

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THE HON. KENT J. DAWSON, JUDGE PRESIDING

4  
5 UNITED STATES OF AMERICA, )

)

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

)

7 vs. )

)

8 IRWIN SCHIFF, CYNTHIA NEUN, )

and LAWRENCE COHEN, )

9 )

Defendants. )

10 )

11  
12  
13  
14  
15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 16)

16 Wednesday, October 6, 2005

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18  
19  
20 APPEARANCES: (See Page 2)

21  
22  
23  
24 Court Reporter: Felicia Rene Zabin, RPR, CCR 478  
Federal Certified Realtime Reporter  
25 (702) 676-1087

## 1 APPEARANCES:

2 For the Plaintiff:

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24 Also Present:

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

## I N D E X

WITNESS:	Direct	Cross	Redirect	Recross	Further Redirect
Government's:					
Clint Lowder	--	4132S	--	--	--
Defendant Schiff's:					
Gerald Brookins	4224S	4247B	4254S	--	--
		4252I			
Glen Murphy	4265S	4282N	4285S	--	--
Kenneth Nicholson	4293S	4306I	--	--	--
R. Hartman, Jr.	4329S	4339I	4340S	--	--

## EXHIBITS

EXHIBIT NO.:	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
Government's:		
327	--	4157
Defendant Schiff's:		
2114	4232	--

1 LAS VEGAS, NEVADA; WEDNESDAY, OCTOBER 6, 2005; 9:17 A.M.

2 --oOo--

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

4 (In-camera hearing between Government counsel  
5 and the Court.)

6 THE CLERK: All rise.

7 THE COURT: Please be seated.

8 Government.

9 MR. IGNALL: We have one brief issue to raise, your  
10 Honor. Mr. Schiff may wanna... Mr. Schiff. Mr. Schiff.

11 We have one brief issue to raise. We've gotten a  
12 witness list from Mr. Schiff. And our concern is that some of  
13 these witnesses appear to be followers of Mr. Schiff who filed  
14 zero returns and done other things and may have criminal  
15 exposure from their conduct. So we just wanted to alert the  
16 Court to that and then defer to the Court about what canvassing  
17 of witnesses is appropriate in terms of informing them of their  
18 right not to incriminate themselves under oath on the stand  
19 here.

20 They may already be aware of that. Mr. Schiff may have  
21 done that. But we felt we should bring that to the attention of  
22 the Court --

23 THE COURT: Thank you.

24 MR. IGNALL: -- before he raises it.

25 MR. SCHIFF: Well, you bring up a very interesting

1 point. The Government put on witnesses and they were given  
2 immunity so they can testify. So I would like to give them  
3 immunity as well. I mean, they didn't ask for it, but they  
4 bring up an interesting point. Since my witnesses will be  
5 testifying that they don't file, then I want immunity for my  
6 witnesses just the same way the Government got immunity for  
7 their witnesses.

8 MR. IGNALL: Well, your Honor, two things: Not every  
9 Government witness got immunity and, secondarily, we have some  
10 research downstairs -- we could do it at the next break -- that  
11 makes clear that the defendant has no right to require the  
12 United States Attorney immunize any witness.

13 MR. BOWERS: Wait. I'm sorry. Just for -- the  
14 witnesses did not get immunity?

15 MR. IGNALL: Two witnesses got immunity.

16 MR. BOWERS: Right. Okay.

17 MR. IGNALL: Other witnesses did not.

18 MR. BOWERS: That's fine. Yeah.

19 MR. SCHIFF: Well, the fact is, your Honor, my  
20 witnesses who were using the material and even if they believe  
21 it's correct, they still run the risk, like I'm being  
22 prosecuted, and I believe...

23 THE COURT: That's right. They do. And I'm going to  
24 inform them --

25 MR. SCHIFF: Pardon me?

1 THE COURT: I'm going to inform them of, uh, their  
2 right, uh, to not incriminate themselves, make sure they  
3 understand that right --

4 MR. SCHIFF: I'm -- I'm --

5 THE COURT: -- and that their testimony may result  
6 in -- in disclosures --

7 MR. SCHIFF: Well, I just --

8 THE COURT: -- that can --

9 MR. SCHIFF: -- I just want the record to show --

10 THE COURT: -- result in prosecution.

11 MR. SCHIFF: -- I'm at a disadvantage.

12 THE COURT: Don't overspeak me.

13 MR. SCHIFF: Pardon me?

14 THE COURT: Don't overspeak me. I've warned you about  
15 that before.

16 MR. SCHIFF: I don't know.

17 THE COURT: You're lookin' right at me. You could see  
18 me talking and you --

19 MR. SCHIFF: I only --

20 THE COURT: -- did it anyway.

21 MR. SCHIFF: -- have one eye, your Honor. But I'm  
22 trying to hear.

23 THE COURT: Use it.

24 MR. SCHIFF: I'm trying to. I'm not saying --

25 THE COURT: There will be no immunity granted to your

1 witnesses.

2 MR. SCHIFF: All right.

3 THE COURT: I will inform them of their right, uh,  
4 against self-incrimination and warn them that anything they say  
5 may be used against them in a future proceeding at a future  
6 criminal prosecution. If -- if there is any consensus that I  
7 should do that at sidebar, I'll consider it.

8 MR. CRISTALLI: Your Honor, that's what -- I -- I would  
9 request that only because during the course of the, um,  
10 Government's case in chief a number of these witnesses who will  
11 be similarly situated as Mr. Schiff's witnesses were not  
12 canvassed as such. And I think it would be prejudicial in front  
13 of the jury just because they are defense witnesses to have that  
14 admonition when the other witnesses did not.

15 THE COURT: Okay.

16 MR. BOWERS: Join in that.

17 THE COURT: Anything further?

18 MR. IGNALL: No, your Honor.

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

20 THE CLERK: Yes, sir.

21 (Clint Lowder retakes the witness stand.)

22 THE CLERK: We're missing one juror.

23 THE COURT: Okay.

24 THE CLERK: She's not here yet. I don't have a phone  
25 number, though one of jurors did call her at home and she didn't

1 answer.

2 THE COURT: Go ahead and be seated. We'll see if we  
3 can locate the juror.

4 (Pause in the proceedings.)

5 MR. NEIMAN: Your Honor, would you object if I ran to  
6 the restroom real quick?

7 THE COURT: No.

8 (Pause in the proceedings.)

9 THE CLERK: The juror's six-year-old son is sick. Her  
10 mother is on her way to stay with the kid all day.

11 THE COURT: Okay.

12 THE CLERK: She should be here any moment.

13 THE COURT: We'll wait for the arrival of our juror.

14 (Recess from 9:24 a.m. to 9:41 a.m.)

15 THE COURT: The juror is here, so they'll be coming in.

16 (Mr. Lowder retakes the witness stand.)

17 THE CLERK: Ready?

18 (Jury enters the courtroom at 9:42 a.m.)

19 THE COURT: Please be seated.

20 Will counsel stipulate to the presence of the jury?

21 MR. CRISTALLI: Yes, your Honor.

22 MR. NEIMAN: Yes, your Honor.

23 MR. BOWERS: Yes, Judge.

24 MR. SCHIFF: Yes, your Honor.

25 (Discussion between the clerk and the Court.)

1 THE COURT: Mr. Schiff?

2 MR. SCHIFF: Yes, yes.

3

4

CLINT LOWDER,

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

6 previous duly sworn, continued his examination examined and

7 testified as follows:

8

9

CROSS-EXAMINATION (Continued)

10 MR. SCHIFF: Can I please have the last question

11 repeated or --

12 THE COURT: You'll have to --

13 MR. SCHIFF: -- is it possible to do that?

14 THE COURT: It's not possible to read it back to you.

15 MR. SCHIFF: Okay. Well, I -- I believe what the last

16 question was -- the witness said that, uh -- I asked him if he

17 knew of a law that required him to keep books and records and I

18 think he said Section 6001.

19 MR. NEIMAN: Your Honor, objection. Just -- if

20 Mr. Schiff wants to inquire what was included as income or not

21 included as income to get into his interpretation of the Code

22 versus Mr. Lowder's interpretation I think would be invading

23 upon the province of this Court and would only waste our time.

24 MR. SCHIFF: Mr. Lowder testified, apparently, that --

25 that Cindy Neun didn't keep books and records; Freedom Books

1 didn't keep book and records. I simply asked him: Was there a  
2 statute that required people to keep books and records. And he  
3 said yes. And I asked him what the statute was. And he said  
4 section 6001.

5 THE COURT: That's correct.

6 MR. SCHIFF: So I have a copy of my Code book, your  
7 Honor.

8 THE COURT: Well, you're not going to go into it with  
9 him.

10 MR. SCHIFF: I want --

11 THE COURT: He answered --

12 MR. SCHIFF: -- I want to read --

13 THE COURT: -- the question.

14 MR. SCHIFF: -- from Section --

15 THE COURT: He answered the question. And if --

16 MR. SCHIFF: Well, I want him to read where in Section  
17 6001 I was required to keep books and records.

18 THE COURT: He's not going to do that. If necessary, I  
19 will give the jury an instruction --

20 MR. SCHIFF: Your Honor --

21 THE COURT: -- on that matter. You're not going to  
22 argue the law with this witness.

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

24 Your Honor, let me just say this: If I -- um, under  
25 the Cheek decision the Government has to prove that I have a

1 duty under the law to do something and I knew of that duty.  
2 Now, if there's no law that I see that requires me to keep books  
3 and records, that's relevant to whether I knew of a duty.

4 Now, I submit that there is no provision in Section  
5 60001 [sic] for me to keep books and records and, therefore, he  
6 made a false statement. And I have a right to, um -- to, um --  
7 what's the word I want? -- to --

8 MR. NEIMAN: Your Honor, Mr. Schiff's mischaracterizing  
9 the law, mischaracterizing the Government's burden in this case.  
10 You're going to instruction the jury as to the obligations --

11 MR. SCHIFF: Your Honor --

12 MR. NEIMAN: -- to pay --

13 MR. SCHIFF: I'm not --

14 MR. NEIMAN: -- or not pay taxes.

15 Mr. Schiff, if I may finish.

16 MR. SCHIFF: I'm sorry.

17 MR. NEIMAN: We would object to this questioning. It's  
18 irrelevant and invading upon the province of this Court.

19 MR. SCHIFF: Your Honor --

20 THE COURT: Sustained.

21 MR. SCHIFF: -- I'm not gonna admit -- I am not going  
22 to mischaracterize the law. I'm asking him to read the law.

23 THE COURT: Sustained.

24 MR. SCHIFF: I'm not gonna mischaracterize it.

25 THE COURT: Sustained.

1           MR. SCHIFF: Okay.

2           BY MR. SCHIFF:

3           Q. Mr. Lowder, you talk about the IRS seizing bank accounts; is

4           that correct?

5           A. No, that's not correct. The bank accounts were obtained

6           through subpoenas.

7           Q. I know.

8                     But you are aware that the IRS does seize bank

9           accounts?

10          A. They might. But they didn't in this case.

11          Q. Well, they -- they have seized -- they -- aren't you aware

12          that they seized my bank accounts in, um, Bank of America which

13          is why I had to go to, um, the -- the state bank of Nevada

14          [sic]?

15          A. If you're referring to the money that was taken out of Bank

16          of America, that money was obtained through a lien or a levy.

17          Q. A Notice of Levy.

18          A. Notice of Levy.

19          Q. So my question was: Then you're aware that the IRS seizes

20          bank accounts through Notices of Levy; is that correct?

21          A. They seize funds from bank accounts through Notice of Levy.

22          Q. Funds, yeah. They seize bank funds; is that correct?

23          A. Correct.

24          Q. Have you ever seen a statute that allows the IRS to seize

25          bank accounts?

1 MR. NEIMAN: Same objection, your Honor.

2 THE COURT: Sustained.

3 MR. SCHIFF: Well, this goes -- your Honor, whether I'm  
4 aware. I have never found a statute that allows them to seize  
5 bank accounts.

6 THE COURT: You're not going to testify either, at  
7 least not now.

8 MR. SCHIFF: Well, how can I be willful?

9 BY MR. SCHIFF:

10 Q. All right. So you don't want to answer the question. All  
11 right.

12 Now, you testified at length about going over my checks  
13 that I deposited. You were aware that when I filed a tax return  
14 I stated I had zero income; is that correct?

15 A. I'm aware of that.

16 Q. Okay. So all of your activity was designed to show that I  
17 owed more in taxes than I put on my returns; is that correct?

18 A. My activity was to show that there was income, uh,  
19 reportable by you on a tax return.

20 Q. Okay. Incidentally, you just used the word "income." Is  
21 the word "income" defined in the Internal Revenue Code?

22 A. Code Section 61 says, all items are income --

23 Q. My question --

24 A. -- unless otherwise excluded.

25 Q. My question was: Is income defined in the Internal Revenue

1 Code? Yes or no.

2 A. Section 61 also provides an example of income items --

3 Q. You're --

4 A. -- 15 examples.

5 Q. You're unresponsive. I said, is it defined, yes or not? Is

6 it --

7 THE COURT: He's answered the question.

8 MR. SCHIFF: He didn't answer the question.

9 THE COURT: He did answer the question.

10 MR. SCHIFF: No. I asked him if the income --

11 THE COURT: He didn't answer it the way you wanted

12 it --

13 MR. SCHIFF: No.

14 THE COURT: -- but he answered the question.

15 MR. SCHIFF: Okay.

16 BY MR. SCHIFF:

17 Q. Show me in this Code book under Section 61 where you claim

18 income tax is defined. Here is a Code book. Let's turn to

19 Section 61 and show me where income is defined. Just read

20 Section 61. It says, "Gross income defined." Now tell me where

21 income is defined.

22 A. (Complies.)

23 "Gross income defined," Section 61 --

24 Q. Okay.

25 A. -- "Exempt as otherwise provided in this subtitle, gross

1 income means all income from whatever source derived, including  
2 (but not limited to) the following items," and it sets forth 15  
3 examples of income.

4 Q. Okay. So gross income is defined by saying gross income  
5 means all income. But income itself isn't defined, is it?

6 A. I believe it's --

7 Q. If I were to tell you --

8 A. -- self-explanatory. It says all items are income unless  
9 specifically excepted.

10 Q. All right. If I were to say that a big flidglet is a  
11 flidglet only bigger, would you know how big a big flidglet is?

12 MR. NEIMAN: Objection. Argumentative, vague,  
13 confusing --

14 THE COURT: It is.

15 MR. NEIMAN: -- and...

16 THE COURT: Sustained.

17 BY MR. SCHIFF:

18 Q. Were you aware of the court cases that say income is not  
19 defined in the Internal Revenue Code?

20 MR. NEIMAN: Objection to these court cases. They  
21 misinterpret the law.

22 THE COURT: Sustained.

23 MR. NEIMAN: And he --

24 THE COURT: Sustained.

25 MR. SCHIFF: How can I misinterpret the law when they

1 say income is not --

2 THE COURT: Don't ask me how you could do it.

3 MR. SCHIFF: Can I read from the statute?

4 THE COURT: No, you may not.

5 MR. SCHIFF: Can I read from the court decision?

6 THE COURT: You may not. The Court will instruct on  
7 the law.

8 MR. SCHIFF: This is my understanding. I'm not saying  
9 this is the law, your Honor. I'm saying I rely on --

10 THE COURT: You are not going to testify as to what you  
11 relied on during cross-examination.

12 MR. SCHIFF: This impeaches --

13 THE COURT: When the Government rests, then you can  
14 testify.

15 MR. SCHIFF: But this impeaches the Government's  
16 witness.

17 THE COURT: No, it does not.

18 BY MR. SCHIFF:

19 Q. Now, in any case, whatever in- -- but, from my tax returns,  
20 it's obvious that my understanding of income is different from  
21 your understanding; is that correct?

22 A. I believe we've said more than once that we do disagree --

23 Q. Okay.

24 A. -- on what income is.

25 Q. Okay. In any case, you, um, were analyzing my deposits to

1 determine whether or not I didn't have more income than I put on  
2 my income taxes; is that right?

3 A. That was the purpose of that analysis.

4 Q. Okay. So your purpose is you were trying to determine --  
5 you were trying to estimate whether I had more income than I  
6 said I had --

7 A. I was trying to --

8 Q. -- is that correct?

9 A. -- reconstruct your income and determine what your correct  
10 income was.

11 Q. Well, you were estimating. You wouldn't -- you wouldn't  
12 know to the penny what it was. It's gonna be an estimate --

13 A. No. It was --

14 Q. -- is that correct?

15 A. -- a reconstruction because there weren't any books and  
16 records to audit. It was -- the bank deposit method is a  
17 reconstruction of income.

18 Q. But wasn't that done so you could estimate the amount of  
19 taxes I allegedly omitted from my return?

20 A. I used the term "reconstruct" and you're using "estimate."

21 Q. Weren't you trying to estimate the amount of tax I allegedly  
22 omitted from my return?

23 THE COURT: He disagrees with your --

24 MR. SCHIFF: Well --

25 THE COURT: -- characterization as -- as an estimate.

1 MR. SCHIFF: Well, because the -- the -- the law uses  
2 estimate. The court talks about estimating the amount of taxes  
3 omitted --

4 THE COURT: He's --

5 MR. SCHIFF: -- from somebody's return.

6 THE COURT: -- testifying as to what he did. Whether  
7 you agree with it or not --

8 MR. SCHIFF: But he's not --

9 THE COURT: -- is another matter.

10 MR. SCHIFF: -- being responsive. It's obvious.

11 THE COURT: He did respond. That he won't put it in  
12 the word you want is --

13 MR. SCHIFF: Well, I'm trying to -- all right.

14 THE COURT: -- not objectionable.

15 BY MR. SCHIFF:

16 Q. Are you familiar with Section 6201 of the Internal Revenue  
17 Code?

18 A. No, I'm not.

19 Q. You're not. You're not familiar with the Code?

20 THE COURT: That isn't what he said.

21 MR. SCHIFF: 6201 of the Code --

22 MR. NEIMAN: I would object to any questions as to  
23 6201.

24 MR. SCHIFF: Well, he -- it says "assessment  
25 authority."

1 THE COURT: Sustained.

2 MR. SCHIFF: Okay.

3 BY MR. SCHIFF:

4 Q. Are you aware that Section 6201 --

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. Uh, in any case, what were you doing -- what were you  
8 attempting to do?

9 A. I was attempting to reconstruct your income for the years of  
10 1997 through 2002.

11 Q. Okay. When you did that, were you doing it legally or  
12 illegally?

13 A. I was doing it legally.

14 Q. Uh, you believed you were doing it legally.

15 Did you ever see a law that allowed you to do that?

16 MR. NEIMAN: Your Honor --

17 BY MR. SCHIFF:

18 Q. Did you ever see a law --

19 MR. NEIMAN: -- I need to --

20 BY MR. LEVENTHAL:

21 Q. -- that allowed you to do that?

22 MR. NEIMAN: -- object even though I'd like to hear the  
23 answer.

24 BY MR. SCHIFF:

25 Q. Can you -- can you take your Code book and show me a law

1 where you're authorized to do that?

2 THE COURT: Mr. Schiff, the -- the Court will instruct  
3 on the law. If you want an instruction on that, I will give it.

4 Move on.

5 MR. SCHIFF: Yeah. But you never instructed me, your  
6 Honor, before this day. How would I know? As far as I know, I  
7 can't find a law --

8 THE COURT: You will not testify.

9 MR. SCHIFF: Okay. So we cannot --

10 THE COURT: I ruled.

11 MR. SCHIFF: I -- I -- I will point out that under the  
12 Cheek decision --

13 THE COURT: I will rule --

14 MR. SCHIFF: -- I have to be made aware that --

15 THE COURT: I will rule on instructions of law when it  
16 becomes an appropriate time. I've already sustained the  
17 objection.

18 BY MR. SCHIFF:

19 Q. Now -- now, in your testimony you referred to Mrs. Ahee  
20 testifying about Cindy Neun being an employee or something like  
21 that. Did you -- you referred to Mrs. Ahee testifying?

22 A. I did refer to Mrs. Neun being an employee.

23 Q. And -- and you -- and did you refer to Mrs. Ahee's testimony  
24 to support that statement of yours?

25 A. I made references to the testimony. I -- I had heard from

1 witnesses in this court as to Mrs. Neun being an employee of  
2 Freedom Books.

