming in. It's
16 irrelevant. It's -- it cites misstatements of law, false law.
17 It -- it usurps the power of the Court to instruct the jury on
18 the law. And so it's not coming in, neither one.

19 Bring in the jury.

20 (Jury enters the courtroom at 9:31 a.m.)

21 THE COURT: Please be seated.

22 Will counsel stipulate to the presence of the jury?

23 MR. NEIMAN: Yes, your Honor.

24 MR. CRISTALLI: Yes, your Honor.

25 MR. BOWERS: Yes, Judge.

1 THE CLERK: Come on forward, sir.

2 (Anthony Aguiar takes the witness stand.)

3 THE COURT: Mr. Bowers, did you have a chance to
4 cross-examine this witness yet?

5 MR. BOWERS: Uh, no. I -- I don't --

6 THE COURT: Okay.

7 MR. BOWERS: -- I'll defer it, maybe skip it. But for
8 now just defer it.

9 THE COURT: Okay.

10 To Mr. Cristalli.

11 MR. BOWERS: Thank you, Judge.

12 MR. CRISTALLI: Thank you, your Honor.

13

14 ANTHONY AGUIAR,

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

17

18 CROSS-EXAMINATION

19 BY MR. CRISTALLI:

20 Q. Good morning, Mr. Aguiar.

21 THE COURT: Hold on just a minute.

22 MR. CRISTALLI: Oh, I'm sorry.

23 THE COURT: We have another problem.

24 (Pause in the proceedings.)

25 THE COURT: Go ahead.

1 MR. CRISTALLI: Thank you, your Honor.

2 BY MR. CRISTALLI:

3 Q. Good morning, Mr. Aguiar.

4 A. Good morning.

5 Q. Um, Mr. Aguiar, we discussed yesterday a little bit about,
6 uh, the collection due process hearing. You are a Appeals
7 officer for the collection due process hearing or you were;
8 correct?

9 A. Yes.

10 Q. Okay. And I think we established that the collection due
11 process hearing was a hearing to make sure that all of the
12 procedures for the purposes of collection were followed;
13 correct?

14 A. Correct.

15 Q. Okay. And so, for the most part, the hearing was limited to
16 that purpose; correct?

17 A. For collection purposes --

18 Q. Correct.

19 A. -- correct.

20 Q. Occasionally, if a taxpayer had not had an opportunity to
21 exercise his right to the appellate courts to determine whether
22 or not his liability was just or not just, you would, um, have a
23 discussion with regard to liability. But, for the most part, it
24 was a hearing to assure that all procedures in terms of
25 collections were met. Correct?

1 A. The purpose of collection due process, yes --

2 Q. Okay.

3 A. -- administrative steps have been followed.

4 Q. Right. Okay.

5 Um, now, yesterday the Government spoke to you about
6 the collection due process hearings that Ms. Cynthia Neun
7 attended. Would it be fair to say that she attended those as a
8 taxpayer representative; correct?

9 A. Initially she was treated as a -- a representative or a
10 person for the taxpayer.

11 Q. And -- and, when you determined that all of the arguments
12 would be repetitious or the same, she then was prevented from
13 being a representative and then acted as a witness; correct?

14 A. Correct.

15 Q. Okay. You also discussed with the Government the fact that
16 on occasion you had an opportunity to discuss -- despite the
17 fact that it was a collection due process hearing for the
18 purposes of collection, you had an opportunity to discuss
19 liability issues with, uh, the taxpayer that was with
20 Ms. Cynthia Neun; correct?

21 A. Correct.

22 Q. And you in fact gave out a handout, as you testified to, um,
23 that has a number of Code sections on it I would assume as some
24 type of notice to the taxpayer in terms of their liability;
25 correct?

1 A. You're referring to this?

2 Q. Um, I don't know what it was referred to by the Government.
3 But yeah.

4 A. That's Exhibit 155?

5 Q. Yes.

6 A. That was one of the handouts that was given, yes.

7 Q. Okay. Um, and you would agree with me, uh, sir, that the
8 federal income tax is imposed pursuant to Internal Revenue Code
9 Section 1, correct, on taxable income?

10 A. That's part of it, yes.

11 Q. Okay. Um, taxable income is also defined in Internal
12 Revenue Code Section 63 as gross income less deductions. True?

13 A. True.

14 Q. Um, and, uh, Section 61 was to mean all income from whatever
15 source derived, which includes wages and salaries; correct?

16 A. True.

17 Q. Okay. And that, pursuant to Section 6012, every individual
18 whose gross income exceeds specified amounts is required to file
19 an income tax; correct?

20 A. Correct.

21 Q. Do you agree with all those statements?

22 A. Yes.

23 Q. Okay. Um, forgive me if, uh, I'm missing something. But it
24 doesn't appear on that sheet to have those Internal Revenue Code
25 sections; correct?

1 A. 6012 is on there.

2 Q. Okay. So out of all of the ones that we discussed, uh, 6012
3 would be the only one that was on there?

4 A. That is on the list, yes.

5 Q. Okay. Um, Section 1 is not on there; correct?

6 A. Correct.

7 Q. And Section 63 and 61 are not on there; correct?

8 A. Correct.

9 Q. Okay. And would it also be safe to say, sir, that the
10 portion of 6012 is a very scant portion of that particular Code
11 section. True?

12 A. I don't know about scant. My memory is not -- you know, I
13 can't remember what the entire Code section says.

14 Q. Okay. Now, you also, um -- you testified that in addition
15 to giving these handouts out to the taxpayer accompanied by
16 Cynthia Neun you also would at times engage them in the, uh --
17 in a discussion to point out to them, uh, where their liability
18 lies for the income tax; correct?

19 A. Correct. There was discussion.

20 Q. Okay. And I'm not an expert. And, by the way, you are not
21 a lawyer; correct?

22 A. Correct.

23 Q. And you are not an accountant; right?

24 A. Got a degree in accounting.

25 Q. Okay. So you are -- you are an accountant. And it would be

1 safe to say that, um, there are tax attorneys out there that
2 specialize in tax law; correct?

3 A. Yes.

4 Q. Okay. In terms of noticing a person with regard to their
5 liability under the income tax law, would it be safe to say,
6 sir, that you would refer them to Title 26; right?

7 A. Okay. Yes.

8 Q. Uh, Section 62 of the Internal Revenue Code, Section 63 of
9 the Internal Revenue Code. Would that be a fair statement?

10 A. I don't -- I don't know what notice you're speaking about
11 that's going out.

12 Q. Well, what I'm -- the Government tried to -- or the
13 Government discussed with you the fact that you had these
14 discussions with the taxpayer about their liability; correct?

15 A. Correct.

16 Q. Okay. So, in terms of your discussion with the taxpayer
17 about the liability, the liability exists in Section 1 of the
18 Internal Revenue Code; correct?

19 A. Correct.

20 Q. Section 63, Section 61, and Sections [sic] 6012 -- would
21 that be an accurate statement?

22 A. That's partially true.

23 Q. Okay. So, to engage one in that discussion, you would have
24 to discuss those particular sections; right?

25 A. Correct.

1 Q. Okay. Now, um, just momentarily, if we can go back to
2 Government's 155, the, uh, section identified as 6012. Do you
3 see that?

4 A. Yes.

5 Q. Okay.

6 MR. CRISTALLI: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 MR. CRISTALLI: Thank you.

9 BY MR. CRISTALLI:

10 Q. Um, I'm gonna show you in the Internal Revenue Code what
11 appears to be that particular section. Um, if you just take a
12 look at it for me. I don't want you to, you know, read it or
13 just kind of look at the, uh, portion that's identified in the
14 exhibit and then the remaining portion of the entire section.

15 A. Okay.

16 Q. My -- and basically, um, the -- the portion that's cited in
17 the document that is Government's Exhibit 155 is a small portion
18 of the entire section; correct?

19 A. Correct. It's a good synopsis of that Code section.

20 Q. It's a synopsis; right?

21 A. Correct.

22 Q. So it would be safe to say that that particular Code section
23 went on for several pages; right?

24 A. In the code, yes.

25 Q. Yes.

1 And that's probably a sentence worth of the Code.

2 True?

3 A. Pretty close I would say.

4 Q. Okay.

5 (Document shown to Government counsel.)

6 MR. CRISTALLI: Court's indulgence just one moment for
7 the Government to...

8 (Pause in the proceedings.)

9 BY MR. CRISTALLI:

10 Q. Now, Mr. Aguiar, just before we start this, um, I believe
11 it's your testimony that you attended numerous due process
12 collection hearings wherein Ms. Cynthia Neun was either a
13 taxpayer representative and/or a witness for the taxpayer;
14 correct?

15 A. Correct.

16 Q. Okay. And those hearings went from approximately the end of
17 1999 up and through 2002; correct?

18 A. Approximately, yes.

19 Q. Okay.

20 (Defendant Neun's Exhibit Nos. 2512 through
21 2516, marked for identification.)

22 MR. CRISTALLI: Your Honor, I am going to approach the
23 witness with Defendant's Proposed 2512, 2516, 2515, 2514, 2513.

24 THE COURT: In other words, 2512 through 2516?

25 MR. CRISTALLI: Yeah. I don't know. 2512 jumped on

1 top there somehow I think.

2 THE COURT: Okay.

3 MR. CRISTALLI: I think the Government tried to screw
4 me up.

5 THE COURT: Okay.

6 Do you want to stipulate to that?

7 MR. NEIMAN: I'll stipulate that I put 'em out of
8 order, yes.

9 BY MR. CRISTALLI:

10 Q. Um, Mr. Aguiar, I'm going to show you what's been marked as
11 Defendant's Exhibits 2512 through 2516. And, if you could just
12 take a look at those and see whether or not you can identify
13 those as collection due process hearings that you attended, uh,
14 with Ms. Cynthia Neun as a taxpayer representative and/or a
15 witness.

16 MR. NEIMAN: Your Honor, what I think what
17 Mr. Cristalli may be doing here is to refresh recollection.
18 There's nothing that has to be refreshed right now. There's no
19 question posed to the witness to -- in which he doesn't remember
20 the answer to. I -- I guess is my concern right now. If I'm --

21 THE COURT: Is that the purpose?

22 MR. CRISTALLI: No. I'm getting to this purpose.

23 THE COURT: I'll allow some leeway.

24 MR. CRISTALLI: Thank you.

25 THE WITNESS: (Reviewing documents.)

1 MR. CRISTALLI: And take your time, if you would, just
2 to review those.

3 THE WITNESS: My purpose of reviewing is that if I
4 attended --

5 BY MR. CRISTALLI:

6 Q. Well, first of all, I wanna make -- I wanna make sure that
7 those are all -- each one of those, um, are collection due
8 process hearings wherein you attended with a taxpayer and
9 Ms. Cynthia Neun as a representative and/or a witness. Let's
10 get that out of the way first.

11 A. Okay. (Reviewing documents.)

12 Q. And why don't we go -- why don't we go step by step. Which
13 is the -- the one that you have in front of you right now is
14 what date?

15 A. Uh, top, October 31st, 2001.

16 Q. Okay. October 31st, 2001.

17 And, uh, you were the hearings officer at that
18 proceeding; correct?

19 A. Correct.

20 Q. And that was a due process collection hearing; correct?

21 A. Correct.

22 Q. And, uh, Ms. Cynthia Neun was either a taxpayer
23 representative and/or a witness for the taxpayer; correct?

24 A. Correct.

25 Q. Um, could you just identify what taxpayer that was for us,

1 if you would?

2 A. This is Ron Caldwell.

3 Q. Okay. Um, now, um, I would like you to look through that
4 particular document and tell me, uh, where you went over and/or
5 explained to the taxpayer their liability under Section 1,
6 Section 63, Section 61, or Section 6012 of the Internal Revenue
7 Code.

8 MR. NEIMAN: Objection, your Honor. That's what I was
9 afraid of. There wasn't a recollection -- I think the testimony
10 on direct is that he went through the Code a number of times,
11 not every time, with -- with Ms. Neun present. And he could ask
12 him if he did it. And then, if he didn't do it, he could
13 refresh his recollection. I think it's an improper impeachment
14 of sorts.

15 MR. CRISTALLI: Well, yesterday they used it, uh, for
16 the purpose of notice. I don't recall ever hearing any
17 testimony that he didn't go over the liability issues with
18 either the taxpayer or the taxpayer representative. I think it
19 is, uh, important that we establish because it goes to the heart
20 of notice.

21 MR. NEIMAN: And that's a fair question to the witness,
22 whether or not he did do it --

23 MR. CRISTALLI: Okay.

24 MR. NEIMAN: -- every time or not.

25 MR. CRISTALLI: Okay.

1 THE COURT: It is a fair question. The testimony
2 was -- not yesterday -- that he went over it with every
3 taxpayer.

4 MR. CRISTALLI: Okay.

5 BY MR. CRISTALLI:

6 Q. So -- okay. So, Mr. Aguiar, just, um -- I -- I presented
7 to -- with you up there four different, uh, due process
8 collection hearings, correct, wherein Ms. Cynthia Neun attended,
9 uh, with either -- with a taxpayer as a representative and/or a
10 witness; correct? And it was all during the 2001, um, period.
11 True?

12 A. Well, I've only looked at the Caldwell. I've got five
13 documents up here.

14 Q. Right. All you need to do is just to establish the fact
15 that you're the hearing officer, Ms. Cynthia Neun was the person
16 that was representing the taxpayer, and the taxpayer.

17 A. Okay.

18 Q. I think it's ...

19 A. Okay. Just let me --

20 Q. Sure.

21 A. -- look them all over.

22 (Reviewing documents.) Okay.

23 Q. Okay. Five due process hearings; correct?

24 A. Correct.

25 Q. You're the hearing officer; right?

1 A. Correct.

2 Q. Taxpayer and Ms. Cynthia Neun present; right?

3 A. Correct.

4 Q. Okay. Sir, then, um, it would be safe to say that you did
5 not have a discussion, uh, with every taxpayer that was -- that
6 accompanied Ms. Cynthia Neun with regard to their tax liability
7 under Section 1, 63, 61, or 6012 of the Internal Revenue Code;
8 correct?

9 A. Not every taxpayer.

10 Q. Right.

11 And it would also be true, sir, would it not be --
12 would it not, that, um, you did not hand out handouts, uh, to
13 each and every taxpayer at each and every collection due process
14 hearing that was attended by Ms. Cynthia Neun either; right?

15 A. No.

16 Q. Okay. Just so we're clear. I could take those back. Thank
17 you.

18 Sir, would it also be safe to say that despite your
19 attempts, uh, based on your direct testimony yesterday, that,
20 um, you -- you were unable to convince any of the taxpayers that
21 accompanied Ms. Cynthia Neun to their collection due process
22 hearings that they had a tax, uh, liability, uh, as outlined in
23 the Internal Revenue Code; correct?

24 A. None of the taxpayers that came with Cynthia Neun -- I was
25 not able to convince but was able to convince other people that

1 came as pro ses.

2 Q. Okay. My -- my -- my question, however, was specific to
3 those that accompanied Ms. Cynthia Neun.

4 A. That's correct.

5 Q. Okay.

6 A. None of 'em did agree.

7 Q. And, sir, you're not a lawyer; right?

8 A. That's correct.

9 Q. And you do not know how to interpret cases or case law;
10 correct?

11 A. I know how to interpret cases and case law.

12 Q. You do? But you did not attend law school.

13 A. You don't have to attend law school to be able to understand
14 cases and case law.

15 Q. Jeez, I've been wastin' a lot of time then.

16 A. I would not say that.

17 Q. Oh, okay.

18 MR. CRISTALLI: No further questions. Thank you, your
19 Honor.

20 THE COURT: Mr. Bowers?

21 MR. BOWERS: I'll defer again to Mr. Schiff, your
22 Honor.

23 THE COURT: Mr. Schiff has already gone, I believe.

24 MR. BOWERS: Oh. No, I don't have any questions.
25 Thank you, Judge.

1 THE COURT: Okay.

2 Any further questions?

3 MR. NEIMAN: Real briefly, your Honor.

4

5 REDIRECT EXAMINATION

6 BY MR. NEIMAN:

7 Q. Mr. Aguiar, approximately how many times did you go through
8 the Code starting with Section 1 with Defendant Neun present in
9 the courtroom -- or present in the meeting room? I'm sorry.

10 A. I had approximately a hundred to a hundred and fifty cases.
11 And initially we went through the Code section by section with
12 Ms. Neun and the individual that was there. At a later point in
13 time, it became Appeals procedure that when we did not identify
14 her as being a representative then we followed Section 6330 of
15 the Code to make sure that all administrative steps have been
16 followed and used that as a guide for the hearings.

17 Q. Mr. Aguiar, do you remember being present along with a Tom
18 Menaugh at a collection due process hearing of a taxpayer by the
19 name of Matthew Diamond?

20 A. Yes, I do.

21 Q. And do you remember who accompanied Mr. Diamond to that
22 collection due process hearing?

23 A. Ms. Neun.

24 Q. And at that collection due process hearing, do you recall
25 whether or not Mr. Menaugh went code by -- section by section

1 within the Code explaining to Ms. Neun where in the law she was
2 required to pay -- or explained to Mr. Diamond with Ms. Neun in
3 the room where she [sic] was required to pay taxes?

4 A. Yes. Mr. Menaugh went through the Code thoroughly.

5 Q. And is that similar to the way you went through the Code at
6 least initially with these taxpayers and Defendant Neun present?

7 A. Yes.

8 MR. NEIMAN: I have nothing further.

9 THE COURT: Recross?

10

11

RECROSS-EXAMINATION

12 BY MR. CRISTALLI:

13 Q. Sir, do you have a collection due process hearing in front
14 of you which you attended which would support your position that
15 you advised Ms. Neun about the tax laws?

16 MR. NEIMAN: Objection to the -- what the witness has
17 in front of him. I think he --

18 BY MR. CRISTALLI:

19 Q. Do you have anything to show us where you would --

20 THE COURT: Sustained.

21 BY MR. CRISTALLI:

22 Q. -- which would validate [sic] your position that you had
23 deep and long dialogue with the taxpayer in reference to their
24 liability?

25 MR. NEIMAN: Objection again, your Honor. It's our job

1 to introduce the evidence, not Mr. Aguiar. I...

2 THE COURT: Sustained.

3 BY MR. CRISTALLI:

4 Q. Mr. Aguiar, would it be safe to say that I showed you five
5 collection due process hearings' transcripts, all in 2001, for
6 which you made no reference nor had any discussion with -- with
7 the taxpayer or Ms. Cynthia Neun with regard to their tax
8 liability?

9 A. As I stated, at that point in time in 2001, we used Code
10 Section 6330 as a guide to conduct those hearings.

11 Q. Correct.

12 6330 does not discuss anything as it relates to tax
13 liability; correct?

14 A. Yes, it does.

15 Q. It -- I'm sorry?

16 A. 6330 states that if you've had a prior opportunity to
17 contest the income tax liability then you do not get another
18 opportunity at the collection due process hearing.

19 Q. Right. Exactly. I don't disagree with that. But that
20 doesn't discuss anything as it relates to an individual's tax
21 liability under the Internal Revenue Code. That's -- that's --
22 that's -- that's collection due process hearing issues; right?

23 A. 6330 is collection due process hearing issues. Right.

24 Q. My question was: I -- I just randomly picked out five
25 particular hearings in --

1 MR. NEIMAN: Objection --

2 THE COURT: Sustained.

3 MR. NEIMAN: -- to the random and --

4 THE COURT: Sustained.

5 MR. BOWERS: How can you object to the random nature of
6 it?

7 THE COURT: You can't -- you can't testify, Counsel.

8 MR. BOWERS: Well, that's fair, Judge.

9 BY MR. CRISTALLI:

10 Q. Sir, would you agree with me that of those five there was
11 not one reference to any section in the code which discusses tax
12 liability; correct?

13 A. I did not read 'em all over in detail.

14 Q. Okay. Well, would it --

15 MR. NEIMAN: We would stipulate that in these five it
16 wasn't discussed. It's consistent with his testimony that they
17 didn't do it every time.

18 THE COURT: Any further --

19 BY MR. CRISTALLI:

20 Q. So you would --

21 THE COURT: -- question --

22 BY MR. CRISTALLI:

23 Q. The Government stipulates that you don't refer to -- not
24 once in here to any liability issue as it relates to taxes,
25 correct, to income tax? Right?

1 A. If that's what's been stipulated to.

2 MR. NEIMAN: We just stipulated.

3 MR. CRISTALLI: All right.

4 MR. NEIMAN: So it's a moot point.

5 MR. CRISTALLI: Nothing further, your Honor.

6 THE COURT: Thank you.

7 MR. BOWERS: Real quick, Judge.

8 THE COURT: Mr. Bowers.

9

10 CROSS-EXAMINATION

11 BY MR. BOWERS:

12 Q. Just for the record, Mr. Aguiar, you saw Larry Cohen -- I'm
13 sorry. I'm Larry Cohen's attorney Chad Bowers. How are you
14 this morning?

15 A. Good morning.

16 Q. Carried away there.

17 Just for the record, you saw Larry Cohen one time as a
18 witness at one conference; is that correct?

19 A. Correct.

20 Q. You've had no other contact with him; right?

21 A. Not that I can recall.

22 Q. Okay. Thanks.

23 Um, you just mentioned now that you don't discuss
24 liability at a CPD hearing if a taxpayer's had an opportunity to
25 contest liability on a prior occasion.

1 A. Correct.

2 Q. That's -- am I understanding your testimony correctly?

3 A. Yes.

4 Q. Okay. Is -- is it fair to say that Treasury Regulation 63,
5 103 and 105 provide for an appeals conference as to liability?
6 Is that your understanding of --

7 MR. NEIMAN: Objection. Beyond the scope of redirect.

8 MR. BOWERS: No, no, it's not because this witness is
9 talking about a prior opportunity to contest the liability
10 determination. And it's my understanding that those two
11 Codes -- Treasury Regulations acting in conjunction provide the
12 opportunity for just the kind of hearing he's talking about. So
13 I'm not sure if, uh, that's the hearing that's been missed or
14 it's some other hearing that's been dismissed.

15 MR. NEIMAN: I don't recall getting into that on my --

16 THE COURT: There --

17 MR. NEIMAN: -- redirect.

18 THE COURT: -- there was no discussion of that on --

19 MR. BOWERS: There was --

20 THE COURT: -- recross.

21 MR. BOWERS: -- there was no discussion of a prior
22 opportunity to assess liability --

23 THE COURT: There was --

24 MR. BOWERS: -- on his redirect?

25 THE COURT: -- there was a discussion of the procedure

1 under 6330 to, uh, confirm that all of the, uh, steps had been
2 followed.

3 MR. BOWERS: Right, right.

4 And -- and there was also a discussion, I thought, that
5 under 6330 if there had been a prior opportunity to contest
6 liability of a -- of a tax that had been determined that that
7 wasn't an appropriate discussion to be had at a CPD hearing.

8 THE COURT: Well, I don't remember that.

9 MR. BOWERS: I'm sorry. It wouldn't be the first time
10 I misheard. I apologize if I did.

11 THE COURT: There was a discussion of that. But I
12 think it was on Mr. Cristalli's cross-examination, not on the,
13 uh, redirect. Just a second.

14 MR. BOWERS: I apologize, your Honor. I thought that
15 was --

16 THE COURT: Let me just look and see.

17 MR. BOWERS: -- within the scope.

18 (Pause in the proceedings.)

19 THE COURT: Yes. That's all that was discussed in the,
20 uh -- is what I just told you, that 6330, they checked to see
21 that all of the administrative steps had been followed. That
22 was the extent of it.

23 MR. BOWERS: Okay. Well, I apologize.

24 Thanks, Mr. Aguiar.

25

1 CROSS-EXAMINATION

2 BY MR. SCHIFF:

3 Q. Mr. -- Mr. Aguiar --

4 A. Good morning.

5 Q. -- are you aware that the income tax -- this is -- that --
6 the income tax code is divided into various subtitles; is that
7 correct?

8 MR. NEIMAN: Same objection as to Mr. Bowers. This is
9 beyond the scope of redirect.

10 MR. SCHIFF: Well --

11 THE COURT: Beyond the scope of redirect.

12 MR. SCHIFF: Well, I'll get to --

13 THE COURT: Sustained.

14 MR. SCHIFF: -- I'll get to its relevance in a moment
15 before I --

16 THE COURT: Sustained.

17 MR. SCHIFF: I'm laying a foundation.

18 THE COURT: It's not a relevance question. It's a --

19 MR. SCHIFF: The rel- -- he.

20 THE COURT: It's not a relevance question.

21 MR. SCHIFF: All right. It is relevant to these
22 statutes, your Honor.

23 THE COURT: It is not a question of relevance. He did
24 not go into it on redirect, and you're not able to go into it on
25 recross if he didn't go into it on redirect.

1 MR. SCHIFF: The Government in direct asked him about
2 laws; he asked him about tax laws. All right. I'm just asking
3 him --

4 THE COURT: Mr. Schiff, the objection is sustained.

5 MR. SCHIFF: Okay.

6 BY MR. SCHIFF:

7 Q. Now, in looking at this document in Code Section 3121, 6001,
8 are these statutes contained in subtitle (a) which deals with
9 income tax?

10 MR. NEIMAN: Same objection --

11 BY MR. SCHIFF:

12 Q. Do any of these --

13 MR. NEIMAN: -- your Honor. Beyond the scope.

14 THE COURT: Sustained.

15 MR. NEIMAN: Also irrelevant at this time as well.

16 MR. SCHIFF: He --

17 THE COURT: Sustained and beyond the scope and
18 irrelevant.

19 MR. SCHIFF: Your Honor, he talked about the statutes.
20 And I'm trying to point out that none of these --

21 THE COURT: The fact that he mentioned Section 6330
22 does not mean that he opened it up for every law pertaining to
23 taxes to be discussed.

24 MR. SCHIFF: I'm -- I'm -- I'm just trying to make the
25 point that none of these statutes fall under --

1 THE COURT: You can't --

2 MR. SCHIFF: -- subtitle (a).

3 THE COURT: -- don't tell me what point you're trying
4 to make.

5 MR. SCHIFF: All right.

6 THE COURT: The --

7 MR. SCHIFF: All right.

8 THE COURT: -- the --

9 MR. SCHIFF: Okay.

10 THE COURT: -- question was beyond the scope of
11 redirect.

12 MR. SCHIFF: Okay. Well, he discussed these statutes.

13 BY MR. SCHIFF:

14 Q. Is it your claim, Mr. Aguiar, that in 3121 there's a
15 provision for tax liability?

16 THE COURT: Mr. Schiff, the Government asked two or
17 three questions on redirect. They were very specific.

18 MR. SCHIFF: What -- what were they?

19 THE COURT: They asked three questions, and you're only
20 allowed to go into those three areas on recross, not all the
21 previous testimony. Just on the questions on redirect.

22 MR. SCHIFF: Look. I'm tryin' to be -- it was my
23 understanding that the Government discussed the tax laws.

24 THE COURT: When?

25 MR. SCHIFF: Didn't he do that?

1 THE COURT: He -- he discussed one section of the code.

2 MR. SCHIFF: Well, what section did he discuss then?

3 THE COURT: 6330.

4 MR. SCHIFF: Okay. All right.

5 BY MR. SCHIFF:

6 Q. Is it your contention that in 6330 there's a provision for
7 an income tax liability?

8 A. 6330 deals with the amount of income tax that has been
9 assessed and to be collected.

10 Q. Um, can you -- all right. 6330. Uh, I think you had -- all
11 right. 6330. I'll just stick to 6330.

12 MR. NEIMAN: Your Honor, the questioning with 6330 --

13 MR. SCHIFF: Okay.

14 MR. NEIMAN: -- on redirect was simply about what he
15 discussed at these collection due process hearings. He
16 testified that he complied with -- with the -- what was in 6330.
17 Nothing more. Any other questions by Mr. Schiff would be
18 irrelevant first off and, secondly, beyond the scope of any
19 redirect.