3 Q. I think you referred to three people. But Mrs. Ahee was one  
4 of 'em, if you remember that. Okay.

5 Would you remember your specific reference to  
6 Mrs. Ahee's testimony?

7 MR. NEIMAN: Your Honor, I think Mrs. Ahee is Toni  
8 Mitchell's maiden name, just for clarification purposes.

9 MR. SCHIFF: Okay.

10 THE COURT: He did not refer to Mrs. Ahee.

11 MR. SCHIFF: She [sic] did. I -- I...

12 THE COURT: No. He referred to Toni Mitchell.

13 MR. SCHIFF: Toni Mitchell. Well, yeah.

14 THE COURT: Well --

15 MR. SCHIFF: I'm sorry.

16 THE COURT: -- not Mrs. Ahee.

17 MR. SCHIFF: Well, it's the same person, your Honor.  
18 Same person.

19 THE COURT: No. It's a different name.

20 BY MR. SCHIFF:

21 Q. But you referred to Mrs. Mitchell, Toni Mitchell?

22 A. I recognize the name Toni Mitchell --

23 Q. Okay.

24 A. -- but not Mrs. Ahee.

25 Q. I'm sorry. Okay.

1           Did you also recall Mrs. Ahee stating that she couldn't  
2 find a law that made her liable for the income tax?

3           THE COURT: Will you use the correct name if you're  
4 going to --

5           MR. SCHIFF: Well, Mrs. Mitchell.

6           THE COURT: -- ask him a question?

7 BY MR. SCHIFF:

8 Q. Did you also recall Mrs. Mitchell saying she couldn't find a  
9 law that made her liable for income tax?

10 A. I think she said she believed that at one point, but she  
11 doesn't believe that any longer.

12 Q. No. All right.

13           MR. CRISTALLI: Objection. That misstates the  
14 evidence. She did not state that.

15 BY MR. SCHIFF:

16 Q. Did you hear Mr. Parrinelli testify he couldn't find a  
17 law --

18           THE COURT: The jury will use --

19 BY MR. SCHIFF:

20 Q. -- that made him --

21           THE COURT: -- its own recollection.

22 BY MR. SCHIFF:

23 Q. -- liable for income tax?

24 A. I believe Mr. Parrinelli did testify to that.

25 Q. Did you hear Mr. Matt Diamond say he couldn't find a law

1 that made him liable for income tax?

2 A. I believe you're correct on that as well.

3 Q. Did you hear Dr. Dentice also state he couldn't find a law  
4 that made him liable for income tax?

5 A. I believe he testified to that as well.

6 Q. Did you also hear Mr. Bill Willard [sic] -- Willard state  
7 that he also couldn't find a law that made him liable for income  
8 tax?

9 A. Mr. Waller, I believe, testified to that as well.

10 Q. Okay. Did you hear -- did any Government witness get on the  
11 stand who I can crossify [sic] -- to who I could cross-examine  
12 state that there is a law that made us all liable? Did any  
13 Government witness testify under oath?

14 MR. NEIMAN: Objection. That's invading the province  
15 of this Court. It's this Court's job to instruct as to the law,  
16 not Government witnesses.

17 THE COURT: Sustained.

18 MR. SCHIFF: Your Honor, the -- the Government's job is  
19 to prove that I believed I had a duty under the law to do  
20 something. And so far the Government hasn't proved I had a duty  
21 to do anything.

22 THE COURT: No speeches.

23 MR. SCHIFF: I'm not making any speeches.

24 THE COURT: You just did.

25

1 BY MR. SCHIFF:

2 Q. Now, you also testified that Freedom Books maintained -- no  
3 books and records were maintained by Freedom Books?

4 A. That's correct as far as I know.

5 Q. Well, weren't -- weren't there plenty of books and records  
6 that the Government took out of my office?

7 A. Those -- those were -- I would not classify those as books  
8 and records reflecting income nor expenses. They were, um,  
9 invoices, um, but they were not -- they were not books and  
10 records.

11 Q. Well, we had checkbooks. We used the Safeguard Business  
12 System. And all the expenditures were in those checkbooks.

13 A. Yes, there was. But there was no activity to show a  
14 summarization or a calculation of the activity within those  
15 checks nor the deposits that were in your business as well.

16 Q. When we made deposits, didn't we put the name where the  
17 check came from?

18 A. Yes. But there was no record of them -- of any computation  
19 or calculation of what those represented nor any summation  
20 of 'em.

21 Q. Oh, there had to be a summation of them.

22 A. That's what books and records are.

23 Q. A sum- -- oh. Were you aware that courts have ruled that  
24 you have no legal obligation to turn over books and records?

25 MR. NEIMAN: Objection. The jury has the right to hear

1 an accurate reflection of the law, not Mr. Schiff's  
2 misinterpretation.

3 THE COURT: You will refrain from interjecting your  
4 view of the law.

5 MR. SCHIFF: Can I --

6 THE COURT: Mr. Schiff, listen to my ruling.

7 MR. SCHIFF: I'm not -- I'm not giving my views.

8 THE COURT: You just attempted to do that.

9 MR. SCHIFF: Let me --

10 THE COURT: You will refrain from doing that.

11 MR. SCHIFF: Yes, yes.

12 Can I take this --

13 THE CLERK: Do you want me to take it to the witness?

14 MR. SCHIFF: Yes, yes, yes.

15 THE CLERK: Sure.

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

17 BY MR. SCHIFF:

18 Q. I have -- will you turn to page 33?

19 A. (Complies.)

20 Q. What I did is -- all right. Is that an excerpt from the  
21 handbook for special agents?

22 MR. NEIMAN: Objection --

23 MR. SCHIFF: I have the handbook.

24 MR. NEIMAN: -- to relevance. We're going back to our  
25 books and record issue as well, I think, based upon where we're

1 turning in the page --

2 MR. SCHIFF: Well --

3 MR. NEIMAN: -- or in the book.

4 MR. SCHIFF: Well, you -- you just said that my  
5 characterization is wrong. I'm just reading from the IRS's own  
6 handbook.

7 THE COURT: Mr. Schiff, I warned you. Again, you are  
8 not going into this. You have ignored my ruling. You are  
9 apparently attempting to go into the same area. Let me see the  
10 page that he's directed you to.

11 MR. SCHIFF: All I'm trying to say -- are you saying --

12 THE COURT: Don't you say anything until I rule.

13 (Document handed to the Court.)

14 THE COURT: You are. Sanctions. Stop it.

15 MR. SCHIFF: Your Honor, you're characterizing things  
16 that I say --

17 THE COURT: Mr. Schiff --

18 MR. SCHIFF: -- this --

19 THE COURT: -- Mr. Schiff, move on to your next  
20 question.

21 MR. SCHIFF: How many days does that sanction cost me?  
22 I can't -- I can't follow 'em yet.

23 BY MR. SCHIFF:

24 Q. If it's -- if it's the Government's claim that we have to  
25 keep expensive books and records, does the Government reimburse

1 us for keeping books and records?

2 THE COURT: Mr. Schiff, I have warned you over and over  
3 again.

4 MR. SCHIFF: I'm trying to defend myself here, your  
5 Honor.

6 THE COURT: You are not. You are going down side  
7 avenues.

8 MR. SCHIFF: I took notes. I'm tryin'...

9 BY MR. SCHIFF:

10 Q. Um, are you aware, of course, that a lot of these documents  
11 that were records I kept the Government is using against me at  
12 this trial; is that correct?

13 A. Yes, I am.

14 Q. So what you're saying is that the Government requires people  
15 to keep books and records that the Government can seize and then  
16 use against them? Is that your understanding of the U.S.  
17 Constitution?

18 A. No. My understanding is that the purpose for keeping books  
19 and records is that so a proper income can be calculated.

20 Q. And, if it's not, what happens?

21 A. If the person is audited, then the correction is made either  
22 at a decrease or an increase in tax.

23 Q. Well, let me ask you something: Are you familiar with the  
24 U.S. Tax Court?

25 MR. NEIMAN: Objection to relevance.

1 MR. SCHIFF: The relevance --

2 THE COURT: What is the relevance?

3 MR. SCHIFF: It's relevant to his testimony.

4 BY MR. SCHIFF:

5 Q. Are you familiar with the U.S. Tax Court?

6 THE COURT: No. You haven't stated the relevance.

7 MR. SCHIFF: Well, it's relevant to the whole inquiry

8 here. It's relevant to being audited. The U.S. Tax Court is

9 very relevant and you'll see its relevance in a moment.

10 BY MR. SCHIFF:

11 Q. Are you --

12 THE COURT: I'm not going to trust that.

13 MR. NEIMAN: Your Honor, Mr. -- Mr. Lowder did not

14 conduct an audit here. He conducted an examination to determine

15 income for purposes of this trial. Nothing more.

16 THE COURT: Sustained.

17 MR. SCHIFF: All right.

18 BY MR. SCHIFF:

19 Q. Did -- did you -- all right. After doing your audit, did

20 you ever send me a deficiency notice showing I didn't --

21 THE COURT: Mr. Schiff --

22 MR. SCHIFF: He just -- he just audited me he said.

23 THE COURT: No, he didn't.

24 MR. SCHIFF: He went --

25 THE COURT: That was the -- that was the objection.

1 BY MR. SCHIFF:

2 Q. All right. Let me just ask you something: When you did  
3 this audit of me, did you ever --

4 THE COURT: Mr. Schiff --

5 MR. SCHIFF: What?

6 THE COURT: -- he did not do an audit. He did not  
7 testify to doing an audit.

8 MR. SCHIFF: Well, I don't know what he was doing then.

9 BY MR. SCHIFF:

10 Q. Did anybody -- all right. Do you know of anybody who ever  
11 took your figures and told me that I had more income than I  
12 reported on my return?

13 A. I don't believe a report has ever been given to you with --  
14 with a tax deficiency. No.

15 Q. Okay. What happens when somebody files a return and the IRS  
16 determines he really has more income than he reported? What  
17 happens?

18 A. If you're referring to an audit, the process is a taxpayer  
19 would be audited. And, under your example, if there's  
20 additional income, adjustments would be proposed to the  
21 taxpayer. They would be discussed. If the taxpayer's not in  
22 agreement, a 30-day letter would be issued.

23 Q. You said if the taxpayer signs an agreement. Suppose the  
24 taxpayer doesn't sign an agreement?

25 MR. NEIMAN: Your Honor, objection. I should have

1 objected one question earlier. We're going down a path  
2 that's --

3 THE COURT: It is. It's the same line of questioning.

4 MR. SCHIFF: I'm trying --

5 THE COURT: Sustained. It's irrelevant to this  
6 proceeding.

7 MR. SCHIFF: Well, it's relevant to whether or not the  
8 Government ever notified me that I earned more income than I  
9 reported and, if they did, what would my option have been.

10 THE COURT: Sustained.

11 MR. SCHIFF: Your Honor, my option would have been a  
12 civil litigation in Tax Court. But they never gave me that  
13 option.

14 BY MR. SCHIFF:

15 Q. Did they?

16 MR. NEIMAN: Same objection.

17 THE COURT: Sustained.

18 BY MR. SCHIFF:

19 Q. In other words, the Government -- the Government could have  
20 come after me civilly as well as criminally; is that correct?

21 A. That wasn't my -- I was not -- it was not my determination.

22 I was only assigned to do an examination -- or not an  
23 examination. I was assigned to calculate the business income  
24 through an indirect, um, method, which was the bank deposit  
25 method.

1 BY MR. SCHIFF:

2 Q. But, as far as you know, the -- the IRS or the Government  
3 never notified me that they had determined that I had income  
4 greater than what I reported; is that correct?

5 MR. NEIMAN: Objection. We -- Mr. Schiff's history  
6 with the IRS, I think, has been presented throughout this trial.

7 MR. SCHIFF: Why -- this is highly relevant. It's a  
8 Government witness. The fact is the Government could have come  
9 after me civilly and I could have litigated it. And the jury  
10 should know that. And that's what they are trying to keep from  
11 the jury. The fact is the Government --

12 THE COURT: All right. You've done enough. You've  
13 testified enough.

14 MR. SCHIFF: I'm not --

15 THE COURT: I've warned --

16 MR. SCHIFF: -- testifying. He's not --

17 THE COURT: -- I've warned you -- I've warned you about  
18 blurting out --

19 MR. SCHIFF: Your Honor --

20 THE COURT: -- such statements.

21 MR. SCHIFF: Your Honor, the Government is trying to  
22 hide the fact --

23 MR. NEIMAN: Objection to -- to any -- what the  
24 Government's hiding.

25 THE COURT: Sustained.

1 MR. SCHIFF: Well, why didn't he answer my question?

2 THE COURT: Sustained.

3 MR. SCHIFF: The questions are relevant. He did an  
4 audit. He went to my bank. He got all this information. And  
5 I'm saying to him, what did the Government do with this  
6 information?

7 Normally when the Government gets --

8 THE COURT: No. You're testifying again.

9 MR. SCHIFF: I'm asking him what does the Government  
10 normally do when they get information that the person has more  
11 income than he reported. That's a simple question.

12 THE COURT: Irrelevant.

13 MR. SCHIFF: How is that irrelevant?

14 THE COURT: Because I said it's irrelevant.

15 BY MR. SCHIFF:

16 Q. All right. Could the government have sent me -- could the  
17 government have sent me a deficiency notice?

18 MR. NEIMAN: Objection. This is --

19 MR. SCHIFF: It's a different question.

20 MR. NEIMAN: -- apples and oranges.

21 THE COURT: It's the same thing.

22 MR. SCHIFF: All right.

23 THE COURT: Sustained.

24 BY MR. SCHIFF:

25 Q. All right. Let me ask you this question. Did I ever get a

1 deficiency notice --

2 THE COURT: Sanctions.

3 BY MR. SCHIFF:

4 Q. -- for any of my tax returns?

5 THE COURT: Sanctions.

6 MR. SCHIFF: No further questions.

7 THE COURT: Mr. Bowers?

8 MR. BOWERS: Court's indulgence for just a moment, your  
9 Honor.

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

12 MR. BOWERS: I have nothing, your Honor. Thank you.

13 MR. NEIMAN: No redirect, your Honor.

14 THE COURT: Thank you.

15 The witness is excused.

16 (Pause in the proceedings.)

17 MR. NEIMAN: Your Honor, before the Government rests,  
18 we would move into evidence Exhibit 327, which is another  
19 summary schedule prepared by Revenue Agent Lowder. It's my  
20 understanding there's no objection to Mr. Cristalli as it  
21 pertains to --

22 MR. BOWERS: No objection, your Honor.

23 THE COURT: Exhibit 327?

24 MR. CRISTALLI: Yes, your Honor. I have no objection.

25 THE COURT: Mr. Schiff, 327?

1 MR. SCHIFF: I thought there's another Code book. No  
2 objection.

3 THE COURT: 327 is received.

4 (Government's Exhibit No. 327, received into  
5 evidence.)

6 THE COURT: Does the Government rest?

7 MR. NEIMAN: Your Honor, at this time the United States  
8 would rest.

9 THE COURT: Okay.

10 MR. BOWERS: Yeah, your Honor --

11 THE COURT: Who will go first for the defense?

12 MR. BOWERS: I believe Mr. Schiff will. But, before  
13 proceeding, I think we need to request a sidebar.

14 THE COURT: Sidebar.

15 (Sidebar conference was held as follows:)

16 MR. CRISTALLI: Are we going to do our Rule 29 motions  
17 here?

18 THE COURT: (Nods head.)

19 MR. CRISTALLI: Oh, we are.

20 MR. SCHIFF: Okay.

21 (Pause in the proceedings.)

22 MR. SCHIFF: Okay. Your Honor --

23 THE COURT: Wait a minute.

24 (Pause in the proceedings.)

25 MR. SCHIFF: Okay. I make a motion now for a motion

1 for acquittal, which is required by law. It has nothing to do  
2 with the facts. I'll get to the facts in a moment.

3 Now, the Government made a point of saying that the CRS  
4 Report for Congress was notice to me, uh, of various aspects of  
5 the law. And, as a matter of fact, they quoted from this report  
6 like -- quoted all kinds of things in this report. However, uh,  
7 what they apparently overlooked is in the CRS Report the  
8 Government pointed out also that there are two types of -- types  
9 of direct taxes therefore have to be apportioned, taxes on  
10 property, real and personal.

11 Uh, they also -- this report pointed out that the  
12 Constitution divides all taxes into two classifications, direct  
13 and indirect. And direct taxes must be levied according to the  
14 Rule of Apportionment and indirect taxes must be levied  
15 according to the Rule of Uniformity.

16 They also pointed out that, prior to the ratification  
17 of the Sixteenth Amendment, the questions of classification of  
18 income was central to the determination as to its constitutional  
19 [sic]. They then referred to the Pollack case, a case that I  
20 referred to, as holding the income tax unconstitutional.

21 And then they point out that -- I don't want to read  
22 the whole thing -- but the Supreme Court in the decision written  
23 by Chief Justice White wrote that the Sixteenth Amendment did  
24 not authorize any new type of tax nor did it repeal or revoke  
25 the tax clauses of Article 1. Direct taxes were, not

1 withstanding the event of the Sixteenth Amendment -- were still  
2 subject to the Rule of Apportionment and indirect taxes were  
3 still subject to the Rule of Uniformity.

4 They also pointed out in this report that the Pollack  
5 decision held that the income was an excise tax.

6 Okay. Now, I filed a motion, a pretrial motion, to  
7 dismiss on the grounds that the income tax was indeed an excise  
8 tax and that the income tax was still subject to the Rules of  
9 Apportionment. Here is my motion on that issue. It's in here  
10 someplace.

11 However, the Magistrate took the position that the  
12 Sixteenth Amendment authorized a nonapportioned direct tax and  
13 you adopted the Magistrate's position. Therefore -- oh, here's  
14 the Government's -- the Government's motion.

15 The Government's motion citing In re Becraft was that  
16 the Sixteenth Amendment authorized a nonapportioned direct tax,  
17 in other words, that the Sixteenth Amendment gave the Government  
18 a new taxing authority and allowed them to impose a direct tax  
19 while I argued that the Sixteenth Amendment provided the  
20 government -- allowed the government to impose the income tax as  
21 excise and pointed out that since it wasn't imposed in that  
22 manner, uh, the income tax -- one of the reasons why it was  
23 voluntary.

24 Now, you used the CRS Report as notice to me that I was  
25 wrong.

1 THE COURT: No, I didn't use it. The Government  
2 presented it.

3 MR. SCHIFF: All right. The Government did it.

4 Well, then the CRS is notice to you that your decision  
5 was wrong. Your decision was wrong. You said in your decision,  
6 adopting Magistrate, um, Leavitt's, that the income tax was an  
7 excise. Therefore -- I mean, sorry -- that the income tax was a  
8 direct tax. And here is a CRS Report saying that the Sixteenth  
9 Amendment -- I mean, it was -- it was in big bold headlines  
10 here, "What Does The Court Mean When It States That The Income  
11 Tax Is In The Nature Of An Excise Tax?"

12 And you're trying to collect a tax from me that is  
13 neither imposed as a direct tax, since it's not apportioned, and  
14 not imposed as an excise. Therefore, you wanna put me in jail  
15 for not paying a tax that's not authorized under the  
16 Constitution. And you cannot legally do it. And this shows  
17 that you were wrong in rejecting my pretrial motion on this very  
18 issue. That's number one.

19 MR. BOWERS: Should --

20 MR. SCHIFF: Well, were you wrong? Were you going to  
21 grant --

22 THE COURT: No.

23 MR. SCHIFF: Okay.

24 THE COURT: Denied.

25 MR. SCHIFF: Denied. Okay.

1           You're gonna deny it. Well -- in other words, so the  
2 CRS Report --

3           THE COURT: I don't answer questions from you.

4           MR. SCHIFF: Okay.

5           THE COURT: Denied.

6           MR. SCHIFF: So the CRS Report --

7           THE COURT: I don't answer questions from you.

8           MR. SCHIFF: Okay.

9           THE COURT: Denied.

10          MR. SCHIFF: In addition, under the Cheek decision,  
11 there's -- before I could be found guilty, there's a three-prong  
12 test: (1) that the law imposes a duty, (B) I knew of that duty,  
13 and (C) I deliberately, intentionally violated that duty.

14          Now, the first thing that the Government would have to  
15 do in their case in chief before you even instructed the jury on  
16 the law is during their case in chief they would have to prove  
17 that I had a duty. So far not one Government witness testified  
18 that I was liable for the income tax that I could cross-examine,  
19 that I had any duty to keep books and records. So the  
20 Government has not in their case in chief put on any evidence of  
21 any duty that I have.

22          Secondly, they did not put on --

23          MR. CRISTALLI: It appears --

24          MR. SCHIFF: -- any witness --

25          MR. CRISTALLI: -- that this is gonna be a while.

1       Should we --

2               MR. BOWERS:  Irwin, just hold on one second.

3               As a practical matter --

4               MR. CRISTALLI:  We should recess --

5               MR. BOWERS:  -- recess and --

6               MR. CRISTALLI:  -- the jurors and let --

7               MR. BOWERS:  -- do this from tables.  Because we --

8               MR. CRISTALLI:  I mean, I'm gonna have something' to  
9       say and --

10              THE COURT:  We'll let him finish here.

11              MR. CRISTALLI:  Okay.

12              MR. SCHIFF:  Okay.

13              Secondly, I was eliciting questions from Government  
14       witnesses about the statutes which I believed imposed no duty.  
15       And their testimony would have revealed that I did not  
16       understand from the statute that I had any such duty.  And you  
17       continually prevented me from going into the law to show I had  
18       no understanding of the law.  The law didn't impose any duty.  
19       So, as of right now, the Government hasn't met two of its  
20       burdens.

21              Now, true, when I put on my defense, my defense will be  
22       based upon my belief -- my good-faith belief that I had no such  
23       duty.  But, before I even need to do that, the Government had to  
24       prove that there was such a duty and I knew there was that duty.  
25       And so far, obviously, they haven't done it.

1           THE COURT: I disagree with you. The Government has  
2 put forth evidence that if believed by the jury they could find  
3 you guilty of the crimes charged in the Indictment.

4           MR. SCHIFF: Well, you didn't allow me to cross-examine  
5 them to prove --

6           THE COURT: I did not allow you to go into irrelevant  
7 matters; I did not allow you to argue the law.

8           MR. SCHIFF: You did not allow me to present the law.  
9 Not only didn't I argue it, you -- you wouldn't even let me  
10 present the law. I wasn't arguing the law.

11          THE COURT: You were attempting to present what was not  
12 the law, and I stopped you.

13          MR. SCHIFF: Section six -- one of your witnesses --

14          THE COURT: You're not gonna argue with me.

15          MR. SCHIFF: All right.

16          THE COURT: I've ruled.

17          MR. BOWERS: Is that -- do you have more, Irwin?

18          MR. SCHIFF: Well, I mean, how much -- how much more do  
19 I have to say? I mean --

20          MR. BOWERS: Well, you don't have to say anything.  
21 But, if this is your motion, then this is the time you make --

22          MR. SCHIFF: I mean --

23          MR. BOWERS: -- your argument.

24          MR. SCHIFF: -- it's obvious that -- all right. I --  
25 I'll say I said enough.

1 THE COURT: Okay. We'll go excuse the jury for a few  
2 minutes and you can make yours.

3 MR. BOWERS: I'm not advising you of anything.

4 MR. SCHIFF: Oh, wait a minute. Wait a minute. Wait a  
5 minute.

6 Now, the third prong -- I'm sorry.

7 THE COURT: Mr. Cristalli has left.

8 MR. SCHIFF: I'm sorry?

9 THE COURT: Mr. Cristalli thought you were through.  
10 Because I said you were through.

11 MR. SCHIFF: Sorry.

12 MR. MODAFFERI: Sorry, Judge. I apologize.

13 MR. SCHIFF: This is --

14 MR. MODAFFERI: We thought you were done.

15 MR. SCHIFF: Now, the third point -- and that I -- that  
16 I -- well, that comes under my defense. All right.

17 MR. IGNALL: Thank you.

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

20 THE COURT: Ladies and gentlemen of the jury, it looks  
21 like we're going to be a few minutes. You are excused while we  
22 discuss matters outside your presence.

23 (Jury leaves the courtroom at 10:22 a.m.)

24 THE COURT: Be seated, please.

25 Next.

1 MR. CRISTALLI: Thank you, your Honor.

2 Um, your Honor, I think I will, uh, uh, start, first of  
3 all, with Count 32 of the Indictment which is, uh, identified as  
4 42, U.S.C., Section 408(a)(3), Social Security Disability Fraud,  
5 uh, charged against Ms. Cynthia Neun, which indicates:

6 "On or about November 16, 2001, in the District of  
7 Nevada, defendant CYNTHIA NEUN, while receiving disability  
8 benefits from the Social Security Administration, made a false  
9 statement and representation of a material fact for use in  
10 determining her right to payment under Title II of the Social  
11 Security Act, specifically stating to the Social Security  
12 Administration Claims Representative that she was not employed  
13 at Freedom Books and was not paid for her work there."

14 Um, we heard two things during the course of testimony  
15 as related to that particular matter. First of all, through  
16 the, um, testimony of Gail Loschen, who is the, um -- who is  
17 the, uh, representative of disability that was handling  
18 Ms. Neun's case, that she -- that she, um -- first of all,  
19 she -- the reason for the November 16, 2001, telephone call was  
20 the November 5th, 2001, um -- and I forgot the name of the -- it  
21 was -- it was a review document that Ms. Neun filled out, uh,  
22 and sent into the, uh, administrative office for Disability  
23 basically, um, giving them an update on her current, uh, medical  
24 status and her work status.

25 During the course of that particular, um -- during the

1 course of that -- of her -- and it was -- specifically, it was a  
2 Report of Continuing Disability Interview, November 5th, 2001,  
3 wherein she discloses her work at Freedom Books wherein she said  
4 that "I am up working around most [of the] days... I have about  
5 3 weeks out of every month where I am" -- "when I am able to  
6 work part time in an office/bookstore." And she goes along to  
7 talk about, um, her medical condition.

8 And then, um, says, once again, um: "I am working now  
9 again. I am working off and on with my boyfriend, Irwin Schiff.  
10 He has a bookstore, Freedom Books, at 444 East Sahara, here in  
11 Las Vegas. I am [a] 'sidekick' on his radio show every Thursday  
12 for 2 hours. Sometimes I represent taxpayers in audits &  
13 hearings at the I.R.S. The pay is lousy. But, I have not been  
14 able to find another situation where absences are tolerated.  
15 There is something wrong with my back, [and I know] I have been  
16 betrayed by the whole community of 'care-givers' on my case - I  
17 really don't know where to turn."

18 So that was the extent of the disclosures by Ms. Neun  
19 on November 5th, 2001, to Gail Loschen. So we have a  
20 disclosure. So we don't have a situation at that particular  
21 time where she failed to disclose to disability that she was  
22 working in some capacity at Freedom Books.

23 It was the phone call on November 16th, 2001, that, I  
24 guess, we're relying on to make some type of determination that  
25 she wasn't truthful to the disability, um, offices. But with

1 regard to that, um, once again, she does not deny -- and I  
2 looked at the reports of Ms. Gail Loschen with regard to that --  
3 she doesn't deny working at Freedom Books. The discussion went  
4 into the fact that she -- she is not, um, a -- an employee as --  
5 as defined by an employee. She works there. She said the pay  
6 is lousy. She participates in the radio show.

7 Um, I don't know how much more of a disclosure you have  
8 to have with regard to telling them directly that you are  
9 employed and you are working and you're doing it in some  
10 capacity despite your physical, uh, handicaps.

11 Um, it wasn't until the criminal investigation was  
12 launched and evidence, uh, through Michelle Desgrosellier came  
13 about where disability offices got, um, notice by the, uh,  
14 criminal investigators in this case and we had an issue as it  
15 related to, uh, some type of a Social Security fraud. I don't  
16 believe the Government's met their burden with regard to that.  
17 I don't think the evidence supports the fact that she committed  
18 any fraud against, uh, Social Security disability.

19 So, with that said, I don't think they've met their  
20 burden as far as that particular count is concerned. And it's  
21 important because it goes directly into Count 33, a violation of  
22 18, U.S.C., Section 641, Theft of Government Property, with  
23 regard to Cindy Neun:

24 "From in or about May ... 2000 through in or about  
25 February ... 2003, in the District of Nevada, ... defendant,

1 CYNTHIA ... NEUN, by fraudulently receiving disability benefits,  
2 knowingly converted to her own use more than \$1,000 belonging to  
3 Social Security Administration, an agency of the United States."

4 From my understanding of how the Indictment reads, I  
5 don't think you can prove Count 33 if you don't prove Count 32.  
6 If you don't prove fraud, then you can't prove the theft. Um,  
7 and so as it relates directly to that I would submit to the  
8 Court that as the Government has not met Count -- the burden on  
9 Count 32 they have not met the burden on Count 33.

10 Now, with regard to whether or not she's making money,  
11 the only evidence that we have in terms of direct payment from  
12 Freedom Books to Ms. Cynthia Neun is the testimony of Michelle  
13 Desgrosellier. There was some reference to Toni Mitchell and  
14 seeing, um, some -- an envelope maybe handed to Ms. Neun  
15 occasionally. We don't know what the content of that envelope  
16 is. We don't know how often that was exchanged. We don't even  
17 know, um, obviously, um, what, if anything, was in the envelope.  
18 Even if it was, uh, cash, if this Court believes that it can  
19 infer that it was through the testimony, we don't know how much  
20 cash that was.

21 But I think the Government is relying kind of, um, for  
22 the most part on the calculations that were conducted by the  
23 payments to Sprint. By the payments to, um, the -- her rent,  
24 um, and other expenses in her household.

25 Um, the evidence is clear, I believe, that she was

1 having a relationship with Mr. -- Mr. Irwin Schiff; um, that as  
2 part of the relationship that existed between the two of them,  
3 um, he was, uh, paying for a majority of the expenses, um, that  
4 occurred in her life.

5 Um, the amounts in question are, um -- are -- are not  
6 high. Um, they are relatively minimal. And, in terms of that,  
7 in terms of the threshold, I don't think we've made a  
8 determination as to what the threshold is. But if the threshold  
9 is, um, seven -- \$7,000 -- or \$7,000 and change and/or \$9,000  
10 and change, whatever it -- it may be -- and we haven't made a  
11 determination yet -- um, that would be exclusive of whatever she  
12 was receiving in terms of her disability.

13 So, um, can we -- or has the Government established,  
14 uh, beyond a reasonable doubt in this particular case that she  
15 earned, based on the evidence that has been elicited here in  
16 court, more than the threshold requirement? I don't think that  
17 they have established that.

18 I mean, there's -- there's no way, in my opinion, that  
19 they have proved through the testimony of Mr. Lowder that the  
20 expenses were directly related beyond a reasonable doubt to work  
21 that was performed at Freedom Books. I think the evidence  
22 establishes more clearly that she was compensated by Mr. Irwin  
23 Schiff, for whatever reason, as a result of some type of  
24 domestic relationship that was ongoing.

25 We know for a fact that Mr. Irwin Schiff lived there

1 for a period of time during his rehabilitation after his surgery  
2 and we know certainly through the evidence that some expenses,  
3 at the very least, were paid by Mr. Irwin Schiff as a result of  
4 the relationship that existed between the two of them.

5 So, um, I don't think the burden has been met with  
6 regard to Counts 32 or 33.

7 Additionally, the thing that, uh -- if you want to  
8 bring up Michelle Desgrosellier's testimony with regard to her  
9 mother bein' paid directly for her services at Freedom Books,  
10 which is exclusively the testimony we have here in terms of  
11 compensation for services. And that, I think, is an important  
12 distinction. It's not just services; it's compensation for  
13 services, profit and/or pay for services as the disability  
14 employee had testified on the stand.

15 In that particular situation, Michelle Desgrosellier  
16 stopped working there in 2000. The allegations with regard to  
17 Ms. Neun as they are alleged in the Indictment begin in 2000.  
18 So you can't even take into consideration what Michelle  
19 Desgrosellier testified to because if you do then you have to  
20 infer that whatever happened during her tenure continued to  
21 happen, which is not sufficient in terms of the Government  
22 establishing their proof beyond a reasonable doubt.

23 And, your Honor, with all due respect -- and I think  
24 we're gonna get a jury instruction on this point as well -- the  
25 only witness exclusive, without any corroboration, of direct pay

1 for services to Ms. Neun from Freedom Books, um, is Michelle  
2 Desgrosellier who has issues in terms of her credibility.  
3 There's -- there's significant bias; credibility with regard to  
4 issues that occurred, um, you know, at Freedom Books with regard  
5 to accusations; um, her drug uses -- usage.

6 We have direct testimony that she, um -- she had for a  
7 period of two weeks paid her drug dealer, um -- and it is true.  
8 She -- she testified she paid her drug dealer. She didn't say  
9 that she paid the drug dealer, um -- that the -- that the two  
10 weeks that she [sic] worked there she didn't say was payment for  
11 drugs. But she conceded that he was the drug dealer and that  
12 he -- she had purchased drugs from him subsequent to his  
13 employment at -- during the two-week period at Freedom Books.

14 And the other suspect thing is during the two-week  
15 period that this so-called "drug dealer" was employed he made  
16 more money than any of the other employees at Freedom Books. So  
17 what does that tell ya? And why was it only two weeks? It's  
18 not my burden; it's their burden. And they haven't met it.

19 Now, with regard to --

20 MR. IGNALL: All right. Your Honor, if I may  
21 interject. It'd be easier just for my brain -- I don't want to  
22 interrupt Mr. Cristalli -- but if we could do it count by count,  
23 I think it might be easier just for my brain to remember what --  
24 if Mr. Cristalli objects we -- that'd be my preference though.

25 THE COURT: All right.

1 MR. CRISTALLI: Oh, you want -- okay. That's fine.  
2 You want to answer each one.

3 MR. IGNALL: Yeah.

4 MR. CRISTALLI: That's fine.

5 MR. IGNALL: In case my memory fades.

6 With respect to the Social Security counts and what's  
7 Count 32 -- I think in the original Indictment I think we've  
8 redacted it to probably now Count 30 -- uh, the allegation is  
9 that on November 16th Ms. Neun made a false statement to Gail  
10 Loschen, who testified, that -- that Ms. Neun said she was not  
11 working; she's not getting paid. There's other evidence showing  
12 that she was indeed working there; she was indeed getting paid.  
13 Therefore, it's up to the jury to decide.

14 And Mr. Cristalli is correct to some extent that if the  
15 jury were to find that Ms. Neun made a false statement to  
16 Ms. Loschen on November 16th, 2001, that's certainly some  
17 evidence that she was continuing to receive Social Security  
18 benefits fraudulently. But, beyond that, there's a continuing  
19 obligation of disclosure to the Social Security Administration.  
20 The evidence of that is her application that she signed  
21 acknowledging that she has to inform Social Security if she's  
22 working and getting paid.

23 So, again, the evidence that we have that she's not --  
24 just from Michelle Desgrosellier -- Desgrosellier that she's  
25 getting paid \$600 a week, there's other evidence from which the

1 jury could infer that she's getting paid. And indeed there's  
2 other evidence that she's working.

3 Why she's getting paid is an issue for the jury.  
4 Mr. Cristalli has his version of why she's getting paid.  
5 There's evidence to suggest that she's getting paid because  
6 indeed she's performing all kinds of tasks. There's plenty of  
7 evidence as to her performing office-type tasks. There's  
8 evidence from her own hand that she calls herself "the office  
9 manager," that she's doing things. That's clearly a jury  
10 question as to whether she's working or not and if she's getting  
11 paid for working or not.

12 Therefore, Counts 32 and 33 as denominated in the  
13 original Indictment should go to the jury.

14 THE COURT: Credibility is a jury issue. The evidence  
15 is sufficient that a reasonable jury could find the defendant  
16 guilty beyond a reasonable doubt of the crimes alleged in the --  
17 what were 32 and 33 of the Indictment.

18 The, uh -- the exhibit which is in evidence, 310,  
19 clearly states that the defendant is not paid and doesn't  
20 actually work. She goes up a few hours a week. That is  
21 contradicted by her letter to the Supreme Court. It's also  
22 contradicted by the, uh -- the expenditure evidence that has  
23 come in. Expenditure method is a valid method, a recognized  
24 method of proving income.

25 Accordingly, the Rule 29(a) motion of Defendant Neun on

1 Counts 33 and Counts 33 is denied.

2 MR. CRISTALLI: Um, and, your Honor, just so that we're  
3 clear. I mean, I'm being specific to a certain extent. But I  
4 want my motion to be broader than that. I'm asserting my Rule  
5 29 motion at this particular time. I certainly don't want to be  
6 pigeonholed into any one particular argument that I'm making at  
7 this particular time and would reserve my right to raise, uh,  
8 subsequent, more specific issues on appeal if they should arise.

9 And so, therefore, um, I will -- and I will make a  
10 general motion for acquittal on all counts. But I will -- I  
11 will go just, um, a little bit further into the other counts  
12 just briefly.

13 Um, with regard to Count 28, which is the willful --  
14 willful failure to file federal tax -- tax returns by Cynthia  
15 Neun, you know, um, it's gonna -- it basically is tied into my  
16 previous arguments in that the Government hasn't established  
17 that she made sufficient money to be required to file a 1040  
18 return. Um, like I said, I think it's pure speculation on the  
19 part of the Government's witnesses, number one, that she worked  
20 as an employee at Freedom Books and was compensated for pay --  
21 for compensated for services. Um, in addition, even if she was  
22 compensated, that that compensation did not, uh, arise to the  
23 level of the threshold required to disclose, uh, um, and file a  
24 1040 return.

25 So -- and that goes to the willful failure to file, uh,

1 uh, counts. And I think it's Counts 28.

2 MR. IGNALL: It's 26 through 29.

3 MR. CRISTALLI: 26 through 29, uh, yes.

4 MR. IGNALL: And, your Honor, we'd have the same  
5 argument, pretty much, for Counts 26 through 29.

6 THE COURT: The Government -- or the Government has  
7 argued with respect to Counts 26 and 29?

8 MR. IGNALL: It's four counts, your Honor, 26, 27, 28,  
9 and 29.

10 THE COURT: I see. Okay. I thought you were only  
11 addressing two counts. Through -- through Count 29.

12 Again, the Court finds that sufficient evidence has  
13 been presented to the jury that it could, based on the evidence  
14 adduced, find the defendant guilty beyond a reasonable doubt as  
15 to the Counts 26 through 29. Accordingly, the 29(a) motion for  
16 dismissal is denied.

17 MR. CRISTALLI: Your Honor, with regard to the  
18 remaining counts, the conspiracy counts -- conspiracy count and  
19 the remaining aiding and assisting in the filing of false  
20 federal income tax returns, I don't believe, uh, that the  
21 Government has established that there is evidence in this  
22 particular case that Ms. Neun willfully violated, um, the law.  
23 Um, in addition, I think there is, uh, ample evidence to support  
24 the fact that she had a good faith, um, belief, uh, in her  
25 position. And at the very, uh, least it was a -- it was a

1       misunderstanding on her part with regard to her, uh, legal  
2       responsibilities. So, um, with that said we would move for a --  
3       move for acquittal on all of the, uh, remaining counts.

4                Additionally, your Honor, just so that I could finish  
5       up, I would like to renew my motion for severance and all other  
6       previous motions that have filed -- been filed, including any  
7       and all motions for mistrial.

8                MR. IGNALL: Well, briefly. Willfulness or good faith  
9       is clearly a matter for the jury. There is evidence from which  
10      a reasonable juror could find that Defendant Neun understood her  
11      legal obligations, both from, you know, the numerous meetings  
12      she had with the IRS; people coming back and saying what their  
13      court decisions were; documents that were found at Freedom  
14      Books. And I wish I had a full catalog of that. But any one of  
15      those standing alone would be enough to create a jury question  
16      as to whether she was aware of her legal duty and then chose to  
17      violate that.

18              THE COURT: The Court finds that there is sufficient  
19      evidence for the jury to convict on the conspiracy and aiding  
20      and assisting counts as to Defendant Neun. And, accordingly,  
21      the motion for acquittal is denied.

22              MR. BOWERS: Your Honor, I also have a Rule 29 motion  
23      to make on behalf of Defendant Larry Cohen.

24              As your Honor is aware, the evasion accounts were  
25      redacted leaving just Aiding and Abetting [sic], Counts 13

1 through 16, uh, and Conspiracy, Count 1. Uh, all of my -- all  
2 of those allegations, uh, require, um, the Government to --  
3 pursuant to Cheek show willfulness on behalf of Mr. Cohen. So  
4 I -- I think this argument applies to all of those counts  
5 individually, as well as collectively, which is that the  
6 Government has not met that burden. Um, I think pursuant to  
7 Cheek the Government -- which we all agree United States v.  
8 Cheek is the controlling law here. And, to the extent that  
9 previous cases weren't overruled, it incorporates them into it.