20 MR. SCHIFF: I'm gonna stick my question, your Honor,
21 to 6330.

22 THE COURT: His question was: Did he follow 6330?
23 That was the question.

24 MR. SCHIFF: Okay.

25 THE COURT: You can cross-examine him --

1 MR. SCHIFF: I'm --

2 THE COURT: -- on that.

3 MR. SCHIFF: -- that's what I'm going to do. That's
4 what I'm gonna do.

5 BY MR. SCHIFF:

6 Q. Can you just read the first sentence in 6330?

7 MR. NEIMAN: Objection. Invading upon this Court's
8 right to instruct as to the law.

9 THE COURT: Sustained.

10 MR. SCHIFF: He's -- I'm just asking him to read --

11 THE COURT: Ask your question.

12 BY MR. SCHIFF:

13 Q. Could you just read the first line?

14 THE COURT: No. He's not going to read it.

15 MR. SCHIFF: Can I --

16 THE COURT: Ask him a question about --

17 MR. SCHIFF: All right.

18 THE COURT: -- what was discussed --

19 BY MR. SCHIFF:

20 Q. Doesn't the first line --

21 THE COURT: -- on redirect.

22 MR. SCHIFF: All right.

23 BY MR. SCHIFF:

24 Q. Doesn't the first line in 6330 says, if the secretary
25 notifies the taxpayer of his right --

1 THE COURT: Mr. Schiff --

2 BY MR. SCHIFF:

3 Q. -- of a collection due -- it says no -- no levy can be made
4 unless the Secretary notifies the taxpayer of his right to a
5 collection due process hearing.

6 MR. NEIMAN: Your Honor --

7 BY MR. SCHIFF:

8 Q. Isn't that what it says?

9 MR. NEIMAN: -- this is Mr. Schiff's misinterpretation
10 of the law.

11 MR. SCHIFF: Well, let him read it. I'm not
12 interpreting. Let him read it. You read it.

13 THE COURT: Sustained.

14 MR. SCHIFF: Let him read it. I'm not trying to
15 interpret. I asked the witness just to read it. I don't want
16 to interpret anything.

17 BY MR. SCHIFF:

18 Q. Can you just --

19 THE COURT: Mr. Schiff --

20 BY MR. SCHIFF:

21 Q. -- can you just read the first line?

22 THE COURT: Mr. Schiff --

23 BY MR. SCHIFF:

24 Q. Just read the first line.

25 THE COURT: Mr. Schiff, you are not listening to the

1 rulings of the Court.

2 MR. SCHIFF: He -- he said he complied with 6330. 6330
3 says --

4 THE COURT: Don't you repeat it.

5 MR. SCHIFF: Pardon?

6 THE COURT: You can ask him another question. Ask him
7 a question about how he didn't comply if that's what you want.

8 MR. SCHIFF: All right. How he didn't comply.

9 THE COURT: You asked --

10 MR. SCHIFF: Okay.

11 THE COURT: -- a question as to elicits how he didn't
12 comply.

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. Does the Secretary ever notify the person of his right to a
16 collection due process hearing?

17 A. Yes.

18 Q. He does?

19 A. (Nods head.)

20 Q. You are saying -- is it my understanding that what you're
21 saying that the Secretary of the Treasury sends out to each
22 taxpayer notice that he has a right to collection due process
23 hearing? Is that your testimony?

24 MR. NEIMAN: Objection. Relevance.

25 MR. SCHIFF: The relevance is --

1 MR. NEIMAN: We're gettin' --

2 MR. SCHIFF: -- we're sticking --

3 MR. NEIMAN: -- down that --

4 MR. SCHIFF: -- to 6330 --

5 MR. NEIMAN: -- line again, your Honor --

6 MR. SCHIFF: The relevance is --

7 MR. NEIMAN: -- of misinterpretation and gonna start
8 challenging the authority to do stuff where they have authority
9 to do it.

10 MR. SCHIFF: 6330 gives no authority for the IRS to
11 send out notice of a collection due -- where in that section is
12 the IRS authorized to send out notice?

13 THE COURT: Mr. Schiff, the question is irrelevant. It
14 is inappropriate. The Court has already ruled on this. The
15 courts -- other courts have ruled on this. And there -- there
16 is no requirement that the Secretary himself send out such a
17 notice. It is delegated down the line. The case of Hughes v.
18 IRS holds that. You are not going any further into this area.

19 MR. SCHIFF: I -- I am not saying they can't delegate
20 his authority.

21 BY MR. SCHIFF:

22 Q. The point is: Have you ever seen a delegation of authority
23 from the Secretary to the IRS?

24 THE COURT: Mr. Schiff, you are not going to argue
25 questions of law with this individual. The Court has already --

1 MR. SCHIFF: The witness --

2 THE COURT: -- the Court has already ruled against your
3 position on this. You know it.

4 MR. SCHIFF: No further questions.

5 MR. NEIMAN: Nothing further on behalf of the United
6 States.

7 THE COURT: The witness is excused.

8 Government will call its next witness.

9 MR. IGNALL: United States calls Agent Holland.

10 (David Holland takes the witness stand.)

11 THE CLERK: You do solemnly swear that the testimony
12 you shall give in the cause now pending before this court shall
13 be the truth, the whole truth, and nothing but the truth, so
14 help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated.

17 Please state for the record your full name and spell
18 your last name.

19 THE WITNESS: David Holland. Last name is spelled,
20 H-o-l-l-a-n-d.

21

22

23

24

25

1 DAVID HOLLAND,
2 called as a witness on behalf of the Government, having been
3 first duly sworn, was examined and testified as follows:

4

5 DIRECT EXAMINATION

6 BY MR. IGNALL:

7 Q. Good morning, Agent Holland.

8 A. Good morning.

9 Q. Just so we're clear, Agent Holland, do you go by a nickname
10 other than your given name?

11 A. Yes, I do.

12 Q. What name is that?

13 A. Sam.

14 Q. All right. Mr. Holland, what do you --

15 THE COURT: Hold on a minute.

16 BY MR. IGNALL:

17 Q. -- do for a living?

18 THE COURT: Hold on a minute.

19 I'm gonna ask, Mr. Leventhal, that you keep the noise
20 down.

21 MR. LEVENTHAL: He can't hear me. Sorry, sir.

22 MR. SCHIFF: This is not working, your Honor.

23 THE COURT: Well, then we'll take a moment and get it
24 working. I noticed before you left and went over there where
25 you didn't have it. So we'll -- we'll get it working again

1 right now. We'll take a short break.

2 Ms. Reporter, will you go and see why it's not working?

3 (Pause to check on realtime connection.)

4 (Discussion between the reporter and the

5 Court.)

6 THE COURT: Looks like we're going to be a few minutes.

7 So we're going to be in recess for a few minutes. Standard

8 admonitions.

9 (Jury leaves the courtroom at 10:17 a.m.)

10 (Recess from 10:17 a.m. to 10:48 a.m.)

11 THE CLERK: Ready? Okay.

12 (Jury enters the courtroom at 10:48 a.m.)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. BOWERS: Yes, your Honor.

16 MR. CRISTALLI: Yes, your Honor.

17 MR. IGNALL: Yes, your Honor.

18 THE COURT: Mr. Ignall, you may go ahead with --

19 MR. SCHIFF: Uh, your Honor, is Mr. Holland being

20 offered by the Government as an expert?

21 THE COURT: I don't know. They haven't -- they haven't

22 asked him any questions yet.

23 MR. IGNALL: Again, I'll break the suspense. No.

24 THE COURT: Okay. Thank you.

25

1 BY MR. IGNALL:

2 Q. All right. Agent Holland, what do you do for a living?

3 A. I'm a special agent/criminal investigator with the IRS.

4 Q. How long have you been a special agent with the IRS?

5 A. 18 years.

6 Q. Just briefly, what are your job responsibilities?

7 A. I investigate criminal violations of the Internal Revenue
8 Code and related offenses, including money laundering and
9 violations of the Banking Secrecy Act.

10 Q. Did you have any involvement in the investigation of Irwin
11 Schiff, Cindy Neun, Larry Cohen, and Freedom Books?

12 A. Yes.

13 Q. What was your involvement?

14 A. I was the case agent.

15 Q. What do you mean by "case agent"?

16 A. I was assigned the case of, uh, Mr. Schiff and worked the
17 case.

18 Q. When did you start investigating this case?

19 A. It was probably about 2000.

20 Q. At any point during this investigation, did you apply for a
21 search warrant?

22 A. Yes, I did.

23 Q. When was that?

24 A. In 2003.

25 Q. All right. And did you execute a search warrant?

1 A. Yes, we did.

2 Q. When was that search warrant executed?

3 A. February 11th, 2003.

4 Q. And where were the premises that you searched?

5 A. Uh, 444 East Sahara, Freedom Books.

6 Q. Is that here in Las Vegas?

7 A. That's here in Las Vegas --

8 Q. Okay.

9 A. -- yes.

10 Q. Can you describe the -- the building?

11 A. Uh, it -- it was like a renovated old house that had been
12 renovated into a business and, uh, the inside of it was probably
13 about 2500 square feet and, um, basically it was an office
14 inside.

15 Q. And when you walked inside, what -- what -- was --

16 A. Well --

17 Q. -- was that the front area?

18 A. -- when we initially walked inside, uh, if you'd like me to
19 describe the inside, there was a lobby area and, uh, to the
20 right of the lobby area they had, uh, what would be deemed, I
21 guess, their bookstore and, uh, to the left of the lobby would
22 be what I would deem probably the -- the bullpen area where a
23 lot of the -- the salesmen worked and then behind, um, the
24 reception area there was an office, and then even behind that
25 office there was more offices and an office area.

1 Q. And how many agents, uh, were involved in this search?

2 A. I think we had about 20 that day.

3 Q. All right. Was there any centralized way to collect the
4 evidence that was seized during that search?

5 A. Well, yeah. When you initially, uh, do a search warrant,
6 um, after securing the property, making entry and securing the
7 property, first thing you do is you -- you label all the rooms
8 generally with letters and, then, um, after -- and -- and you
9 also videotape and photograph the -- the place to show how you
10 began the -- you know, how it looked when you began the search.
11 And then --

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

13 You did somethin' to the room with something? Letters?

14 THE WITNESS: Yeah. You label all the rooms with, like
15 stickies --

16 MR. BOWERS: Letters?

17 THE WITNESS: Yeah, letters --

18 MR. BOWERS: Sorry.

19 THE WITNESS: -- A, B, C, D. Yeah.

20 MR. BOWERS: Sorry.

21 THE WITNESS: And, after you got all the rooms labeled
22 and everything photographed and videoed, uh, then you commence
23 the search. And, after you commence the search, you know,
24 against break up into different search groups, they go into
25 different rooms, uh, A, B, C, D, what have you, search the

1 rooms.

2 BY MR. IGNALL:

3 Q. Is there any way to identify the location from which a
4 certain document was -- was obtained?

5 A. Oh, absolutely.

6 Q. Can you explain that to the jury?

7 A. Yeah. In each -- you know, after each agent goes into each
8 room -- and, even in each room, you label everything that's in
9 the room. If it's in room A, you label, like, the file cabinet,
10 file cabinet room A; if there's two file cabinets in there, file
11 cabinet 1, room A; file cabinet 2, room A. The desks. Uh,
12 everything that's in the room. We even draw a map of the, uh --
13 the search warrant area so we know where everything came from.

14 And then, you know, after the -- when the agents begin
15 the search, they, uh -- they label each item that they take;
16 they put it in an evidence bag; and they -- they write down, uh,
17 what the evidence is; where it came from; and then they take it
18 to the seizing agent and they enter it in the computer.

19 Q. I'm sorry. Explain the seizing agent entering things in the
20 computer.

21 A. Yeah. At each search warrant, there's an agent that's
22 deemed a seizing agent. And a seizing agent, their purpose is
23 to basically, uh, review the evidence when it comes in; make
24 sure it falls within the scope of the warrant; and then, uh,
25 they basically approve it, for lack of a better word; and then

1 enter it in the computer and put it in an evidence box.

2 Q. And, at the end of the search, did you take physical custody
3 of the evidence that was seized?

4 A. Yes, I did.

5 Q. And did you at some point label the documents that were
6 obtained in the search warrant?

7 A. Well, they're already labeled when we -- we leave. You
8 know, the evidence will be put in an evidence bag; uh, the
9 computer we'll -- it'll be entered in the computer; and then the
10 computer has a labeling system and it literally spits out a
11 label of, uh, what was -- what was seized; who seized it; where
12 it was from; uh, you know, the room that it was taken; and
13 everything's puttin' on -- on the evidence bag, which is put in
14 boxes; and then there's even a sticker put on each box. And all
15 that at end of the warrant is also, uh, on the search warrant
16 inventory.

17 Q. All right. Uh, for documents that you obtained during the
18 course of this search at Freedom Books, did you put any
19 individual labels on every page of the documents that you
20 obtained?

21 A. Yeah. After -- after you bring all the evidence back to the
22 office, one of the first things that we do is we -- we Bates
23 label each document and -- and as a way to -- to put 'em all in
24 order you'll -- you'll have -- like what we did is we put labels
25 on 'em and then we scanned 'em all. And on each label, uh,

1 it'll be for instance, search warrant, uh, it'll -- you know,
2 search warrant will be the first letters and then, say, uh,
3 Box 30. And it'll tell ya in the search warrant inventory
4 exactly where that box came from, what room.

5 Q. All right. And -- I'm sorry. Does each page of each
6 document get a unique number?

7 A. Yes.

8 Q. If I could hand you what we've marked -- I think I skipped
9 ahead. I think it may be one of the oversize -- Exhibit 212.

10 MR. IGNALL: May I approach the clerk, your Honor?

11 THE COURT: You may.

12 (Pause in the proceedings.)

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

14 THE COURT: You may.

15 BY MR. IGNALL:

16 Q. Agent Holland, I'm handing you a few more exhibits --
17 there's a few in front of you now -- but these are marked as
18 Exhibits 212, 213, 215, and 216.

19 If you could take a look at Exhibit 212, do you
20 recognize Exhibit 212?

21 A. Yes, I do.

22 MR. IGNALL: And, your Honor, I believe that
23 Exhibit 212 is already in evidence.

24 BY MR. IGNALL:

25 Q. Do you have some way to -- let me ask that again -- do you

1 know where you found Exhibit 212?

2 A. I can't remember specifically. Um, I do have the -- the
3 Bates label number on this exhibit. And if I had the, uh -- the
4 search warrant inventory to refresh my recollection, I could
5 tell ya exactly where we got it.

6 Q. All right.

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

8 THE COURT: You may.

9 MR. BOWERS: I'm sorry. What -- what's he approaching
10 with, your Honor?

11 THE COURT: Search warrant inventory.

12 MR. BOWERS: Thank you.

13 MR. SCHIFF: Can -- can I...

14 (Pause in the proceedings.)

15 (Government's Exhibit No. 333, marked for
16 identification.)

17 MR. IGNALL: I'm approaching the witness with
18 Exhibit 333.

19 BY MR. IGNALL:

20 Q. Agent Holland, if you look at Exhibit 333, does that refresh
21 your recollection?

22 A. Yes, it does.

23 Q. Okay. And, just for the record, what is Exhibit 333?

24 A. It's a search warrant inventory of Freedom Books.

25 MR. SCHIFF: What is Exhibit...

1 BY MR. IGNALL:

2 Q. All right. Can you --

3 MR. SCHIFF: Is this Exhibit...

4 BY MR. IGNALL:

5 Q. -- now that your recollection's refreshed, tell the jury
6 where item 212 -- uh, Exhibit 212 was located?

7 A. Yeah. This was located in the shipping area, I believe.

8 Q. The shipping area. What was the shipping area?

9 A. Uh, it was a -- a room that they had in the, uh -- in the
10 office where I guess they did a lot of their shipping.

11 MR. CRISTALLI: Foundation.

12 BY MR. IGNALL:

13 Q. Okay. What -- what did you observe in that room? What...

14 A. Uh, boxes of items that were being boxed up to be shipped
15 out, uh, tapes, numerous other items.

16 Q. All right. Thank you.

17 MR. IGNALL: May I approach the witness, again, your
18 Honor --

19 THE COURT: You may.

20 MR. IGNALL: -- to display this? This is an oversized
21 exhibit and it is not scanned.

22 (Document displayed in open court.)

23 BY MR. IGNALL:

24 Q. Agent Holland, have you looked through Exhibit 212 before?

25 A. Yes, I have.

1 Q. And I'm looking at the first page here on the screen, I
2 hope.

3 Can you read what this says at the top?

4 A. It's a Power of Attorney and Declaration of Representative.

5 Q. All right. And if I can focus it a little better... humm,
6 well, maybe not. There we go.

7 Can you read what it says in, uh, Box 1. Maybe you
8 can't.

9 THE WITNESS: 1 --

10 MR. SCHIFF: What is this?

11 THE WITNESS: -- Carrera (phonetic).

12 BY MR. IGNALL:

13 Q. And that's under -- what's the heading --

14 MR. SCHIFF: What is that?

15 BY MR. IGNALL:

16 Q. -- on item 1? What does that say?

17 A. Uh, "Taxpayer name and address."

18 Q. All right. If you can just read -- and then read -- what is
19 number two? What's the heading number two say?

20 A. "Cynthia Neun, 544 East Sahara Avenue, Las Vegas, Nevada."

21 Q. And what's the heading -- what is number two? What is...

22 A. Number two is "Representative."

23 Q. All right. If I could ask you to look through Exhibit 212,
24 can you tell us what else is contained in Exhibit 212?

25 A. (Reviewing document.)

1 Now, this entire book is filled up with power of
2 attorneys.

3 Q. And, if you look through it, is this -- who -- what names
4 are listed under item 2? Is that all the -- are they all the
5 same form that we just looked at?

6 A. Yes, they are.

7 (Reviewing exhibit.)

8 All of them that I've -- I've reviewed here have
9 Cynthia Neun as the, uh, representative.

10 MR. CRISTALLI: Well, "all of them," I need some
11 foundation with regard to that. I need to know what he's
12 referring to and how many documents he's --

13 BY MR. IGNALL:

14 Q. If you could keep --

15 MR. CRISTALLI: -- referring to.

16 BY MR. IGNALL:

17 Q. Agent Holland, look -- you can keep looking through the book
18 if you don't mind.

19 MR. CRISTALLI: I don't -- we don't have -- I don't
20 have 212.

21 MR. IGNALL: Oversized. We produced --

22 MR. CRISTALLI: It's a what?

23 MR. IGNALL: It's an oversized exhibit.

24 MR. CRISTALLI: Okay. I just need to see it real
25 quick.

1 MR. IGNALL: That's okay.

2 THE WITNESS: (Reviewing exhibit.)

3 BY MR. IGNALL:

4 Q. All right. Agent Holland, whose name is listed in item 2 in
5 the documents that are contained in Exhibit 212?

6 A. Cynthia Neun.

7 Q. All right.

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

9 THE COURT: You may.

10 BY MR. IGNALL:

11 Q. Now, if I can turn your attention to Exhibit 213.

12 A. You know, if I might make a slight correction, that was
13 actually seized from the order room. I -- I've mixed up the
14 boxes and the actual -- actual envelopes with the control
15 numbers on 'em.

16 Q. Can you describe where the order room was? And let -- let
17 me back up one second.

18 The order room is your -- your name for where you found
19 it; is that correct --

20 A. That's correct --

21 Q. -- Agent Holland?

22 A. -- yeah.

23 Q. Okay. And can you describe where that was in Freedom Books?

24 A. What would have been I guess what I called earlier as kinda
25 the bullpen area where all the -- the sales personnel worked

1 just directly to the, uh, left of the entrance inside Freedom
2 Books.

3 Q. Thank you.

4 If I could turn your attention to Exhibit 213, can you
5 tell the jury where that was located?

6 A. (Reviewing exhibit.)

7 This was located in Irwin's office which was, uh, the
8 office in the back of -- of the building.

9 Q. And how did you know it was Irwin's office?

10 A. It -- it had a lot of his personal effects back there:
11 pictures, awards, whatnot.

12 MR. IGNALL: May I approach the witness again, your
13 Honor?

14 THE COURT: You may.

15 MR. IGNALL: May I publish Exhibit 213 to the jury?

16 THE COURT: You may.

17 Have you already admitted 213?

18 THE CLERK: Yes, sir.

19 THE COURT: It is? Okay..

20 MR. IGNALL: By stipulation, your Honor, I think --

21 THE COURT: Thank you.

22 MR. IGNALL: -- the exhibits have been admitted
23 already.

24 THE COURT: Thank you. You may publish.

25 (Document displayed in open court.)

1 BY MR. IGNALL:

2 Q. I'm sorry. What -- Agent Holland, can you tell us what this
3 says on the cover of the notebook?

4 A. "Consultations."

5 MR. SCHIFF: What is this? I can't see it.

6 MS. NEUN: It says, "Consultation Book."

7 BY MR. IGNALL:

8 Q. All right. And can -- Agent Holland, can you just read --
9 without what's written in -- read what's written at the top,
10 just preprinted in?

11 A. Uh, well, consultation sheet, Freedom Books. It has the
12 date, the name of the client, the address, city, state,
13 telephone number, occupation of the client, uh, who they work
14 for, cell phone number. Basically all their personal
15 information.

16 Q. And what does it say about a cell phone and work number?

17 A. Uh, "What material you already have."

18 Q. Okay. All right.

19 MR. IGNALL: May I approach the witness again, your
20 Honor?

21 THE COURT: You may.

22 BY MR. IGNALL:

23 Q. Can you -- look through Exhibit 213, Agent Holland. Can you
24 tell us whether the other documents in that notebook are on that
25 same preprinted form?

1 A. (Reviewing exhibit.)

2 Yes, they are.

3 Q. Thank you, Agent Holland.

4 Agent Holland, do you have Exhibit 225 in front of you?

5 A. Yes, I do.

6 Q. All right. Where was Exhibit 225 located?

7 A. Uh, it was located numerous places. I -- I recall this one
8 bein' specifically located in Irwin Schiff's office, in his
9 desk.

10 Q. In -- in Mr. Schiff's desk?

11 A. That's correct.

12 Q. You said it was found in numerous places?

13 A. Yes. We -- I -- we found about four, five copies of this,
14 uh, throughout the office.

15 Q. All right.

16 MR. IGNALL: This document's actually scanned. So may
17 we publish this to the jury? It's already been admitted.

18 THE COURT: You may.

19 (Document displayed in open court.)

20 BY MR. IGNALL:

21 Q. If you look at the first page, Agent Holland, can you read
22 what it says on the top in the title of this first page?

23 A. Uh, "CRS Report for Congress, Frequently Asked Questions
24 Concerning the Federal Income Tax."

25 Q. And, now, what does it say at the bottom, all the way at the

1 bottom line?

2 A. "Congressional Research Service · the Library of Congress."

3 Q. All right. If we could turn to the second page,

4 Agent Holland.

5 (Document displayed in open court.)

6 BY MR. IGNALL:

7 Q. Could you read just that first line, that first paragraph?

8 A. "This report addresses some of the frequently asked
9 historical, constitutional, procedural, and legal questions

10 concerning the federal income tax."

11 Q. If I could turn your attention to the next page, the Table
12 of Contents.

13 MR. BOWERS: Your Honor, can we have a brief sidebar?

14 THE COURT: Yes.

15 MR. BOWERS: Thank you.

16 (Sidebar conference was held as follows:)

17 THE COURT: Go ahead.

18 MR. BOWERS: Your Honor, it's my understanding that the
19 Government intends to, uh, offer Mr. Holland as simply this is
20 the document I found, this is where I found it, so forth, which
21 is basically what they've been doing so far.

22 Um, when they -- if they are now going to systemically
23 proceed to go through this document page by page for whatever
24 reason, whether it's to show notice or whatever else, that
25 provides -- essentially what they are gonna do is they are gonna

1 introduce legal testimony through Mr. Holland by reading this
2 document, which is fine. The document's been admitted into
3 evidence. But I think we should be able to cross-examine
4 Mr. Holland on that if that's what the Government does.

5 THE COURT: On what part of it?

6 MR. BOWERS: On any of it that he reads from this --
7 this document because of his position as an agent in the IRS.
8 He can say it's from the Library of Congress, but then when he
9 sits there on the stand and he begins to read this as an agent
10 of the IRS, they are getting it both ways. They're importing
11 some validity to it, an adoption of the Service, even though
12 they are saying, well, it's in the Library of Congress. But we
13 should be able to cross-examine him as to his knowledge about
14 this stuff if he's gonna sit there and read it. That's all.

15 THE COURT: You mean as an expert, a legal expert?

16 MR. BOWERS: I don't -- I don't wanna get into all
17 that. I just wanna get into the fact that they're -- they're --
18 they're giving the opinions in this document the force of the
19 IRS by having Sam read it this way, you know. If they just want
20 to put it in and say it's there, jury, read it on your own,
21 then -- then I don't think that affects Mr. Holland.

22 But it's clear that the document came as a result of
23 the search warrant. I just -- I'm just, I guess, advancing an
24 argument ahead of time that if this testimony's gonna be a
25 page-by-page review of this document I don't think that's as

1 simple as, oh, the Library of Congress had this document there
2 and Mr. Holland's just talking about it. I think it imports
3 some weight by the mere fact that he's an agent of the IRS.

4 MR. SCHIFF: Well, I wanna just say I have no objection
5 to the document going in.

6 MR. BOWERS: I don't either. That's not what we are
7 talking about.

8 MR. IGNALL: Your Honor, may I?

9 THE COURT: Yes.

10 MR. IGNALL: We wouldn't object to some sort of a
11 curative instruction. But all Agent Holland's gonna testify
12 about is we found this in Mr. Schiff's desk and in a number of
13 other places. Therefore, we're introducing it for notice as to
14 what the law actually is.

15 MR. SCHIFF: No.

16 MR. IGNALL: It's an accurate statement of the law.

17 MR. SCHIFF: It's an inaccurate statement of the law.

18 MR. IGNALL: That's an accurate --

19 MR. SCHIFF: Well, wait --

20 MR. IGNALL: -- statement of the law --

21 MR. SCHIFF: Wait a minute.

22 MR. BOWERS: Irwin, please. Hold on.

23 MR. IGNALL: -- that's in the possession of Mr. Schiff
24 and everyone else at Freedom Books. It's to be introduced
25 solely for notice. We don't object to --

1 MR. SCHIFF: No --

2 MR. BOWERS: Irwin, please. Just a moment.

3 MR. IGNALL: -- to an instruction as to that. But, if
4 they want some sort of instruction as to all that Mr. Holland is
5 doing is reading what he found at Freedom Books, that's fine.

6 MR. SCHIFF: Okay.

7 MR. IGNALL: There's no --

8 MR. BOWERS: Wait.

9 MR. IGNALL: -- Agent Holland is not being offered as
10 an expert. He's not opining on it. He's doing nothing other
11 than reading it and we're posing it to the jury, introducing it.
12 I understand that the defendants don't like this because this is
13 very powerful evidence of --

14 MR. BOWERS: No, no.

15 MR. IGNALL: -- their notice as to the frivolous nature
16 of the arguments they are making.

17 MR. CRISTALLI: It's not notice --

18 MR. SCHIFF: It's not notice --

19 MR. CRISTALLI: -- to me.

20 MR. IGNALL: Because this document goes through many of
21 the arguments that they've been making all along.

22 MR. SCHIFF: It was a self-serving document. Don't you
23 understand? Self-serving.

24 MR. CRISTALLI: Your Honor --

25 MR. BOWERS: Please, Irwin.

1 THE COURT: Be quiet.

2 MR. BOWERS: Please.

3 MR. SCHIFF: It's self-serving.

4 THE COURT: Be quiet.

5 MR. SCHIFF: Pardon me.

6 MR. CRISTALLI: Your Honor, on behalf --

7 MR. SCHIFF: I have no objection to the argument.

8 MR. BOWERS: Just a moment, please.

9 MR. SCHIFF: Some of these statements are correct and
10 some of the statements aren't correct.

11 MR. IGNALL: Okay. But -- but this -- this doesn't
12 open the door to a discussion of the law.

13 MR. SCHIFF: Why not? You just said it's notice to me
14 of the law.

15 MR. IGNALL: It is.

16 MR. BOWERS: There's no way --

17 MR. SCHIFF: But it's an inaccurate statement of the
18 law.

19 MR. BOWERS: Whether it's --

20 MR. SCHIFF: You want to be cross-examined --

21 THE COURT: I decide what the law is.

22 MR. BOWERS: Whether it's accurate or --

23 THE COURT: You don't.

24 MR. SCHIFF: Pardon me?

25 THE COURT: I'm going to decide what the law is, not

1 you.

2 MR. BOWERS: Whether it's accurate or not, your Honor,
3 there's no way we would be allowed to, for example, have a
4 witness get up and read the Code section. I mean, that's my
5 point. Okay? This document -- this -- to have Agent Holland
6 sit there and read each page of this document --

7 THE COURT: Well, he's not gonna read the whole
8 documents. I'm not gonna allow that.

9 MR. BOWERS: No. Or read the highlights or whatever.
10 I mean, no problem --

11 THE COURT: How much time you gonna spend on this
12 document?

13 MR. IGNALL: Five to ten minutes.

14 MR. BOWERS: That's a long time.

15 MR. IGNALL: This is very good evidence, your Honor.

16 MR. BOWERS: We can --

17 MR. SCHIFF: Your Honor, it's evidence of nothing.
18 It's a --

19 MR. BOWERS: Hold on, Irwin.

20 MR. SCHIFF: -- self-serving document. I'm sorry.

21 MR. BOWERS: Please, Irwin. You're --

22 MR. SCHIFF: I'm sorry.

23 MR. BOWERS: -- gonna have your opportunity.

24 MR. SCHIFF: All right.

25 MR. CRISTALLI: Can I --

1 MR. BOWERS: And I have no problem with them pointing
2 that out and they can say, jury, here it is. They can argue it.
3 But --

4 THE COURT: But -- no.

5 MR. BOWERS: -- it's cumulative. It's --

6 THE COURT: So -- no.

7 MR. BOWERS: -- to have it -- we would never be allowed
8 to have anybody read a document like that. I'm sorry.

9 THE COURT: State your --

10 MR. CRISTALLI: Your Honor, I have a different -- I
11 have a different position.

12 THE COURT: Okay.

13 MR. CRISTALLI: First of all, they're gonna use it for
14 notice, uh, to the defendants as to what the law was. This was
15 found in Mr. Irwin Schiff's office inside of his drawer.

16 What --

17 THE COURT: Well, it was also found throughout the
18 office.

19 MR. CRISTALLI: Where though? I don't -- I don't --

20 THE COURT: Well, you can ask a question. You ask a
21 question on --

22 MR. SCHIFF: I showed it to my --

23 MR. CRISTALLI: Is that where he testified it was found
24 from, his office?

25 MR. SCHIFF: -- I showed it to my employees as an

1 example of how the IRS misstates the law.

2 MR. BOWERS: Why are you testifying against yourself
3 here, Irwin?

4 THE COURT: Okay.

5 MR. SCHIFF: No.

6 MR. BOWERS: Why are you doing that?

7 THE COURT: All right.

8 MR. SCHIFF: I'm not testifying against --

9 MR. BOWERS: Why are you doing that?

10 MR. SCHIFF: Because they mistake the law. Don't you
11 understand?

12 THE COURT: I think that finishes it.

13 MR. BOWERS: Make your -- make your objection for the
14 record.

15 MR. SCHIFF: My objection is it's a self-serving
16 doc- -- I have no objection of it coming in because some of the
17 statements are correct, some of the statements aren't correct
18 and they address arguments that we never make like the Sixteenth
19 Amendment was never ratified; like, um, I'm not -- I'm a state
20 citizen. There are a lot of silly arguments in there. And I
21 use it as an example of arguments that people make that we
22 don't -- that we don't subscribe to.

23 MR. BOWERS: I'd like to --

24 MR. SCHIFF: -- but it's a self- --

25 MR. BOWERS: -- renew my --

1 MR. SCHIFF: -- serving document.

2 MR. BOWERS: -- my motion to sever, your Honor.

3 THE COURT: Do you have something on the pot calling
4 the kettle black?

5 MR. BOWERS: Yeah.

6 THE COURT: Okay.

7 MR. SCHIFF: Yeah, yeah --

8 THE COURT: Okay.

9 MR. SCHIFF: -- yeah.

10 THE COURT: All right. Thank you.

11 MR. SCHIFF: And I use it as a teaching aid.

12 (Sidebar conference concluded and the
13 following is held in open court:)

14 THE COURT: Go ahead with your next question.

15 MR. IGNALL: All right. If we could publish
16 Exhibit 225. I think we were at the third page, the Table of
17 Contents. But...

18 THE COURT: Before publication, the objections are
19 overruled.

20 (Document displayed in open court.)

21 BY MR. IGNALL:

22 Q. All right. Could you read what -- Agent Holland, it's the
23 Table of Contents. Can you read item 7?

24 A. "ARE WAGES TAXABLE AS INCOME."

25 Q. And if I could, uh, turn your attention to page 10.

1 A. (Complies.)

2 MR. CRISTALLI: Your Honor, I'm gonna object, not with
3 regard to what we discussed at sidebar, but the evidence speaks
4 for -- the exhibit speaks for itself. The exhibit is in
5 evidence. The jury can have an opportunity to review it. I'm
6 not quite --

7 THE COURT: Well, the Gov- --

8 MR. CRISTALLI: We're not going to have a substantive
9 discussion with this particular witness as to what is in the
10 document. I know previously we attempted to do that, uh, myself
11 and we were unable to do it with particular exhibits. I'm not
12 quite sure this is proper for -- for this particular witness to
13 read from the portions of the exhibit --

14 THE COURT: Well --

15 MR. CRISTALLI: -- when it's going to be in --

16 THE COURT: How many pages is the exhibit?

17 MR. CRISTALLI: It's a lot.

18 MR. IGNALL: The exhibit's probably 25.

19 MR. BOWERS: Your Honor, I would just join and add to
20 that objection that clearly, uh, Mr. Holland has knowledge of
21 this exhibit beyond what the words on the page are. He
22 wasn't --

23 MR. CRISTALLI: Recovering it.

24 MR. BOWERS: What's that?

25 MR. CRISTALLI: Other than recovering it.

1 MR. BOWERS: Right. That's what I'm saying. I mean,
2 he has no ability to elaborate beyond the written text at all.
3 I'm sure he would admit that if allowed on voir dire.

4 MR. IGNALL: Your Honor, we concede that. But the
5 Court certainly has discretion to allow us to publish this to
6 the jury now so the jury can --

7 THE COURT: Yes --

8 MR. IGNALL: -- see it, at least --

9 THE COURT: -- and I'm not --

10 MR. IGNALL: -- parts of it now.

11 THE COURT: -- going to make you go through it page by
12 page as earlier objections were raised. You can point out what
13 you wish in it. And it -- it's only fair that we not make the
14 jury read voluminous documents to find the -- the aspect that
15 the Government is trying to present. So the objections are
16 overruled.

17 MR. SCHIFF: Your Honor, can I voice my objection to
18 the document?

19 THE COURT: You already have and --

20 MR. SCHIFF: But --

21 THE COURT: -- I've ruled.

22 MR. SCHIFF: -- I want the jury to hear what my
23 objection is.

24 THE COURT: I've already heard your objections.

25 MR. SCHIFF: But the jury hasn't heard it.

1 THE COURT: The jury -- that's why we went to sidebar.
2 And I -- and I think the jury did hear you over there anyway,
3 regardless, even after I asked you --

4 MR. SCHIFF: The Government --

5 THE COURT: -- to quiet down.

6 MR. SCHIFF: -- is presenting this as notice to me. I
7 use this in my --

8 MR. IGNALL: Objection, your Honor, to Mr. Schiff
9 giving a speech now.

10 MR. BOWERS: I object too.

11 MR. IGNALL: He can testify to this.

12 THE COURT: Yeah.

13 MR. BOWERS: I object to Mr. Schiff's speaking
14 objection on this point.

15 THE COURT: Sustained.

16 Go ahead.

17 MR. IGNALL: All right. If we could blow up item --
18 the first two paragraphs under item 7.

19 MR. SCHIFF: I use it as a teaching tool.

20 (Document displayed in open court.)

21 BY MR. IGNALL:

22 Q. All right. What's the heading under number 7, Special Agent
23 Holland?

24 A. "ARE WAGES TAXABLE AS INCOME."

25 Q. All right. And how many pages does this discussion go on

1 for?

2 A. Three.

3 Q. All right. And, if I could turn your attention to the next
4 page.

5 MR. IGNALL: Let's highlight one portion of this
6 discussion. If we could go down to the second full paragraph.
7 Second full paragraph if we could highlight that.

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. Now, it's -- I'm sorry. If you could read the first two
11 sentences there?

12 A. "The Sixteenth Amendment clarified the power of Congress to
13 lay and collect taxes on income, from whatever source derived."

14 Q. Is there a footnote there?

15 A. Brushaber v. Union Pacific Railroad --

16 Q. Okay.

17 A. -- 1916.

18 Q. And what's the next sentence?

19 A. "Income has been defined as gain derived from capital, from
20 labor, or from both combined."

21 Q. If I could turn your attention to, uh, page 13 and item 8.

22 MR. IGNALL: If we could highlight, you know, the first
23 two paragraphs there. Actually, first let's just have --
24 highlight the first paragraph. Well, maybe not.

25 (Document displayed in open court.)

1 BY MR. IGNALL:

2 Q. Could you read that first paragraph -- what's the heading
3 say there?

4 A. The heading says, "DO WE HAVE A VOLUNTARY TAX SYSTEM?"

5 Q. Could you read that first paragraph for us?

6 A. Yeah.

7 "We do not have a voluntary tax system in the sense
8 that payment of taxes is optional. There are specific
9 provisions of law which require the payment of income taxes.
10 There are civil and criminal penalties for failing to pay these
11 taxes or file the required returns. Several rather tenuous
12 arguments have been put forward to support the contention that
13 paying income taxes is optional."

14 Q. If I could turn your attention to the third paragraph.

15 MR. IGNALL: If we could blow that up.

16 MR. CRISTALLI: Your Honor, I do -- I apologize to the
17 Court. I do have to assert another objection.

18 I will not have an opportunity -- or will not be
19 afforded an opportunity to cross-examine this witness on this
20 particular document. This witness is being used merely has a
21 puppet to get in -- a substance of a document -- of a document
22 that's been produced by the Government.

23 If they wanna produce an expert to discuss the law,
24 that's fine. It's improper to pull certain portions of a
25 document without me being afforded an opportunity to

1 cross-examine him because he doesn't have any knowledge with
2 regard to the substance of it.

3 THE COURT: Well, the -- it's introduced only on the
4 issue of notice and for no other reason. And the Court is going
5 to give a curative instruction at some point with respect to
6 that. So --

7 MR. BOWERS: Irwin, please.

8 THE COURT: -- if you want to ask him if this is
9 something he found and you want to cross-examine him, fine. But
10 this is notice only. So --

11 MR. SCHIFF: Your Honor --

12 THE COURT: -- the objection's overruled.

13 MR. CRISTALLI: That's assuming --

14 MR. SCHIFF: Your Honor --

15 MR. CRISTALLI: -- if somebody --

16 MR. SCHIFF: -- your Honor, I object --

17 MR. CRISTALLI: -- read it.

18 MR. SCHIFF: -- that this document was notice to me.
19 The -- the document itself is loaded with false representations.
20 It wasn't notice to me. It's a self-serving document prepared
21 by the IRS.

22 MR. CRISTALLI: Your Honor --

23 THE COURT: Mr. Schiff --

24 MR. SCHIFF: It wasn't notice to me.

25 THE COURT: Well, you -- that's --

1 MR. SCHIFF: It wasn't notice to me.

2 THE COURT: -- that's a jury question. And --

3 MR. SCHIFF: But you're trying --

4 THE COURT: -- the jury --

5 MR. SCHIFF: -- to pretend --

6 THE COURT: -- will decide whether --

7 MR. SCHIFF: -- that was --

8 THE COURT: -- it was --

9 MR. SCHIFF: -- notice to me.

10 THE COURT: -- notice to you.

11 MR. SCHIFF: I used it as a teaching tool to show why
12 all of these arguments are false as a matter of law. That's why
13 it was in my office.

14 THE COURT: Well, you're testifying. You were warned
15 about it. The attorney's objected to you testifying earlier.
16 You are sanctioned again --

17 MR. SCHIFF: But, your Honor --

18 THE COURT: -- for testifying --

19 MR. SCHIFF: -- you're saying --

20 THE COURT: -- over the ruling of the Court.

21 MR. SCHIFF: You're saying this is notice to me.

22 THE COURT: I'm not saying anything. That's for the
23 jury to decide. It's introduced for the purpose of showing
24 notice.

25 MR. SCHIFF: If I heard you right, I heard you say that

1 because this document was in my office --

2 THE COURT: No, I didn't --

3 MR. SCHIFF: -- that was notice to me.

4 THE COURT: No, I didn't. I said it was being
5 introduced for the purpose of showing notice.

6 MR. SCHIFF: That's the point. It wasn't notice. It
7 wasn't notice to me.

8 THE COURT: That is for the jury to decide.

9 MR. BOWERS: Your Honor, I --

10 MR. SCHIFF: But -- but -- but you have prevented me
11 from explaining to the jury why it was in my office.

12 THE COURT: You -- you don't have a right to explain
13 why it was in your office until you take the stand, Mr. Schiff.
14 You're out of order.

15 MR. BOWERS: Your Honor, if I may.

16 THE COURT: Yes.

17 MR. BOWERS: In adding to this objection, I have no
18 objection to this document coming in at all. Um, I understand
19 that whether or not this was notice to my client is an issue we
20 can explore through cross or other avenues. And that's fine.

21 I do believe, though, that this manner of presenting
22 this particular document is -- is more prejudicial than
23 probative in -- in the way that it's being presented. So I
24 would make that objection as well.

25 THE COURT: The objections are overruled.

1 MR. SCHIFF: He just sanctioned me?

2 MR. IGNALL: If we could...

3 MR. SCHIFF: He just held me in contempt?

4 MR. IGNALL: One paragraph down.

5 MR. SCHIFF: He said this was notice to me.

6 MR. IGNALL: I'm sorry. Excuse me one moment, your
7 Honor.

8 THE COURT: Yes.

9 (Pause in the proceedings.)

10 MR. SCHIFF: This is how they try to get the law in, by
11 selling --

12 THE COURT: Mr. Schiff? Mr. Schiff, if you do not stop
13 voicing out loud so that the jury can hear your disagreement, I
14 am going to sanction you again.

15 MR. SCHIFF: I'm sorry. I didn't -- I didn't -- I just
16 thought I was talking to my...

17 THE COURT: Everyone can hear you. You know you raise
18 your voice. If you want to communicate with Mr. Leventhal, do
19 it with notes. You have repeated the things that the lawyers --
20 the other lawyers for the other defendants objected to at
21 sidebar three or four times purposefully, in my opinion, so that
22 the jury would hear what you had to say.

23 (Document displayed in open court.)

24 BY MR. IGNALL:

25 Q. All right. Agent Holland, if you could look at the last

1 paragraph on that same page. Could you read that for us?

2 A. "Another semantic argument put forth in this area revolves
3 around use of the word 'liable' in tax acts. The contention is
4 made that the income tax statute does not use the magic words
5 'individual is made liable' and therefore an" -- "an individual
6 is not liable for income taxes. The federal courts have not had
7 much time for this argument, characterizing it is 'arrogant
8 sophistry' and 'blatant nonsense.'"

9 Q. Are there -- are there footnotes in there? I'm sorry.

10 A. Yeah. 45 and 46.

11 Q. And what does Footnote 45 say?

12 A. 45 says, "See, Donelin [and] Commander [sic], T.C. Memo,
13 1984, ... "Schiff v. Commissioner." I'm sorry.

14 Q. All right. And then what does 46 --

15 A. 46 is --

16 Q. -- say?

17 A. -- "See, Newman v. Schiff."

18 Q. All right. I'm sorry. If you could keep reading after
19 footnote 46.

20 A. "The first description is perhaps the most apt. The
21 proponent of this argument has set up a standard that all taxes
22 must meet. The income tax does not meet this standard. He,
23 therefore, concludes there is something wrong with the income
24 tax. The problem is not in the income tax, but in the standard.
25 There is no requirement in fact or law that the tax act" -- "tax

1 act must use the proponent's magic words."

2 Q. All right. Thank you.

3 If I could turn your attention to, uh, page 24. I
4 think it's the second from the last page.

5 What is the heading of --

6 MR. SCHIFF: I'm sorry. Are we to that section yet?

7 It's the second to the last page. Page 24. We're there? Okay.

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. If I could read -- item 20, can you read what the heading is
11 there?

12 A. "WHAT IS THE FRIVOLOUS INCOME TAX PENALTY?"

13 Q. If you could read that first paragraph there and then the
14 next paragraph.

15 A. "As part of the Tax Equity and Fiscal Responsibility Act of
16 1982, Congress enacted a penalty for filing frivolous income tax
17 return. This penalty is codified at Internal Revenue Code
18 Section 6702."

19 Q. And the next paragraph on the next page.

20 A. "The penalty is \$500.00. It may be imposed on any" -- "any
21 individual who files any document which purports to be a tax
22 return but fails to contain information from which the
23 substantial correctness of the amount of tax shown on the return
24 can be judged, [it] contains" -- "or contains information which
25 on its face indicates that the amount of the tax shown on the

1 return is substantially incorrect and such conduct arises from a
2 frivolous position taken by the taxpayer or a desire of the
3 taxpayer, which is apparent from the face of the return, to
4 delay or impede the administration of the tax laws."

5 Q. Is there a footnote there?

6 A. Uh, the last footnote is 105. And it says, "Internal
7 Revenue Code Section 6702."

8 Q. All right. If we could skip down to the third paragraph.
9 Can you read that for us, Agent Holland?

10 A. "It should be" -- "It should be also mentioned that the
11 federal courts may impose penalties for frivolous claims brought
12 before them. These claims range from those which have no basis
13 in fact or law (for example, claiming that payment of income
14 taxes is voluntary) to those which have been legitimate
15 questions when first raised, but have been definitively decided
16 by the courts that they are a waste of the courts time to bring
17 them up again (for example, questioning the constitutionality of
18 taxing wages)."

19 Q. Thank you.

20 All right. Agent Holland, if I could turn your
21 attention to Exhibit 225A.

22 A. (Complies.)

23 Q. Agent Holland, can you tell the jury where you located
24 Exhibit 225A?

25 MR. SCHIFF: Your Honor, I object to going over these,

1 uh, comments unless I can cross-examine him with respect to the
2 validity of these comments. If these comments go in without
3 being challenged, then the assumption the jury's gonna have is
4 that they are not misleading and they are accurate.

5 MR. IGNALL: Your Honor, the relevance of this is
6 simply notice to Mr. Schiff and others at Freedom Books that
7 they have knowledge of the law. They may not agree with it, but
8 these address specific arguments that they've made.

9 MR. SCHIFF: This --

10 MR. IGNALL: They can testify or present other
11 evidence --

12 MR. SCHIFF: This is --

13 MR. IGNALL: -- but this only goes to notice to them.

14 MR. SCHIFF: This is a self-serving document produced
15 by the IRS and these statements are inaccurate and misleading
16 and have nothing to do with -- with my position on -- on the tax
17 law. I use this as a teaching tool myself.

18 MR. IGNALL: Objection, your Honor. This --

19 MR. SCHIFF: All right.

20 MR. IGNALL: -- we're now getting into testimony.

21 THE COURT: Yes. Again --

22 MR. SCHIFF: Your Honor --

23 THE COURT: -- again, you have made a statement that I
24 told you not to make in the presence of the jury. The --

25 MR. SCHIFF: Your Honor, if I may say, this is the law,

1 not that. That is a misstatement of this.

2 MR. IGNALL: Your Honor.

3 THE COURT: Well --

4 MR. SCHIFF: That's why I object to it.

5 THE COURT: -- the -- I haven't seen the document.

6 But, uh, again, it is being tendered for purpose of notice. The
7 counsel for the defense will be able to question with respect to
8 whether their individual, uh, clients knew of its existence in
9 the office. But the objection is overruled.

10 MR. IGNALL: And, your Honor, just to be clear, I
11 believe 225A is probably under the same tab as 225. It --

12 THE COURT: Okay.

13 MR. IGNALL: -- should be in here.

14 THE COURT: So it's already been admitted?

15 MR. IGNALL: It's been admitted and it should be in
16 your binder, I hope.

17 MR. BOWERS: Judge -- your Honor, I have another
18 objection on a semantic matter. Um, the semantic matter is I
19 believe that 225A is document -- IRS Publication 2105. Um, I
20 would request that if we're gonna admit in 25A [sic] we can
21 request the other version of 2105 that I had marked. They are
22 the same document. I would submit that it's laid out -- the one
23 that I had marked is laid out more in line with the way it's
24 actually sent by the IRS. So -- I would move for -- I didn't
25 realize that this was a separate exhibit. If the Government

1 doesn't object, I'd move for simultaneous admission if they are
2 okay with the contents.

3 (Document handed to the Court.)

4 THE CLERK: It's 2845, Mr. Bowers.

5 MR. IGNALL: Your Honor, the Government doesn't object
6 to the admission of 2845, but it's exactly the same. And,
7 again, the relevance of 225A is where it was located as well as
8 what it says given where it was located. But we don't object to
9 the introduction --

10 THE COURT: Well, you can --

11 MR. IGNALL: -- introduction of 2845.

12 THE COURT: -- the Government said it won't object when
13 you get ready to make your cross-examination. You can admit it.
14 I'm not going to --

15 MR. BOWERS: That's fine. And --

16 THE COURT: -- require the Government to admit it while
17 it's questioning the witness.

18 MR. BOWERS: Well, that's okay. No problem.

19 And then the second issue, your Honor, is I -- I raise
20 all of these same objections I've raised in connection with the
21 first half of 25 [sic], uh, in that, you know, we're --

22 THE COURT: Right.

23 MR. BOWERS: -- reading these as opinions without a
24 chance to talk to the author and so forth. Thank you.

25 THE COURT: Thank you.

1 Go ahead.

2 MR. IGNALL: Okay.

3 BY MR. IGNALL:

4 Q. Agent Holland, where was --

5 THE COURT: Let me make the record. The objections are
6 overruled.

7 Go ahead.

8 BY MR. IGNALL:

9 Q. Agent Holland, where was Exhibit 225A?

10 A. Uh, this particular copy was found in the order room, which,
11 again, was the room that was directly to the left of the lobby
12 after walking into Freedom Books.

13 Q. Did you find more than one copy of this document at --

14 A. I believe so --

15 Q. -- Freedom Books?

16 A. -- yes.

17 Q. Do you recall how many copies?

18 A. Several.

19 MR. SCHIFF: Can I interrupt for a moment? We're
20 talking about 225A. Is that this document? What document?

21 MR. BOWERS: It's -- it's Exhibit 225A.

22 MR. SCHIFF: Okay. Okay. And let me understand
23 something. I'm sorry.

24 Is -- is this supposed to be notice to me also?

25 MR. IGNALL: Objection, your Honor.

1 MR. SCHIFF: Is that why it's being offered?

2 MR. IGNALL: This is being offered for notice. But I
3 think it's appropriate for the defendant to address the Court.

4 THE COURT: It is. It's improper to address other
5 counsel and question other counsel. But you've heard the
6 answer.

7 Go ahead.

8 BY MR. IGNALL:

9 Q. I'm sorry.

10 You say you found more than one copy?

11 A. Yes, we did.

12 Q. Do you recall where you found the other copies?

13 A. Uh, they were littered throughout the office. Can't
14 remember specifically.

15 Q. All right.

16 MR. IGNALL: If we can just publish this to the jury
17 and blow up the top two-thirds.

18 (Document displayed in open court.)

19 BY MR. IGNALL:

20 Q. Now, what -- what -- and if we go down -- thank you. I'm
21 sorry. If we go down to the bottom part of this first page.
22 And I think this is cut off a little bit in the way we scanned
23 it. So I apologize to the jury that -- I suggest if you look at
24 the actual copy it'll be a little clearer -- but what -- what
25 does it say in big letters there?

1 A. Uh, "Just the facts."

2 Q. All right. And then what's it say right below that?

3 A. "Commonly Used Frivolous Arguments."

4 Q. If we could turn to the next page.

5 MR. IGNALL: If we could go down to kinda the middle of
6 the page. If we could blow up right there. That's good.

7 (Document displayed in open court.)

8 BY MR. IGNALL:

9 Q. Could you read what it says starting with "Internal Revenue
10 Code Arguments"?

11 A. Uh, "Internal Revenue Code Arguments:

12 Number "(1) The filing and paying of tax is voluntary.

13 "(2) The Internal Revenue Code doesn't apply to me
14 because I am not a government employee not [sic] I am a resident
15 of a sovereign state."

16 Q. If you could read the beginning of the next paragraph.

17 A. "The Truth: ... tax law is found in Title 26 of the United
18 States Code. Section 6012 of the Code makes [it] clear that
19 only individuals whose income falls below the specified level do
20 not have to file returns. While our tax system is based on
21 self-assessment and reporting, compliance with the tax laws is
22 mandatory."

23 Q. All right. Thank you.

24 If you could look at the next item. If you could read
25 the heading of that next paragraph?

1 A. "Wages are not Income Arguments."

2 Q. All right. If you could read that to us.

3 A. "Labor worth a certain amount is exchanged for money worth
4 the same amount and therefore there is no income to be taxed."

5 Q. What -- what -- can you read the heading to the next
6 paragraph?

7 A. "The truth."

8 Q. Can you read that next paragraph?

9 A. "The arguments that taxes on income derived from property
10 are unconstitutional, or that income is limited to gain or
11 profit, are consistently" -- something got cut off -- "assets
12 from taxation" -- no.

13 THE COURT: No. You're -- there's something at the
14 bottom --

15 THE WITNESS: Okay.

16 THE COURT: -- of the page.

17 You're not reading down --

18 THE WITNESS: I'm sorry.

19 THE COURT: -- at the bottom.

20 THE WITNESS: Okay. I'll start from the top.

21 "The arguments that taxes on income derived from
22 property are unconstitutional, or that income is limited to gain
23 or profit, are consistently dismissed by the courts. Congress
24 has determined (through the Internal Revenue Code), that all
25 income is taxable unless specifically excluded by some part of

1 the Internal Revenue Code."