10 Um, unlike the -- the evidence referenced by Mr. Ignall  
11 in connection with Ms. Neun, the only -- there has been no  
12 direct testimony of any kind of actual knowledge on Larry's  
13 behalf. Um, in fact, the direct testimony there has been has  
14 been under the contrary establishing Larry's good-faith belief,  
15 uh, not only in that he doesn't have an obligation to impose --  
16 or there's no obligation imposed for him to pay these taxes but  
17 a different theory from the other coconspirators as to what his  
18 obligations were.

19 Both -- Melvin Lewis, Jason Cardiff, and Virginia Olen  
20 testified that Larry discussed with them a separate theory apart  
21 from what's been alleged in the conspiracy. Toni Mitchell  
22 testified that there were a number of other people exactly  
23 similiated [sic] -- exactly situated with Larry, um, in respect  
24 to the alleged conspiracy conduct in that he was simply an order  
25 taker and answering the phone. The aiding and abetting [sic]

1 counts, we -- we submit, occurred outside the conspiracy and  
2 those witnesses, uh, establish that Larry never acknowledged a  
3 known duty.

4 There has not been direct testimony that Larry received  
5 documents or admonishments or -- or whatever the Government  
6 alleges Ms. Neun received at collection due process hearings or  
7 anywhere else. In fact, there's been no evidence presented that  
8 at any time any agent of the government had a conversation with  
9 Larry about this and imposed a duty upon him nor has there been  
10 any evidence if that even happened to suggest that Larry doesn't  
11 have a good-faith misunderstanding. In fact, there's only been  
12 presented the contrary by the Government.

13 Um, and I -- I think that's the extent of the basis for  
14 my argument. Just Court's indulgence for a moment, your Honor.

15 (Pause in the proceedings.)

16 MR. BOWERS: Yeah, that's -- that's it. Thank you,  
17 Judge.

18 THE COURT: Thank you.

19 MR. SCHIFF: Yeah, your Honor, I'd like...

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

22 THE COURT: Government?

23 MR. IGNALL: Your Honor, briefly, again, willfulness or  
24 good faith or lack thereof is a jury question. There is  
25 evidence from which a reasonable juror could find beyond a

1 reasonable doubt Mr. Cohen knew his legal obligation and chose  
2 to violate it. For example, there are statements that Mr. Cohen  
3 made to the undercover about what -- what is a red flag and what  
4 isn't to the IRS showing an intent to try and impair and impede  
5 the IRS and try and, you know, defraud the United States. There  
6 were statements, uh, made Mr. Mr. Waller that he discussed his  
7 own case that he lost with Mr. Cohen as well as Ms. Neun and  
8 Mr. Schiff.

9 In addition, this separate theory that Mr. Bowers is  
10 talking about is evidence of intent. It may be that he's trying  
11 to help impair and impede the IRS in some different way. But,  
12 in a related way, that's part of the same conspiracy. Beyond  
13 that, that certainly shows liability for the substantive 7206(2)  
14 counts. And perhaps most important is the evidence that's  
15 already been introduced that in 2000 Mr. Cohen got his own  
16 frivolous letter from the IRS before any of the acts alleged in  
17 the conspiracy against him. Puts him on notice. Certainly  
18 there's enough evidence from which a reasonable juror could  
19 determine that he is aware of his legal obligation and has  
20 chosen to disregard that.

21 THE COURT: Court finds that sufficient evidence has  
22 been adduced that a reasonable jury could convict the Defendant,  
23 uh, Cohen on the, uh, conspiracy count, the aiding and  
24 assisting --

25 MR. SCHIFF: Uh --

1 THE COURT: Sorry?

2 -- aiding and assisting counts and the, uh --

3 MR. BOWERS: Conspiracy as well. Is that it?

4 THE COURT: I mentioned conspiracy.

5 MR. BOWERS: I'm sorry. I didn't hear you.

6 THE COURT: And the aiding and assisting, which is

7 Counts 13 through 16.

8 The -- the, uh, issue of good-faith belief is a jury

9 issue that will be decided by the jury.

10 Okay. Are we ready to bring the --

11 MR. SCHIFF: Yes, your Honor, I --

12 THE COURT: You already made your 29(a).

13 MR. SCHIFF: Well -- pardon me?

14 THE COURT: You already made your argument, sir.

15 MR. SCHIFF: Well, I wanted to supplement it, your

16 Honor, because I thought those arguments were so strong I

17 think -- I'm pro se. I didn't realize when I -- I think I have

18 a right to supplement it because I thought the arguments that

19 were made were so strong that there's no place to go.

20 THE COURT: They weren't strong.

21 MR. SCHIFF: Okay. Let me --

22 THE COURT: They were legally incorrect.

23 MR. SCHIFF: Okay. Can I supplement it? Okay.

24 First of all, just going -- just move to the

25 Indictment, in the first count --

1 THE COURT: Mr. Schiff --

2 MR. SCHIFF: Yeah.

3 THE COURT: -- you have already had your opportunity

4 to --

5 MR. SCHIFF: But, your Honor --

6 THE COURT: -- 29(a).

7 MR. SCHIFF: I didn't.

8 THE COURT: The Court does not give you permission to

9 supplement. You took up more time than --

10 MR. SCHIFF: But, your Honor --

11 THE COURT: -- the attorneys.

12 MR. SCHIFF: -- that's very unfair. It's very unfair

13 because they reminded me --

14 THE COURT: But you can't --

15 MR. SCHIFF: -- I should go over it count by count.

16 THE COURT: You do not tell --

17 MR. SCHIFF: You can't hold me --

18 THE COURT: -- me that I'm unfair. You went through

19 your argument --

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

21 THE COURT: -- at sidebar.

22 MR. SCHIFF: Remember I said to you these are arguments

23 on the law itself? I didn't -- why don't you just allow me to

24 do what any lawyer does? I'm not a lawyer.

25 THE COURT: I don't allow lawyers to -- to make a 29(a)

1 and then get up and after everybody has spoken and make another  
2 29(a). I don't allow it.

3 MR. SCHIFF: Give me ten minutes. Come on. Give me  
4 ten --

5 THE COURT: Mr. Schiff.

6 MR. SCHIFF: It's very unfair of you, your Honor,  
7 because I -- I thought when I saw that in the, uh, CRRS [sic] --  
8 when -- when the CRS bulletin was contrary to -- to rulings that  
9 you have made, it just blinded me to what I --

10 THE COURT: You just, again, cherry pick --

11 MR. SCHIFF: Your Honor, I beg of you.

12 THE COURT: -- you cherry picked lines out of the CRS  
13 and cobbled it together, as you have with your other documents  
14 that are here before the Court --

15 MR. SCHIFF: Well, why --

16 THE COURT: -- and I denied it.

17 MR. SCHIFF: -- why don't you let me -- hear me on this  
18 alone? Give me ten minutes.

19 THE COURT: Mr. Schiff, I am not going to allow that.

20 MR. SCHIFF: I think this is terribly unfair.

21 THE COURT: You have called the Court unfair about five  
22 times now. Mostly, I think, for your followers who are in the  
23 courtroom.

24 MR. SCHIFF: I don't have any followers.

25 THE COURT: You need to stop it.

1 MR. SCHIFF: Your Honor --

2 THE COURT: You are not going to do it anymore.

3 MR. SCHIFF: Can I --

4 THE COURT: Do you understand? If you continue to  
5 argue, I will sanction you.

6 MR. SCHIFF: Let me ask you something. Can I file this  
7 in the form of a written objection?

8 THE COURT: You can file -- you can file your 29(a) in  
9 writing if you wish.

10 MR. SCHIFF: And I could supplement?

11 THE COURT: You can reserve your 29(a) for later, as I  
12 allowed Mr. Cristalli to do, and I will consider it.

13 MR. BOWERS: I'm sorry. Your Honor, I didn't  
14 explicitly request that. I assume I could always supplement it  
15 later. So I'll make an explicit request if I need to.

16 THE COURT: Yes, you may.

17 MR. BOWERS: Thank you, Judge.

18 MR. SCHIFF: I -- I --

19 THE COURT: Don't repeat.

20 MR. SCHIFF: -- I just think it's terribly --

21 THE COURT: Go be seated.

22 MR. IGNALL: Your Honor, may I request a two-minute  
23 recess?

24 THE COURT: You may.

25 MR. IGNALL: Thank you.

1                   (Recess from 10:50 a.m. to 11:05 a.m.)

2                   THE CLERK: All rise.

3                   THE COURT: Please be seated.

4                   THE CLERK: Mr. Schiff and Mr. Leventhal aren't here.

5                   (Pause in the proceedings.)

6                   THE COURT: Mr. Schiff, I understand you're going first  
7 with the defense; is that correct?

8                   MR. SCHIFF: Pardon me?

9                   THE COURT: Are you going first?

10                  MR. SCHIFF: I guess so. I have some witnesses, your  
11 Honor.

12                  THE COURT: All right. Tell me who you have --

13                  MR. SCHIFF: Well, I have four --

14                  THE COURT: -- who you have waiting.

15                  MR. SCHIFF: Well, the four that I wrote on the...

16                  THE COURT: All right. Well, let's bring them all in  
17 so I can give them their advisement before --

18                  MR. SCHIFF: Okay.

19                  THE COURT: -- before we bring the jury in.

20                  MR. BOWERS: Judge, I -- I think --

21                  MR. SCHIFF: One didn't have --

22                  MR. BOWERS: -- and the only reason --

23                  MR. SCHIFF: -- so he went to get his summons. I  
24 got --

25                  MR. BOWERS: I want to do it outside the presence of

1 the jury. There's -- there's a case and, uh, Mr. Leventhal, I  
2 think, I gave the citation to. I wanted to just put something  
3 on the record regarding, um, requesting immunity for these  
4 witnesses briefly. It's Virgin Islands v. Smith, 615 F.2d 964.  
5 It's been much discussed. It's not like it's -- the Ninth  
6 Circuit has clearly adopted this and there was some  
7 prosecutorial misconduct and I'm not alleging that here. But.

8 I'm citing it for the proposition that, um, if there  
9 are defense witnesses, uh, to be called that will help ascertain  
10 the truth of the matter that, uh, if there's not a compelling  
11 reason not to give a limited immunity, then the case basically  
12 states that immunity could be granted by the Court. That is --  
13 is what it is. If that changes the Court's decision, that --  
14 that's fine.

15 Um, this canvassing by the Court, though -- I  
16 appreciate that it's taken outside the place of the jury -- but  
17 that isn't something we did with the Government's witnesses.  
18 Uh, that could be quite intimidating to these witnesses. It  
19 could, uh, stop their testimony; change their testimony; um,  
20 otherwise have a chilling effect on what they are being called  
21 to do.

22 This influences me because, of course, uh, just about  
23 everything Mr. Schiff does with his defense, in light of our  
24 ongoing and renewed motion to sever being denied, has an effect  
25 against my client and I -- you know, Mr. Cristalli can do what

1 he wants -- but I presume Ms. Neun as well.

2 So I -- I just want, for the record again, to state  
3 that I think there's -- well within this Court's discretion to  
4 grant this immunity, limit it to the use of the testimony made  
5 here in court; if the Government still has a need to prospect  
6 these people, they may. Uh, they certainly have whatever  
7 informa- -- that's the other thing, Judge, is I can't believe --  
8 and I don't know -- but I can't believe a witness is gonna be  
9 called in this trial whose evidence of filing false tax returns  
10 or whatever the crime it is the Government's gonna allege they  
11 may have committed isn't already within the Government's  
12 possession in these 50-some Bankers boxes and six hard drives  
13 they took out of the store. So there you have it.

14 MR. CRISTALLI: Your Honor, only one follow-up to that.  
15 Um, specifically there was, um, two witnesses that I can --  
16 well, three witnesses actually that jump right out at me. Um, I  
17 mean, Matt Diamond, Parrinelli, and then the realtor guy, which  
18 I forgot --

19 MR. BOWERS: Waller.

20 MR. CRISTALLI: -- his name. Waller.

21 I mean, all, in my opinion, are steadfast in their  
22 positions whether or not it's deep rooted in Irwin's philosophy  
23 or their own philosophies, um, in a unconventional tax-type  
24 ideology. So -- and they were not canvassed in terms of their  
25 protection. So, with that said, I -- I would join in Mr. --

1 MR. BOWERS: Well --

2 MR. CRISTALLI: -- Bowers --

3 MR. BOWERS: -- I guess along the same lines the  
4 Government's the one who pointed out that all but two of their  
5 witnesses were not immunized. I mean, they paraded witness  
6 after witness after witness, the whole village people group --  
7 the, you know, doctor; dentist; fireman; this whole thing -- all  
8 of them, uh, were not canvassed; all of them came in and  
9 acknowledged crimes.

10 Now, they may have had some agreement with the  
11 Government that didn't rise to the level of immunity so it  
12 didn't need to be offered. I'm not accusing the Government of  
13 wrongdoing. But sort of, hey, you know, we'll -- I guess, the  
14 point is they are similarly situated that -- all the village  
15 people are similarly situated to these two -- or these witnesses  
16 that Irwin's gonna offer and the Court didn't do that with them.  
17 So for whatever that's worth.

18 THE COURT: Thank you.

19 Uh, with respect to the -- the renewed motions for  
20 mistrial and severance, the Court denies those motions.

21 With respect to the -- the issue of canvass, I'm going  
22 to -- I'm going to, uh, just inquire briefly of each of these  
23 individuals if they have had an opportunity to consult with  
24 counsel or if they wish counsel and if they are aware that  
25 anything they say can be used against them. That's the --

1       that's the extent of it.

2               So if you'll bring in your -- as many witnesses as you  
3 have so that I don't have to keep doing this at sidebar.

4               MR. SCHIFF: Your Honor, I also just filed a motion in  
5 connection with 18, U.S.C., 3500. Here's a copy that was just  
6 filed.

7               (Document handed to the Court.)

8               MR. SCHIFF: What I'm asking for -- I have to put on my  
9 defense -- that pursuant to 18, U.S.C., 35 [sic] demanding the  
10 production of all statements and reports of witnesses. Uh,  
11 Section 18, U.S.C., Section 3500 speaks for itself.

12              MR. NEIMAN: Do you have a copy for us?

13              MR. SCHIFF: Yeah, I'll give you a copy.

14              MR. BOWERS: Here's one, Irwin.

15              MR. SCHIFF: This was just filed. So before I put on  
16 my case...

17              (Document handed to Government counsel.)

18              (Pause in the proceedings.)

19              MR. IGNALL: All right. Your Honor, I'm not sure I  
20 understand what Mr. Schiff is asking for. He's asking for  
21 Jencks Act statements of witnesses for the Government who have  
22 already testified?

23              THE COURT: Yes.

24              MR. SCHIFF: Yes.

25              MR. IGNALL: We've already complied with the Jencks

1 Act, so...

2 Although we do want reciprocal Jencks Act discovery  
3 from Mr. Schiff with respect to any of his witnesses.

4 MR. BOWERS: Just so I --

5 MR. SCHIFF: After a witness is called. This says  
6 after a witness has been called and has testified on direct  
7 examination the Court shall motion for the United States to  
8 produce any statement. This is after the witness has testified.

9 THE COURT: So you want them to copy them all over  
10 again?

11 MR. SCHIFF: Well, I -- well, I -- I have -- I don't  
12 have any transcripts. I -- I asked for expedited transcript.  
13 The point is I'm entitled to this material, your Honor, before I  
14 put on my defense.

15 THE COURT: Transcripts is a different issue than  
16 statements of -- prior statements of witnesses. And -- and, as  
17 I understand it, the other attorneys acknowledge they've already  
18 received -- in fact, they've used the statements in examining  
19 some of the witnesses. So it was --

20 MR. SCHIFF: Your Honor --

21 THE COURT: -- already turned over.

22 MR. SCHIFF: I'm just trying to avail myself of the  
23 protection offered by 18, U.S.C., 3500 which states --

24 THE COURT: And they said you've already received it.  
25 You received it before the witnesses testified.

1           MR. SCHIFF: I -- I -- but this says: "After a witness  
2 called [to] testify..., the court shall, on motion of the  
3 defendant, ... produce any statement ... of the witness in the  
4 possession of ... which relates to the subject matter as to  
5 which the witness has testified. If the entire contents of  
6 any ... relate ..., the court shall order it to be delivered  
7 directly to the defendant."

8           THE COURT: It's already been delivered.

9           MR. CRISTALLI: Well, I don't -- I don't have any of  
10 this stuff.

11          THE COURT: The Government represents that you have  
12 already received those.

13          What form are they in?

14          MR. SCHIFF: If the United States elects not to  
15 comply --

16          THE COURT: Mr. Neiman, which --

17          MR. NEIMAN: I'm sorry?

18          THE COURT: -- what form were the -- were the, uh,  
19 witness statements delivered in?

20          MR. IGNALL: What form? We had -- we gave all the  
21 Grand Jury transcripts we had for any witness who testified.  
22 And, although I'm not actually sure it's actually covered by the  
23 Jencks Act, if we had memorandums of interview or things like  
24 that for every witness, we provided that.

25          THE COURT: I just asked what form they were delivered

1 in. Were they on --

2 MR. IGNALL: They were --

3 THE COURT: -- a disk?

4 MR. IGNALL: -- delivered in hard copies and I

5 believe --

6 THE COURT: Hard copies.

7 MR. IGNALL: -- I believe we probably have a receipt

8 that the IRS agents have --

9 MR. SCHIFF: Your Honor --

10 MR. IGNALL: -- when they delivered it to --

11 MR. SCHIFF: Your Honor --

12 MR. IGNALL: -- each defendant.

13 MR. SCHIFF: -- that's before they testify. And some

14 of the witnesses did not testify before the Grand Jury. I had

15 no statements of theirs.

16 The point is the law -- the law specifically says I

17 have a right to their statements after direct examination.

18 THE COURT: Oh. So your point is that they give them

19 to you -- if they give them to you before, they also have to

20 give them to you after?

21 MR. SCHIFF: Well, this is what the law says.

22 THE COURT: That's an example of why you are here, sir.

23 MR. SCHIFF: Your Honor, I'm reading, "After a witness

24 called by --

25 THE COURT: An excellent example of why you are here.

1 MR. SCHIFF: Why am I here? The -- the law says,  
2 "After a witness called by the United States" --

3 THE COURT: Delivery before is sufficient. If they've  
4 delivered them already --

5 MR. SCHIFF: So, in other words --

6 THE COURT: -- it's sufficient.

7 MR. SCHIFF: In other words --

8 THE COURT: Don't argue with me.

9 MR. SCHIFF: I'm asking --

10 THE COURT: It's an inane --

11 MR. SCHIFF: -- a question.

12 THE COURT: -- reading of the law. It's exactly why  
13 you're here. They've already delivered them to you. I'm not  
14 going to make them copy them all over them again and hand them  
15 to you just for the sake of your interpretation. Your  
16 interpretation is wrong. If they've already given them to you,  
17 they don't --

18 MR. SCHIFF: They haven't given --

19 THE COURT: -- have to give them to you again.

20 MR. SCHIFF: They haven't given 'em to me.

21 THE COURT: They have already given them to you.

22 MR. BOWERS: Court's indulgence just a moment, your  
23 Honor.

24 (Discussion between Mr. Bowers and  
25 Mr. Schiff.)

1           MR. SCHIFF: Well -- yeah, well, I want copy of the  
2 transcripts, then, of what has transpired today. I don't have  
3 it.

4           MR. BOWERS: In this trial.

5           MR. SCHIFF: In this trial.

6           THE COURT: No, we don't provide daily transcripts.  
7 It's impossible. I've already told you that before.

8           MR. SCHIFF: Can I have a five-minute recess?

9           THE COURT: No.

10           Bring your witnesses in. We're ready to go. The jury  
11 has been waiting.

12           MR. SCHIFF: Well, not all my witnesses are here  
13 because some have problems. But I'll see who's here.

14           VOICE: Who do you want in?

15           MR. SCHIFF: Who's here?

16           VOICE: Jenny Blair -- Jerry Blair.

17           THE COURT: All that are here so I can advise them as a  
18 group.

19           (Pause in the proceedings.)

20           THE COURT: Just remain standing right there.  
21 Would you identify yourselves for the record.

22           MR. BROOKINS: Gerald Reginald Brookins.

23           MR. MURPHY: Glen J. Murphy.

24           THE COURT: Your name.

25           MR. MURPHY: Glen John Murphy.

1 THE COURT: Okay.

2 Have each of you had an opportunity to consult legal  
3 counsel regarding your testimony or anticipated -- anticipated  
4 testimony today?