2 BY MR. IGNALL:

3 Q. All right. Thank you, Agent Holland.

4 If I could turn your attention to Exhibit 226. Do you
5 have that in front of you, Agent Holland?

6 MR. IGNALL: Ms. Vannozzi, has that been admitted?

7 THE CLERK: Yes, sir, it has.

8 MR. IGNALL: Okay.

9 THE WITNESS: Did you say 226?

10 BY MR. IGNALL:

11 Q. Uh, 226, yes.

12 Do you have that somewhere up there?

13 A. No, I don't.

14 Q. You don't have Exhibit 226.

15 (Pause in the proceedings.)

16 (Clerk hands exhibit to witness.)

17 MR. IGNALL: Thank you, Ms. Vannozzi.

18 BY MR. IGNALL:

19 Q. Tell us where you located Exhibit 226.

20 A. (Reviewing document.)

21 Uh, this was located in the bill room.

22 Q. I'm sorry. Where?

23 A. In the bill room.

24 Q. And that's your terminology as well, Agent Holland?

25 A. That's correct.

1 Q. Where is that? Can you describe that?

2 A. I can't remember exactly where that was. I'll have to think
3 a minute. I can't -- I can't recall specifically --

4 Q. All right.

5 A. -- where that was.

6 Q. Okay. If you just look at the top half of -- of
7 Exhibit 226.

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. All right. Can you read -- is there a name and a number
11 somewhere below the box in the upper right?

12 A. "Prosper International, Ltd., 4270 Aloma Avenue, Suite
13 124-66K, Winter Park, Florida."

14 Q. No, no. I'm sorry. If we could go up a little bit above
15 that.

16 A. Oh.

17 "FREEDOM, Prosper Place, CR 54274" --

18 Q. No. I'm sorry. My bad.

19 Do you see Mr. Schiff's name anywhere here on -- on...

20 A. Yes. "Irwin Schiff" --

21 Q. All right.

22 A. -- "#1040."

23 Q. And what does it say right below that?

24 A. "#1040."

25 Q. All right. Thank you.

1 If I could turn your attention to Exhibit 227.

2 MR. IGNALL: Ms. Vannozzi, I think that's already
3 probably been admitted. We're also gonna wanna go through I
4 think it's at least 230 -- probably 230.

5 THE CLERK: 238?

6 MR. IGNALL: Sure. Yes.

7 THE CLERK: Okay.

8 MR. IGNALL: Thank you.

9 (Exhibits placed before the witness by the
10 clerk.)

11 BY MR. IGNALL:

12 Q. Agent Holland, where was Exhibit 227 located?

13 MR. SCHIFF: Your Honor, I have to object again. There
14 has been no evidence stating that if I make a deposit to a
15 foreign -- that's a crime. Is it a crime to make a deposit?
16 This was a check. I didn't carry cash over there.

17 MR. IGNALL: Your Honor --

18 MR. SCHIFF: I wrote a check.

19 MR. IGNALL: -- again, Mr. Schiff is testifying. The
20 relevance of this is this is evidence of an affirmative act to
21 evade payment of already-assessed taxes.

22 THE COURT: The objection --

23 MR. SCHIFF: There is no evidence given that --

24 THE COURT: The objection --

25 MR. SCHIFF: -- deposits constitute income within the

1 meaning of the law.

2 THE COURT: The --

3 MR. SCHIFF: This is a deposit which I had a perfect
4 right to make. And the implication to the jury is that it's
5 somehow illegal and nobody has testified --

6 MR. IGNALL: Your Honor --

7 MR. SCHIFF: -- that deposits --

8 THE COURT: The objection is overruled.

9 MR. SCHIFF: -- in an account constitutes income.

10 THE COURT: The objection is overruled.

11 MR. SCHIFF: Pardon me?

12 THE COURT: The objection is overruled.

13 Go ahead.

14 MR. IGNALL: Thank you.

15 MR. SCHIFF: Will I be able to cross-examine the
16 document though?

17 THE COURT: The objection is overruled.

18 BY MR. IGNALL:

19 Q. Agent Holland, do you know where Exhibit 227 was located?

20 A. Yeah. This was found in a room that we, uh -- we deemed
21 "Irwin's workroom." It was a large room next to his office that
22 had work tables set up with, uh, filing boxes and some filing
23 cabinets. And it was found in that room.

24 Q. All right. If you could look at kinda the middle third of
25 that document. Can you read what it says in, uh, large printed

1 letters?

2 A. "Letter Of Wishes."

3 Q. All right. And what's it say in hand -- the handwriting
4 there?

5 A. "Please deposit \$10,000.00 to my account 1040."

6 Q. Thank you.

7 If we could turn to the second page.

8 A. (Complies.)

9 Q. Where was this document located?

10 A. Uh, the same area.

11 Q. All right. And how about the following page, where was that
12 document located?

13 A. It was located with the -- all these were found together.

14 Q. All right. And how many more pages are there in
15 Exhibit 227?

16 A. There's six total.

17 (Discussion between Mr. Neiman and
18 Mr. Ignall.)

19 BY MR. IGNALL:

20 Q. And, uh, if we're looking at the -- well, what does it say
21 at the top of this thing that said "Letter Of Wishes"?

22 A. "Prosper International Ltd. (P.I.L.), P.O. Box 1870, Winter
23 Park, Florida."

24 Q. All right. Thank you.

25 And then who is the check made out to at the bottom?

1 A. Irwin Schiff.

2 Q. I'm sorry. We may be on the wrong page here. If we could
3 look at, say, the second page of --

4 A. Oh, I'm sorry.

5 Q. -- or the third page there's a check at the bottom.

6 A. Check is made payable to "P.I.L.L. #1040."

7 Q. Thank you.

8 If I could turn your attention to Exhibit 228,
9 Agent Holland. Tell us where this document was located.

10 A. This was found in the same area.

11 Q. All right. If we could look at the top third of that page,
12 can you read what it says, uh, after "Cardmember"?

13 A. "Cardmember: Irwin Schiff."

14 Q. And what's it say right below that?

15 A. It has the account number, the last four digits of it, and
16 it has the current account summary.

17 Q. What are the last four digits?

18 A. "7456."

19 Q. If I could turn your attention back to Exhibit 226.

20 A. (Complies.)

21 MR. SCHIFF: Again, what is the relevance of this
22 document? Is this my credit card --

23 MR. IGNALL: Your Honor --

24 MR. SCHIFF: -- account?

25 MR. IGNALL: -- I think we've been through the

1 relevance and I think it may unfairly prejudice Mr. Schiff for
2 me to do the closing arguments yet again --

3 THE COURT: All right.

4 MR. IGNALL: -- to explain the relevance.

5 THE COURT: Yes.

6 MR. SCHIFF: What --

7 THE COURT: Is your objection as to relevance?

8 MR. SCHIFF: Yeah. I mean --

9 THE COURT: It's overruled.

10 MR. SCHIFF: -- I can't figure -- is this my credit
11 card bill or somethin'?

12 THE COURT: The -- the --

13 MR. SCHIFF: Huh?

14 THE COURT: -- the attorney does not answer questions
15 from you. Do not ask questions to the attorney.

16 MR. SCHIFF: I just wanna be able -- is this a bill
17 from my -- my --

18 THE COURT: Look at it. He doesn't answer questions.

19 MR. SCHIFF: I don't see the relevance of this.

20 THE COURT: It's relevant. Overruled.

21 MR. SCHIFF: For what purpose, your Honor?

22 THE COURT: It's relevant to show notice.

23 MR. SCHIFF: For what purpose?

24 MR. IGNALL: No. Actually --

25 MR. SCHIFF: I'm asking.

1 MR. IGNALL: -- in this case, it's not actually notice,
2 your Honor.

3 MR. SCHIFF: What is its relevance?

4 MR. IGNALL: This is evidence of the evasion of payment
5 in Count 17.

6 MR. SCHIFF: Does it show drug purchases or something?
7 I don't know.

8 THE COURT: Mr. Schiff, the witness has testified that
9 it was in your office or in the workroom next to your office.
10 And the Government has said it is to show notice of evasion --
11 or I'm sorry -- to show evidence of evasion.

12 MR. SCHIFF: I -- I -- I paid -- I paid for somebody's
13 flowers.

14 THE COURT: Mr. Schiff --

15 MR. SCHIFF: I paid for a hotel.

16 THE COURT: Mr. Schiff --

17 MR. SCHIFF: I just don't understand the relevance of
18 this document.

19 THE COURT: Mr. Schiff, I have ruled. Do you wish to
20 argue further with the Court?

21 Go ahead.

22 BY MR. IGNALL:

23 Q. What are the last four numbers under "account number" on the
24 first page of Exhibit 226?

25 A. "7256."

1 Q. Thank you, Agent Holland.

2 If I could turn your attention to Exhibit 229. Could
3 you tell us where Exhibit 229 was located?

4 MR. IGNALL: I'm sorry. Ms. Vannozzi.

5 (Exhibit handed to the witness.)

6 MR. IGNALL: And also 230.

7 THE CLERK: I gave him 230 and 230A.

8 MR. IGNALL: All right. Thank you.

9 THE CLERK: Um-hum.

10 THE WITNESS: (Reviewing document.)

11 BY MR. IGNALL:

12 Q. Agent Holland, do you know where Exhibit 229 was located?

13 A. Yes. This was also found in Irwin's workroom.

14 Q. Okay.

15 MR. IGNALL: If we could blow up the top half of that
16 page.

17 (Document displayed in open court.)

18 BY MR. IGNALL:

19 Q. What does it say in the upper left-hand corner?

20 A. "Prosper International Limited, Prosper Place CR-54274,
21 Nassau Bahamas."

22 Q. What does that say below that?

23 A. "Prosper International Trust Statement" and "Statement
24 Date."

25 Q. And is there a name or an address below that?

1 A. "Irwin Schiff, 4616 West Sahara, Suite #340, Las Vegas,
2 Nevada."

3 Q. Okay.

4 MR. IGNALL: If we can just blow up the middle part and
5 publish that to the jury.

6 (Document displayed in open court.)

7 BY MR. IGNALL:

8 Q. What -- what's the first item listed there? Can you -- just
9 read it.

10 A. Uh, "TRANSFER TO CREDIT CARD" in the amount of \$5,000.

11 Q. Okay. If I could turn your attention, Agent Holland, to
12 Exhibit 230.

13 A. (Complies.)

14 Q. Do you know where Exhibit 230 was located?

15 A. It was located in the same area, Irwin's workroom.

16 Q. And how do you know that? Just so we're clear for the jury.

17 A. Uh, again, we, uh -- you know, we -- we label all the rooms
18 and we label all the file cabinets and basically we do the
19 search, uh, the item's taken from that area, uh, from whatever
20 file cabinet or wherever it was taken from and, uh, they write
21 on the evidence envelope.

22 Q. All right. I apologize for cutting you off. I think I
23 asked a poorly worded question. So I apologize.

24 From looking at the face of the document --

25 A. Oh.

1 Q. -- how do you know where that was located? My error.

2 A. From "Prosper International, Limited."

3 Q. No, no, no. Where it was locate at Freedom Books.

4 A. Uh, well, it has in the bottom corner, uh, a Bates label.

5 Q. So that -- is that the number that we've blown up here?

6 A. Yes, that's correct.

7 Q. And what -- can you explain to us what that number signifies
8 to you as to how you could tell where these came from?

9 A. That this document came from the search warrant and that it
10 was in Box 11 and it was, uh, the 12th item in Box 11.

11 Q. All right. And it's -- what does the letters "SW" at the
12 beginning signify?

13 A. That this item came from the search warrant.

14 Q. Thank you.

15 And -- and so when I asked you where you located
16 Exhibit 230 just read the top and what the heading is there.

17 A. "Prosper International Limited."

18 Q. Okay. Is this addressed to someone?

19 A. Uh, addressed to "Irwin Schiff, 4616 West Sahara, Suite 340,
20 Las Vegas, Nevada."

21 Q. And then what does the first line say?

22 A. "Enclosed is your statement(s) reflecting activity on your
23 Freedom Card."

24 Q. All right. If you could look at the, uh -- I think it's the
25 fourth paragraph. If we could blow that up.

1 (Document displayed in open court.)

2 BY MR. IGNALL:

3 Q. Can you read that sentence to us -- that paragraph?

4 A. "The balance in [the] Prosper International Trust # 1040 as
5 of 6/16/1998 is \$34,934.19. If there are" -- "are not
6 sufficient funds in the trust to pay off the 'BALANCE CARRIED
7 OVER' please forward payment immediately."

8 Q. Thank you.

9 If I could turn your attention to Exhibit 230A.

10 A. (Complies.)

11 Q. Can you tell us where you located Exhibit 230A?

12 A. Uh, one sec. (Reviewing document.)

13 Uh, this was located in the room we deemed Sue's -- or
14 Cindy's office.

15 MR. CRISTALLI: Objection. Foundation.

16 BY MR. IGNALL:

17 Q. And that's -- that's your -- your name for the room; is that
18 correct?

19 A. That's correct.

20 Q. And why did you name it that?

21 A. Uh, it had a lot of, uh, Ms. Neun's personal effects,
22 pictures, uh, I think a computer that even said -- had her label
23 on it. It had, uh, uh, an art portfolio, um, with numerous of
24 her paintings in it.

25 Q. Thank you.

1 MR. IGNALL: If we could blow up the top, you know,
2 third of that page.

3 (Document displayed in open court.)

4 BY MR. IGNALL:

5 Q. What -- what is the heading for this document?

6 A. "Insurance Binder."

7 Q. And what's it say under "Named Insured"?

8 A. "Irwin Schiff."

9 Q. And then what does the next line below that say?

10 A. "Property insured."

11 Q. And what does it say there?

12 A. Uh, '95 Dodge.

13 Q. Do you have personal knowledge of what car Mr. Schiff
14 drives?

15 A. Yes, I do.

16 Q. At what time did you see him driving a car?

17 A. Uh, for the last five years.

18 Q. What kind of car is it?

19 A. It's a 1995 Dodge Intrepid.

20 Q. And does it have Nevada license plates?

21 A. No, it does not.

22 Q. What state's license plates does it have?

23 A. Pennsylvania.

24 Q. Thank you.

25 MR. SCHIFF: I object also to the relevance. Is it

1 against the law to drive a car with Pennsylvania plates? Is
2 that what I'm being charged with?

3 MR. IGNALL: Your Honor, again, it's relevant to the
4 evasion of payment.

5 THE COURT: If you live here in Nevada, you don't want
6 me to answer that question.

7 MR. SCHIFF: I don't understand the relevance. I...

8 THE COURT: Okay. It's relevant. Overruled.

9 BY MR. IGNALL:

10 Q. Agent Holland, may I turn your attention -- hold on. One
11 moment.

12 MR. IGNALL: Ms. Vannozzi, has Exhibit 233 already been
13 admitted?

14 THE CLERK: Yes.

15 MR. IGNALL: Okay. And I'm also gonna wanna use 234.

16 THE CLERK: Okay. 234 has an "A" and "B" to it.

17 MR. IGNALL: Okay.

18 THE CLERK: I'll just give it to him.

19 MR. IGNALL: Okay. Great. Thank you.

20 THE COURT: I think we're pretty close to -- we're
21 about five minutes away from our break time. Do you want to
22 take your break now or do you want to use up the next five
23 minutes?

24 MR. IGNALL: If we could use the next five minutes --

25 THE COURT: Go ahead.

1 MR. IGNALL: -- and then I might move on to a different
2 area.

3 THE COURT: Okay.

4 MR. IGNALL: Probably be another five minutes and then
5 we'll...

6 THE COURT: That's fine.

7 MR. SCHIFF: I object to this document. It's a
8 self-serving document sent out --

9 THE COURT: It's already been admitted, if you're
10 referring to 230A. If you're referring to the Neun's, you'll
11 have to wait until they are introduced.

12 MR. SCHIFF: Are we on 234?

13 THE COURT: They haven't been, uh, introduced yet --

14 MR. SCHIFF: Okay.

15 THE COURT: -- that is, they've just been handed to the
16 witness as I understand it.

17 THE CLERK: Your Honor, they are admitted.

18 THE COURT: Oh. They are already admitted.

19 THE CLERK: Yes.

20 THE COURT: Mr. Schiff, they are already admitted.

21 BY MR. IGNALL:

22 Q. All right. Agent Holland, can you tell us where you located
23 Exhibit 233?

24 A. Uh, this was also located in the bill room.

25 Q. In where? I'm sorry.

1 A. In -- in the room we deemed the bill room, where they paid
2 the bills.

3 Q. And what -- what made you describe it as the bill room?

4 A. That's where apparently they had a room set up where they,
5 uh, they paid all their bills.

6 Q. All right. And what does it say at the top of this?

7 A. Uh, "Business Credit Card Application."

8 Q. All right. If you could look down at --

9 MR. IGNALL: If we could blow up the signature block
10 area.

11 (Document displayed in open court.)

12 BY MR. IGNALL:

13 Q. Could you read what it says right below "signature"?

14 A. "Cynthia L. Neun."

15 Q. No. I'm sorry. The text right below the heading
16 "signature." It starts "by signing below."

17 A. You mean the very bottom line?

18 Q. No, no. The bottom -- it's right below where it says
19 "SIGNATURE."

20 A. "By signing below, you certify that all information provided
21 in this application is true and correct, you are authorized to
22 sign this application on behalf of the applicant and you agree
23 to be bound by the terms and conditions of the Associates
24 Capital Bank Business Credit Card Account."

25 Q. If we look at the signature in the print part at the bottom

1 there, what does it say next to "Please print name and title"?

2 A. "Cynthia L. Neun, Office Manager."

3 Q. And is there a date printed anywhere there?

4 A. 5-29-01.

5 Q. Thank you.

6 If I could turn your attention to Exhibit 234A. I'm
7 sorry. 234.

8 Can you tell us where you located, uh --

9 MR. IGNALL: Well, may I have a moment, your Honor?

10 THE COURT: You may.

11 MR. SCHIFF: Your Honor, as I understand -- has this
12 already been admitted?

13 THE COURT: Ms. Clerk?

14 THE CLERK: Yes, sir.

15 THE COURT: It has.

16 MR. SCHIFF: I -- well, I wanna -- wanna know what its
17 relevance is.

18 THE COURT: Relevance.

19 MR. IGNALL: Uh, the relevance is there's a statement
20 in here about estimated annual remuneration.

21 MR. SCHIFF: What is its relevance?

22 THE COURT: The Government says there is an estimate of
23 annual income.

24 MR. IGNALL: Well, it's actual payments to employees.
25 But that --

1 THE COURT: Payments to employees.

2 MR. IGNALL: -- corroborates income.

3 THE COURT: All right. Payments to employees
4 estimated.

5 BY MR. IGNALL:

6 Q. Do you recognize this document, Agent Holland?

7 A. Yeah, I do.

8 Q. Do you know where it came from?

9 MR. SCHIFF: Oh, I'm sorry. I'm sorry. I thought we
10 were talkin' about 234. We're not talking.

11 MR. IGNALL: We are talking about 234.

12 THE COURT: 234 is --

13 MR. SCHIFF: We are not talking about --

14 THE COURT: -- is being discussed.

15 MR. SCHIFF: Okay.

16 THE WITNESS: I believe we must have obtained this
17 document, um, with the Grand Jury subpoena.

18 BY MR. IGNALL:

19 Q. Do you know from whom?

20 A. "McCready Insurance Services Incorporated."

21 MR. IGNALL: I'll move on, your Honor.

22 BY MR. IGNALL:

23 Q. If we could turn your attention to Exhibit 234A, do you know
24 where this document was located?

25 MR. SCHIFF: I object to -- what is the relevance of

1 234A?

2 MR. IGNALL: The relevance is, your Honor, is notice to
3 Mr. Schiff of the frivolous nature of his own tax returns.

4 MR. SCHIFF: This is a self-serving document sent to me
5 by the IRS containing misstatements of law and misstatements of
6 fact. This is an example -- how the IRS misleads the public.

7 MR. IGNALL: Your Honor --

8 THE COURT: No --

9 MR. SCHIFF: It's notice to me --

10 THE COURT: -- no more --

11 MR. SCHIFF: -- of nothing else.

12 THE COURT: -- no more speeches.

13 MR. SCHIFF: It's not notice to me.

14 THE COURT: Well, you can argue that in your closing.
15 But the issue is whether it is admissible for purposes of
16 showing notice.

17 MR. SCHIFF: Am I gonna be able to cross-examine the
18 document, your Honor?

19 THE COURT: It is admissible for purpose of showing
20 notice to you. Overruled.

21 BY MR. IGNALL:

22 Q. Agent Holland, can you tell us where this document was
23 located?

24 A. Yeah. This was also, uh, located in the order room.

25 Q. I'm sorry?

1 A. In the order room. I'm sorry.

2 Q. All right. And can you just read the top, uh, part of
3 what -- what this says? Maybe the first, uh, two lines, or
4 three lines, two paragraphs.

5 A. "Dear Mr. Schiff:

6 "We have determined that the document referred to above is a
7 frivolous document. The position you have taken has no basis in
8 law and represents a frivolous position. The tax laws are very
9 clear and have been tested in the courts -- including the
10 Supreme Court of the United States. Claims, such as yours, have
11 been considered and rejected repeatedly as frivolous and without
12 merit by the federal court[]. Therefore, we will not respond to
13 future correspondence from you concerning these same issues."

14 Q. What's the date that's --

15 MR. SCHIFF: Your Honor --

16 BY MR. IGNALL:

17 Q. -- listed on this letter?

18 MR. SCHIFF: Your Honor, could I -- unless I can
19 cross-examine Mr. Paiz, this is all hearsay. This is a way of
20 getting --

21 THE COURT: Mr. Schiff, I have already ruled --

22 MR. SCHIFF: Well, but I don't understand.

23 THE COURT: -- that the document is admissible.

24 MR. SCHIFF: Isn't Mr. Paiz saying this is and not
25 Mr. Holland?

1 THE COURT: Mr. Schiff, the Court will instruct the
2 jury on the law. The document is admissible. I, again,
3 overrule your objections.

4 MR. SCHIFF: I'm not a lawyer. I'm just a layperson.
5 All I know is here's a document --

6 MR. IGNALL: Your Honor, I think --

7 MR. SCHIFF: -- sent in --

8 MR. IGNALL: -- it's inappropriate --

9 THE COURT: Mr. Schiff --

10 MR. SCHIFF: -- by Mr. --

11 THE COURT: -- you are not make -- going argue the same
12 issue.

13 Go ahead.

14 BY MR. IGNALL:

15 Q. I'm sorry.

16 What's the date that's listed on this document,
17 Agent Holland?

18 A. January 15th, 1999.

19 Q. And does it say something under the word --

20 MR. SCHIFF: Do you understand --

21 BY MR. IGNALL:

22 Q. -- under heading "Form"?

23 MR. SCHIFF: -- they are getting Mr. Paiz to testify
24 and I can't cross-examine him.

25 THE WITNESS: "Form: 1040."

1 BY MR. IGNALL:

2 Q. And what's it say after "Year Ended"?

3 A. "Year Ended, December 31[st], 1996."

4 Q. All right.

5 MR. IGNALL: This might be a good time to take the a
6 break, your Honor.

7 THE COURT: We'll take our afternoon -- or lunch break.
8 We'll be in recess until 1:30.

9 The Court instructs the jury, as previously, not to
10 discuss the case among themselves or with others or to form any
11 conclusion until the case is submitted to you for deliberation.

12 (Jury leaves the courtroom at 12:01 p.m.)

13 THE COURT: Okay. 1:30.

14 MR. IGNALL: Well, your Honor, may we raise one thing?

15 THE COURT: Yes.

16 MR. IGNALL: I think it's highly inappropriate what
17 Mr. Schiff has been doing. He's been testifying and
18 grandstanding. This evidence is admissible for notice. I have
19 tried to restrain myself so as not to unfairly prejudice him by
20 giving a closing argument in addressing the relevancy of each
21 piece of evidence. But, if he keeps going on, I'm not sure what
22 the recourse is for the Government to ensure that --

23 THE COURT: Well --

24 MR. IGNALL: -- the issues don't get confused if
25 Mr. Schiff decides not to testify. If he does testify, then

1 certainly the jury will hear this again and he'll be subject to
2 cross-examination.

3 THE COURT: It's --

4 MR. SCHIFF: Your Honor, I object to the Government --
5 if they want to say that they sent this letter to Mr. Schiff,
6 that's one thing. But, when you say "notice," that means --
7 that has a legal connotation. It's notice to me of nothing.
8 It's -- it's a document sent to me --

9 THE COURT: That's for the jury to decide whether it's
10 notice to you --

11 MR. SCHIFF: He's using --

12 THE COURT: -- to you or not.

13 MR. SCHIFF: Your Honor --

14 THE COURT: And you're not to stand up and argue that
15 and interrupt and try to distract --

16 MR. SCHIFF: Your Honor --

17 THE COURT: -- the jury with your -- with those
18 interruptions, which is what you're doing. I'm going to order
19 you to stop it. And, if you continue to do it, I'm not going to
20 issue three orders overruling your objection anymore; I'm just
21 going to start sanctioning you on the second time you do it.

22 MR. SCHIFF: I wouldn't object if he said was this a
23 letter sent to Mr. Schiff. But he's using the legal word
24 "notice" as if this means I should --

25 THE COURT: It is evidence of notice.

1 MR. SCHIFF: No, it's not notice.

2 THE COURT: Well --

3 MR. SCHIFF: It's notice to me of nothing.

4 THE COURT: -- it is evidence --

5 MR. SCHIFF: It's a self-serving IRS document.

6 THE COURT: It's evidence of notice to you that your
7 position on the law --

8 MR. SCHIFF: It's a letter. No.

9 THE COURT: -- is incorrect.

10 MR. SCHIFF: You are misusing the word "notice"
11 deliberately. That's a letter; it's not a notice. Where does
12 it say on it that this here is notice to you?

13 THE COURT: Well, I don't think you get it.

14 MR. SCHIFF: Well, where --

15 THE COURT: I'm just telling you --

16 MR. SCHIFF: -- does it say --

17 THE COURT: -- don't do that --

18 MR. SCHIFF: -- this is notice?

19 THE COURT: -- anymore. If you don't stop arguing with
20 the Court, I am going to sanction you again.

21 MR. SCHIFF: I am asking you to say to the Government,
22 was this letter sent to Mr. Schiff? He's giving a legal
23 connotation to the document that the document itself --

24 THE COURT: Only when you object. Only when you --

25 MR. SCHIFF: Pardon?

1 THE COURT: -- object. You invite -- you ask him to --
2 to recite what it's about by objecting.

3 MR. SCHIFF: I object to the word "notice."

4 THE COURT: Yeah. You are the one who -- who invited
5 that -- the use of that response. You're the one who requires
6 the Government to state why it is relevant and they have to
7 state it involves notice.

8 MR. SCHIFF: But --

9 THE COURT: It is your problem. You are the one who
10 invites it over and over again. Don't complain --

11 MR. SCHIFF: Because the jury thinks --

12 THE COURT: -- don't complain about it --

13 MR. SCHIFF: -- that that --

14 THE COURT: -- because you're the one that invited it.

15 MR. BOWERS: Your Honor --

16 THE COURT: You forced the Government to state what it
17 was about.

18 Yes.

19 MR. BOWERS: I'm sorry, Judge. On a more mundane
20 issue, do you know what the technical capacities are of this
21 courtroom to play audio CD's or tape-recorders or play a CD from
22 my computer or who I could find out about that?