5 MR. MURPHY: I haven't consulted any.

6 THE COURT: Have you had the opportunity to do so if  
7 you wished?

8 MR. MURPHY: I could if I wanted to, yes.

9 THE COURT: Okay.

10 MR. MURPHY: But I don't want to.

11 THE COURT: All right.

12 And, Mr. Brookins? Brookings?

13 MR. BROOKINS: Sir, yes, sir.

14 THE COURT: All right.

15 The Court --

16 MR. IGNALL: I'm sorry. I don't mean to interrupt.  
17 I'm you just looking at the -- well, actually I take  
18 that back. I'm sorry, your Honor.

19 THE COURT: Okay.

20 MR. IGNALL: All right.

21 THE COURT: The Court advises you that -- the Court  
22 advises you that, uh, anything you may say in your testimony can  
23 be used against you.

24 Are you both aware of that?

25 MR. MURPHY: (Nods head.)

1 THE COURT: You'll have to answer out loud.

2 MR. BROOKINS: Am I under some type of indictment here?

3 What's goin' on?

4 THE COURT: No. I'm just advising you that -- of your  
5 right to remain silent if you wish, to not incriminate -- you  
6 may incriminate yourself. I don't know.

7 MR. BROOKINS: Okay. Well, I'm here to -- to speak the  
8 truth, whatever that requires.

9 THE COURT: All right.  
10 Do each of you understand that?

11 MR. MURPHY: Yes, I do.

12 THE COURT: Okay.  
13 Anything you say can be used against you. All right.  
14 Who's going to be your first witness?

15 MR. SCHIFF: The gentleman over here.

16 MR. IGNALL: Your Honor, may we raise an issue of  
17 relevance --

18 THE COURT: Yes, sir.

19 MR. IGNALL: -- outside of Mr. Murphy's presence?

20 THE COURT: The witnesses will leave the courtroom  
21 until they are called. Please remain outside the doors of the  
22 courtroom. Remain outside the doors of the courtroom.

23 (Mr. Brookins and Mr. Murphy leave the  
24 courtroom.)

25 MR. SCHIFF: Mr. Murphy is going to be my first

1 witness.

2 THE COURT: Well, this is going to be done outside the  
3 presence of the witnesses.

4 MR. IGNALL: Your Honor, if we look at the -- uh, the  
5 proffer of Mr. Murphy, nothing in there -- it says how he may  
6 have been convinced that the Freedom Books information is  
7 correct, which I think is not relevant testimony. There's  
8 nothing in here that says that what -- what Mr. Murphy may have  
9 told Mr. Schiff upon which Mr. Schiff may have formed a  
10 good-faith belief. So I -- I think -- if it's limited to that,  
11 we'll defer to the Court as to the relevance. But that hasn't  
12 been proffered in what we have written out in item No. 4 for  
13 Mr. Murphy.

14 MR. BOWERS: Your Honor, may I address that 'cuz  
15 this -- this is gonna be an ongoing theme from the proffers that  
16 I have seen. Just very briefly, a comment on that issue.

17 THE COURT: Go ahead.

18 MR. BOWERS: Um, the Government has been allowed in  
19 this case to have various documents, their existence in the even  
20 building input notice to all of the defendants. Now, the -- the  
21 flip side of this is to impute, um, sort of good notice to  
22 the -- to the defendants that this was successful they intend to  
23 require that each time one of these people is offered he -- he  
24 provide dates and times and circumstances of exactly when, uh,  
25 he relayed this information. Now, that's --

1 THE COURT: I don't see that as the Government's  
2 objection. I think you're --

3 MR. BOWERS: Well, then I --

4 THE COURT: -- I think you're flying off on a tangent,  
5 Counsel.

6 MR. BOWERS: Well, then I'll --

7 THE COURT: You're --

8 MR. BOWERS: -- I'll sit down and wait till that comes  
9 up.

10 THE COURT: That's all right. I want -- I want to  
11 address it. But they -- they haven't complained about that.

12 What they have said just now is that none of the  
13 proffered evidence shows anything that would support Schiff's  
14 good-faith belief. And -- and they have got a point there. I  
15 don't know if you have this summary in front of you.

16 Do you have it in front of you?

17 MR. BOWERS: I do. And we're -- we're referring to  
18 Mr. Murphy, the truck driver.

19 THE COURT: Correct.

20 MR. BOWERS: He's a Schiff student.

21 THE COURT: Now, what you are going off on was if they  
22 got a refund. But it doesn't --

23 MR. BOWERS: No, no, no.

24 THE COURT: Well, or had some success with this and --

25 MR. BOWERS: My -- my position on this issue would

1 be -- and, if I'm premature or out of line, I'm happy to sit  
2 down. I just was -- I had understood this from conversation  
3 with the Government that was their position. So, if I'm wrong,  
4 I'm happy to be quiet.

5 But my understanding was that if -- if a student or  
6 anyone else called the store and said, hey, I -- I had some  
7 success or another, that that was not gonna suffice as -- as,  
8 quote-unquote, for lack of a better phrase, good notice to these  
9 defendants. If that is not the Government's position, then I  
10 wanna sit down.

11 THE COURT: That is not their position. That is not  
12 what they said.

13 MR. BOWERS: Well, I -- I agree that may not be what  
14 they said. So I'll wait until they comes up or I'll just --

15 THE COURT: Their point --

16 MR. BOWERS: -- hope it does.

17 THE COURT: -- is that there's nothing in this proffer  
18 that shows the witness would testify to what you have just said.

19 MR. SCHIFF: Your Honor, I didn't write an extensive --

20 MR. BOWERS: Well, you know, Judge, I have --

21 THE COURT: Their -- their belief, the --

22 MR. BOWERS: No, I understand that.

23 THE COURT: -- the witness belief, is not germane.

24 MR. BOWERS: I understand that there is a -- well, it  
25 is germane if they've relayed it -- for purposes of notice, if

1 they've relayed that back to the store. I understand that this  
2 proffer is not drafted in such a way where it states that.  
3 And -- and I have a -- a problem because, again, we're getting  
4 into an area where Irwin's lack of ability and knowledge is  
5 spilling over to my clients.

6 I -- I think the question to ask Mr. Murphy is: Did  
7 you talk about whatever happened to you with the people at  
8 Freedom Books? And, if the answer to that is yes and what  
9 happened to Mr. Murphy was not frivolous penalties and  
10 indictments and everything else, then I think he's a -- he's a  
11 relevant, salient witness for Mr. Schiff and may -- and the rest  
12 of the defendants as well the way the Government's offered  
13 evidence.

14 I understand that the Government is technically  
15 correct, that phrase is not contained in this proffer as drafted  
16 by whoever drafted this and submitted by Irwin. But it doesn't  
17 surprise me, or would not surprise me, if in fact that testimony  
18 were going to be offered by this witness and Irwin didn't  
19 include it in the proffer.

20 MR. SCHIFF: Your Honor, this goes to my good-faith  
21 belief. If people are using my material -- just to show you  
22 how -- how influenced they are, they are willing to risk  
23 criminal penalties. The fact is they used my material and this  
24 goes to my good-faith belief that my material works.

25 Now, what the Government wants to do is put on people

1 who don't even read my material and apparently because it  
2 doesn't work say, see, he knows it doesn't work. Now, I can't  
3 bring in here everybody who has bought my material and it's  
4 worked. But there's some people who have done extensive  
5 research, called me, and they believe, uh, in this material and,  
6 therefore, it supports my good-faith belief in the material.

7 THE COURT: Well --

8 MR. SCHIFF: The Government would have you believe that  
9 I know people are gonna get into trouble, they are gonna get  
10 frivolous letters, and that's why they -- yeah, but here are  
11 people who support my good-faith belief in the material.

12 THE COURT: No.

13 MR. SCHIFF: Now, the Government cannot be allowed,  
14 your Honor, to -- to bring in people who claim exempt, who file  
15 zero returns, do no independent research. And, if the  
16 Government can put on witnesses who apparently have gotten into  
17 trouble, even when they state they haven't read my book, you're  
18 telling me if I can't discuss the law and I can't put on people  
19 who use my material, you're essentially telling me I don't have  
20 a defense.

21 THE COURT: Well, I've said you can't make false  
22 statements about the law.

23 MR. SCHIFF: Well --

24 THE COURT: You cannot testify about the law because  
25 that is the sole function of the Court is to --

1 MR. SCHIFF: They're not --

2 THE COURT: -- instruct the jury on what the law is.

3 MR. SCHIFF: First of all, any statements --

4 THE COURT: Mr. Schiff --

5 MR. SCHIFF: I make any --

6 THE COURT: -- let me speak.

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

8 THE COURT: The ruling is that if -- if the witness has

9 something that they communicated to you that it worked for them,

10 you're able to go into that. Their beliefs as to whether --

11 whether this was legal or not is -- is -- is not relevant.

12 These are people who are your followers. And, if they had some

13 success with it and they communicated that, that is fair game.

14 That's what Mr. Bowers point, I think, was.

15 MR. BOWERS: Thank you, your Honor.

16 MR. SCHIFF: Mr. Brookins --

17 MR. CRISTALLI: And, your Honor --

18 MR. SCHIFF: Mr. Brookins --

19 MR. CRISTALLI: If I could interject real quickly.

20 MR. SCHIFF: -- Mr. Brookins is in the video --

21 MR. CRISTALLI: I have -- go ahead.

22 MR. SCHIFF: -- that we made.

23 MR. CRISTALLI: I just have a little bit of a different

24 angle with regard to that.

25 My only concern is that the Government had presented

1 their case in a way that, which they certainly can do, is going  
2 to attempt to betray the organization as more of a type of a  
3 rip-and-tear organization, um, and kind of dismiss whether or  
4 not these individuals held their beliefs in good faith versus  
5 held their beliefs in an effort to turn a profit. And I think  
6 if you have other individuals who would testify to, um, reliance  
7 issues, I think that ultimately is important to, uh -- you know,  
8 to -- I mean, to establish that my client was similarly  
9 situated.

10 THE COURT: The good faith intent of the witness cannot  
11 be used to establish the good faith of the, uh --

12 MR. CRISTALLI: Oh, I understand --

13 THE COURT: -- of the defendant.

14 MR. CRISTALLI: I understand that. I understand that.

15 THE COURT: All right. First witness.

16 MR. IGNALL: Well, your Honor, I'm not sure if we've  
17 resolved whether Mr. Murphy's actually --

18 MR. BOWERS: Judge --

19 MR. IGNALL: -- I don't think Mr. Schiff's actually  
20 told us whether Mr. Murphy is gonna --

21 THE COURT: Yeah. What --

22 MR. IGNALL: -- say that there --

23 THE COURT: -- what is --

24 MR. IGNALL: -- was some notice to him.

25 THE COURT: -- he going to testify to? Is he going to

1 testify that he had some success that he communicated to you?

2 MR. SCHIFF: He's gonna -- no. He's gonna testify that  
3 he took my material and -- and -- and he didn't do anything  
4 until he verified it all and he'll tell you his experiences with  
5 it. And, um, you'll hear his testimony.

6 THE COURT: Well, I'm asking you to tell me now.

7 MR. SCHIFF: Well, Mr. Brookins -- well, Mr. Brookins,  
8 the other fellow is --

9 THE COURT: Tell me about Mr. Murphy.

10 MR. SCHIFF: Mr. Murphy --

11 THE COURT: Let's do one at a time.

12 MR. SCHIFF: -- is gonna testify to the extent that  
13 when he got -- when he heard me on the radio, he got my  
14 material; he went down to the library; he checked it all out; he  
15 went down to the IRS; uh, he tried to go to the legal counsel  
16 for the IRS. He can relate his experience. He claimed ex- --  
17 oh, that's another thing.

18 See, um, in the Indictment you accuse me of filing  
19 false --

20 THE COURT: Mr. Schiff --

21 MR. SCHIFF: -- he's gonna testify that he claimed  
22 exempt, uh, successfully and then the government wrote to his  
23 employer and said tell the employer not to honor his W-4. His  
24 employer did. So he quit and he went into business for himself.  
25 But -- and he -- he -- he believes in the information. So I --

1 THE COURT: No. He can't testify to that. What he can  
2 testify to is he claimed exempt successfully and then he'll be  
3 subject to cross-examination.

4 MR. SCHIFF: Well, can he say --

5 THE COURT: We're not going to go into his research.  
6 We're not going to go into his good-faith belief. The only  
7 thing that's relevant is what he communicated to you about his  
8 success or failure.

9 MR. SCHIFF: But, your Honor -- but this goes to my --  
10 if people are using my material and it works, this goes to my  
11 good-faith belief that the material is valid --

12 THE COURT: You used the --

13 MR. SCHIFF: -- and legal and works for people.

14 THE COURT: -- word "works," it works. And that's --

15 MR. SCHIFF: Pardon?

16 THE COURT: I told you if you can show through a  
17 witness that they communicated to you that it worked, fine.

18 MR. SCHIFF: But, your Honor, the -- the Government  
19 admits that thousands of people have used my material. Did they  
20 all call me and say it works? The fact that they don't call  
21 me -- that's why I had the radio show. Nobody called the radio  
22 show and says it doesn't work. I mean, you're asking me to  
23 prove a negative.

24 The -- the Government is trying to claim that I  
25 deliberately -- if you look through the Indictment that my

1 information was false and I knew it was false.

2 THE COURT: Let's address the witnesses, Mr. Schiff.

3 MR. SCHIFF: Well, bring the witness in. I don't --  
4 your Honor, I was gonna ask him his name; where he's from; how  
5 does he -- the fact -- did he pay taxes. I mean --

6 THE COURT: I'm going to restrict you to the question  
7 of did he follow your material, did it work, and --

8 MR. SCHIFF: Well --

9 MR. BOWERS: I'm sorry, Judge. May I make one thing  
10 for the record --

11 THE COURT: Yes.

12 MR. BOWERS: -- that I believe is also relevant?

13 We -- I -- forget about we -- I during opening argument  
14 said to this jury that the IRS did not answer these questions in  
15 a way that, um, satisfied these people. We're not gonna to  
16 argue the law. That's not what this is about. I made that  
17 comment; no one objected to it. Um, it sounds to me like  
18 Mr. Schiff's proposed witness has testimony that will reinforce  
19 that.

20 Secondly to that, I made the comment Mr. Schiff is a  
21 persuasive person who brings people in; they go through this  
22 process; come out the other side believing whatever they  
23 believe. Their beliefs, I -- I'm not arguing with this Court,  
24 are immaterial. But -- and -- and I have no problem if the  
25 Court precludes these witnesses from testifying as to what their

1 beliefs were, are, will be, whatever the case may be -- but I  
2 think that they should be allowed to talk about the process of  
3 how those beliefs were formed.

4 MR. CRISTALLI: I agree, your Honor. I mean, your  
5 Honor has instructed on the law during the course of this trial.  
6 Your Honor is going to instruct on the law at the conclusion of  
7 this trial. In no way is the testimony, um, in terms of what  
8 these individuals did in terms of independent research, um,  
9 going to compromise the Court's instructions to the jury.

10 It's not about whether or not what they are espousing  
11 or believing is true and/or legal; it's about what they relied  
12 on in coming to that conclusion which is the heart of the  
13 elements for which the Government must establish in this  
14 particular case.

15 MR. BOWERS: You know, Judge, and --

16 THE COURT: That establishes their good-faith belief.  
17 And that's not -- that's not --

18 MR. SCHIFF: Your Honor --

19 THE COURT: -- relevant.

20 MR. BOWERS: I'm sorry, Judge. Just one more thing  
21 along these lines.

22 I -- I don't want to speak out of turn, but I think  
23 Mr. Cristalli and I are both at the close of the evidence in  
24 this case gonna get up in front of this jury and suggest that  
25 the version of the law this Court has given is the version --

1       it's the law. I mean, there's -- there's no -- the only  
2       possible risk of confusion on that issue stems from Mr. Schiff.

3               The curative powers of this Court do not need to stem  
4       my -- my position or Mr. Cristalli's position. I mean, we --  
5       we're taking some -- some extreme measures, which is fine. It's  
6       within the province of this Court to make sure this jury doesn't  
7       get confused. And -- and I don't mind. That's the Court's  
8       decision. It's gonna be what it's gonna be. But to cut off  
9       salient information to my defense for fear of confusing the jury  
10      for this limited purpose, I -- I think is heavy handed and, uh,  
11      more than this Court needs to do to prevent, uh, confusion.

12             MR. IGNALL: Your Honor, I -- I think there are things  
13      that Mr. Schiff could testify to about no one ever -- I never  
14      heard back from thousands of customers, that's fine. But to put  
15      on customer after customer to say I never contacted Mr. Schiff  
16      is a huge waste of time.

17             However, if the -- everything has to be tied back to  
18      what the defendants did and what they knew. So, if it's  
19      something that's relayed back about the IRS didn't respond to my  
20      inquiry, I think the relevance is low. But it probably is  
21      minimally relevant if it goes back to one or more of the  
22      defendants to say that might be part of their state of mind.

23             MR. SCHIFF: Your Honor --

24             MR. IGNALL: Beyond that, I'm not really sure what the  
25      relevance of this witness's testimony.

1 MR. SCHIFF: Well, what --

2 MR. IGNALL: No matter how vehemently the witness  
3 believes it, it doesn't go to whether the defendants believe it  
4 in good faith or not, if they misunderstand the law or not. I  
5 suppose -- I don't -- now -- now I may misunderstand. I don't  
6 know. It may be that Mr. Cristalli and Mr. Bowers wanna call  
7 these witnesses independently for a separate purpose to show  
8 that Mr. Schiff is persuasive. I -- I don't know. Is that what  
9 they are getting at? I'm not really sure.

10 THE COURT: Yeah. That's a different issue.

11 MR. IGNALL: And that -- and that, I suppose, could  
12 be --

13 THE COURT: We're talking --

14 MR. IGNALL: -- very narrowly tailored, but...

15 THE COURT: -- about the proffer that's in front of the  
16 Court right now.

17 MR. SCHIFF: Let me ask you something. What was the  
18 relevance -- what was the relevance of the people using my  
19 material that the Government called? What was that relevance?  
20 What was the relevance of all the people that the Government  
21 called who were using my material?

22 THE COURT: Do you want me to go through every one of  
23 'em?

24 MR. SCHIFF: Pardon me?

25 THE COURT: Do you expect me to go through every

1 witness?

2 MR. SCHIFF: No. Just in general.

3 THE COURT: Uh, Mr. Schiff, I've already made my  
4 rulings.

5 MR. SCHIFF: All right. Let me --

6 THE COURT: I'm not going to --

7 MR. SCHIFF: -- can I ask you -- well, let me just show  
8 you something that goes to my good-faith belief.

9 Uh, paragraph 13 of the Indictment says, "Through his  
10 business [and] ... with the assistance of [SCHIFF], and others,  
11 promoted, marketed, and sold materials ... instructions how to  
12 file false exempt ... W-4['s]."

13 First of all, they did not put on one witness that said  
14 that these W-4's were false. But, if people were using my  
15 material, as both of these individuals did, and claimed exempt  
16 and they were honored and went over by the legal -- uh, the one  
17 case the lawyer for the hospital, then that statement is false.  
18 It shows I do -- I did not knowingly urge people to file false  
19 and fraudulent exempt W-4's. So it's directly related to my  
20 good-faith belief as contained in paragraph 13.

21 THE COURT: We're not arguing your good-faith belief  
22 right now, Mr. Schiff. We're discussing witnesses and what  
23 they --

24 MR. SCHIFF: The --

25 THE COURT: -- what is the proper area for -- for

1 testimony and what is not.

2 MR. SCHIFF: The experience of these witnesses support  
3 my good-faith belief. How -- otherwise how could I support it?

4 If I say to people using my material, uh, that's what  
5 you say. They're all getting in trouble; they all get frivolous  
6 letters -- how could I support my good-faith belief if I'm not  
7 allowed to put on witnesses who have used my material -- but  
8 it's not only that they've used my material. They've --  
9 they've, uh, done other additional research. In -- in the case  
10 of -- of Mr. Brookins, he -- he didn't do anything for two or  
11 three years until he confirmed, you know.

12 And then he's on that video. I wanna play this video  
13 that Mr. Brookins relied on and he is in this video. It was a  
14 special seminar. And Mr. Brookins is on this video. And I want  
15 to introduce the video through him, among other things.

16 But these are my witnesses. If they make -- you can  
17 instruct the jury that the law is not what they believed or what  
18 I believe.

19 MR. IGNALL: Your Honor --

20 MR. SCHIFF: But they certainly -- I certainly have a  
21 right to produce witnesses that use my material and have  
22 positive results. Otherwise, if everybody is getting in  
23 trouble, then I shouldn't be selling my material.