23 THE COURT: The last time, uh -- last time we had to
24 use the Government's equipment. I don't think we -- do we have
25 anything here that can --

1 THE CLERK: If Mr. -- Mr. Bowers --

2 MR. BOWERS: Can I just run it through --

3 THE CLERK: -- if your computer has the ability to run
4 it through --

5 MR. BOWERS: Yeah.

6 THE CLERK: -- then I can turn --

7 MR. BOWERS: Yeah.

8 THE CLERK: -- control over to your computer and you
9 can run it from your computer.

10 MR. BOWERS: Can we do audio without -- or can we do
11 audio without video, that way? Do you know?

12 MR. CRISTALLI: If it's run through the computer, yeah,
13 you should be --

14 THE CLERK: I believe so.

15 THE COURT: I'm going to leave -- we're gonna recess.

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

17 THE COURT: Yeah.

18 MR. BOWERS: I don't mean to burden you with this.

19 THE COURT: Yeah. It --

20 MR. BOWERS: This is just sort --

21 THE COURT: -- it --

22 MR. BOWERS: -- of a surprise to me.

23 THE COURT: -- it's something that will have to be
24 answered by the Clerk's office and --

25 MR. BOWERS: I don't want to get in this position where

1 it's --

2 THE COURT: -- I don't wanna have everybody standing
3 around listening to an on-the-record discussion. This isn't
4 something --

5 MR. BOWERS: Okay. I'm sorry.

6 THE COURT: -- that should be on the record.

7 MR. IGNALL: Your Honor, may I have one more moment?

8 THE COURT: Yes.

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

11 MR. IGNALL: All right. Your Honor, I -- the reason I
12 had asked for that extra moment is I think what -- what
13 Mr. Bowers wants to play is something the Government would
14 object to. So we'd request if we --

15 MR. BOWERS: Oh, absolutely.

16 MR. IGNALL: -- can come back five or ten minutes early
17 to address that in case we get to cross-examination before the
18 next break.

19 THE COURT: Uh, we -- we can return at 20 after?

20 MR. IGNALL: That would be great. I appreciate that,
21 your Honor.

22 THE COURT: 20 after 1:00.

23 MR. IGNALL: Yes. Thank you, your Honor.

24 THE COURT: Thank you.

25 (Lunch break, 12:06 p.m. to 1:30 p.m.)

1 MR. BOWERS: Your Honor, are we...

2 (Pause in the proceedings.)

3 THE COURT: Mr. Bowers, go ahead.

4 MR. BOWERS: Your Honor, I -- I know that we came back
5 early to address this. And it didn't really occur to me at the
6 time. But I think that it's premature to address this until
7 Mr. Holland has concluded his testimony.

8 THE COURT: Okay.

9 MR. BOWERS: Um, and then, you know, I'm happy to let
10 whatever attorneys that need to go forward. And, when we get to
11 the limited issue I need to discuss with the Court, if it's time
12 for a break we can take it or we can discuss it at sidebar or
13 however we need to.

14 THE COURT: Okay.

15 MR. IGNALL: As long as it's outside the presence of
16 the jury --

17 THE COURT: Okay.

18 MR. IGNALL: -- that's fine with us.

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

20 THE CLERK: Yes, sir.

21 (Agent Holland resumes the witness stand.)

22 (Pause in the proceedings.)

23 MR. SCHIFF: Your Honor, before the jury comes in,
24 instead of me objecting to each of these documents, can I
25 just -- can it just be on record that I'm -- continuous

1 objection?

2 THE COURT: Well, if it's the same objection. If it's
3 a new one, you need to state it.

4 MR. SCHIFF: What I'm objecting on is that these
5 letters serving as a notice to me rather than as merely, um,
6 communications from the IRS to me. I mean, notice has a
7 particular legal, uh, connotation.

8 THE COURT: Well, if you're objecting to this use of
9 the term "notice" --

10 MR. SCHIFF: Okay.

11 THE COURT: -- it can be a continuing objection.

12 MR. BOWERS: Your Honor, I -- I hate to do this. But,
13 if we can get any more out, it's preferable to do that than have
14 Irwin continue to offer admissions against Larry with respect to
15 these --

16 MR. SCHIFF: What did he say?

17 MR. LEVENTHAL: If you want any more continuing
18 objections, say 'em now.

19 MR. SCHIFF: Well, I don't know what they are gonna do.
20 How do I know.

21 MR. BOWERS: I tried.

22 (Pause in the proceedings.)

23 (Jury enters the courtroom at 1:34 p.m.)

24 THE COURT: Please be seated.

25 Will counsel stipulate to the presence of the jury?

1 MR. IGNALL: Yes, your Honor.

2 MR. CRISTALLI: Yes, your Honor.

3 MR. BOWERS: Yes, your Honor.

4 THE COURT: Thank you.

5 You may resume your examination of the witness.

6 MR. IGNALL: One moment, your Honor.

7 (Discussion between Mr. Ignall and the
8 clerk.)

9 BY MR. IGNALL:

10 Q. Agent Holland, can I turn your attention to what we've
11 marked as Exhibit 235?

12 A. (Complies.)

13 Q. And I believe Exhibit 235 has already been admitted.

14 Can you tell us where you found Exhibit 235?

15 A. Uh, this was found, uh, in a room we -- we deemed the order
16 room, uh, more specifically in Larry Cohen's briefcase.

17 Q. And do you know that -- how -- how do you know that?

18 A. Uh, it's on my search warrant, um, inventory.

19 Q. All right. Thank you.

20 If I can turn your attention to what we've marked as
21 Exhibit 236.

22 A. (Complies.)

23 Q. Do you recognize the contents of Exhibit 236?

24 A. Yes, I do.

25 Q. Where were those contents located?

1 A. Uh, these were also found in Larry Cohen's briefcase.

2 Q. How do you know it was Larry Cohen's briefcase?

3 A. Uh, well, Mr. Cohen identified it as bein' his briefcase.

4 Q. All right. Thank you.

5 MR. IGNALL: I believe Exhibit 236 has admitted. I
6 just wanna confirm that with -- the clerk has said it was. I
7 wanna confirm with counsel. I think it's part of the
8 stipulation. I want to make sure that we're not...

9 MR. BOWERS: Yeah, subject to the prior discussion
10 about it.

11 MR. IGNALL: Okay.

12 THE CLERK: Right.

13 MR. BOWERS: Sure.

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

15 THE COURT: You may.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. I'm showing what's -- let's see if we can't focus that
19 better.

20 All right. Agent Holland, did you individually number
21 pages that were contained in Exhibit, uh, 236?

22 A. No, I did not. We actually contracted that out.

23 Q. But you had them numbered?

24 A. Yes, sir, I did.

25 Q. Okay.

1 A. At my directive they were numbered.

2 Q. All right. Now, this document we're looking at here, was
3 this found inside Mr. Cohen's briefcase?

4 A. Yes, sir, it was.

5 Q. All right. And what -- what does it say at the top here?

6 A. "Not Liable."

7 Q. What does it say below that?

8 A. "Amended Individual Income Tax Return."

9 Q. Are there any names written in on there?

10 A. Jason Cardiff and Amy Cardiff.

11 Q. All right. Thank you.

12 MR. BOWERS: Your Honor --

13 MR. IGNALL: If I could.

14 THE COURT: I'm sorry?

15 MR. BOWERS: I'm sorry. For expediency sake, if
16 Mr. Holland just wants to, you know, talk about what he sees on
17 the documents for -- I mean, I don't know how far the
18 Government's gonna go with this. But --

19 MR. IGNALL: We're not gonna go very far. The problem
20 is we only have one copy of this. So I'll --

21 THE COURT: Okay.

22 MR. IGNALL: -- I'll try and keep it brief.

23 BY MR. IGNALL:

24 Q. Was this document that we're looking at here also found
25 inside Mr. Cohen's briefcase?

1 A. Yes, it was.

2 Q. And, uh, who -- whose name is on this document?

3 A. Amy Cardiff.

4 Q. And what is the title of this document?

5 A. Uh, "2001 W-2 and Earnings Summary."

6 Q. All right. Thank you.

7 Agent Holland, are there any other tax return documents
8 in that exhibit?

9 MR. BOWERS: I'm just gonna object on the grounds of
10 relevance and cumulative.

11 THE WITNESS: Yes, there are.

12 THE COURT: Um, for now the objection's overruled. As
13 to cumulative, depending on what those documents are, there may
14 be some basis for relevance. But...

15 BY MR. IGNALL:

16 Q. Are there different names on those tax returns other than
17 the Cardiffs?

18 A. Yes, there are.

19 Q. And how many other tax return documents are in there?

20 MR. BOWERS: Judge, I just have to object again on
21 grounds of relevance. This is uncharged conduct. It's not
22 relevant to these proceedings.

23 THE COURT: Is it -- um, how is it relevant then?

24 MR. IGNALL: Well, this is -- this is evidence of
25 Mr. Cohen's participation in the Klein conspiracy and his

1 knowledge of that and it comes out of his briefcase.

2 THE COURT: Overruled.

3 MR. BOWERS: I -- I'm sorry. Just for the record,
4 these are being offered as evidence of Mr. Cohen's participation
5 in the conspiracy?

6 THE COURT: The Klein -- Klein conspiracy.

7 MR. BOWERS: Klein?

8 THE COURT: Klein.

9 MR. BOWERS: Charged conspiracy.

10 MR. IGNALL: Correct. Count I.

11 MR. BOWERS: Thank you.

12 (Discussion between Mr. Ignall and the
13 clerk.)

14 MR. BOWERS: Judge, while Mr. Holland reviews those,
15 can I ask a housekeeping issue of the Court? And I don't think
16 this is a problem.

17 Um, the format I have these documents in is not very
18 useable. Is there any way that we could get a defense copy of
19 those, a hard copy somehow, whether it's after they are in
20 evidence or now or whatever.

21 THE COURT: You mean of Exhibit No. 236?

22 MR. BOWERS: Yeah. I mean, I think the Government's
23 tried. But I just -- there's a formatting issue I can't get
24 translated to -- to -- it would be very helpful if I could get
25 hard copies of that somehow.

1 THE COURT: Okay. Sometime before they rest or now?

2 MR. BOWERS: No, no, no. No, no. Later.

3 THE COURT: Okay.

4 MR. BOWERS: Later.

5 THE CLERK: Okay. Um, I have 237 and 70.

6 MR. IGNALL: Okay.

7 THE CLERK: What is the other one you needed?

8 MR. IGNALL: 231. I'm not sure it's admitted.

9 THE WITNESS: I -- I --

10 BY MR. IGNALL:

11 Q. How --

12 A. -- I found three names. There's numerous years and
13 obviously numerous documents.

14 Q. All right. Thank you. Thank you, Agent Holland.

15 If I could turn your attention to, uh, what we've
16 previously marked and admitted as Exhibit 70.

17 A. (Complies.)

18 THE CLERK: Mr. Ignall, he has 231.

19 MR. IGNALL: All right. Thank you.

20 THE CLERK: You're welcome.

21 (Document displayed in open court.)

22 BY MR. IGNALL:

23 Q. And, from looking at Exhibit 70, can you tell if that
24 document, uh, was obtained during the execution of the search
25 warrant?

1 A. Yes.

2 Q. And can you tell us where that was located?

3 A. (Reviewing document.)

4 MR. IGNALL: If we can just blow up maybe the top half
5 so the jury knows what document we are looking at.

6 THE WITNESS: That was found in Irwin's workroom.

7 MR. IGNALL: And go -- okay. There. Blow up the top
8 half. It's a little hard to see on the screen, I think, when
9 it's... Okay. Keep going down. Go down. Okay. All right.
10 Thank you.

11 BY MR. IGNALL:

12 Q. Agent Holland, uh, you have Exhibit 231 [sic], I believe.
13 Do you recognize that? I'm -- I'm sorry. 237. I jumped ahead.

14 A. I have 70.

15 Q. 237.

16 A. This is a -- a -- a tape labeled, uh, "Sales Training."

17 Q. Do you -- have you seen that tape before?

18 A. Yes, I have.

19 Q. Where have you seen it before?

20 A. Uh, this tape was seized from the lobby during the search
21 warrant.

22 Q. All right. Have you listened to that tape?

23 A. Yes, I have.

24 Q. All right.

25 MR. IGNALL: At this point, uh, we'd like to publish

1 part of Exhibit 237. What -- and we don't object to defense
2 playing the rest at any other time.

3 BY MR. IGNALL:

4 Q. Agent Holland, what briefly is contained on -- on that tape?

5 A. Uh, it's --

6 MR. BOWERS: I'm sorry.

7 THE WITNESS: -- kind of a --

8 MR. BOWERS: Just real quick. We -- we can play the
9 whole tape at some later time; right?

10 THE COURT: That's what he said.

11 MR. IGNALL: Correct.

12 MR. BOWERS: No objection to publishing that.

13 MR. IGNALL: All right.

14 THE WITNESS: It's, uh, kind of a rehearsal tape for,
15 uh -- for, I guess, sales --

16 BY MR. IGNALL:

17 Q. Well, I don't want you to speculate about what it's for but
18 just what -- what you heard on that. I just wanna set the
19 stage. We could probably skip past that too.

20 MR. IGNALL: Can we play the -- publish the first clip
21 of that tape?

22 And, just to be clear, your Honor, this tape has not
23 been transcribed, so there's not gonna be any transcripts coming
24 up. So...

25 THE COURT: Okay.

1 (Pause in the proceedings.)

2 MR. BOWERS: It's 237?

3 MR. IGNALL: 237. I believe 237A is how we've
4 denominated the clip.

5 (Discussion between Mr. Neiman and
6 Mr. Ignall.)

7 MR. IGNALL: All right. Can we -- we'll skip ahead.
8 Just -- just for clarity purposes, your Honor, in terms of where
9 it appears on the tape, the second clip is actually closer to
10 the end of the tape. So we are playing this slightly out of
11 order.

12 If we could play the second clip, which I believe is
13 237B.

14 (Audiotape played in open court.)

15 MR. IGNALL: Your Honor, if we could disconnect the
16 screen from Agent Steiner's computer, I think he can work some
17 magic and get us to the first clip. But I'll go onto something
18 else slightly out of order --

19 THE COURT: Okay.

20 MR. IGNALL: -- just to keep this going.

21 BY MR. IGNALL:

22 Q. I think on the tape we heard something about a radio
23 program, Mr. Holland.

24 A. That's correct.

25 Q. Have you ever heard a radio program with Mr. Schiff on it?

1 A. Yes, I have.

2 Q. How often did you hear that radio program?

3 A. Once a week.

4 Q. During what time period?

5 A. From the period of about...

6 (Audiotape began playing.)

7 THE WITNESS: From the...

8 BY MR. IGNALL:

9 Q. I'm sorry. During what time period, Agent Holland?

10 A. I think from about December of '99 through, um, about April
11 or March of, uh, 2003.

12 Q. How often did you listen to the show?

13 A. Once a week.

14 Q. All right and where was that show broadcast?

15 A. In Las Vegas on KLAV AM radio.

16 Q. And did you ever record any of the radio shows?

17 A. Yes, we did.

18 (Discussion between Mr. Neiman and

19 Mr. Ignall.)

20 MR. IGNALL: All right. I think we're ready to play
21 the first clip from the sales --

22 BY MR. IGNALL:

23 Q. What -- what's written on Exhibit 237, Agent Holland?

24 A. "Sales Training."

25 Q. All right. Thank you.

1 MR. SCHIFF: Well, is he -- your Honor, if -- if he
2 wants to play a tape, I want him to play not just the, uh, ad
3 but I want to play what's around the tape. Play at least half
4 the tape.

5 THE COURT: As I pointed out already, Mr. Schiff --

6 MR. SCHIFF: Pardon me?

7 THE COURT: As I pointed out already, you don't decide
8 what the Government will introduce in its case.

9 MR. SCHIFF: Well, it's out of context.

10 THE COURT: Well, then you can put it into context.
11 Mr. Bowers has already raised this issue, and it has been agreed
12 that defense can play the rest of the clip.

13 MR. IGNALL: May we publish the first part of the tape,
14 your Honor?

15 THE COURT: You may.

16 MR. IGNALL: Thank you.

17 (Audio played in open court.)

18 BY MR. IGNALL:

19 Q. Agent Holland, uh, if I could turn your attention to what
20 we've marked as Exhibit 231.

21 A. (Complies.)

22 Q. Do you recognize Exhibit 231?

23 A. Yes, I do.

24 Q. What is Exhibit 231?

25 A. Uh, these are, uh, cassette tapes of a recording of the

1 Irwin Schiff Freedom Now radio show on October 3rd, 2002.

2 Q. Did you personally record this show?

3 A. Yes, I did.

4 Q. Did you listen to the show while you were recording it?

5 A. Yes, I did.

6 Q. All right. And is this part -- the same radio show we
7 talked about while we're trying to fix our technical
8 difficulties?

9 A. That's correct.

10 Q. All right. Thank you.

11 MR. IGNALL: Again, with Exhibit 231, we only intend to
12 play certain excerpts of it. We don't object to defendants
13 playing other excerpts at their convenience.

14 So if we could play what we've marked as 231D.

15 There is a transcript, Ms. Vannozzi.

16 THE CLERK: 231 --

17 MR. IGNALL: D.

18 THE CLERK: -- D? Okay.

19 MR. IGNALL: Well, I'm sorry. This is all -- just to
20 be clear, these are all part of 231. For our convenience, we've
21 broken them up into clips and we've given them letters. They
22 are not on the exhibit list. Just so we know which one to play.

23 (Audio clip played and transcript is
24 displayed in open court.)

25 MR. IGNALL: There we go. Okay.

1 BY MR. IGNALL:

2 Q. Agent Holland, did you hear that, uh, clip more than one
3 time while listening to the radio show?

4 A. Yes, I did.

5 Q. How often did you hear it on the radio show?

6 A. Are you talkin' that particular radio show or...

7 Q. No, no. That -- that particular clip we just heard.

8 A. That was at the beginning of every radio show.

9 Q. Thank you.

10 MR. IGNALL: I'd like to publish the next clip which
11 internally we've called 231E.

12 (Audio clip played and transcript is
13 displayed in open court.)

14 BY MR. IGNALL:

15 Q. Thank you.

16 Uh, Agent Holland, in the radio show did you ever hear
17 any discussion of -- of audits at the IRS?

18 A. Yes, I did.

19 Q. All right.

20 MR. IGNALL: If we could play, uh, what we've marked as
21 231F internally.

22 (Audio clip played and transcript is
23 displayed in open court.)

24 BY MR. IGNALL:

25 Q. Agent Holland, had you ever met Lawrence Cohen?

1 A. Yes, I have.

2 Q. Have you ever spoken to Mr. Cohen?

3 A. Yes, I have.

4 Q. From those conversations, do you recognize his voice?

5 A. Yes.

6 Q. Did you ever hear his voice on the radio show?

7 A. Yes, I have.

8 Q. All right.

9 MR. IGNALL: If we could play 231B.

10 (Audio clip played and transcript is
11 displayed in open court.)

12 BY MR. IGNALL:

13 Q. Agent Holland, did you recognize whether Mr. Cohen's voice
14 was on that tape?

15 A. Yes, I did.

16 Q. Was it?

17 A. Oh, absolutely.

18 Q. Did you ever hear Mr. Cohen's voice on the radio any other
19 time?

20 A. Yes. Numerous times.

21 Q. How many times as best you can approximate?

22 A. Uh, I'd probably say he was on there, uh -- the shows I
23 listened to he chimed in probably 75 percent of the time.

24 Q. Thank you.

25 Did you ever hear any, uh, people calling in saying

1 they were customers?

2 A. Yes.

3 Q. All right.

4 MR. IGNALL: If we could play 231G, please.

5 (Audio clip played and transcript is
6 displayed in open court.)

7 BY MR. IGNALL:

8 Q. Agent Holland, did you ever hear any discussion about anyone
9 from Freedom Books going to the IRS on the radio show?

10 A. Yes.

11 Q. All right.

12 MR. IGNALL: If we could play clip 231H.

13 (Audio clip played and transcript is
14 displayed in open court.)

15 BY MR. IGNALL:

16 Q. Agent Holland, on the tape that we're looking at, the -- the
17 October 3rd radio show, were there other people who called into
18 the radio show?

19 A. Yes, there were.

20 Q. All right.

21 MR. IGNALL: If we could play clip 231I.

22 (Audio clip played and transcript is
23 displayed in open court.)

24 MR. IGNALL: If we could play clip 231J.

25 MR. BOWERS: Your Honor, could we have a sidebar for a

1 moment, please?

2 THE COURT: On this? On this matter?

3 MR. BOWERS: Uh, yes.

4 (Sidebar conference was held as follows:)

5 MR. BOWERS: Judge, I think -- I don't know if -- I
6 guess I'm moving for a mistrial. It's incredibly prejudicial.
7 I can't believe the Government did it. I'm not accusing them of
8 deliberate wrongdoing. But the end of that tape, the very last
9 phrase -- I don't know if you saw the transcript -- Denny says,
10 "Bye. White Power." They cut the audio off. But it's clearly
11 up there on the screen.

12 Now, whether this was done on purpose or inadvertently
13 it doesn't matter. We have a number of African-American jurors.
14 Throughout that phone call, Irwin and Cindy are being very nice
15 to that caller. This remark is totally unrelated to anything in
16 this case and incredibly inflammatory regarding the nature of
17 the jury. And -- and I -- I just can't even believe that was
18 there.

19 THE COURT: What? I didn't hear it.

20 MR. CRISTALLI: I can't either.

21 MR. BOWERS: Again, I'm not saying --

22 MR. CRISTALLI: It was on the --

23 MR. BOWERS: -- it's not true --

24 MR. CRISTALLI: -- it was on the screen.

25 MR. BOWERS: -- but it was absolutely on that

1 transcript and clearly visible.

2 THE COURT: I can't read the transcript from where I
3 am. I have to listen to the --

4 MR. IGNALL: Now, your Honor, it's on -- it is on the
5 tape. We intentionally cut off the audio to avoid that. And it
6 was our error that it remained on the transcript.

7 MR. CRISTALLI: And I --

8 MR. IGNALL: If they want to --

9 THE COURT: In what context was it?

10 MR. IGNALL: He just says, "Bye. White Power. I'm
11 joking."

12 MR. BOWERS: Well, I don't -- I don't know if he was
13 joking or not. We didn't hear it.

14 THE COURT: Who said this?

15 MR. IGNALL: It's the caller who says it.

16 THE COURT: Oh.

17 MR. IGNALL: And we -- just to avoid this issue, we cut
18 it in the audio.

19 THE COURT: It wasn't --

20 MR. SCHIFF: Well, what --

21 THE COURT: -- said by these defendants?

22 MR. IGNALL: No.

23 MR. CRISTALLI: Well, I would join --

24 THE COURT: Motion for mistrial is denied.

25 MR. CRISTALLI: I would join in the motion, your Honor.

1 THE COURT: Denied.

2 MR. CRISTALLI: I don't want --

3 MR. BOWERS: I don't want to draw more attention to it.

4 THE COURT: I didn't even notice it, but...

5 MR. CRISTALLI: Well, we did.

6 MR. BOWERS: Well, just --

7 THE COURT: It wasn't by one of --

8 MR. BOWERS: -- just for the record --

9 THE COURT: You're closer than I am.

10 MR. BOWERS: The Government --

11 THE COURT: You're closer than I am --

12 MR. BOWERS: -- is not --

13 THE COURT: -- and the jury is.

14 MR. BOWERS: -- the transcript; is that correct?

15 THE REPORTER: I'm sorry. I didn't --

16 MR. BOWERS: You're not disputing that that didn't

17 appear -- that appeared on the screen --

18 MR. IGNALL: It did appear on the screen.

19 MR. BOWERS: -- as part of your -- your transcript.

20 MR. IGNALL: We did not intend it, but it did appear on
21 the screen. We cut it out of the audio. I agree.

22 (Sidebar conference concluded and the
23 following is held in open court:)

24 MR. IGNALL: I'm sorry. If we could play clip 231J,
25 please.

1 (Audio clip played and transcript is
2 displayed in open court.)

3 BY MR. IGNALL:

4 Q. Did you ever hear the name "41K Cal" in any other radio
5 show?

6 A. Uh, yes, I have.

7 Q. Did you ever hear the caller who called in here call on
8 another radio show?

9 A. Yes.

10 Q. How many?

11 A. Several. He was -- I wouldn't say a regular, but he -- he
12 called in frequently.

13 Q. "Frequently." Does that mean once a month? Once every
14 other month? What...

15 A. Yeah, every other month.

16 Q. All right. And did you ever listen to how this show ended?

17 A. Uh, yes.

18 Q. All right.

19 MR. IGNALL: If we could play clip 231K, please.

20 (Audio clip played and transcript is
21 displayed in open court.)

22 BY MR. IGNALL:

23 Q. Uh, did other shows end that same way?

24 A. They all ended that way.

25 Q. Thank you.

1 And did what we hear accurately reflect what you
2 listened to while you were recording the radio show?

3 A. Yes, it did.

4 MR. IGNALL: One moment, your Honor.

5 (Discussion between Mr. Ignall and
6 Mr. Neiman.)

7 MR. IGNALL: One moment, your Honor.

8 Ms. Vannozzi, I just want to confirm. Are
9 Exhibits 214, 215, 216, '17, '18, all the way up to 224 already
10 in evidence?

11 THE CLERK: Yes, they are. They came in on 9-26.

12 MR. IGNALL: Are they available?

13 (Pause in the proceedings.)

14 MR. IGNALL: May I approach, your Honor?

15 THE COURT: You may.

16 (Pause in the proceedings.)

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

18 THE COURT: You may.

19 BY MR. IGNALL:

20 Q. Special Agent Holland --

21 MR. IGNALL: May I stand here for a moment, your
22 Honor --

23 THE COURT: You may.

24 MR. IGNALL: -- so I don't have to go back to the ELMO?

25 THE COURT: Do you need the lights on now?

1 MR. IGNALL: We will in a minute.

2 THE COURT: Okay.

3 BY MR. IGNALL:

4 Q. Special Agent Holland, if you look at Exhibit 217, could you
5 tell us where that document was found?

6 A. Uh, yeah. This was a document we seized in the search
7 warrant. More specifically, it was seized from Cindy's office.

8 Q. All right. And what -- what number, if anything -- or how
9 could you tell from looking at the check that it was seized from
10 Cindy's office?

11 A. Uh, well, it's -- let me just -- on the search warrant
12 inventory, of course, and then it's -- do you want me to tell
13 you what the exhibit is?

14 Q. No, no. Is there a number on there that indicates -- you
15 talked earlier about the Bates number at the bottom.

16 A. Yeah.

17 Q. Is there part of that number that indicates where something
18 was located?

19 A. Yeah. On this particular one, it's, uh -- it says "Search
20 warrant 37," which indicates to me it's Box 37. If I look on
21 the search warrant inventory, I find that Box 37 was Cindy's
22 office --

23 Q. All right.

24 A. -- more specifically in her desk.

25 Q. All right. Thank you.

1 MR. IGNALL: May I publish this to the jury, your
2 Honor?

3 THE COURT: You may.

4 (Document displayed in open court.)

5 BY MR. IGNALL:

6 Q. And, Agent Holland, I'm gonna hand these back to you. How
7 many documents are there contained in Exhibit 217?

8 A. (Reviewing exhibit.)

9 12. 12 documents.

10 Q. All right. And, Agent Holland, did you find any other bills
11 within that area you called "Cindy's office"?

12 A. Yes.

13 Q. Did you find any other, uh, check stubs?

14 A. Yes.

15 Q. All right.

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

17 THE COURT: Cross-examination?

18 MR. CRISTALLI: Thank you, your Honor.

19 (Pause in the proceedings.)

20

21 CROSS-EXAMINATION

22 BY MR. CRISTALLI:

23 Q. Good afternoon, Agent Holland.

24 A. Good afternoon.

25 Q. Um, the investigation as it related to Freedom Books was

1 originally, uh, exclusively directed towards Mr. Irwin Schiff;
2 correct?

3 A. Correct.

4 Q. In fact, um, Mr. Schiff had been under investigation
5 probably, uh, well before your specific investigation began;
6 correct?

7 A. No, that's not correct.

8 Q. Your investigation began when?

9 A. Uh, I started lookin' into the matter approximately at the
10 end of 2000.

11 Q. And approximate --

12 MR. BOWERS: I'm sorry. At the end of 2000?

13 THE WITNESS: Yeah.

14 BY MR. CRISTALLI:

15 Q. And so, um, you have no knowledge of maybe a investigation
16 that pre- -- preceded your investigation?

17 A. Yeah, I'm aware of an investigation.

18 Q. Okay. So there was an investigation of Mr. Schiff prior to
19 you beginning your specific investigation; correct?

20 A. Well, there's been --

21 MR. IGNALL: Objection. Relevance.

22 MR. CRISTALLI: It goes to -- I'm trying to find a
23 date -- goes to, um -- well, I think it is relevant. I'm
24 getting there. I don't want to make a speaking response in
25 front of the jury.

1 THE COURT: Well, I'll allow you some leeway subject to
2 motion to strike if it is --

3 THE WITNESS: Maybe just to back up --

4 THE COURT: -- irrelevant.

5 THE WITNESS: -- a little bit, when we -- I mean, when
6 we officially subject number an investigation. That's the date
7 that I'm -- I'm talkin' about when I say "the end of 2000."
8 Before you number an investigation, there's what we would kinda
9 classify as a preliminary investigation where you'd do some
10 preliminary investigation to deem whether it's, uh, you know,
11 worthy of bein' a subject investigation.

12 BY MR. CRISTALLI:

13 Q. I guess what I'm -- what I'm tryin' to get at is: Based on
14 the, um, material that you reviewed, based on the information
15 you gathered, it would be safe to say, would it not, that
16 Ms. Cynthia Neun's involvement with Freedom Books, whatever it
17 may have been, began, uh, at the end of 1998; correct?

18 A. That's correct.

19 Q. And so what I'm getting at is there was an investigation of
20 Mr. Schiff prior to Ms. Neun being involved in Freedom Books?

21 A. Not my investigation.

22 Q. Okay.

23 A. I mean, you know, there's been several matters, uh,
24 investigated matters --

25 MR. IGNALL: Objection, your Honor. I think this

1 potentially prejudices another defendant. I mean, if he doesn't
2 object, then I don't object. But...

3 MR. BOWERS: Could we have a sidebar on this?

4 THE COURT: Sidebar.

5 MR. CRISTALLI: It's all right. I'll move on.

6 THE COURT: All right.

7 MR. CRISTALLI: Okay.

8 BY MR. CRISTALLI:

9 Q. So we're -- we're both on the same page in that the evidence
10 revealed through your investigation suggests that Cindy's
11 involvement in Freedom Books started around the end of 1998;
12 correct?

13 A. That's correct.

14 Q. All right. Um, now, with regard to your investigation, um,
15 as related to, um, Irwin Schiff, Freedom Books, Cynthia Neun,
16 you have -- you have had an opportunity, obviously, to review,
17 uh, Cynthia -- well, first of all, do you know what an IMF file
18 is?

19 A. An IMF file?

20 Q. Yes.

21 A. Yes.

22 Q. It's a master file --

23 MR. IGNALL: Objection. Beyond the escape of direct.

24 MR. CRISTALLI: It's not actually.

25 THE COURT: How is it related to direct?

1 MR. CRISTALLI: Well, I would like to discuss the IMF
2 file with regard to my client.

3 THE COURT: I don't remember the IMF file being brought
4 up --

5 MR. CRISTALLI: It doesn't --

6 THE COURT: -- on direct.

7 MR. CRISTALLI: IMF file wasn't specifically brought
8 up. My client was brought up numerous times though. And it's
9 relevant to testimony that was given with regard to my client.
10 I'll get to the point relatively quickly. I think the agent --
11 if he has --

12 BY MR. CRISTALLI:

13 Q. Did you ever look at my client's IMF files?

14 A. I -- I mean, I requested transcripts which are a reflection
15 of her account with the IRS.

16 Q. Right.

17 And, if I showed you a copy of the, uh, IMF file, you
18 would recognize it; correct?

19 A. I don't know what you have there. I mean --

20 Q. Well, can --

21 A. -- I'll look at it.

22 MR. CRISTALLI: I have Proposed Defendant's
23 Exhibit 25- --

24 MR. IGNALL: I object. Beyond the scope of direct as
25 well as relevance.

1 MR. CRISTALLI: It's -- it's completely relevant, your
2 Honor.

3 THE COURT: Well, we're gonna take our mid-afternoon
4 break. We'll discuss relevance outside the presence of the
5 jury.

6 We'll be in recess approximately 15 minutes.

7 (Jury leaves the courtroom at 2:56 p.m.)

8 THE COURT: Please be seated.

9 MR. IGNALL: Thank you. Your Honor, if I may.

10 THE COURT: Go ahead.

11 MR. IGNALL: Agent Holland on direct testified about
12 the search warrant and he testified about what they obtained and
13 where. He testified about observing Mr. Schiff driving a '95
14 Dodge. He testified about listening to the radio shows. As I
15 recall --

16 MR. BOWERS: And he also testified about notice.

17 MR. IGNALL: No. Mr. Holland simply testified about
18 what he found where. Where he found it is relevant to notice.
19 But that's all that Mr. Holland testified about.

20 Now, I'm not gonna quibble about whether Mr. Cristalli
21 could recall Agent Holland -- and maybe for convenience he could
22 call him now -- but it's certainly beyond the scope of direct.
23 And, if it's something else, then I have an objection
24 potentially to relevance as to how that comes in.

25 THE COURT: Well, let me hear him briefly exactly how

1 it is relevant.

2 MR. CRISTALLI: Um, your Honor, I believe in the
3 Indictment it charges my client with willful failure to file.
4 The IMF file specifically said that she did not have a
5 requirement to file based on her income. Um, that's all I'm
6 trying to get out.

7 Um, Agent Holland was the agent involved in this
8 investigation. Agent Holland was the one that was involved with
9 the preparation of the case that ultimately led to the
10 indictment in this particular matter.

11 I -- the Government is going to establish, despite what
12 I have in the IMF file, is that there was income made. And
13 they're gonna have an opportunity to do that; I'm gonna have an
14 opportunity to rebut that through the Social Security employees.
15 Um, however, it's very relevant to the underlying charges in the
16 Indictment. And I should be allowed to get into it.

17 Now, if the Government wants me to recall
18 Agent Holland, I mean, I certainly can do that. But, in terms
19 of efficiency, I think it's easier just to go about it this way.
20 If you want me to ask questions in a direct manner, I certainly
21 can do that.

22 MR. IGNALL: Your Honor, I think this is potentially
23 unclear. As I understand it, what Mr. Cristalli is saying is
24 IRS records don't show she made any income above the filing
25 threshold.

1 MR. CRISTALLI: Correct.

2 MR. IGNALL: We'll stipulate to that.

3 MR. CRISTALLI: Okay.

4 MR. IGNALL: That's -- the point is that she made money
5 that was never reported to the IRS. So...

6 MR. CRISTALLI: Well, that's -- that's up for debate
7 and that's ultimately --

8 MR. IGNALL: Well, that's fine. But --

9 MR. CRISTALLI: -- that's the issue that the jury's
10 gonna have to make a determination on. My position is that she
11 didn't make money above that particular threshold.

12 THE COURT: Well, the Government's offered to stipulate
13 to what you're attempting to demonstrate and that is that IRS --

14 MR. CRISTALLI: Okay.

15 THE COURT: -- records showed she made no money above
16 the filing threshold.

17 MR. IGNALL: No. The IRS records show that no money
18 was reported --

19 THE COURT: All right. Well...

20 MR. IGNALL: -- to the IRS.

21 MR. CRISTALLI: Well --

22 MR. IGNALL: I'm sorry.

23 THE COURT: That's all --

24 MR. CRISTALLI: No, no, no.

25 THE COURT: -- that's all they can show is what's

1 reported.

2 MR. CRISTALLI: That's actually not correct. It's more
3 than that. It's not that it wasn't reported. It wasn't -- it
4 was that she didn't -- I want in the stipulation if "X" amount
5 of dollars above a certain threshold is not made one does not
6 have the requirement to file.

7 THE COURT: You can't show that from the Government
8 records because --

9 MR. CRISTALLI: Yes, sir.

10 THE COURT: -- they only -- as I understand it, they
11 only have what's reported. So you're asking --

12 MR. CRISTALLI: Well, certain --

13 THE COURT: -- you're asking for more than the records
14 can show.

15 MR. CRISTALLI: Agent Holland, as an internal Revenue
16 agent for 18 years, has that knowledge.

17 THE COURT: He doesn't have the knowledge of what she
18 actually earned. He only has --

19 MR. CRISTALLI: No. And I'm not gonna --

20 THE COURT: -- the knowledge of what she reported.

21 MR. CRISTALLI: The only thing wanna establish is that
22 on the IMF file there was, uh, nothing reported suggesting that
23 nothing had to be reported based on her threshold requirements.
24 Agent Holland, um -- all I'm gonna do is establish if one -- if
25 an individual doesn't make "X" amount of dollars one does not

1 have legal responsibility to file. They are gonna be able to
2 argue whatever they want in terms of trying to tie up the loose
3 ends to establish that she did in fact made money -- make money.
4 I have to have the right to -- to, um -- to contradict that
5 testimony.

6 MR. IGNALL: Your Honor --

7 THE COURT: I'm not sure you're contradicting it.
8 But...

9 MR. CRISTALLI: I'm not --

10 MR. IGNALL: The filing threshold --

11 MR. CRISTALLI: Not yet.

12 MR. IGNALL: -- you know, is a matter of law. That is
13 part of our proposed jury instruction.

14 MR. CRISTALLI: That's fine. But I should be able to
15 elicit it from the case agent in this particular matter who
16 worked the case, who understands the law, who -- who
17 participated in drafting the Indictment in this particular case.
18 And I -- if -- I mean, I don't -- I'm not quite sure what
19 we're -- what we're trying to prevent from coming in here. It's
20 all -- it's all legitimate evidence that is -- it doesn't --

21 THE COURT: Well --

22 MR. CRISTALLI: -- misstate the law.

23 THE COURT: -- as pointed out, it's not a matter of
24 that what was gone into on direct. And, accordingly, it's not
25 appropriate for cross unless I agree that you can, uh, bring it

1 in now as a matter of judicial economy.

2 MR. CRISTALLI: All right.

3 THE COURT: But the problem I have is, is that you're
4 apparently asking for something more than the public record can
5 reflect. I'm going to allow the question and -- along the lines
6 that you asked. And, if he disagrees with your premise, he can
7 say so.

8 MR. CRISTALLI: Sure. I appreciate that.

9 MR. SCHIFF: Can I take care of --

10 MR. IGNALL: Your Honor -- I'm sorry.

11 MR. BOWERS: I -- I still want to see what the rest of
12 Agent Holland's testimony is before we discussed my issue.

13 MR. IGNALL: All right. Thank you.

14 MR. BOWERS: Thank you.

15 MR. CRISTALLI: Oh, your Honor, just for the record,
16 with regard to that one issue discussed at sidebar, there was
17 just one final notation that I'd like to make is that, um, the
18 prejudice increases in this particular matter, I believe,
19 because of the number of African-American jurors we have on the,
20 uh, jury. We have six African-American jurors.

21 THE COURT: That was already mentioned.

22 MR. CRISTALLI: It was?

23 THE COURT: That was mentioned at sidebar.

24 MR. CRISTALLI: I'm sorry.

25 THE COURT: Yeah.

1 MR. CRISTALLI: I did not hear that.

2 THE COURT: It was mentioned.

3 MR. CRISTALLI: Okay. Thank you.

4 MR. SCHIFF: Can I... What's going on?

5 (Recess from 3:02 p.m. to 3:21 p.m.)

6 THE COURT: Ready to bring the jury in?

7 MR. IGNALL: Well, one moment, your Honor.

8 One, we're working on a possible stipulation. But,
9 two, I want to raise something else that, obviously, we defer to
10 the Court when it comes to matter of judicial economy. But we
11 would object to any defendant going beyond the scope of direct
12 examination with Agent Holland at this point.

13 It doesn't really benefit judicial economy given that
14 Agent Holland will be sitting three feet away if they choose to
15 call him. And I think there may be a benefit to judicial
16 economy insofar as the relevance of his testimony or his ability
17 to give that testimony may be something that -- that we'd have
18 to stop and go to sidebars periodically whereas if the
19 defendants try to call him in their case in chief we could
20 address that at this time before he gets called as opposed to
21 continuing this case now.

22 We're hoping -- we have two more witnesses in the
23 hallway; we'd get them out and done. So I'd actually say in the
24 interest of judicial economy it's better to leave the
25 cross-examination at this point to Agent Holland's direct

1 examination and then leave open for another day whether it's
2 appropriate to call Agent Holland. He'll be here. We'll make
3 him available.

4 MR. CRISTALLI: And, um, with regard to my questioning,
5 um, outside of, uh, direct examination, I'm -- my -- and we're
6 trying to work on a stipulation with regard to that -- I will
7 not explore any other avenues outside of direct examination
8 other than this IMF file issue. The only thing -- um, it's
9 probably gonna be two more questions -- I'm just trying to, um,
10 establish that pursuant to the IMF file of Ms. Neun there, um --
11 and according to the, uh -- the -- the numbers and the --
12 that -- that categorize her reporting, it basically says, um,
13 1040 not required. There's no outstanding tax liabilities. Um,
14 and it's -- and we all agree that it's -- you know, that's
15 whatever's been disclosed to the Internal Revenue Service. It
16 doesn't mean that she has no -- necessarily no liability.
17 That's gonna be up to the jury to decide. And that's
18 somethin' --

19 THE COURT: Well, I'll allow you to ask that one
20 question --

21 MR. CRISTALLI: Right.

22 THE COURT: -- as long as you put in the part that it's
23 based on her self-reporting and --

24 MR. CRISTALLI: Yes.

25 THE COURT: -- not on --

1 MR. IGNALL: Well, that's not -- that's not totally
2 accurate, you know. I think the IRS records -- and I'm not even
3 sure if Agent Holland is the right witness to know the answer to
4 this. He may be; I'm not -- but my limited understanding of the
5 IRS records is that it's what she reported and what third
6 parties --

7 MR. CRISTALLI: Okay.

8 MR. IGNALL: -- report, you know, 1099's, W-2's. That
9 sort of thing.

10 MR. CRISTALLI: That's -- that's fair. I don't -- I
11 don't oppose that.

12 THE COURT: All right.

13 MR. IGNALL: But --

14 THE COURT: I'm gonna allow one -- one incursion and --
15 because I don't think it's that harmful.

16 MR. IGNALL: How about --

17 THE COURT: It's already --

18 MR. IGNALL: -- this --

19 THE COURT: -- been raised.

20 MR. IGNALL: We have --

21 MR. CRISTALLI: Let me see it.

22 MR. IGNALL: We have a stipulation that may --

23 THE COURT: All right.

24 MR. SCHIFF: Your Honor, can I -- I want to raise an
25 issue here.

1 THE COURT: You want to raise an issue about what?
2 About this issue?

3 MR. SCHIFF: Well, God. I don't wanna have the jury go
4 out again. I wanna know whether I can cross-examine
5 Mr. Holland. Now, Mr. Holland -- mine's a separate issue. Or
6 do you want to hear my objection?

7 THE COURT: Not until they finish.

8 (Pause in the proceedings.)

9 MR. SCHIFF: I have some questions I want to ask or
10 should I ask them later?

11 MR. CRISTALLI: I might have two questions on this.
12 That's it. And I think nobody's gonna be upset with me with
13 regard to them. I hope.

14 MR. IGNALL: Well, I'm not gonna say that. That's
15 fine. I mean, we object. But that's -- the Court can overrule
16 that. That's fine.

17 THE COURT: Okay. Bring in the jury.

18 (Jury enters the courtroom at 3:25 p.m.)

19 THE COURT: Please be seated.

20 Will counsel stipulate to the presence of the jury?

21 MR. IGNALL: Yes, your Honor.

22 MR. CRISTALLI: Yes, your Honor.

23 MR. BOWERS: Yes, your Honor.

24 THE COURT: Mr. Cristalli.

25 MR. CRISTALLI: Thank you, your Honor.

1 (Defendant Neun's Exhibit Nos. 2517 and 2518,
2 marked for identification.)

3 BY MR. CRISTALLI:

4 Q. Agent Holland, um, I'm gonna show you what's been marked
5 Defendant's Proposed Exhibit 2518 -- well, actually 2517 and
6 2518.

7 MR. CRISTALLI: May I approach, your Honor?

8 THE COURT: You may.

9 BY MR. CRISTALLI:

10 Q. Um, if you would, Agent, if you could just review those two
11 documents for me and, uh, just tell me whether or not they
12 appear to be portions of --

13 MR. IGNALL: Objection. I think the appropriate
14 question is whether he can identify them, if he's seen them.

15 MR. CRISTALLI: Okay.

16 THE COURT: Yes, sustained.

17 THE WITNESS: It appears to be a transcript.

18 BY MR. CRISTALLI:

19 Q. Uh, of the -- the -- of Ms. Neun's, uh, master file?

20 A. That's correct.

21 Q. And that's basic -- I think we've heard previously that the
22 master file is a file kept by the Internal Revenue --

23 MR. IGNALL: Objection --

24 BY MR. CRISTALLI:

25 Q. -- Service?

1 MR. IGNALL: -- leading. And, given that this is
2 beyond the scope of direct, it's inappropriate.

3 MR. CRISTALLI: It's foundational.

4 THE COURT: I'll allow it as foundational.

5 BY MR. CRISTALLI:

6 Q. The master file is kept by the Internal Revenue Service for
7 all taxpayers; correct?

8 A. That's correct.

9 Q. Okay. Let me just -- if I could just see that one back.
10 Let me have both those back.

11 Now, on Defendant's Proposed Exhibit 2517, um, it
12 appears on page -- page 1 of the document that there is no
13 balance in terms of liability for that taxpayer; correct?

14 A. That's correct.

15 Q. Okay. And that's Ms. Cynthia Neun. True?

16 A. True.

17 Q. And the date of that is what?

18 A. Uh, December 1997.

19 Q. Okay. And it says a zero balance as of?

20 A. Uh, March 1st, 2004.

21 Q. So it would cover the periods from December of '97 to March
22 of 2004; correct?

23 A. Correct.

24 Q. Okay. Thank you.

25 And this document, specifically, um, I want to direct

1 your attention to page 1 again. Um, there's an MFR number here.

2 It says "MFR-01." Are you familiar with that?

3 A. Where are you looking?

4 Q. It's right here.

5 A. No, I'm not.

6 Q. Okay. So you don't know what that means?

7 A. Nope.

8 Q. Okay.

9 MR. CRISTALLI: Court's indulgence.

10 (Pause in the proceedings.)

11 MR. CRISTALLI: Can I have this marked really quick?

12 (Defendant Neun's Exhibit No. 2519, marked
13 for identification.)

14 MR. CRISTALLI: Thank you.

15 (Document shown to Government counsel.)

16 MR. CRISTALLI: Your Honor, if I may approach with
17 Defendant's Proposed Exhibit 2519.

18 BY MR. CRISTALLI:

19 Q. Agent, I'm gonna ask you --

20 THE COURT: You may.

21 BY MR. CRISTALLI:

22 Q. -- I'm gonna ask you if you -- it appears to be a filing
23 requirements code. Could you tell me whether or not you're
24 familiar with that document?

25 A. No, no, I'm not.

1 Q. You've never seen a document like that before?

2 A. No.

3 Q. Okay. Does it appear to be -- so you have no recognition
4 of --

5 A. I can --

6 Q. -- this document?

7 A. -- look at it right now and speculate as to what it is.

8 Q. Well --

9 A. But I've --

10 Q. -- I don't want you --

11 A. -- I've never --

12 Q. -- to speculate.

13 A. -- seen that before.

14 Q. As an agent from the Internal Revenue Service, can -- can --
15 workin' 20 years, or however long you have, I mean, do you
16 recognize this and can you, um, connect it to Defendant's
17 Proposed Exhibit 2518, which I showed you regarding the Code?

18 A. Like I said, I don't recognize this.

19 Q. Okay. You -- you don't know what it is?

20 A. And I would be speculating if I told you what I thought it
21 was.

22 Q. And, in terms of Defendant's Proposed Exhibit 2518, you
23 don't -- you don't know what this is?

24 A. This is a transcript.

25 Q. It's a transcript. But you don't know how to read it and

1 what it identifies?

2 A. Yeah. Basically I have an understanding of how to read
3 that. Um, to be honest with you, I usually consult with people
4 within the IRS who have a better knowledge of if there's
5 something on it I don't understand.

6 Q. Would it be an accurate statement that that document
7 indicates that that particular taxpayer is not required to pay
8 based on the information obtained by the IRS, a 1040?

9 A. No, that's -- that's not accurate at all. I mean, this
10 statement says that nothing has been reported to the IRS, like
11 her -- if she has had an employer, she didn't report any money
12 or she didn't file a tax return claiming any income.

13 Q. Right. Well, let's work that out through its logical
14 conclusion then. That's what I'm trying to get out.

15 So if an individual did not, uh, uh, report -- if an
16 individual wasn't makin' any money or wasn't workin' or if an
17 individual wasn't employed, they are not going to have a
18 requirement to file a 1040; correct?

19 MR. IGNALL: Objection. Although that is accurate, I
20 don't think it's appropriate to go into a legal conclusion with
21 this witness.

22 THE COURT: Sustained.

23 BY MR. CRISTALLI:

24 Q. How long have you been working in the IRS?

25 A. 18 years.

1 Q. Is everybody required to file 1040s? Is every taxpayer
2 required to file 1040s?

3 MR. IGNALL: Objection, your Honor. I think that was
4 even in the instruction that the Court gave yesterday, I
5 believe.

6 MR. CRISTALLI: Which is what?

7 MR. IGNALL: And if I can find it.

8 MR. CRISTALLI: They are not?

9 MR. IGNALL: No. I...

10 THE COURT: Well, I -- I can see that I have not
11 shortened this up at all by allowing you to go into this area.

12 MR. CRISTALLI: I don't know why I can't get the
13 answer. I know -- I know for a fact, your Honor, that you're
14 not required to. So --

15 MR. IGNALL: But, your Honor --

16 MR. CRISTALLI: -- that's all I'm trying to elicit.

17 MR. IGNALL: And that's part of the Government's
18 proposed jury instructions and it's even part of the Court's
19 instruction yesterday that every individual whose gross income
20 exceeds specified amounts is required to file an income tax --

21 MR. CRISTALLI: And that's all I'm askin'.

22 MR. IGNALL: -- return.

23 MR. CRISTALLI: If -- if -- and I was sustained on an
24 objection with regard to this particular witness that if you
25 don't make a certain amount of money you're not required to file

1 1040 returns. That's all I wanna ask him.

2 THE COURT: I sustained the objection because of the
3 legal nature and of opening the door to further questions, uh,
4 calling for legal conclusions on the part of the witness. The
5 discussion earlier -- the discussion earlier was that you would
6 bring this out for a limited purpose and that you would do it in
7 two questions with a qualifier as to what -- what this
8 transcript showed. That has not occurred.

9 MR. CRISTALLI: I could ask it in one question, and I
10 just did. And that's all I wanted to ask.

11 THE COURT: Well --

12 MR. CRISTALLI: I just wanna --

13 THE COURT: -- it's an improper question. That is not
14 the question you told me you were gonna ask.

15 BY MR. CRISTALLI:

16 Q. Now, um, Agent Holland, you had, uh, talked about a couple
17 of exhibits that you recovered from different locations inside
18 of Freedom Books one of which was, if I'm not mistaken...

19 (Pause in the proceedings.)

20 MR. CRISTALLI: Court's indulgence, your Honor.

21 (Pause in the proceedings.)

22 BY MR. CRISTALLI:

23 Q. Um, it was, uh, Government's Exhibit 250- -- 225, which was
24 the CRS Report from Congress. Do you recall that?

25 A. Yes, I do.

1 Q. And, um, you said you recovered that from Irwin Schiff's
2 desk drawer; correct?

3 A. That and several other places.

4 Q. Okay. And you don't recall specifically the other locations
5 that you acquired it at; correct?

6 A. Uh, in his workroom there was a couple copies of it and I
7 recall there bein' other copies of it around the, uh, business
8 also.

9 Q. And would it be safe to say, sir, would it not, that there
10 are thousands and thousands upon -- upon thousands of
11 document -- documents that were recovered from Freedom Books;
12 correct?

13 A. That's true.

14 Q. I'm sorry?

15 A. That's correct.

16 Q. Okay. Um, one of which was, um, The Federal Mafia; correct?

17 A. I don't think we took a copy in the search warrant.

18 Q. There was no copies of The Federal Mafia in Freedom Books?

19 A. I don't recall takin' a copy of The Federal Mafia.

20 Q. Okay. Would it be safe to say that there was other
21 documents that, um -- other -- other -- there was IRS Codes;
22 correct?

23 A. Yeah.

24 Q. Sections from the IRS Code. True?

25 A. There was Code books, such as they sell, sittin' around

1 tabbed. Um...

2 Q. Right.

3 And -- and basically the C -- CRS Report for Congress
4 is put out by the Internal Revenue Service; correct?

5 A. I think it's written by Congress, isn't it?

6 Q. I'm asking you. I don't know for sure.

7 A. The congressional li- -- I don't -- the congressional
8 library is where it came from.

9 Q. Okay. And, um, there were other material within Freedom
10 Books, um, that would be in terms of cases and statutes that
11 were contrary to those reported in the C -- CRS Report. Would
12 that be an accurate statement?

13 A. I don't understand your question.

14 Q. Well, this -- the CRS Report contains what appears to be
15 sections from the Internal Revenue Code; it appears that it has
16 case law in support of, um -- obviously, um, that there is a,
17 uh, legal liability to pay income tax. I mean, that's -- it
18 is -- it is a supporting document for income tax. Would that be
19 an accurate statement?

20 A. Correct.

21 Q. Okay. Would it be safe to say that there were other
22 documents contained within Freedom Books that were contrary to
23 the positions taken in the CRS Report for Congress?

24 MR. IGNALL: Objection, your Honor. It's vague. I'm
25 not sure which particular position and then it also requires the

1 witness to speculate on --

2 THE COURT: It is.

3 MR. IGNALL: -- what's contrary to --

4 THE COURT: It is vague and speculative.

5 BY MR. CRISTALLI:

6 Q. Is it safe to say you recovered other documentation from
7 Freedom Books that were consistent with Irwin Schiff's
8 philosophy and teachings, uh, about the legality of the income
9 tax; correct?

10 A. That is correct.

11 Q. Okay. And you wouldn't, uh, dispute the fact that the
12 content of The Federal Mafia would be one of those particular
13 documents?

14 A. I wouldn't dispute that.

15 Q. Okay. I mean, you also -- you obtained opinion letters, uh,
16 from Freedom Books, uh, from other legal sources? lawyers? Do
17 you recall -- do you recall recovering -- recovering
18 documentation?

19 A. I think one that you might be talkin' about.

20 Q. Okay. Um, what about testimonials from former IRS agents?
21 Do you recall recovering those type items?

22 A. I don't recall readin' any of those, no.

23 Q. Do you recall recovering them?

24 A. No.

25 Q. Okay. But you do recall, uh, recovering opinion letters

1 from lawyers; correct?

2 A. One -- I mean, I recall it from this trial it came out. I
3 mean, I can't specifically remember recovering that in the
4 warrant.