24 THE COURT: I've already ruled.

25 MR. SCHIFF: What's -- I don't understand the ruling.

1 THE COURT: Well, listen. Listen for a change.

2 I said you can bring in witnesses who testified that  
3 they had success with your materials. You cannot bring in  
4 witnesses to testify that they are convinced that you're --  
5 you're right; that they have a good-faith belief because that  
6 doesn't go to your good-faith belief.

7 MR. SCHIFF: Well, I'll try to -- I'm gonna ask them  
8 questions. If I get to a question that you think is irrelevant  
9 or the Government, he -- he can object --

10 THE COURT: I'm telling --

11 MR. SCHIFF: -- and I won't proceed.

12 THE COURT: -- you to confine yourself to -- to  
13 questions about their use of the materials, and whether they had  
14 success.

15 MR. IGNALL: All right. Your Honor --

16 MR. SCHIFF: I was just gonna ask them how they came --

17 THE COURT: Yes.

18 MR. SCHIFF: -- how they came in contact with me. How  
19 they came in contact, what they do for a living.

20 THE COURT: I'll allow you some initial background  
21 questions, but I'm not going to allow you to go into all the  
22 other areas that you have --

23 MR. SCHIFF: Well, I want to ask him --

24 THE COURT: -- identified.

25 MR. SCHIFF: -- how they happened to get material from

1 us, what they did with the material after they got it.

2 MR. IGNALL: Your Honor, I think this still all has to  
3 be tied back into relaying this success back to Mr. Schiff --

4 THE COURT: Correct.

5 MR. IGNALL: -- personally --

6 THE COURT: Correct.

7 MR. IGNALL: -- just to be clear.

8 MR. SCHIFF: Okay.

9 MR. IGNALL: And I -- I assume we don't need to  
10 address --

11 THE COURT: I've already --

12 MR. IGNALL: -- the video at this point?

13 THE COURT: -- said it. It looks like we're not going  
14 to be able to -- to --

15 MR. SCHIFF: I'll tell Mr. Brookins -- I want  
16 Mr. Brookins to come in.

17 THE COURT: -- to have Mr. Schiff cooperate with us.

18 MR. SCHIFF: I'm gonna --

19 THE COURT: -- in any fashion.

20 MR. SCHIFF: -- I'll use Mr. Brookins first. I'll use  
21 Mr. Brookins first.

22 MR. IGNALL: There's nothing -- unfortunately, I hate  
23 to go over this again -- there's nothing in Mr. Brookins's  
24 proffer that says that he had success and he relayed it back to  
25 Mr. Schiff. And that may be the case and --

1 MR. SCHIFF: He lived in my apartment for five months.

2 MR. IGNALL: All right. Mr. -- that may be relevant to  
3 Mr. Cristalli's defense in that --

4 MR. SCHIFF: Yeah. He -- he's on this video.

5 THE COURT: So what?

6 MR. SCHIFF: Well, he relied upon what he learned in  
7 this video.

8 THE COURT: I don't care what he relied on. The  
9 question is did he have success and communicate that to you.

10 MR. SCHIFF: Yes.

11 MR. CRISTALLI: Your Honor, with regard to the reliance  
12 issue, my only, um, issue with regard to that, if -- for  
13 example, if a person goes to the seminar, prescribes to the  
14 philosophy, does their own independent research, and then gives  
15 positive feedback to Mr. Schiff and/or any one of the other  
16 defendants, doesn't -- doesn't that establish a reliance basis?

17 For example, if they had come back and said you're  
18 completely wrong, you're writing the law, and that's the end of  
19 the story, then I think it's a different -- I mean, obviously  
20 they would be really put on notice and the Government would put  
21 them up there. But, if you're getting different feedback,  
22 doesn't that go to a reliance issue that is fair game in terms  
23 of the, um -- in terms of the evidence and how it directly goes  
24 into the elements of these offenses? That would be my only  
25 concern in terms of, you know, the parameters of their

1 testimony.

2 I believe they can't say I believe it and therefore he  
3 believes it. I agree that that's the case. But, in terms of  
4 what they did in furtherance and then what the feedback was,  
5 that would be my only issue with regard to that.

6 MR. BOWERS: I agree. I -- I -- I mean, I think that's  
7 an extension of the happy -- I know this Court's rejected the  
8 notion of happy camper/satisfied customers because of the wire  
9 fraud and telemarketing cases. But, in my research of those,  
10 those cases that reject that are -- reject it because there's  
11 something inherently wrong with the program as it's offered. In  
12 this context, the -- the happy camper would be offered for the  
13 purpose of establishing reliance by any of these defendants. So  
14 I --

15 THE COURT: Yeah.

16 MR. BOWERS: -- I think that's legitimate.

17 THE COURT: Now, Mr. Schiff has stated that his -- he  
18 is the foremost tax authority in the United States.

19 MR. SCHIFF: Your Honor --

20 THE COURT: This material, uh, uh, emanated from him  
21 and the fact that, uh, he gets someone to go read a case that  
22 has excerpted one line and they say that line is there is not --  
23 is not evidence for his good faith. That is -- that is just an  
24 attempt to confirm that he excerpted the line correctly from the  
25 case and it's confusing to the jury. So -- and it's prejudicial

1 value outweighs --

2 MR. SCHIFF: Your Honor --

3 THE COURT: -- its probative value.

4 MR. SCHIFF: Your Honor --

5 THE CLERK: Excuse me, your Honor.

6 MR. SCHIFF: -- what is probative?

7 (Discussion between the clerk and the Court.)

8 MR. SCHIFF: What is also probative, your Honor?

9 THE CLERK: It's coming over the speakers. When I mute

10 all the speakers... It's very strange.

11 THE COURT: Call Shawn to --

12 THE CLERK: Okay.

13 THE COURT: -- come up here and find out what's the

14 problem.

15 (Pause in the proceedings.)

16 THE CLERK: I can mute all the microphones and we'll

17 just go on our ears, but...

18 THE COURT: Can you handle that?

19 THE REPORTER: I'll try.

20 THE CLERK: Okay.

21 THE COURT: Is it a possibility that a phone is on hold

22 or...

23 (Pause in the proceedings.)

24 THE COURT: We'll be in recess until 1:00 p.m.

25 Ms. Clerk, will you notify the jury?

1 THE CLERK: Yes, sir. 1:00 p.m.

2 MR. MODAFFERI: 1:00.

3 MR. BOWERS: 1:00?

4 THE COURT: 1:00 p.m.

5 MR. IGNALL: Your Honor, may we address one thing?

6 THE COURT: Yes. I don't know how many more witnesses  
7 Mr. Schiff has. But, if we could request that the Court request  
8 Mr. Schiff to have more of them available in case these two  
9 witnesses' testimony does not take very long.

10 MR. SCHIFF: Well, first of all, a lot of my witnesses  
11 are out of town, and I -- you're telling me they may not -- how  
12 could I have all my witnesses here and then find out that a lot  
13 of them are not gonna testify? I mean, how many -- I can't have  
14 all my potential witnesses here.

15 MR. IGNALL: Well, perhaps the five that are on the  
16 sheet so far.

17 THE COURT: All of the five that are on the sheet so  
18 far should be here.

19 MR. SCHIFF: Yeah. Well, one of them, Cal -- Cal --

20 THE COURT: I don't want to keep this jury any more  
21 days than is absolutely necessary.

22 MR. SCHIFF: The problem, your Honor, was I didn't want  
23 to bring people from out of town who might not get on and then  
24 they gotta wait here four days.

25 THE COURT: Well, you -- you bring your witnesses.

1 I've told you --

2 MR. SCHIFF: Well, I wanna be --

3 THE COURT: -- before you schedule --

4 MR. SCHIFF: -- able to play the video.

5 THE COURT: -- you schedule your witnesses close enough  
6 together so that we do not have any day that the jury is going  
7 home early because you are not ready to go.

8 MR. SCHIFF: Well, your Honor, I got a three-and-a-half  
9 hour video I'd like to play. So we can play that.

10 MR. IGNALL: All right. Your Honor, I'm sure we're  
11 gonna object to that. So...

12 MR. SCHIFF: Pardon me?

13 MR. IGNALL: I'm sure we're gonna object to the video.

14 MR. SCHIFF: Well, this -- this goes to my reliance --  
15 self-reli- -- and Mr., uh, Brookins relied on the video; he was  
16 in the video. He's in the video. So that's three and a half  
17 hours.

18 And it's been referred to -- the Government got copies  
19 of this. This video was turned in, uh, with the material that  
20 they got at the Grand Jury hearings. And the Government keeps  
21 saying that I'm promoting tax evasion. Well, this video will  
22 address that issue. So we have this tape --

23 THE COURT: It may not come in, Mr. Schiff.

24 MR. SCHIFF: Well, why not?

25 THE COURT: I'm just telling you do not inconvenience

1 the jury. If it becomes a question of between inconveniencing  
2 your witnesses and the jury --

3 MR. SCHIFF: Well, let me ask you something.

4 THE COURT: -- you inconvenience your witnesses.

5 MR. SCHIFF: Let he ask you something. Why should --

6 THE COURT: I don't know what's on that tape.

7 MR. SCHIFF: Well -- on the tape? Well, the Government  
8 knows what's on it. They have copies.

9 This is a -- a seminar that I put on and I sold and  
10 people bought and the Government claims I promote tax evasion.  
11 And, if I do, there should be evidence of that on this tape.  
12 Besides which, Mr. Brookins --

13 THE COURT: They didn't present the tape. The question  
14 is relevance.

15 MR. SCHIFF: Well, they didn't present the tape because  
16 there's no evidence that I promote tax evasion. They didn't  
17 present any evidence of the two-hour seminar -- the two-day  
18 seminar and the one-day seminar.

19 THE COURT: I've already ruled that the Government has  
20 presented sufficient evidence to go to the jury --

21 MR. SCHIFF: And the Government hasn't --

22 THE COURT: -- on these questions.

23 MR. SCHIFF: -- presented any evidence.

24 THE COURT: Pardon?

25 MR. SCHIFF: They haven't presented any evidence.

1 All -- all they said is did -- did you get this document from  
2 Freedom Books? Yes. They haven't pointed out one statement in  
3 any document that was false.

4 As a matter of fact, in their Indictment they accuse me  
5 at my seminars of promoting tax evasion. That's what they said.  
6 Now, they had undercover agents at two of those seminars who  
7 made tapes of those seminars. And they haven't played any  
8 excerpts for the jury. What does that tell ya? They also --  
9 the Government --

10 THE COURT: That tells me that they have enough  
11 evidence otherwise. They don't have to put it all in.

12 MR. SCHIFF: Well, your Honor -- your Honor, the  
13 Government had this seminar. It was turned in, uh, with the --  
14 Mr. Abdulla -- Mr. Abdulla, whatever his name, before I even  
15 signed, I said to him, "Did you listen to these tapes?" He  
16 said, "Yes." Then he tells the Government, "Well, I didn't  
17 listen to the tapes."

18 This is -- this is evidence of my good faith. This is  
19 evidence of what I tell people. This is just one evidence.  
20 It's only three-and-a-half hours; I could put on a two-day  
21 seminar.

22 And Mr. Brookins is on this seminar. And he -- this  
23 was a seminar for about 10 people which we videoed and a number  
24 of people purchased this seminar. So it's relevant. It's  
25 relevant to what they believed. It's relevant to what I teach.

1 It's relevant to my good faith.

2 Now, you can instruct the jury if you want that any  
3 comments that I make about the law may or may not be correct.  
4 And I'll even say this is my understanding. My understanding  
5 could be dead wrong. But this is essential to my defense.

6 Oh, incidentally, all of the people who have used my  
7 material could also testify that they believe that I believe  
8 sincerely in what I teach and sell. That goes to my good faith.  
9 That's essential.

10 THE COURT: It is not.

11 MR. SCHIFF: Pardon me?

12 THE COURT: It is not. Their belief as to your good  
13 faith is not admissible.

14 MR. SCHIFF: Well, can I ask you one question? Then  
15 how does the Government establish -- how does the Government  
16 establish whose testimony will be presented that I don't believe  
17 what I teach and sell.

18 THE COURT: The jury decides whether you have a  
19 good-faith belief.

20 MR. SCHIFF: On what basis do they decide it?

21 THE COURT: They decide that based on the evidence that  
22 has come in --

23 MR. SCHIFF: Yeah. But you don't know -- you're  
24 saying --

25 THE COURT: -- my instructions of law, the evidence.

1 MR. SCHIFF: -- you may not allow the evidence to come  
2 in.

3 THE COURT: Well, I'm not going to allow you to put in  
4 whatever you want nor am I going to allow you to put in a  
5 three-and-a-half-hour tape without more showing of relevance  
6 than what you have right now let alone --

7 MR. SCHIFF: Well, the Government --

8 THE COURT: -- let alone the fact --

9 MR. SCHIFF: -- has spent three weeks --

10 THE COURT: -- the fact that you haven't taken the  
11 stand yet.

12 (Discussion between Mr. Leventhal and  
13 Mr. Schiff.)

14 MR. SCHIFF: All right. Well, Mr. Brookins is on this  
15 tape and I expect to be able to put it in through his testimony.

16 THE COURT: We're in recess until 1:00 p.m.

17 (Lunch break, 11:54 a.m. to 1:28 a.m.)

18 THE CLERK: All rise.

19 THE COURT: Any matters before we bring the jury in?

20 MR. CRISTALLI: Your Honor, I just have one brief --

21 THE COURT: Please be seated.

22 MR. CRISTALLI: -- issue.

23 I -- I just found out that there was a communication, I  
24 believe, this morning with, um, yourself and Government  
25 prosecutors -- initiated by Government prosecutors. I'm

1 certainly not asserting that there was anything improper. I  
2 understand that it was on the record; it was in your office.  
3 Uh, and um, I was not notified of that. I just kinda found out  
4 through the grapevine sort of thing.

5 And I'm just a little concerned that we weren't advised  
6 of that. Um, I don't know the content of it and I certainly  
7 would defer to your Honor with regard to it. But my only  
8 concern was that we were never, uh, advised of -- of such a  
9 meeting.

10 THE COURT: The, um, court reporter was present. There  
11 was nothing improper with it. It -- it dealt with some matters  
12 that are properly ex parte. And, uh, the, uh -- that's all I  
13 need to say.

14 MR. CRISTALLI: Okay.

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

16 THE CLERK: Yes, sir.

17 (Pause in the proceedings.)

18 (Jury enters the courtroom at 1:31 p.m.)

19 THE COURT: Please be seated.

20 Will counsel stipulate to the presence of the jury?

21 MR. NEIMAN: Yes, your Honor.

22 MR. BOWERS: Yes, your Honor.

23 MR. SCHIFF: Yes, your Honor.

24 THE COURT: Mr. Schiff, you may call your first  
25 witness.

1 MR. SCHIFF: Mr. Brookins, please take the stand.

2 (Gerald Brookins takes the witness stand.)

3 THE CLERK: Okay, sir. Remain standing and raise your  
4 right hand.

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

8 THE WITNESS: I do.

9 THE CLERK: Please be seated.

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

12 THE WITNESS: Gerald Reginald Brookins,  
13 B-r-o-o-k-i-n-s.

14 THE REPORTER: Sir, would you please pull the  
15 microphone --

16 THE WITNESS: Oh, I'm sorry. Gerald --

17 THE REPORTER: That's too close.

18 THE WITNESS: -- Reginald Brookins, B-r-o-o-k-i-n-s.

19 THE COURT: Go ahead.

20

21 GERALD BROOKINS,

22 called as a witness on behalf of Defendant Schiff, having been  
23 first duly sworn, was examined and testified as follows:

24

25

## DIRECT EXAMINATION

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BY MR. SCHIFF:

Q. Mr. Brookins, uh, what is your profession?

A. I'm a respiratory -- a Board certified respiratory therapist.

Q. And where do you live?

A. In Las Vegas.

Q. Las Vegas.

Uh, how did you first, um -- well, do you pay income taxes, Mr. Brookins?

A. Pardon me?

Q. Do you pay income taxes?

A. Not anymore.

Q. Not anymore.

THE CLERK: That microphone doesn't work, Mr. Schiff.

MR. SCHIFF: Oh, it doesn't work.

THE CLERK: You'll have to use that microphone --

MR. SCHIFF: Okay.

THE CLERK: -- right there (indicating).

MR. SCHIFF: Okay.

THE CLERK: Yeah.

BY MR. SCHIFF:

Q. Okay. Was there a time that you did pay income taxes?

A. More than enough.

Q. Uh, when did you first come in contact with me?

1 A. The -- the specific year? It was in the -- in the mid '90s.  
2 I don't remember. It's been more than 10 years.

3 Q. Um, when you -- when you came here, did you brought [sic]  
4 with you your Internal Revenue Code? Is this your Internal  
5 Revenue Code?

6 A. That's my Internal Revenue Code, yeah.

7 Q. The year is 1994. Is that --

8 A. Yes, sir.

9 Q. -- when you got this Code from me?

10 A. Yes, sir.

11 Q. So we go back at least --

12 A. It's 11 years?

13 Q. -- 11 years.

14 A. I forgot. I don't remember. It's been a long time.

15 Q. Uh, how did you happen to get this Internal Revenue Code  
16 from me? How did you first know -- come -- how did you first  
17 know about me?

18 A. I heard you on the radio, um, several years ago. It's been  
19 a long time.

20 Q. So you think you heard me on the radio?

21 A. I think, yeah.

22 Q. Well, what was I talking about?

23 A. The taxes, uh, destroyin' the industrial base in the United  
24 States. And, uh, I'm from an industrial town, so I had a lot of  
25 interest in that and --

1 Q. And can you speak a little louder, Mr. Brookins. I...

2 A. You talked about, um -- in some of your books about the

3 destruction of the industrial base within the United States.

4 And that's what got me interested. And you claimed that it was

5 due to, uh, excessive government taxation.

6 Q. So did you -- because of that radio show, did you contact

7 Freedom Books?

8 A. Sir, yes, sir.

9 Q. Pardon me?

10 A. Sir, yes, sir.

11 Q. And did you order books from us?

12 A. Yes. I started reading, uh, books, uh, pertainin' to

13 economics and what have you.

14 Q. Well, do you recall the books that you ordered from us?

15 A. Uh, there was a book called The Biggest Con and, uh...

16 Q. You don't remember the full title of that book?

17 A. It's been -- it's been a long time. The Biggest Con; uh,

18 The Greatest Income Tax Hoax, uh -- I can't -- I'm -- I'm tired.

19 I've been up all night workin' in the medical center --

20 Q. Did you --

21 A. -- so I'm tired.

22 Q. Did you also order The Federal Mafia?

23 A. That was, uh, later on.

24 Q. That was later on?

25 A. Yes, sir.

1 Q. Now, as -- as -- as a result of those books, did that change  
2 your state of mind with respect to the federal income tax?

3 A. It -- it transformed me.

4 Q. It did what?

5 A. It transformed me.

6 Q. How did it do that?

7 A. You have to read the book. But it's banned. So I don't  
8 know, you know -- it -- it -- the -- the book, uh, used, uh,  
9 the -- referred you to, uh, government, uh, publication and laws  
10 that were --

11 Q. So --

12 A. -- you know, that had nothin' to do with your book. It  
13 was -- the laws were stated in the book and where you could find  
14 them. So I started doin' research on my own.

15 Q. So did, uh -- did those books cause you to stop paying  
16 income taxes?

17 A. The -- the Code book itself stopped me from payin' income  
18 taxes.

19 Q. Well, you purchased the Code book in 1994. So did you run  
20 right out and stop paying income taxes?

21 A. Of course not.

22 Q. So what did you do?

23 A. Uh, well, I started, uh, researching the Code book and there  
24 were tabs in the Code book when I -- the first time I saw a  
25 Internal Revenue Code book I says, you know, I -- it was

1 probably 1992. Somebody had one, you know, somewhere. And I  
2 picked it up and looked at it. I say, "Who can understand  
3 this?" I mean, it was just way over -- you know, I just set it  
4 back out; picked it up and looked at it; put it down.

5 So, by the time I read all your economic books and got  
6 really interested -- because I'm -- I'm from a industrial town  
7 and I was very interested in what was happenin' to the country  
8 in terms of no more jobs, people goin' to jail, drugs, and  
9 the -- no money -- that I -- that's what got me interested in  
10 readin' the books.

11 Now, by the time I started readin' The Federal Mafia, I  
12 had a good understanding that the, um, taxes were forcin' people  
13 to do things, uh, and closin' down businesses and industries.  
14 And that's what got me involved in -- in researchin' the law  
15 regarding the income tax.

16 Q. So eventually did you claim -- well, eventually what did you  
17 do about all this that you were learning?

18 A. Well, I was -- I -- I was bein' harassed by the Internal  
19 Revenue before I got out of the military. So, when I got out of  
20 the military, they claimed that I had created a tax debt. And I  
21 was unemployed; I couldn't even pay it. But I held onto the  
22 documents. When I got a Code book and looked up the documents,  
23 they claim that I was liable for, uh, alcohol, firearms, and  
24 tobacco.

25 Q. But -- I see -- but what did you eventually do with respect

1 to your own personal tax?  
2 A. Eventually, uh, after lookin' through the Code and -- and --  
3 and reading the -- the laws pertainin' to withholding, what have  
4 you, the Code -- uh, the Code book, I didn't understand it.  
5 I -- I started reading The Federal Mafia, and it showed me how  
6 the Code book was broke down: subtitle A, income taxes;  
7 subtitle B, gift and estate taxes; subtitle C, employment taxes;  
8 FICA, FIC --

9 MR. IGNALL: Objection. This is narrative and I'm not  
10 sure it's responsive --

11 THE COURT: Sustained.

12 MR. IGNALL: -- to the question.

13 BY MR. SCHIFF:

14 Q. Well --

15 THE COURT: It is not responsive.

16 BY MR. SCHIFF:

17 Q. Well --

18 A. Anyway, I'm -- I'm sorry. What I'm --

19 THE COURT: Ask another question.

20 BY MR. SCHIFF:

21 Q. All right. So did -- did that information eventually  
22 indicate that you could claim exempt from withholding?

23 A. It did under 3402(n).

24 Q. So did you claim exempt?

25 A. I did, yes.

1 Q. Now, did you -- did you believe the law allowed you to claim  
2 exempt?

3 A. The -- the Privacy Act, uh, told me that I had to have a  
4 liability. So I started researchin' the Code lookin' for the  
5 liability and I could not find it.

6 Q. But pursuant to -- why did you think you could claim exempt  
7 and why did you think you could prevent taxes from being taken  
8 from your pay?

9 A. 3402(n) said it in the Code.

10 MR. IGNALL: Objection, your Honor. I think for this  
11 testimony to be relevant needs to --

12 MR. SCHIFF: He's -- I'm trying to ask --

13 MR. IGNALL: -- be limited to what he may have relied  
14 on from Mr. Schiff and what he may have told Mr. Schiff about  
15 that.

16 THE COURT: Sustained.

17 MR. SCHIFF: Well, he claimed exempt. It was in my  
18 book as to why you could claim exempt.

19 THE WITNESS: Yes.

20 MR. SCHIFF: And, since he claimed exempt, I'm trying  
21 to find out why he thought he could claim exempt. I think it's  
22 relevant as to why he believed he could claim exempt.

23 THE COURT: Go ahead.

24 Next question. I sustained --

25

1 BY MR. SCHIFF:

2 Q. Well, when you --

3 THE COURT: -- the objection.

4 BY MR. SCHIFF:

5 Q. -- initially claimed exempt, did it work?

6 A. Uh, no.

7 Q. It didn't work?

8 A. No.

9 Q. And did -- and did you call me and tell me it didn't work?

10 A. Yes, sir.

11 Q. So you let me know your claiming exempt didn't work?

12 A. Uh, well, I was at some lower level ends in the personnel.

13 Q. What did I tell you when you called me --

14 A. Go up the chain of command.

15 Q. What did I tell you when you called me to tell me it didn't

16 work?

17 A. You told me, uh, to not give up and to go to some higher

18 authorities in the payroll.

19 Q. And did I tell you you should file something else?

20 A. File an exemption affidavit.

21 Q. Right.

22 So, when you told me that, I told you to file the

23 affidavit that's in the book --

24 A. Which I should have done, yeah.

25 Q. -- and -- and to go to a higher --

1 A. Which I did.

2 Q. Is this the affidavit that I told you to file when you --

3 MR. SCHIFF: Oh. Can I...

4 MR. NEIMAN: Is it in your book?

5 MR. IGNALL: Did you mark this already, Mr. Schiff?

6 MR. NEIMAN: Is it in your book?

7 MR. SCHIFF: Well, this is not in my book, no.

8 MR. IGNALL: Is it in this exhibit book?

9 MR. NEIMAN: It's not in the exhibit book.

10 MR. SCHIFF: I didn't even know until he just showed it

11 to me.

12 BY MR. SCHIFF:

13 Q. Incidentally, I didn't even see this until today; is that

14 right?

15 THE CLERK: I can give it to him. It's Exhibit 2114.

16 (Defendant Schiff's Exhibit No. 2114, marked

17 for identification.)

18 BY MR. SCHIFF:

19 Q. Mr. Brookins, isn't it a fact that I never even saw that

20 until today?

21 A. Uh, no. This -- this has been in storage for more than

22 five, seven years or whatever.

23 Q. And what is the date of that affidavit?

24 A. 1-22-96.

25 Q. '96.

1           That's two years after you bought the Code from me?

2     A.   Yes, sir.

3     Q.   Now, as a result of your going to a higher level and  
4     using -- supplementing your W-4 with the affidavit, what  
5     happened?

6     A.   Uh, they turned this affidavit over to, uh, the company  
7     attorney -- it's been a long time -- but, as best I can  
8     remember, this affidavit went to the company attorney and he  
9     said that it was legal and they stopped withholding.

10    Q.   So, after consulting with me and doing a few other things,  
11    the hospital, um, agreed to stop withholding?

12    A.   Yes, sir.

13    Q.   And you told me at the time that the document -- it was so  
14    long ago -- the legal department said it was okay?

15    A.   Yes. It went to the, uh, head of personnel and, uh, they  
16    read it; they took it to the company attorney; and he okayed it.  
17    Yes.

18    Q.   You remember discussing that with me?

19    A.   Sir, yes, sir.

20    Q.   Okay. So, as a result of that, now what happened?

21    A.   They stopped withholding.

22    Q.   And, as a result of that, what happened?

23    A.   Well, uh, it -- it was, uh -- it was good for me because now  
24    I could go to work and start puttin' in some hours and kinda  
25    break out of the box because I wasn't -- if I worked overtime

1 before, the withholding, the government would just take it all.  
2 You be workin' and -- and not gettin' paid.

3 Q. In the -- in the work that you were doing, didn't the  
4 hospital want to encourage --

5 A. They --

6 Q. -- people to work overtime?

7 A. They -- they put out --

8 MR. IGNALL: Objection. Relevance.

9 MR. SCHIFF: Well, the relevance is -- it'll be  
10 apparent when I ask it.

11 THE COURT: Sustained.

12 MR. SCHIFF: Well --

13 THE COURT: Sustained.

14 BY MR. SCHIFF:

15 Q. Now -- now, as -- so now you worked overtime?

16 A. Yeah, I could work overtime and -- and not -- and receive  
17 the fruits of my labor. The government wasn't takin' the money  
18 anymore.

19 Q. How much -- how much in overtime hours did you start putting  
20 in?

21 MR. IGNALL: Objection. Relevance.

22 THE COURT: Sustained.

23 MR. SCHIFF: Well --

24 THE COURT: Move on to another question.

25 MR. SCHIFF: -- well, I'm asking does he make a lot of

1 money. Well --

2 THE COURT: Move on --

3 MR. SCHIFF: -- I'm asking --

4 THE COURT: -- to a new line of questions.

5 MR. SCHIFF: Well, this is gonna --

6 THE COURT: The objection was sustained.

7 MR. SCHIFF: All right.

8 THE COURT: Move on to a new question.

9 MR. SCHIFF: But he gets -- he's leading into --

10 THE COURT: Did you hear what I said?

11 BY MR. SCHIFF:

12 Q. Now, did you get fired from the hospital?

13 A. Uh, some employees, uh, didn't like me, uh, working, uh,  
14 these long hours and I was makin' money and not gettin'  
15 penalized. Uh, so they became, uh, envious and jealous, yeah,  
16 and they started trumpin' up phony, uh, attendance records. But  
17 my attendance was -- I had more overtime hours than the average  
18 person had, uh, regular hours.

19 Q. So ultimately you got fired?

20 A. Yes, I did.

21 MR. IGNALL: Objection. Relevance.

22 MR. SCHIFF: The relevance is that he got fired.

23 THE WITNESS: I wound up unemployed as a result.

24 BY MR. SCHIFF:

25 Q. So then what happened?

1 A. I, uh, went to the, uh, uh, Labor Commission and, uh, the  
2 Union. And, uh, uh, eventually I prevailed and they had to, uh,  
3 give me a settlement because of --

4 Q. So what happened after that?

5 A. Well, I kinda skipped over some things. I don't know if  
6 they are gonna object to me talkin' about it, is it relevant or  
7 not.

8 MR. IGNALL: Objection. We'll object to the narrative.

9 THE WITNESS: Well, I don't know.

10 MR. IGNALL: And I'm not sure what the relevance --

11 THE COURT: Sustained.

12 MR. IGNALL: -- of this line --

13 MR. SCHIFF: Well, I'm asking --

14 MR. IGNALL: -- of inquiry is at all.

15 THE COURT: You will respond to questions.

16 THE WITNESS: Okay.

17 BY MR. SCHIFF:

18 Q. Just --

19 THE WITNESS: All right.

20 BY MR. SCHIFF:

21 Q. -- just respond to --

22 THE WITNESS: Yeah. I was --

23 BY MR. SCHIFF:

24 Q. -- my questions, Jerry.

25 THE WITNESS: -- he was askin' me.

1 BY MR. SCHIFF:

2 Q. Now, as a result of your ultimately being unemployed, did

3 you --

4 A. I wound up homeless.

5 Q. Pardon me?

6 A. I wound up homeless and penniless.

7 Q. But --

8 A. I didn't have a job.

9 Q. But where were you when that occurred?

10 A. I went back to Indiana.

11 Q. To where?

12 A. I went to Indiana, back to Indiana, from California to --

13 Q. To where?

14 A. -- to -- to Gary, Indiana.

15 Q. Gary, Indiana.

16 A. Yeah.

17 Q. And you believed -- now, when you went back to Gary,

18 Indiana, what were your plans when you went back to Gary?

19 MR. IGNALL: Objection. Relevance.

20 MR. SCHIFF: All right.

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. All right. You went back to Gary, Indiana.

24 A. I needed somewhere --

25 THE COURT: Did you hear?

1 THE WITNESS: -- to stay.

2 THE COURT: I said "sustained."

3 MR. SCHIFF: All right.

4 THE COURT: Don't ignore the ruling. Move on to  
5 another --

6 MR. SCHIFF: All right.

7 THE COURT: -- question.

8 BY MR. SCHIFF:

9 Q. What happened when you got to Gary, Indiana?

10 THE COURT: Sustained.

11 BY MR. SCHIFF:

12 Q. Well, what eventually happened?

13 A. What happened --

14 THE COURT: Mr. Schiff --

15 BY MR. SCHIFF:

16 Q. -- what happened next?

17 THE COURT: Mr. Schiff --

18 THE WITNESS: I was homeless.

19 THE COURT: -- ask him a specific question.

20 BY MR. SCHIFF:

21 Q. What happened next?

22 A. I was homeless.

23 Q. You were homeless.

24 A. Right.

25 Q. Where?

1 MR. IGNALL: Objection, your Honor.

2 MR. SCHIFF: All right. You were homeless.

3 MR. IGNALL: Does this tie in in any way to any of the  
4 conduct alleged --

5 THE COURT: Are you going to --

6 MR. IGNALL: -- in the Indictment?

7 THE COURT: -- continue to disregard my rulings? You  
8 asked the same question again after --

9 BY MR. SCHIFF:

10 Q. What happened next?

11 THE COURT: -- I sustained the objection. That is not  
12 sufficient. You ask him a specific question.

13 BY MR. SCHIFF:

14 Q. Did you call me from someplace telling me you were homeless?

15 A. Yes.

16 THE COURT: Mr. Schiff, that is leading.

17 THE WITNESS: I called you.

18 BY MR. SCHIFF:

19 Q. And what did you tell me?

20 A. That I was homeless.

21 Q. And?

22 A. Livin' in the car wit' a five-year-old, sleepin' in the car.

23 Q. So what did I tell you to do?

24 A. You told me to -- you sent me some money, got me to  
25 Las Vegas.

1 Q. And, when you got to Las Vegas, what did you do?  
2 A. Got another job. Uh, I stayed wit' you for several months  
3 and, uh, you --  
4 Q. When you first came to Las Vegas, where were you living?  
5 A. At your house, at your apartment --  
6 Q. My apartment.  
7 A. -- off of Sahara.  
8 Q. How long did you live at my apartment?  
9 A. Four to five months. By then, I landed a job at --  
10 Q. Where was I living at the time?  
11 A. With Cindy Newman -- or Neun.  
12 Q. So my apartment was empty?  
13 A. Yeah, the apartment --  
14 Q. So you could --  
15 A. -- was empty.  
16 Q. -- live in it?  
17 A. Yes, sir. Your -- your clothes were there, but the  
18 apartment was empty.  
19 Q. And --  
20 A. You weren't in the apartment.  
21 Q. No.  
22 A. But all your personal things were there.  
23 Q. Well, how did you sustain yourself? You didn't have a job.  
24 A. You -- you helped me. You loaned me money on a weekly  
25 basis.

1 Q. And eventually you got another job?

2 A. Eventually I got back to working.

3 Q. And -- and, uh, so eventually you relocated --

4 A. Relocated --

5 Q. -- here?

6 A. -- got to workin', and I joined the Church --

7 Q. Okay.

8 A. -- Latter-day Saints --

9 Q. Um --

10 A. -- got baptized.

11 Q. Now, while you were still living in California, did you come

12 to any of my seminars?

13 A. I came to all of 'em that I knew of.

14 Q. Now, government witnesses characterized my seminars as

15 being --

16 MR. IGNALL: Objection, your Honor, to having this

17 witness comment on what some other witness may have said.

18 MR. SCHIFF: Well, I'm trying to --

19 THE COURT: Sustained.

20 BY MR. SCHIFF:

21 Q. Well, would you call my --

22 THE COURT: Sustained.

23 MR. SCHIFF: All right. I'm asking him if he

24 thought --

25 THE COURT: Sustained. Do you know what that means?

1 Sustained.

2 MR. SCHIFF: Can I ask him about my seminars he came  
3 to?

4 THE COURT: No. The objection has been made and  
5 sustained.

6 BY MR. SCHIFF:

7 Q. Jerry -- uh, Mr. Brookins, you've read all my books.

8 A. Yes.

9 Q. Oh. Weren't you in a seminar that I taped called "Secrets  
10 of Living An Income Tax Free Life"?

11 A. Yes, I was.

12 Q. That was a -- like a private seminar, right, which was  
13 taped?

14 A. Yes, sir.

15 Q. And you've seen that?

16 A. Yes.

17 MR. IGNALL: Objection. Relevance.

18 MR. SCHIFF: The relevance --

19 THE COURT: Sustained.

20 MR. SCHIFF: -- is he's seen it.

21 BY MR. SCHIFF:

22 Q. And did you rely on a lot of that information that was --

23 THE COURT: Sustained. It doesn't matter what he  
24 relied on. I've already outlined to you the relevance --

25

1 BY MR. SCHIFF:

2 Q. Jerry --

3 THE COURT: -- the only possible relevance of this  
4 witness's testimony.

5 BY MR. SCHIFF:

6 Q. Well, Jerry, we spent a lot of time together; is that  
7 correct?

8 A. Yes, sir.

9 Q. And we go back a long time.

10 A. At --

11 Q. Have I ever given --

12 A. -- least as far as --

13 Q. Pardon me?

14 A. -- that Code is '94.

15 Q. Now, Jerry, have I given you any reason to believe that I  
16 hold my beliefs in economics, in taxes other than these are my  
17 sincere beliefs or do you -- are you -- have I given you any  
18 reason to believe that I made them up to avoid paying income  
19 taxes?

20 MR. IGNALL: Objection, your Honor, to having the  
21 witness comment on what Mr. Schiff believes.

22 MR. SCHIFF: I didn't ask him what I believe. I said  
23 did I give him any reason --

24 THE COURT: Sustained.

25 MR. SCHIFF: -- to believe.

1 THE WITNESS: No, sir, you didn't. Your -- your books  
2 were truthful --

3 THE COURT: Sustained.

4 THE WITNESS: -- and verifiable.

5 MR. IGNALL: Objection.

6 THE WITNESS: Everything that you said.

7 MR. IGNALL: Move to strike the answer as --

8 THE COURT: Strike.

9 MR. IGNALL: -- nonresponsive.

10 THE COURT: The objection is sustained.

11 BY MR. SCHIFF:

12 Q. Uh, ooh, wasn't there a period of time when the IRS put a  
13 levy?

14 A. Yes, it was.

15 Q. And you called me and told me about it?

16 A. Yes, I -- yes, I did.

17 Q. And what eventually happened to that levy?

18 A. It was removed.

19 Q. It was removed.

20 A. Yes.

21 Q. You also told me -- what was the -- what really triggered  
22 your belief that a lot of the material in my Federal Mafia was  
23 correct? You told me there was a particular thing that was of  
24 particular importance to you. What was that?

25 A. The Privacy Act Notice.

1           MR. IGNALL:  Objection.  I -- I think it's fine if the  
2 witness testifies about what he relied on that Mr. Schiff gave  
3 him.  Beyond that, we'd object to relevance.

4           THE COURT:  Sustained.

5           THE WITNESS:  I like to do that.

6           BY MR. SCHIFF:

7           Q.  Well, you told me that -- didn't you tell me that there  
8 was -- there was a particular thing in The Federal Mafia that  
9 made a particular impact on you having to do with levies?

10          A.  Yes.  Uh, uh, the -- the 6331(a).

11          Q.  What was that?

12          A.  Code 66 -- 6331(a).

13          Q.  What -- what was there about that that was of particular --  
14 made a particular impact on you?

15          MR. IGNALL:  Objection to relevance of this particular  
16 Code section insofar as we're getting into what may be a  
17 misstatement of the law.

18          THE WITNESS:  No.  You need to hear this.

19          THE COURT:  Sustained.

20          MR. BOWERS:  I'm sorry, your Honor.  What was the --  
21 you sustained an objection based on...

22          THE COURT:  On what his interpretation of 6331(a) is as  
23 a misstatement of the law.

24          THE WITNESS:  No, it wasn't a misstatement of the law.

25          It was --

1 THE COURT: Don't you argue with me, sir. You respond  
2 to questions; you do not argue with the Court.

3 THE WITNESS: Sir, yes, sir.

4 BY MR. SCHIFF:

5 Q. Jerry --

6 THE COURT: The objection has been --

7 MR. SCHIFF: All right.

8 THE COURT: -- sustained.

9 BY MR. SCHIFF:

10 Q. -- over the last nine years, did we stay in somewhat close  
11 contact in you were advising me what you were doing?

12 A. I -- I did. I --

13 Q. Your successes and your failures.

14 A. Yes. When I was workin' and when I got a job and, you know,  
15 where I was working.

16 MR. SCHIFF: No further questions.

17 THE COURT: Cross-examination?

18 MR. IGNALL: Your Honor, do we have an order that we go  
19 in with...

20 THE COURT: I'm sorry?

21 MR. IGNALL: Do we go next? I'm not sure if we have  
22 established that.

23 THE COURT: We haven't decided that yet.

24 Do you have any questions, Mr. Cristalli?

25 MR. CRISTALLI: I -- I don't have any questions of this

1 witness, your Honor.

2 THE COURT: Mr. --

3 MR. BOWERS: Yeah, I have a couple quick questions,  
4 your Honor.

5 THE COURT: Go ahead.

6

7 CROSS-EXAMINATION

8 BY MR. BOWERS:

9 Q. Good afternoon, Mr. Brookins. How are you?

10 A. Fine. How are you?

11 Q. Good.

12 We spoke briefly in the hall. My name is Chad Bowers.

13 I don't know if I formally introduced myself. I'm Larry Cohen's  
14 attorney.

15 A. Chad Bowers. I've heard you on the radio.

16 Q. Yeah, I do have a radio show on Thursday nights.

17 A. Yeah.

18 Q. We won't talk about that now though.

19 A. All right.

20 Q. Do you -- do you know Mr. Cohen?

21 A. Cindy?

22 Q. No, no --

23 A. What --

24 Q. -- the guy sittin' next to Cindy. Larry.

25 A. I met him once or twice.

1 Q. Okay.

2 A. I mighta -- I -- I don't know him very well.

3 Q. Fair enough.

4 A. I've seen him at the -- uh, Irwin's office.

5 Q. Okay. Um, you indicated you had a -- a levy removed at some  
6 point; is that correct?

7 A. Yes.

8 Q. Uh, was that removed as a result of you following  
9 information supplied by Mr. Schiff?

10 A. Yes.

11 Q. Uh, what -- what specifically did you do to get that  
12 removed?

13 A. It's been a long time. And, uh, I used to know the laws and  
14 procedures very well. Um, but I have forgotten a lot of things.