5 Q. Okay. Now, um, The Federal Mafia in some form or another
6 was published around what, 1990?

7 A. I believe so.

8 Q. Okay. Um, so then -- and there came a point in time when
9 the federal government, uh, banned the distribution of Federal
10 Mafia; correct?

11 MR. IGNALL: Objection. Beyond the scope of direct.

12 THE COURT: Sustained.

13 MR. CRISTALLI: Goes to notice, your Honor.

14 THE COURT: Notice? They banned the -- the federal
15 government banned, uh, the publication of The Federal Mafia and
16 is it goes to notice?

17 MR. CRISTALLI: Uh-huh, it does. I have one question
18 to follow up with that.

19 THE COURT: Well, go ahead with your follow-up
20 question.

21 BY MR. CRISTALLI:

22 Q. It took -- it took the federal government 14 years to, uh,
23 ban The Federal Mafia, correct, from --

24 MR. IGNALL: Objection. Relevance and beyond the scope
25 of direct.

1 THE COURT: Sustained.

2 MR. CRISTALLI: Reliance. Reliance.

3 THE COURT: No, it has nothing to do with that.
4 Sustained.

5 MR. CRISTALLI: Could I have these marked, please?

6 (Defendant Neun's Exhibit Nos. 2520 through
7 2524, marked for identification.)

8 BY MR. CRISTALLI:

9 Q. Um, while we're waiting, Agent Holland, um, the CRS Report
10 for Congress, you cannot testify today, um, or you do not have
11 any knowledge, do you, sir, that Ms. Cynthia Neun ever read that
12 particular document; correct?

13 A. No.

14 Q. And -- and, relating to the, uh, CRS Report for Congress, it
15 says it's "for Congress." So I would assume that it was not
16 prepared by Congress but was prepared for Congress. Would that
17 be an accurate statement?

18 MR. IGNALL: Objection, your Honor. Agent Holland
19 collected it. It was introduced for the sole purpose of the
20 information it contained being notice to the defendants.
21 Agent Holland didn't opine on it on direct. And he can answer
22 it, but I don't think -- it wasn't offered for that purpose.

23 MR. CRISTALLI: Okay.

24 BY MR. CRISTALLI:

25 Q. The title of the report, however, is "CRS Report for

1 Congress"; correct? You saw that you when you recovered it;
2 right?

3 A. I believe that's correct.

4 Q. Okay.

5 MR. IGNALL: Your Honor, could we have a sidebar on
6 this?

7 THE COURT: Okay.

8 (Sidebar conference was held as follows:)

9 MR. CRISTALLI: Just some pictures of the raid.

10 MR. IGNALL: And they weren't provided -- I'm sorry. I
11 shouldn't say anything yet.

12 MR. CRISTALLI: I just was going to ask him if these
13 accurately depict, uh, what happened on the day of the search.
14 Um, and, if they did, I was going to introduce them into
15 evidence.

16 THE COURT: What's -- what's the relevance? What does
17 it go to?

18 MR. CRISTALLI: Well, they testify -- there was
19 testimony initially that there was 20 or so Internal Revenue,
20 uh, agents, um, that, uh, participated in the raid. I mean, you
21 got, um -- it appears that you got some of the agents in body
22 protection. I mean, I'm just gonna demonstrate that they --

23 MR. IGNALL: We object to relevance and that these were
24 not provided in reciprocal discovery.

25 MR. SCHIFF: Well, let me tell you what --

1 MR. IGNALL: Also beyond the --

2 MR. SCHIFF: -- the relevance is.

3 MR. IGNALL: -- scope of direct.

4 MR. SCHIFF: They are not police. They are
5 fraudulent -- these -- this is false. They have no enforcement
6 authority. This is designed to make it look like they have
7 enforcement authority.

8 MR. BOWERS: So you are objecting to those coming in?

9 MR. LEVENTHAL: I think you want those in.

10 MR. SCHIFF: Yeah, I want 'em in.

11 MR. LEVENTHAL: I'm just advisory counsel. I don't
12 know.

13 MR. SCHIFF: Yeah. It's a pretty good picture of me I
14 think. I'm getting old very fast.

15 MR. CRISTALLI: I mean, nobody is obstructing, um, the
16 operation, um. Nobody is --

17 THE COURT: You haven't asked that.

18 MR. CRISTALLI: Okay.

19 THE COURT: You know, you had 20 people there. You can
20 ask him that. I think that's fair. But --

21 MR. CRISTALLI: So you don't want --

22 THE COURT: No, the pictures don't come in. It's a
23 waste of time and a waste of --

24 MR. CRISTALLI: Just --

25 THE COURT: -- court storage space.

1 MR. NEIMAN: Just for the record --

2 MR. CRISTALLI: I think -- to be honest with you, I
3 think there's a lot more documentation aside from these pictures
4 that we ought to worry about.

5 MR. SCHIFF: I don't think I saw these pictures.

6 MR. NEIMAN: Your Honor, just for the record, the
7 Government's received no reciprocal discovery from Defendant
8 Neun at all in this case.

9 THE COURT: Yeah.

10 MR. NEIMAN: Just letting the record --

11 THE COURT: And it's sustained on the -- the objection
12 is sustained on that ground as well.

13 MR. BOWERS: Not on the storage space ground?

14 (Sidebar conference concluded and the
15 following is held in open court:)

16 BY MR. CRISTALLI:

17 Q. Uh, Agent, you testified that you conducted the search on or
18 about February 11, 2002?

19 A. Three.

20 Q. I'm sorry. 2003.

21 Um, and approximately 20 agents accompanied you through
22 the search?

23 A. That's correct.

24 Q. And, uh, nobody from Freedom Books, uh, tried to interfere
25 or obstruct, uh, the operations by your department; correct?

1 A. Mr. Schiff tried to.

2 Q. Mr. Schiff tried to?

3 A. Yes.

4 Q. Okay. Did he try to beat you guys up?

5 A. Uh, he was restrained from goin' in the building.

6 Q. He was -- he wanted to go back into his building?

7 A. Yes.

8 Q. Okay. But he wasn't assaulting any police officers, was he?

9 A. Not that day.

10 Q. Well, I'm asking you about --

11 A. No, no, he did not. I'm sorry.

12 Q. And Cynthia Neun, uh, wasn't even present; correct?

13 A. No, she wasn't.

14 Q. Okay.

15 MR. CRISTALLI: No further questions.

16 THE COURT: Thank you.

17 Mr. Bowers.

18 MR. BOWERS: I'll let Mr. Schiff go. He might cover
19 some of my material.

20

21 CROSS-EXAMINATION

22 BY MR. SCHIFF:

23 Q. Mr. Holland, isn't it a fact, Mr. Holland, that you were the
24 one who secured -- who applied for the search warrant?

25 A. That's correct.

1 Q. Isn't it a fact that in order to apply for a search warrant
2 you have to be a law enforcement officer under the law?

3 MR. IGNALL: Objection. Irrelevant and beyond the
4 scope of direct and --

5 THE COURT: Irrelevant.

6 MR. IGNALL: -- potentially misstating the law.

7 THE COURT: The Court has already ruled on these
8 matters, Mr. Schiff. You know that.

9 MR. SCHIFF: Okay.

10 THE COURT: Sustained.

11 MR. SCHIFF: Okay.

12 BY MR. SCHIFF:

13 Q. Approximately how many -- how many thousand documents did
14 you take from Freedom Books?

15 A. We took 50 boxes. I...

16 Q. Did you take my appointment book?

17 A. Yes.

18 Q. Took my Rolodex?

19 A. Yes.

20 Q. You downloaded all the information in about seven computers?

21 A. That's right.

22 Q. You downloaded the first six chapters of my next book --

23 A. I'm not --

24 Q. -- which was on my computer?

25 A. -- aware of that.

1 Q. So you took a lot of information, a lot of personal
2 information about me, didn't you?

3 A. Uh, a lot of business information.

4 Q. There was -- right.

5 However, when I heard that you were taking all the --
6 when I -- you were there before I got there; right?

7 A. That's right.

8 Q. When I got there and I tried to enter my office, you and
9 about two or three other agents physically restrained me; isn't
10 that correct?

11 A. That's correct.

12 Q. So I couldn't see what you were taking.

13 A. That's right.

14 Q. Do you remember reading to me my Miranda warning?

15 A. Yes, I do.

16 Q. What did you tell me -- in reading my Miranda warning, what
17 did you tell me?

18 A. I advised you of your constitutional advisement and told you
19 you were under criminal investigation.

20 Q. Well, didn't you tell me more? You said anything I said can
21 be used...

22 A. That's part of your --

23 Q. Okay. Can I --

24 A. -- constitutional advisement.

25 Q. -- hear the whole thing, please?

1 A. You want me to read your rights right now?

2 Q. Yeah. Well, you -- you told me -- didn't you say anything
3 you said -- yeah. Well, you remember. You must have used it a
4 number of times.

5 A. Actually, I read it to you from a card --

6 Q. Okay. Well --

7 A. -- that I have here.

8 Q. -- why don't you --

9 A. Would you --

10 Q. -- read it to me again.

11 A. -- like me to read it again?

12 THE COURT: What is the relevance of this?

13 MR. SCHIFF: No, no. It's very relevant, your Honor.

14 THE COURT: Well, you can't just say --

15 MR. SCHIFF: The relevancy will --

16 THE COURT: -- it's relevant.

17 MR. SCHIFF: -- the relevancy will be -- the relevancy
18 will be apparent in a moment.

19 THE COURT: You've said that before.

20 MR. SCHIFF: All right.

21 THE COURT: No. You tell me what the --

22 BY MR. SCHIFF:

23 Q. Do you want to read me --

24 THE COURT: Tell me what --

25

1 BY MR. SCHIFF:

2 Q. -- you wanna --

3 THE COURT: -- the relevance is.

4 MR. SCHIFF: Okay.

5 BY MR. SCHIFF:

6 Q. But you told me that anything I said could be used against
7 me; is that right? So you warned me not to say anything --

8 A. That's correct.

9 Q. -- because it could be used against me.

10 A. That's part --

11 Q. Well, you were taking --

12 A. -- of the advisement.

13 Q. -- 14,000 documents that you can use against me. What could
14 I have told you that could have been more incriminating than all
15 the documents you were taking out of my office?

16 A. I could think of a lot of things.

17 Q. Yeah. It was a little silly to read me my -- in other
18 words, I didn't have any --

19 THE COURT: Oh, come on.

20 BY MR. SCHIFF:

21 Q. -- Fourth and --

22 MR. IGNALL: Objection. Relevance.

23 THE COURT: Yeah.

24 BY MR. SCHIFF:

25 Q. -- Fifth Amendment right.

1 THE COURT: It is not relevant.

2 MR. SCHIFF: Well, your Honor, it's a little silly to
3 read me my --

4 THE COURT: No, it isn't.

5 MR. SCHIFF: -- Miranda rights --

6 THE COURT: It's a requirement.

7 MR. SCHIFF: -- when they are walking out of my
8 office --

9 THE COURT: It's a --

10 MR. SCHIFF: -- with 14 --

11 THE COURT: Mr. Schiff. Mr. Schiff, enough of the
12 theatrics.

13 MR. SCHIFF: All right.

14 But I think it's very significant. He read me my
15 rights.

16 THE COURT: I said leave it alone.

17 MR. SCHIFF: All right. I'm leaving it alone.

18 THE COURT: No, you're not.

19 MR. SCHIFF: All right. I'm not because I think it's a
20 little silly.

21 THE COURT: All right. Sanction.

22 MR. SCHIFF: All right.

23 THE COURT: Sanction.

24 MR. SCHIFF: All right.

25

1 BY MR. SCHIFF:

2 Q. Now, in going through the -- uh, where is it? -- oh, I won't
3 get into this now. But you testified extensively before the
4 Grand Jury, didn't you?

5 A. Yes, I did.

6 Q. As a matter of fact, you testified October 1st, 2003.

7 MR. IGNALL: Objection, your Honor, relevance. It's
8 fine --

9 MR. SCHIFF: Well --

10 MR. IGNALL: -- to either refresh the witness's
11 recollection --

12 MR. SCHIFF: All right.

13 MR. IGNALL: -- with the Grand Jury transcript --

14 MR. SCHIFF: All right.

15 MR. IGNALL: -- or perhaps he said something
16 inconsistent --

17 MR. SCHIFF: Well, I --

18 MR. IGNALL: -- neither of which has happened yet.

19 MR. SCHIFF: Well, I think it's significant that he
20 didn't give any personal testimony, but he did testify
21 extensively.

22 THE COURT: Well --

23 BY MR. SCHIFF:

24 Q. You testified --

25 THE COURT: Mr. Schiff, I would have hoped you would

1 have learned the procedure by now. But the Government's
2 objection is sustained.

3 MR. SCHIFF: Well, let's forget that.

4 BY MR. SCHIFF:

5 Q. Um, in one of the -- in the documents -- in that document
6 you referred to earlier, that -- that document -- the CFR
7 document, was that it, the CFR document? I thought I had it
8 here. That document that you were talkin' about.

9 MR. BOWERS: Would you like Exhibit 225, Mr. Schiff?

10 MR. SCHIFF: I think I took it with me.

11 BY MR. SCHIFF:

12 Q. There -- there was a portion of it that said the income tax
13 isn't voluntary; isn't that right?

14 A. I believe so.

15 Q. Yeah. Extensively.

16 Now, I believe my book is in evidence; right? Can
17 you -- can you please -- oh, here it is. All right. Yeah.

18 MR. SCHIFF: Can you please give him a copy of my book
19 that's in evidence.

20 (Book placed before the witness by the
21 clerk.)

22 BY MR. SCHIFF:

23 Q. Uh, turning -- and you have looked at my book, haven't you?

24 A. Very sparsely.

25 Q. All right. Now, just turn to page -- have you ever seen the

1 IRS --

2 THE COURT: To page what?

3 MR. SCHIFF: Well, 13.

4 BY MR. SCHIFF:

5 Q. -- the mission statement. You're familiar with the IRS's
6 mission statement, aren't you?

7 MR. IGNALL: Objection. Beyond the scope of direct.

8 THE COURT: Sustained.

9 MR. SCHIFF: No, it's not -- he introduced the document
10 to suggest that the payment of income tax is not voluntary. I
11 have a right to refute that. This is not the law.

12 BY MR. SCHIFF:

13 Q. On page 13 -- on page 13 isn't there the mission statement
14 of the IRS?

15 MR. IGNALL: Same objection, your Honor.

16 BY MR. SCHIFF:

17 Q. Figure --

18 MR. IGNALL: Beyond the scope --

19 BY MR. SCHIFF:

20 Q. -- 1.2.

21 MR. IGNALL: -- of direct and irrelevant. But...

22 THE COURT: It's both. Sustained.

23 MR. SCHIFF: Your Honor, he puts in a -- he puts in a
24 document that he says is notice to me and I can't even put in
25 the IRS's mission statement?

1 THE COURT: Mr. Schiff, I've ruled.

2 BY MR. SCHIFF:

3 Q. Doesn't the IRS in numerous documents always refer that the
4 income tax is based on voluntary compliance? Isn't that a term
5 they use continually?

6 A. It's used, yes.

7 Q. They use it continually, that the income tax is based -- I
8 could put in a ton of documents that they say --

9 THE COURT: Don't testify.

10 MR. SCHIFF: I'm not gonna --

11 THE COURT: Don't testify.

12 BY MR. SCHIFF:

13 Q. They continually say income tax is based on voluntary
14 compliance; is that correct?

15 A. I've heard that.

16 Q. Okay. You've never seen a statement by the IRS that the
17 income tax is based on compulsory compliance, have you?

18 A. What do you mean "compulsory" --

19 Q. You have never --

20 A. -- "compliance"?

21 Q. -- seen an official release by the IRS in which they claim
22 that the income tax is based on compulsory compliance?

23 A. No, I --

24 Q. You've never seen that, have you?

25 A. I've never seen that, no.

1 Q. No. So every time they refer to compliance they always
2 refer to voluntary compliance, don't they?

3 MR. IGNALL: Objection, your Honor. Beyond the scope
4 of direct and still irrelevant.

5 MR. SCHIFF: Your Honor, he put in a document that said
6 it's not voluntary. Now why can't I refute it with the -- with
7 the Government's own documents?

8 MR. IGNALL: Objection, your Honor. It's perfectly
9 fine for Mr. Schiff to testify about this, which is seemingly
10 what he's doing now. But Agent Holland testified about a
11 document he found in Mr. Schiff's desk --

12 THE COURT: Correct.

13 MR. IGNALL: -- and elsewhere.

14 THE COURT: It was admitted --

15 MR. SCHIFF: I said --

16 THE COURT: -- for a limited purpose --

17 MR. SCHIFF: -- I said --

18 THE COURT: -- limited purpose and --

19 MR. SCHIFF: -- that the document...

20 THE COURT: It was received for a limited purpose
21 and --

22 MR. SCHIFF: So he just --

23 THE COURT: -- that was it.

24 MR. SCHIFF: -- testified that the IRS continually
25 refers to --

1 THE COURT: No. What --

2 MR. SCHIFF: -- compliance being voluntary.

3 THE COURT: What he testified to -- and you asked those
4 questions over objection --

5 MR. SCHIFF: Well, your Honor --

6 THE COURT: -- was what he found in your office.

7 MR. SCHIFF: Well, they found all kinds of things.

8 That was in my office. I use it as a teaching tool to show how
9 the --

10 MR. IGNALL: Objection, your Honor.

11 MR. SCHIFF: He also found --

12 MR. IGNALL: This is --

13 MR. SCHIFF: -- this book --

14 MR. IGNALL: -- Mr. Schiff can testify --

15 MR. SCHIFF: -- in my office. He also --

16 MR. IGNALL: -- when he's --

17 MR. SCHIFF: -- your Honor --

18 MR. IGNALL: -- subject to cross-examination --

19 MR. SCHIFF: -- he also found --

20 MR. IGNALL: -- but not on --

21 MR. SCHIFF: -- this book that I'm relying on the IRS's
22 mission statement more than that book.

23 THE COURT: Mr. Schiff, if you wish to bring these
24 matters out during your own case, you may. But you can only
25 cross-examination on --

1 MR. SCHIFF: Can I just ask --

2 THE COURT: -- items the Government asked.

3 MR. SCHIFF: -- him one question?

4 BY MR. SCHIFF:

5 Q. Are you saying that compliance with the IRS's regulations
6 are -- is based on compulsory compliance? Are you saying
7 it's --

8 MR. IGNALL: Objection, your Honor. Now we're getting
9 into semantics that --

10 MR. SCHIFF: No. I just --

11 MR. IGNALL: -- are not relevant and beyond the scope
12 of direct.

13 MR. SCHIFF: I'm asking --

14 THE COURT: It --

15 MR. SCHIFF: -- him a question.

16 THE COURT: -- it does involve semantics. It calls for
17 legal conclusion. The objection is sustained.

18 BY MR. SCHIFF:

19 Q. Are you familiar with the handbook for special agents?

20 A. Uh, yeah. We have it online. I believe that one was dated
21 back in the -- the only place I've seen that --

22 MR. SCHIFF: Can I --

23 THE WITNESS: -- is from you.

24 MR. SCHIFF: There's a little statement on the front of
25 this book about --

1 THE COURT: Said he hasn't seen it except --

2 MR. SCHIFF: He hasn't seen it.

3 THE COURT: -- from you. That's what he said.

4 BY MR. SCHIFF:

5 Q. Let me ask you one question.

6 MR. SCHIFF: Because he already testified that he's
7 seen a number of IRS documents that said income is based on
8 voluntary compliance.

9 MR. IGNALL: Objection, your Honor. We're --

10 MR. SCHIFF: He's already said that.

11 MR. IGNALL: -- now getting into a misstatement of what
12 "voluntary" means. It doesn't mean "optional." And it's not
13 appropriate for this witness who's testified about documents he
14 found in Mr. Schiff's office. And --

15 MR. SCHIFF: Yeah.

16 MR. NEIMAN: -- he can disagreed with what he says --

17 MR. SCHIFF: A lot of the documents in my office I use
18 as teaching -- teaching tools to show how the government lies
19 about the income tax. And now --

20 THE COURT: Now you're testifying --

21 MR. SCHIFF: Well --

22 THE COURT: -- again. Sanctions.

23 MR. SCHIFF: Well, all right. Look, he also found this
24 book in my office. He also found The Great Income Tax Hoax in
25 my office, which has a hundred cases that explain the meaning of

1 income tax.

2 THE COURT: Also found a floor in your office. That
3 doesn't mean we're going to discuss what was on the floor.

4 MR. SCHIFF: Well, he --

5 THE COURT: It's not relevant.

6 MR. SCHIFF: He wants to use --

7 THE COURT: It's not relevant.

8 MR. SCHIFF: All right.

9 THE COURT: It was not the subject of direct
10 examination.

11 MR. SCHIFF: All right. I just want to ask him one
12 question.

13 BY MR. SCHIFF:

14 Q. Is it your belief that when the IRS says income tax is based
15 on voluntary compliance they really mean it's based on
16 compulsory compliance?

17 MR. IGNALL: Objection, your Honor. The Court --

18 THE COURT: Sustained.

19 MR. IGNALL: -- has instructed the jury on what the law
20 is.

21 MR. SCHIFF: I'm not asking about the law. I'm asking
22 what the IRS says about compliance.

23 THE COURT: Sustained.

24 MR. SCHIFF: I mean, why confuse me? Why say it's
25 voluntary and then say it's compulsory?

1 THE COURT: Mr. Schiff --

2 MR. SCHIFF: All right.

3 THE COURT: -- the witness's testimony regarding the

4 CR --

5 MR. SCHIFF: He put in a number of documents --

6 THE COURT: Don't overtalk me.

7 MR. SCHIFF: All right. Now --

8 THE COURT: His testimony regarding CRS --

9 MR. SCHIFF: All right.

10 THE COURT: -- was relative --

11 MR. SCHIFF: All right.

12 THE COURT: -- to notice and nothing more.

13 MR. SCHIFF: All right.

14 THE COURT: It was received for that limited purpose.

15 MR. SCHIFF: Okay.

16 BY MR. SCHIFF:

17 Q. Now, you read certain commercials that I ran; right? One of

18 those commercials said -- you heard me say on the -- oh,

19 incidentally --

20 THE COURT: Will you stick on one subject --

21 MR. SCHIFF: I'm sorry.

22 THE COURT: -- instead of --

23 MR. SCHIFF: I'm sorry.

24 THE COURT: -- jumping around?

25 MR. SCHIFF: I'm jumping around. Okay. That's one of

1 the flaws of my personality. All right.

2 BY MR. SCHIFF:

3 Q. You heard me say on a commercial that the IRS has no
4 authority to attribute to a person more income and more tax than
5 he put on his return? You heard me say that on the commercial;
6 right?

7 A. I've heard you say that.

8 Q. You heard me say that. Isn't that a true statement?

9 A. That's a false statement.

10 MR. IGNALL: Objection, your Honor.

11 BY MR. SCHIFF:

12 Q. It's a false statement.

13 THE COURT: Sustained.

14 MR. SCHIFF: Well, all right.

15 BY MR. SCHIFF:

16 Q. Well, you were sitting here when a witness for the IRS --
17 forgot his name -- and I said to him, What happens when an
18 individual sends in a tax return saying he owes 10,000 and the
19 IRS said he owes 30,000 and they can't agree? I said, What
20 happens? And he said, We send him a deficiency notice.

21 MR. IGNALL: Objection to somehow recounting what may
22 or may not have been testified by a previous witness.

23 MR. SCHIFF: He heard --

24 MR. IGNALL: It's inappropriate for this witness who
25 testified on direct --

1 THE COURT: Sustained.

2 MR. IGNALL: -- about certain subjects --

3 THE COURT: Sustained.

4 MR. SCHIFF: Let me cross --

5 MR. IGNALL: -- cross-examination on those subjects.

6 THE COURT: Sustained.

7 MR. SCHIFF: He cross -- he just made a false
8 statement. The fact is the IRS has no authority to determine an
9 amount. It has to go --

10 THE COURT: Mr. --

11 MR. SCHIFF: -- Tax Court.

12 THE COURT: -- Mr. Schiff --

13 MR. SCHIFF: And that's what the Government's own
14 witness said.

15 THE COURT: Mr. Schiff, you're testifying as to what
16 the law is --

17 MR. SCHIFF: I'm not. The gov- --

18 THE COURT: -- I have warned you about before.

19 MR. SCHIFF: Your Honor --

20 THE COURT: And, if you continue it, I will --

21 MR. SCHIFF: Your Honor --

22 THE COURT: -- again, I will give the jury a correct
23 instruction of the law.

24 MR. SCHIFF: I am not testifying on the law. I'm
25 testifying what a government witness said while he was sitting

1 in the courtroom.

2 THE COURT: You can't cross-examine this witness on
3 what someone else said.

4 MR. SCHIFF: Well -- well, what he just said
5 contradicts another statement by another Government witness.
6 Can I impeach his testimony based on what another Government
7 witness said?

8 THE COURT: You can impeach his testimony, but this was
9 not gone into on direct.

10 MR. SCHIFF: All right.

11 BY MR. SCHIFF:

12 Q. You've heard of Tax Court; is that correct?

13 A. Yes, I have.

14 Q. Okay. What is the function of Tax Court?

15 MR. IGNALL: Objection, your Honor. Beyond the scope
16 of direct.

17 THE COURT: Sustained.

18 BY MR. SCHIFF:

19 Q. Um, okay. Let me -- let me collect my thoughts here. Let
20 me collect my thoughts.

21 Oh. You said you heard my show.

22 A. Yes.

23 Q. Almost every week you tuned in; right?

24 A. Pardon me?

25 Q. You said you heard my show every week; right?

1 A. Most weeks --

2 Q. Most every --

3 A. -- yes.

4 Q. -- week.

5 Now, you heard me every week, continually, I offered
6 \$5,000 to anybody who would call the show and cite any statute
7 that stated you had to pay income taxes, didn't you?

8 A. Yes.

9 Q. Okay. Why didn't you call in?

10 A. Believe me, I wanted to.

11 Q. Well, then why didn't you? I would -- why didn't you call
12 in and say -- why didn't you expose me? Did anybody ever call
13 in and claim the 5,000 bucks?

14 A. I believe so.

15 Q. Oh, you -- and what -- you do.

16 What happened when I would -- did you ever hear me call
17 the U.S. Attorney's Office and offer him five grand?

18 A. I heard you call the U.S. Attorney's Office.

19 Q. And what did he do when I called him?

20 A. They don't take your calls.

21 Q. They hung up on me?

22 A. They didn't take your call.

23 Q. Oh, they took --

24 A. They did --

25 Q. They didn't --

1 A. -- take --

2 Q. -- take my call?

3 A. -- your call.

4 Q. They didn't answer the phone?

5 A. I think they answered "U.S. Attorney's Office."

6 Q. Right.

7 And -- and what did I say to the receptionist?

8 A. Uh, this is Irwin Schiff.

9 Q. Right. And I said it.

10 And what else did I say to her?

11 A. You wanted to talk to the U.S. Attorney or...

12 Q. Didn't I tell her I'm calling from a -- because you have --
13 this is live. I'm calling her from a live radio show. Didn't I
14 tell her that?

15 A. Mr. Schiff, I can't recall specifically what you said. I do
16 recall you calling the U.S. Attorney's Office on --

17 Q. Well, the point --

18 A. -- a couple of occasions.

19 Q. -- is I had to tell them that otherwise you can be fined.
20 You can't put people on the radio without letting them know
21 you're on the radio.

22 And I said -- what else did I -- didn't I say, can you
23 find the U.S. Attorney who would like to talk to me?

24 A. I think you asked for him, yeah.

25 Q. Yeah.

1 And I said I was in the process of offering 5,000 bucks
2 to anybody who would cite a law? Don't you recall that?

3 A. I don't know if I recall you offerin' him \$5,000. I recall
4 you callin' the U.S. Attorney's Office.

5 Q. And did you hear me make the offer to the receptionist; she
6 can call back?

7 A. I don't --

8 MR. IGNALL: Objection --

9 THE WITNESS: -- recall that.

10 MR. IGNALL: -- relevance. Waste of time.

11 MR. SCHIFF: Yeah, rel- -- everything he does is not
12 relevant; everything I do is irrelevant. Somethin's --
13 something's wrong in all of that.

14 BY MR. SCHIFF:

15 Q. Okay. In any case, a lot of the people at the Internal
16 Revenue listened to my program, didn't they?

17 A. That's correct.

18 Q. That's correct.

19 Gritis listened to my show?

20 A. Yes.

21 Q. I didn't hide anything; right? I said I'm not paying income
22 taxes and here's why.

23 A. That's what you said.

24 Q. We didn't screen our calls.

25 A. That I --

1 MR. IGNALL: Objection.

2 THE WITNESS: -- don't know.

3 MR. IGNALL: Asks for speculation.

4 BY MR. SCHIFF:

5 Q. Well, anybody could call. Well, all right. I'm gonna bring
6 someone from the station.

7 But you could have called. You could have used a phony
8 name. As a matter of fact, you were duty bound to call to
9 prevent me from misleading the public if I were in fact
10 misleading the public.

11 A. That --

12 Q. Weren't --

13 A. -- that's not correct.

14 Q. -- you duty bound to call?

15 A. No.

16 Q. No.

17 Why not?

18 A. I'm a criminal investigator, Mr. Schiff. My job is to
19 investigate criminal violations of the Internal Revenue Code.

20 Q. Well --

21 A. That's why I was listenin' to your show.

22 Q. Well, wouldn't -- wouldn't -- wouldn't part of your job be
23 to prevent me from --

24 A. My job's not --

25 Q. -- infecting --

1 A. -- to the debate --

2 Q. -- from infecting --

3 A. -- the law with ya.

4 Q. Well, wouldn't you want me to stop misleading the public?

5 A. That's why we're here.

6 Q. That's not why you're here. You're here to stop me from
7 informing the public.

8 THE COURT: Mr. Schiff --

9 BY MR. SCHIFF:

10 Q. That's why you're here.

11 THE COURT: Mr. Schiff --

12 BY MR. SCHIFF:

13 Q. In other words, you made no effort --

14 THE COURT: Mr. Schiff, I have --

15 MR. SCHIFF: All right.

16 BY MR. SCHIFF:

17 Q. In other words --

18 THE COURT: I've ordered you --

19 MR. SCHIFF: I'm sorry.

20 THE COURT: Listen. Quit overtalking me.

21 MR. SCHIFF: Okay.

22 THE COURT: I've ordered you to stop this nonsense.

23 MR. SCHIFF: All right.

24 THE COURT: I've ordered you to stop testifying.

25 MR. SCHIFF: I'm not testifying.

1 THE COURT: You --

2 MR. SCHIFF: I think --

3 THE COURT: -- you just did.

4 MR. SCHIFF: -- he had a duty to call my show.

5 THE COURT: You just did. You made another theatrical
6 speech. Sanctions.

7 Next question.

8 BY MR. SCHIFF:

9 Q. So over -- over how many years did you listen to my show
10 every Thursday?

11 A. Approximately three.

12 Q. Three years.

13 And you and Gritis and everybody else over there?

14 A. I don't know about everybody else. I --

15 Q. A number of --

16 A. -- I think Gritis --

17 Q. -- people.

18 A. -- did listen to your show.

19 Q. Okay. And even though I offered 5,000 bucks to anybody who
20 would call my show and identify a law that said you gotta pay
21 income taxes, nobody from the IRS called to claim the reward?

22 A. Not that I'm aware of.

23 MR. SCHIFF: No further questions.

24 THE COURT: Mr. Bowers.

25

1 CROSS-EXAMINATION

2 BY MR. BOWERS:

3 Q. Good afternoon, Agent Holland.

4 A. Good afternoon.

5 Q. We've spoken before?

6 A. Yes, we have.

7 Q. And so if I call you "Sam," I apologize.

8 A. That's fine.

9 Q. It's just -- and we're not gonna talk about those
10 conversations. But I don't want to appear disrespectful in my
11 familiarity.

12 MR. BOWERS: Can I approach the witness, your Honor?

13 THE COURT: You may.

14 BY MR. BOWERS:

15 Q. Agent Holland, I'm gonna hand you what's been marked as
16 2845. Um, and that -- that, I submit, is Publication 2105 that
17 we discussed earlier. Do -- do you recall identifying --

18 A. Yes.

19 Q. -- that document in your testimony? You do.

20 Um, does that copy that I have there appear to
21 basically have the same information just in a different format?

22 A. It does.

23 Q. Um, I believe the Government indicated there might be some
24 textual differences.

25 MR. BOWERS: And I -- I'd like to move this document

1 into evidence. I'd be happy to have the agent highlight those
2 or -- I don't know if the Government knows what they are or --

3 MR. IGNALL: No objection --

4 MR. BOWERS: -- is concerned about 'em.

5 MR. IGNALL: No objection to this document coming in.

6 MR. BOWERS: Okay. So if I could, Judge, I'd like to
7 move 2105 [sic] in.

8 THE COURT: Any objection from any of the others
9 present?

10 MR. CRISTALLI: No, your Honor.

11 MR. BOWERS: I'm gonna get this back to Agent Holland
12 just 'cuz everybody takes my stuff over there.

13 THE COURT: No objection being heard, 2105 [sic] is
14 received.

15 MR. IGNALL: Your Honor, I think it's 2845.

16 MR. BOWERS: 2845.

17 MR. IGNALL: I may have --

18 THE CLERK: Yes, 2845.

19 THE COURT: Oh, well, Mr. Bowers just said "2105."

20 MR. BOWERS: I'm sorry. It's Publication 2105 from the
21 IRS.

22 THE COURT: 2845 is the --

23 MR. BOWERS: Yes, your Honor.

24 THE COURT: -- exhibit number.

25

1 (Defendant Cohen's Exhibit No. 2845, received
2 into evidence.)

3 THE CLERK: Mr. Bowers, I'm providing a highlighter to
4 the witness --

5 MR. BOWERS: Okay.

6 THE WITNESS: -- if you want him to highlight anything.

7 MR. BOWERS: Yeah. I think we're okay.

8 BY MR. BOWERS:

9 Q. But feel free if you see any errors, Mr. Holland. All
10 right.

11 Um, just real quickly, I -- I've gotta make sure I'm
12 correct to the time frame. It's your testimony that in late '99
13 your initially start taping the radio show; is that correct?

14 A. That's right.

15 Q. Okay. And then a formal invest- -- a formal -- that's like
16 the preliminary investigation?

17 A. Right.

18 Q. Okay. And then a formal criminal investigation begins in
19 late 2000?

20 A. That's right.

21 Q. Okay. Is there something that demarcates a formal from an
22 informal investigation?

23 A. Well, yeah. In a -- a preliminary-type information, you're
24 basically seein' if there's enough facts that would deem, you
25 know -- find out if something warrants a criminal investigation.

1 Q. And then, if it does, you submit a report and get
2 permission, or how does that --

3 A. That's right.

4 Q. Okay. So, when you say it formally began in late 2000,
5 would that be when your -- your report was approved and you were
6 given permission to make this a formal investigation?

7 A. That's correct.

8 Q. Okay. So that happens in late 2000. And at that point is
9 it fair to say that more or less you'd been listening to
10 Mr. Schiff's radio show for about a year?

11 A. That's right.

12 Q. Were you familiar by that point in time obviously not with
13 the details of Mr. Schiff's operation, but his materials, his
14 radio broadcast, his sign, his public alert team, all of that
15 stuff was aware to you --

16 A. I was --

17 Q. -- you were aware of?

18 A. -- gettin' educated.

19 Q. Okay. All through that process; correct?

20 A. That's right.

21 Q. And -- and is it safe to say that much of the details maybe
22 regarding P.I.L.L. or some of these other things you weren't
23 able to learn until you were able to execute the search warrant
24 but the stuff that's available to the public you would have been
25 aware of by that point in 2000?

1 A. Sure.

2 Q. I -- I don't wanna put words in your mouth.

3 A. That sounds -- yeah, that's right.

4 Q. Okay. Is -- is there anything that you've, um, uncovered
5 anywhere to suggest that Larry Cohen had any -- any involvement
6 with Freedom Books prior to 2001?

7 A. No.

8 Q. Okay. So just roughly: '99, preliminary; late 2000,
9 formal; 2001 Larry becomes involved?

10 A. Right.

11 Q. Okay. Um, and you executed the search warrant when?

12 A. In February 2003.

13 Q. 2003. Okay.

14 So between, uh, December of 2000 and February of 2003,
15 is it safe to say or characterize your actions as -- as
16 developing your case against Freedom Books?

17 A. That's right.

18 Q. Okay. Now, in the course of that time frame, uh, did the
19 criminal -- what you allege to be criminal conduct exhibited by
20 Mr. Schiff change or did you simply develop the evidence you
21 needed to support what you had earlier suspected?

22 A. Developed what I earlier suspected.

23 Q. Okay. So his -- his -- his general message and methods
24 is -- at least that the public was aware of, didn't change. You
25 just developed what you needed to to prove that?

1 A. That's correct.

2 Q. Okay. All right. I'm just -- I'm just makin' sure.

3 Um, when you executed your search warrant, um, up until
4 that date and time, what -- what kind of resources did you
5 personally know of that had been put into the criminal
6 investigation of Mr. Schiff?

7 MR. IGNALL: Objection. Beyond the of scope of direct
8 and relevance.

9 THE COURT: What is the relevance first?

10 MR. BOWERS: Well, I'm trying to gather what the scope
11 is of this investigation up to the time of the search warrant.
12 And I -- that's the last question along those lines, at least
13 that -- that particular line.

14 THE COURT: Well, it's pretty vague, what resources or
15 scope.

16 MR. BOWERS: Well, I mean --

17 BY MR. BOWERS:

18 Q. For example, how many agents were working on it besides
19 yourself?

20 A. Uh, well, one other one.

21 Q. Is that Mr. Steiner?

22 A. That's Mr. Steiner.

23 Q. Okay. At the time you executed the search warrant, there
24 were a number of other agents though; correct?

25 A. Yeah. They were just assigned to execute the warrant that

1 day.

2 Q. Is that just sort of standard policy that if you get a
3 warrant you -- you might take additional agents along with you?

4 A. That's right.

5 Q. Okay. Um, so up until the time the search warrant was
6 executed, at least for the IRS's CID Division, this was limited
7 to you and -- and Mr. Steiner, Agent Steiner?

8 A. That's correct.

9 Q. Okay. Um, now, I -- I -- I'm sorry. I missed this. How
10 many agents delivered the warrant with you?

11 A. Executed the warrant with me?

12 Q. Yeah, yeah, yeah.

13 A. Approximately 20.

14 Q. Okay. Were they all IRS or were there some FBI, cops, or...

15 A. No. All IRS.

16 Q. All IRS. Okay.

17 And, uh, guns. You had guns with you; right?

18 A. Yes, we did.

19 Q. Okay. And was it the full SWAT gear, all that kind of stuff
20 or --

21 A. No.

22 MR. IGNALL: Objection. Relevance.

23 MR. BOWERS: This is all going to the scope of the
24 search warrant execution. I mean, we -- we've talked again and
25 again that Agent Holland's here to testify about the search

1 warrant. And it's all within direct --

2 MR. IGNALL: Objection.

3 MR. BOWERS: -- direct.

4 MR. IGNALL: Relevance.

5 MR. BOWERS: Sorry. I don't mean to speak at you.

6 THE COURT: How -- how is it relevant?

7 MR. BOWERS: Again, your Honor, I'm just trying to
8 establish the time, place, and circumstance surrounding the
9 execution of the warrant.

10 THE COURT: I don't see how it goes to the issue of
11 relevance. Sustained.

12 MR. BOWERS: Um, okay.

13 BY MR. BOWERS:

14 Q. Oh, incidentally -- no. No, I mean --

15 THE COURT: Are you --

16 MR. BOWERS: -- obviously I wouldn't do that on
17 purpose.

18 THE COURT: Please.

19 MR. CRISTALLI: Sanction.

20 MR. BOWERS: Let -- let me try this a different way.

21 BY MR. BOWERS:

22 Q. Were you one of the agents who first entered the building?

23 A. Yes.

24 Q. Did Larry Cohen offer you or -- or your cohorts bagels? Did
25 he say, would you like a bagel?

1 A. You know, I can't recall. But that's a possibility.

2 Q. Okay. You wouldn't rule it out?

3 A. I wouldn't rule it out.

4 Q. Certainly wasn't hostile?

5 A. No, it doesn't.

6 Q. And possibly offered you folks something to eat?

7 A. Possibly.

8 Q. Okay. You've -- you've had occasion to talk to Larry, uh,
9 on occasions; correct?

10 A. Yes, I have.

11 Q. Would -- would that be in his character as you understand
12 it?

13 A. Sure.

14 Q. He's a nice enough guy?

15 A. Yeah.

16 Q. Okay. How much did you take, like just sheer stuff? Like
17 how many boxes of stuff.

18 A. About 50 boxes --

19 Q. Yeah --

20 A. -- of stuff.

21 Q. -- yeah. 50 banker's boxes. More or less full; right?

22 A. Right.

23 Q. Okay. And then, um, plus a bunch of hard drives and stuff
24 too or is that included?

25 A. Well, actually, we -- we mirrored the computers that were

1 there. We didn't take 'em; we just copied 'em --

2 Q. On the scene?

3 A. Right.

4 Q. The -- the material from his computers, would that be in
5 addition to the 50 boxes or so?

6 A. Yeah.

7 Q. Okay. Now, at that time you Mirandized Mr. Schiff; correct?

8 A. Correct.

9 Q. Informing him he was the subject of a criminal
10 investigation?

11 A. That's right.

12 Q. Okay. Did you do that with anyone else?

13 A. No.

14 Q. Did you -- did you Mirandize Mr. Cohen?

15 A. No.

16 Q. You didn't inform him he was the subject of a criminal
17 investigation?

18 A. Not at that time.

19 Q. Not at that time. Okay.

20 Oh, oh. Somethin' else. You -- it -- you did not
21 obtain a warrant to tape the radio shows; correct?

22 A. Uh, no.

23 Q. And it would be your position, I assume and I don't want to
24 argue the law and all this stuff, but there's no need because
25 they are out there, they are public, they are already -- you

1 shouldn't --

2 A. That's correct.

3 Q. -- shouldn't need a warrant. Right?

4 A. Right.

5 Q. There's nothing furtive, nothing secretive, nothing -- you
6 know, nothing hidden about Irwin's radio message; right?

7 A. That's right.

8 Q. In fact, the more people that heard it the better; right?

9 A. Mr. Schiff may believe that.

10 Q. Well, yeah, absolutely. And right it's not your position.
11 But the -- the contents of all these shows you listened to
12 suggest that there was no effort to hide it?

13 A. That's right.

14 Q. Okay. Now, you indicated that you met with Mr. Cohen at
15 another time when you informed him he was the subject of a
16 criminal investigation; is that correct?

17 A. That's correct.

18 Q. And he was Mirandized at that time; is that correct?

19 A. Yes, I did.

20 Q. Um...

21 MR. IGNALL: Objection. Beyond of scope of direct.

22 MR. BOWERS: No, I -- no, no, no. No, it's not, Judge.
23 This -- let me ask one more question and then I -- I promise
24 I'll -- I'll --

25 THE COURT: Well, that other meeting, that was beyond

1 the scope of --

2 MR. BOWERS: Well --

3 THE COURT: -- direct.

4 MR. BOWERS: -- no, it's not. And I don't -- I don't
5 get to ask the other question. But the reason that it's not
6 beyond the scope of direct is because it goes directly to
7 notice. And this Court has made the statement that, uh -- and
8 it also ties in with this congressional research document -- and
9 the Court has made the statement that the congressional research
10 document has been offered -- and -- and I listened and wrote
11 this down -- relative to notice and nothing more. And then at
12 one point Mr. Ignall, the U.S. Attorney, stood up and -- and
13 said, the sole purpose for his testimony, uh, is -- is notice to
14 the defendants.

15 Now, this notice to defendants has been unqualified,
16 unequivocal, it hasn't applied to one or the other. This
17 document has come in for notice to all defendants and been
18 repeatedly discussed ad nauseam.

19 THE COURT: What's your question?

20 BY MR. BOWERS:

21 Q. Well, my question is: Uh, did you not meet with Mr. Cohen
22 on another occasion?

23 A. Yes, I did.

24 Q. And you -- you informed him of a criminal investigation, all
25 that stuff. Okay.

1 Now, I'm talking about -- would you agree that that was
2 on the afternoon or sometime in the day on October 16th of 2003?
3 Does that sound more or less correct?

4 A. That's more or less correct.

5 Q. And where was that meeting held?

6 A. At the IRS.

7 Q. That building; correct?

8 A. Right.

9 Q. And who was present?

10 A. Myself, Special Agent Steiner, and Mr. Cohen.

11 Q. Just the three of you?

12 A. Just the three of us.

13 Q. Okay. And that meeting was recorded, was it not?

14 A. Yes, it was.

15 Q. Okay.

16 MR. BOWERS: Your Honor -- and -- and the Government
17 has provided me a tape --

18 MR. IGNALL: Objection --

19 MR. BOWERS: -- of that meeting --

20 MR. IGNALL: -- your Honor.

21 MR. BOWERS: -- correct?

22 MR. IGNALL: This is well beyond the scope of
23 redirect --

24 THE COURT: Yeah. I thought --

25 MR. IGNALL: -- and now there are some other

1 objections --

2 THE COURT: -- thought you were --

3 MR. IGNALL: -- that I think are appropriate as well.

4 THE COURT: -- getting into the CRS Report. It doesn't
5 look like you went down the --

6 MR. BOWERS: Your Honor, if I can make --

7 THE COURT: -- path you told me you were going to.

8 MR. BOWERS: I -- I can take a detailed proffer as to
9 exactly what --

10 MR. IGNALL: Objection. If that's gonna happen, we'd
11 request it at sidebar.

12 MR. BOWERS: I'm not gonna, you know -- I'm not gonna
13 step on this Court's toes. I have -- I have a detailed proffer
14 as to exactly why this tape-recording and what was said at that
15 meetings is very relevant to the CRS --

16 MR. IGNALL: Objection, your Honor.

17 MR. BOWERS: -- and the issue of notice.

18 MR. IGNALL: We'd request this be at sidebar.

19 THE COURT: Yes.

20 MR. IGNALL: Because if it's not relevant, then it's
21 not relevant.

22 THE COURT: Why don't you go through some of your other
23 questions and we'll --

24 MR. BOWERS: That's it.

25 THE COURT: Oh, that's the last one?

1 MR. BOWERS: This is it.

2 THE COURT: All right. We'll go to sidebar.

3 (Sidebar conference was held as follows:)

4 THE COURT: Okay.

5 MR. BOWERS: Okay. Your Honor, um, this is a
6 transcript of that recording. I respectfully submit that
7 throughout this conversation Agent Holland and Mr. Cohen debated
8 the law. There is no reference to -- on, by either party of any
9 of the arguments made in the CRS document nor -- Mr. Holland
10 doesn't discuss it; Mr. Cohen doesn't reference it. There is no
11 indication that notice was given or received by Mr. Cohen at any
12 time of any these documents.

13 Now, I have -- the Government is gonna object that the
14 introduction of this tape is hearsay and that it doesn't fit
15 into any hearsay exception. This request to admit this evidence
16 has nothing to do with hearsay. None of this is offered for the
17 proof of the matter asserted. All of the statements -- and I've
18 gone through this transcript and marked each of them -- but all
19 of these statements are offered for the limited purpose of
20 demonstrating that there's no evidence that Mr. Cohen had ever
21 received any knowledge -- or any notice of this document.

22 MR. NEIMAN: That's hearsay.

23 MR. BOWERS: No, it's not. It's not offered for the
24 proof of the matter asserted.

25 And, if your Honor would like, I would be happy to

1 provide a highlighted version of the specific statements I'm
2 referencing; take the tape home this evening; cue it up so that
3 nothing that isn't approved by the Court isn't played; and offer
4 it for the limited purpose of showing that there's no evidence
5 to suggest that Mr. Cohen had any notice of this.

6 THE COURT: What -- what are you doing up against the
7 mic?

8 MR. SCHIFF: What? Up against what?

9 THE COURT: You don't have any input on this. So stand
10 back.

11 MR. SCHIFF: Okay. I wanna hear what he said.

12 THE COURT: Well, you can hear it.

13 MR. BOWERS: So that --

14 THE COURT: That's your position.

15 Government.

16 MR. IGNALL: Objection. One, it's irrelevant. I mean,
17 the evidence of 225 is that this document was found at Freedom
18 Books in a number of locations. The jury can draw whatever
19 inference they want from that as to --

20 MR. BOWERS: No, no, no.

21 MR. IGNALL: -- whether Mr. Cohen knew of it or not.

22 How is it possibly relevant that there's some sort of a
23 conversation between the agent and Mr. Cohen where he didn't
24 mention Exhibit 225 and that's gonna prove something?

25 THE COURT: That's not evidence.

1 MR. IGNALL: That at most --

2 THE COURT: -- the essence of the --

3 MR. IGNALL: -- it's confusing.

4 THE COURT: -- discussion is not evidence.

5 MR. SCHIFF: I just wanna make --

6 MR. IGNALL: And it certainly is hearsay to show that
7 he didn't say something.

8 MR. BOWERS: Well --

9 MR. SCHIFF: I wanna make one comment on this.

10 What is notice to the taxpayer is the Privacy Act
11 statement in a 1040. The notice to the taxpayer is the Privacy
12 Act Notice. That is the official notice. And what you're
13 trying to do here is use as notice some self-serving paper
14 written by somebody which has some true, uh, statements in it
15 but a lot of false statements. That's not notice to anybody.

16 The Privacy Act Notice in a 1040 is the official
17 notice. And that takes --

18 THE COURT: Okay.

19 MR. SCHIFF: -- precedent. Got it? Okay.

20 THE COURT: I -- I guess -- I guess we're on different
21 trains right now.

22 MR. BOWERS: Your Honor --

23 THE COURT: I don't know what your statement just had
24 to do with what he just said.

25 MR. SCHIFF: Well, that's what notice -- that document

1 is not notice of anything.

2 THE COURT: Well...

3 MR. BOWERS: Appreciate that.

4 MR. SCHIFF: It's not notice.

5 MR. BOWERS: Appreciate you helpin' out.

6 MR. SCHIFF: Well, I don't have a legal mind with all
7 this stuff. I mean, it's simple --

8 MR. BOWERS: Your Honor --

9 MR. SCHIFF: -- notice to me --

10 MR. BOWERS: -- just very briefly.

11 MR. SCHIFF: -- is the Privacy Act.

12 MR. BOWERS: In conclusion, I -- I would offer, again,
13 a highlighted version of the portions that I believe are
14 salient. There's a lengthy discussion about this. I think one
15 could easily draw the conclusion that if either Mr. Holland or
16 Mr. Cohen had knowledge of this document they would have
17 discussed it. And -- and I would also submit --

18 THE COURT: No.

19 MR. BOWERS: -- to a limited cross-examination, a
20 limited cross-examination, of Mr. Cohen as to this issue.

21 THE COURT: It's -- it's -- it's too far off. It's --
22 it's, uh -- you know you're asking me to allow it in as evidence
23 that since they didn't discuss it he didn't know about the
24 other.

25 MR. BOWERS: Well, and I --

1 THE COURT: It's a stretch.

2 MR. BOWERS: -- and I --

3 THE COURT: It's too far of a stretch.

4 MR. BOWERS: And I guess my problem is, just for the
5 record and we'll finish, that, you know, Mr. -- or Agent Holland
6 made -- made -- and the Government made quite a bit of, you
7 know, sort of to do about this document without any opportunity
8 for me to really --

9 THE COURT: Ask him if he has any --

10 MR. BOWERS: Well, I have one more question then.

11 THE COURT: Yeah.

12 MR. IGNALL: Okay. That's fair. Thank you, your
13 Honor.

14 THE COURT: That's appropriate. You can do that.

15 (Sidebar conference concluded and the
16 following is held in open court:)

17 BY MR. BOWERS:

18 Q. Sam, um -- oh, I'm sorry. Agent Holland, um, is it, uh --
19 you -- you didn't find any of -- of these congressional research
20 documents in Mr. Cohen's possession?

21 A. I don't think so.

22 Q. Okay. You never discussed the contents of this document
23 with, uh, Mr. Cohen at any time?

24 A. Not at the search warrant. I can't recall if we went into
25 that at the interview or not. I can't recall.

1 THE COURT: That's your answer.

2 MR. BOWERS: I'm sorry?

3 THE COURT: The ruling of the Court stands.

4 MR. BOWERS: Okay. That doesn't change it. Um,
5 Court's indulgence for just a minute?

6 THE COURT: Yeah.

7 (Pause in the proceedings.)

8 BY MR. BOWERS:

9 Q. Okay. Do you have any specific recollection of anything
10 that leads you to believe Mr. Cohen was aware of this document?

11 A. No.

12 Q. Okay.

13 MR. BOWERS: Your Honor, I'll -- I'll rest. However,
14 I'd like an opportunity -- I -- I do that with -- with the
15 recent Court's objection in mind.

16 THE COURT: I understand.

17 MR. BOWERS: And I'd like an opportunity to revisit
18 that.

19 Thank you.

20 THE COURT: Thank you.

21 MR. BOWERS: Thanks, Mr. Holland -- Agent Holland.

22 MR. IGNALL: No redirect, your Honor.

23 THE COURT: Thank you.

24 We have approximately two or three minutes left. I
25 don't think we're going to have time to get into another

1 witness. So we will recess for the evening.

2 Ms. Clerk, what do we have tomorrow morning?

3 THE CLERK: Nothing.

4 THE COURT: Okay.

5 We'll be resuming at 9:00 a.m. The admonition is a
6 continuing one. Thank you.

7 (Jury leaves the courtroom at 4:25 p.m.)

8 THE COURT: Okay. We're in recess.

9 MR. BOWERS: I'm sorry, your Honor.

10 THE COURT: Yes.

11 MR. BOWERS: Just very, very briefly for the record,
12 I -- I believe I asked Agent Holland that question in a way that
13 would not suggest the answer that he gave. And, you know, I
14 know your court sorta made a ruling without any comment because
15 I didn't wanna, you know, run afoul of the Court or overstep my
16 boundaries and the Court was aware of the issue. But I would
17 submit to the Court that that comment from Mr. Holland to some
18 extent, uh, bolsters the claim I had made at sidebar and ask the
19 Court for a ruling on whether that changes this Court's
20 decision.

21 THE COURT: I said it didn't.

22 MR. BOWERS: Okay.

23 THE COURT: Thank you.

24 MR. BOWERS: Thank you, your Honor.

25

1 THE COURT: 9:00 a.m.

2 MR. IGNALL: Thank you, your Honor.

3 (Proceedings adjourned at 4:26 p.m.)

4 --oOo--

5 I hereby certify that pursuant to Section 753, Title 28, United
6 States Code, the foregoing is a true and correct transcript of
7 the stenographically reported proceedings held in the
8 above-entitled matter.

9

10 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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