15 Basically it had to do with, uh, the procedure, the  
16 levy -- the Notice of Levy, the levy. There's a -- a big  
17 controversy about what a levy is, a Notice of Levy, uh. And  
18 the -- at that time I knew what -- what was required by law --  
19 uh, a lot of that's in Mr. Schiff's book -- and they just  
20 weren't followin' the procedures in terms of this levy. So I  
21 gave the information to the employer to ask, uh, the IRS and the  
22 IRS couldn't provide the information. So they dropped the levy.

23 Q. Okay. So just in broad strokes, because it's been a  
24 while --

25 A. It's been a while.

1 Q. That's all right.

2 A. Yeah.

3 Q. And I understand.

4 In broad strokes --

5 A. I was just glad it went away.

6 Q. Okay. Just -- just to recap to make sure I understand you  
7 correctly.

8 In broad strokes, you followed some doctrine that  
9 procedurally had been supplied by Mr. Schiff and that resulted  
10 in the removal of a levy; is that correct?

11 A. Yes, that -- that's correct. Uh, there was, uh, uh,  
12 procedures that had to be followed. You know, the IRS had to  
13 follow law; uh, Mr. Schiff said I had to follow the law; the IRS  
14 had to follow the law; and, uh, the employer had to follow the  
15 law. So it turned out that the IRS, uh, weren't followin' the  
16 procedures. They were just vaulting over procedures; shootin'  
17 out these, uh, Notices of Levy.

18 And what's interesting about the Notice of Levy --

19 MR. IGNALL: Objection to --

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

21 MR. IGNALL: -- about what's --

22 MR. BOWERS: -- to get you --

23 MR. IGNALL: -- interesting about it.

24 MR. BOWERS: -- in trouble.

25

1 BY MR. BOWERS:

2 Q. So long and the short of it was it worked, as you understood

3 it?

4 A. They released the levy.

5 Q. Okay. And did you -- did you ever communicate that to

6 Mr. Schiff or anyone at Freedom Books?

7 A. Yes, I did.

8 Q. So they knew that it -- it had released the levy?

9 A. Yes, sir.

10 Q. Okay. Um, now, you mentioned that you currently work as a

11 respiratory therapist; is that correct?

12 A. Yes.

13 Q. Okay. At -- at -- at -- I'm not asking for the name -- but

14 at some medical facility here in Las Vegas; right?

15 A. I -- I work in -- in various medical --

16 Q. Okay.

17 A. -- facilities, yeah.

18 Q. All right. Um, and you -- I had one other question about

19 something you had said -- you said you had worked -- you -- you

20 had come from an industrial town --

21 A. Yes.

22 Q. -- at some point in the past, didn't you?

23 A. Yes.

24 Q. And then you talked about Gary. Was that -- were those two

25 the same, Gary, Indiana?

1 A. Yes. Gary, Indiana, yes.

2 Q. Okay. And is it fair to say that Gary was -- or is a city  
3 that's been particularly hard hit industrially?

4 MR. IGNALL: Objection. Relevance.

5 THE COURT: It's not --

6 MR. BOWERS: This all goes to -- and there's only one  
7 or two other questions down this line.

8 THE COURT: Not relevant. Sustained.

9 MR. BOWERS: Sus- --

10 THE COURT: Sustained.

11 MR. BOWERS: Okay.

12 BY MR. BOWERS:

13 Q. Um, when you, uh, first heard --

14 THE COURT: Mr. --

15 BY MR. BOWERS:

16 Q. -- of Irwin Schiff --

17 THE COURT: -- Mr. Bowers, I'll see you at sidebar at  
18 the next break.

19 BY MR. BOWERS:

20 Q. When you first heard of Mr. Schiff, you were listening to  
21 his radio show; is that correct?

22 A. Yeah. He was talkin' about industrial decline.

23 Q. Okay. Was he talking about specifically not paying taxes or  
24 was he talking about larger economic issues that appealed to  
25 you?

1 A. He -- he tied in the larger economic issues, uh, to the, uh,  
2 punitive nature of the -- the income tax as it affected  
3 businesses.

4 Q. Okay.

5 MR. BOWERS: No further questions.

6 Thank you, Mr. Brookins.

7

8 CROSS-EXAMINATION

9 BY MR. IGNALL:

10 Q. Mr. Brookins, you said you haven't paid any taxes since --  
11 is it the '90s?

12 A. I've been payin' employment taxes under subtitle (c). Do  
13 you know where that's at in the Code?

14 Q. I'm sorry.

15 Have you paid any --

16 THE COURT: Sir, you do not ask the questions. The  
17 Government asks you the questions.

18 THE WITNESS: I understand.

19 BY MR. IGNALL:

20 Q. Have you paid any income taxes since you first met up with  
21 Mr. Schiff?

22 A. Uh, just employment taxes.

23 Q. Have you filed a tax return since you met Mr. Schiff?

24 A. I -- I filed, uh, two zero returns.

25 Q. Did you get any correspondence from the IRS about that?

1 A. Uh, yes, I did.

2 Q. Did the IRS agree with your position in filing zeroes on  
3 your returns?

4 A. They told me, uh, that, uh -- they -- they claimed that it  
5 was frivolous.

6 Q. Did you ever communicate that to Mr. Schiff?

7 A. Did I communicate that to him?

8 Q. That you had gotten these letters from the IRS.

9 A. I don't know if I did or not.

10 Q. All right.

11 A. I ignored 'em.

12 Q. You currently receive wages? Do you currently get paid for  
13 what you do?

14 A. Yes, I do.

15 Q. Do you get a W-2 at the end of the year?

16 A. Yes, I do.

17 Q. And you file a tax return?

18 A. No, I don't.

19 Q. Does the IRS claim that you owe them any money?

20 A. Yes, they do.

21 Q. Have you ever told Mr. Schiff that?

22 A. That the IRS claim that I owe 'em some money?

23 Q. Yes.

24 A. I don't -- I haven't really discussed it with him.

25 Q. Before you, uh, purchased Mr. Schiff's products, did the IRS

1 ever claim that you owed them any money? You said you had a  
2 disagreement when you got out of the military.

3 A. Yeah. They said that I was, uh, manufacturing machine guns,  
4 alcohol, and firearms.

5 Q. But it wasn't about income taxes? Were you filing income  
6 tax returns up to that point?

7 A. Yeah. And they said I was manufacturing -- involved in  
8 alcohol and firearms.

9 Q. And they wanted some tax on that?

10 A. Yes.

11 Q. Did you ever consult an accountant since you met with  
12 Mr. Schiff about your tax situation?

13 A. An accountant?

14 Q. Yes.

15 A. In terms of what?

16 Q. Whether --

17 A. I used to go to an accountant to have 'em file taxes in --  
18 and, uh, the Internal Revenue, uh, wanted a \$500 penalty; the  
19 accountants cost more than that.

20 MR. IGNALL: No further questions.

21

22 REDIRECT EXAMINATION

23 BY MR. SCHIFF:

24 Q. Jerry --

25 A. Yes.

1 Q. -- the prosecutor said that you had wages.

2 A. Yes.

3 Q. Do you believe that wages constitute income within the  
4 meaning of the Internal Revenue Code?

5 A. No.

6 MR. IGNALL: Objection, your Honor, unless it ties into  
7 Mr. Schiff's be- -- or statements of...

8 BY MR. SCHIFF:

9 Q. Well, what do you --

10 THE COURT: Sustained.

11 BY MR. SCHIFF:

12 Q. Why don't you report wages as income?

13 A. Uh, because of the Supreme Court.

14 Q. Pardon me?

15 A. The Supreme Court rulings.

16 MR. IGNALL: Objection. Move to strike the answer.

17 THE COURT: Strike.

18 MR. IGNALL: If it's reliance on something that  
19 Mr. Schiff said, then I suppose it's marginally relevant.

20 But...

21 THE WITNESS: I read the Privacy Act Notice.

22 THE COURT: Sustained.

23 BY MR. SCHIFF:

24 Q. Did you read The Great Income Tax Hoax?

25 A. Yes.

1 Q. Do you recall how many chapters I devote to the meaning of  
2 income?

3 A. Yes, I do.

4 Q. Approximately how many? Do you recall?

5 A. It's -- there's -- you talked about it quite a bit. I had  
6 that book before I got The Federal Mafia.

7 Q. And did you rely on this book, um, to shape your  
8 understanding of the meaning of income?

9 A. After I read the Supreme Court decisions, my, uh,  
10 understanding was shaped by the Supreme Court decisions.

11 Q. Supreme Court decisions were quoted extensively in this  
12 book --

13 A. Quoted --

14 Q. -- is that right?

15 A. -- extensively in that book.

16 MR. SCHIFF: Uh, can I put this book as --

17 MR. IGNALL: Objection.

18 MR. SCHIFF: -- as my exhibit?

19 MR. IGNALL: Irrelevant.

20 MR. SCHIFF: It's not irrelevant. This form -- why is  
21 this irrelevant? This shaped his understanding of the meaning  
22 of income.

23 THE WITNESS: It shaped my meaning -- my  
24 understanding --

25 MR. IGNALL: Your Honor --

1 THE COURT: There's not a question pending.

2 MR. IGNALL: -- there's an objection pending.

3 It's irrelevant. And whatever relevance it might have  
4 is certainly outweighed by the danger of confusion, waste of  
5 time --

6 THE COURT: The objection --

7 MR. IGNALL: -- and misleading the jury --

8 THE COURT: -- is sustained.

9 MR. IGNALL: -- as to the accurate statement of the  
10 law.

11 BY MR. SCHIFF:

12 Q. Jerry, when you report your income as zero, do you think  
13 you're breaking any laws or telling any untruths?

14 A. No, I absolutely did not think I was breakin' any law. I  
15 know for a fact if we --

16 MR. IGNALL: Objection. Nonresponsive.

17 THE COURT: Sustained.

18 THE WITNESS: I wished I was a lawyer.

19 THE COURT: You're not allowed to volunteer answers.

20 The objection is sustained.

21 BY MR. SCHIFF:

22 Q. Jerry --

23 THE COURT: You will respond only to questions.

24 BY MR. SCHIFF:

25 Q. -- would you do anything to deliberately break the law,

1 violate the law as you understand?

2 A. No, I wouldn't. I'm a Christian man.

3 Q. So, as you sit there under oath, you can honestly tell us  
4 that you do not believe -- that you do not receive any form of  
5 compensation that you believe is taxable under the Internal  
6 Revenue Code?

7 A. I follow the law --

8 MR. IGNALL: Objection --

9 THE WITNESS: -- to the letter --

10 MR. IGNALL: -- relevance.

11 THE WITNESS: -- of the law.

12 MR. IGNALL: The issue is --

13 THE COURT: Sustained.

14 MR. IGNALL: -- what the defendants know and what they  
15 did, not what this witness believes.

16 THE COURT: Sustained.

17 MR. SCHIFF: Where is his Code book?

18 BY MR. SCHIFF:

19 Q. Jerry, during the years that you were paying taxes, did you  
20 ever look into the Internal Revenue Code?

21 A. Up and down, backwards and forwards.

22 Q. No. Before -- during the years that you were paying  
23 taxes --

24 A. No, no, no.

25 Q. No.

1 A. No.

2 Q. And, for a number of years, you were paying taxes; is that  
3 correct?

4 A. Oh, yes.

5 Q. Why did you think you owed income taxes?

6 A. Because --

7 MR. IGNALL: Objection.

8 THE WITNESS: -- everybody said so.

9 MR. IGNALL: Relevance. Again, it doesn't tie into  
10 anything --

11 THE COURT: It does not.

12 MR. IGNALL: -- the defendants have said or done or  
13 heard.

14 THE COURT: Sustained.

15 BY MR. SCHIFF:

16 Q. The prosecutor asked you if you went to an accountant, if  
17 you went to a lawyer. This indicates you went to the Code  
18 itself.

19 A. I took that book to an accountant.

20 Q. You -- you took this book to an accountant?

21 A. And he started filing these zero returns. The first two I  
22 did.

23 Q. You took the Code book to an accountant?

24 A. Yeah.

25 Q. And what did you ask the accountant?

1 A. I started showin' him, um, the Code book and ask him to do  
2 my zero returns. I did two of 'em.

3 Q. When you showed this to an accountant, did the accountant  
4 indicate he might not have ever seen this before?

5 A. No, he never --

6 MR. IGNALL: Objection.

7 THE WITNESS: -- seen one.

8 MR. IGNALL: Relevance.

9 BY MR. SCHIFF:

10 Q. Pardon me?

11 THE COURT: What is the relevance?

12 THE WITNESS: The accountant never --

13 THE COURT: What is the relevance?

14 MR. SCHIFF: Well, he had asked if he went to an  
15 accountant.

16 THE COURT: Yes, I know that. I'm asking you what the  
17 relevance of your question is.

18 BY MR. SCHIFF:

19 Q. So you did go to an accountant?

20 A. Yes.

21 Q. Did the accountant change -- and what did you -- what did  
22 you discuss with the accountant?

23 MR. IGNALL: Objection. Again, it doesn't tie into any  
24 defendants' state of mind.

25 THE COURT: It does not. And for that reason --

1 BY MR. SCHIFF:

2 Q. Well --

3 THE COURT: -- the objection is sustained.

4 BY MR. SCHIFF:

5 Q. -- can I ask him: Did -- did that have an impact on your  
6 state of mind when you --

7 THE COURT: Mr. Schiff --

8 MR. SCHIFF: Well...

9 THE COURT: -- when --

10 MR. SCHIFF: All right.

11 THE COURT: We set some parameters on the areas --

12 MR. SCHIFF: All right.

13 THE COURT: -- that you could go into.

14 BY MR. SCHIFF:

15 Q. So -- so you did go to an accountant?

16 A. Yes.

17 Q. All right.

18 A. The accountant did my first two --

19 MR. IGNALL: Objection.

20 THE WITNESS: -- zero returns.

21 MR. IGNALL: Nonresponsive.

22 THE COURT: Sustained.

23 MR. SCHIFF: I didn't hear that.

24 Thank you very much, Mr. Brookins.

25 THE WITNESS: All right.

1 MR. IGNALL: Nothing further from the Government, your  
2 Honor.

3 THE COURT: Anything further?

4 MR. CRISTALLI: No, sir.

5 MR. BOWERS: I have nothing further.

6 THE COURT: Witness is excused. The witness is  
7 excused.

8 THE WITNESS: Thank you.

9 MR. SCHIFF: Mr. Murphy. Call Mr. Murphy.

10 (Pause in the proceedings.)

11 MR. SCHIFF: Just go take the witness stand.

12 THE CLERK: Go on up to the top of the stair there,  
13 sir.

14 (Glen Murphy takes the witness stand.)

15 THE CLERK: Remain standing. Raise your right hand.

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

19 THE WITNESS: I do.

20 THE CLERK: Please be seated.

21 Please state for the record your full name and spell  
22 your last name.

23 THE WITNESS: Glen John Murphy, M-u-r-p-h-y.  
24  
25

1 GLEN MURPHY,  
2 called as a witness on behalf of the Defendant Schiff, having  
3 been first duly sworn, was examined and testified as follows:  
4  
5 THE WITNESS: Before any --  
6 MR. SCHIFF: Okay.  
7 THE WITNESS: -- question begins, I'd like to clarify  
8 something with the Court that -- I'd like to --  
9 MR. NEIMAN: Your Honor --  
10 THE WITNESS: -- if I'm under arrest of if I'm under any  
11 Indictment?  
12 MR. NEIMAN: Your Honor, maybe this is something we  
13 should do it at sidebar instead of in the presence of the jury.  
14 MR. SCHIFF: I can't -- what is that?  
15 (Sidebar conference was held as follows:)  
16 THE COURT: Your question.  
17 THE WITNESS: I'd like to know if I'm under an  
18 arrest --  
19 THE COURT: You take that toothpick out of your mouth.  
20 THE WITNESS: Okay.  
21 I'd like to know if I'm under an arrest or under any  
22 indictment dependin' -- given my Miranda warning.  
23 MR. SCHIFF: What was that?  
24 THE WITNESS: My Miranda warning.  
25 THE COURT: I didn't give you --

1 THE WITNESS: When we came in --

2 THE COURT: -- a Miranda warning. I just told you that  
3 anything you said could be used against you in this case. I  
4 gave you that warning. I'm not aware of anything, unless --  
5 unless someone else is.

6 THE WITNESS: I thought that was a Miranda.

7 THE COURT: That is part of a Miranda warning, but I  
8 wasn't giving you your Miranda warning.

9 THE WITNESS: Okay. Well, I'm not -- I want it known  
10 that I will not enter into any contract with the government or  
11 with Mr. Schiff. I'm gonna -- here to tell the truth, the whole  
12 truth, and nothing but the truth.

13 THE COURT: You just respond to questions; don't  
14 volunteer answers. Do you understand?

15 THE WITNESS: Yes, sir.

16 MR. BOWERS: Your Honor, before -- I think the witness  
17 should be excused -- but, before we return to Court, could we  
18 address the issue that --

19 THE COURT: Yeah. Go back over to the witness stand.

20 (Pause in the proceedings.)

21 THE COURT: Mr. Bowers, I saw what you did after my  
22 ruling. You looked at me, looked at the jury, and then shook  
23 your head like you didn't get it. The jury saw it.

24 I'm just warning you that if you do that again you will  
25 be held in contempt of court. That was totally disrespectful.

1 The jury caught it. It was unmistakable what you were doing.  
2 You acted as though you were wronged by the Court's ruling. And  
3 it was pure dramatics. I don't appreciate it. It's not  
4 professional.

5 MR. BOWERS: I -- and, just for the record, I didn't --  
6 I'm not arguing with you, but I understand your ruling. I  
7 didn't deliberately intend the result that you perceived, your  
8 Honor.

9 THE COURT: You, nonetheless, made the gestures.

10 MR. BOWERS: I'm not arguing that. I'm just telling  
11 you it wasn't deliberate.

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

14

15 DIRECT EXAMINATION

16 BY MR. SCHIFF:

17 Q. Now, Mr. Murphy, where do -- where do you live? What's your  
18 home town?

19 A. Reelsville, Indiana.

20 Q. Can I ask you to speak louder? I have a little trouble  
21 hearing.

22 Okay. Where?

23 A. Reelsville, Indiana.

24 Q. Indiana.

25 And what is your profession?

1 A. I'm a truck driver.

2 Q. Truck driver.

3 Do you currently pay income tax?

4 A. Currently?

5 Q. Yes.

6 A. No.

7 Q. You don't pay income taxes.

8 However -- was there a time of your life where -- when

9 you were paying income taxes?

10 A. Yes.

11 Q. Uh, what occurred that persuaded you you can stop paying

12 income taxes?

13 A. I heard you on, uh, "Truckin' Bozo" --

14 Q. Well --

15 A. -- and you had this, uh, Trucker's Special.

16 Q. What is the "Trucker's [sic] Bozo" show?

17 A. "Truckin' Bozo" show, yes.

18 Q. What is that? Is that a radio show?

19 A. Yes, sir.

20 Q. So you heard me on a radio show?

21 A. Right.

22 Q. And is that of particular interest to truck drivers?

23 A. Yes, it is.

24 Q. And what was I discussing on that show?

25 A. How you don't have to pay income tax, why you shouldn't have

1 to pay income tax.

2 Q. Did that discussion surprise you?

3 A. Yes, it did.

4 Q. And you heard me advertise a package of some kind?

5 A. Yes, sir, a Trucker's Special.

6 Q. The Trucker's Special.

7 A. Yes.

8 Q. And did you order the Truck Driver's Special?

9 A. Yes, I did.

10 Q. How much did you pay for the Truck Driver's Special?

11 A. \$95.

12 Q. 95.

13 And what did the Truck Driver's Special consist of?

14 A. Consisted of The Federal Mafia, the Constitution, the Bill

15 of Rights, and a five-and-a-half-hour seminar.

16 Q. And were there documents?

17 A. And doc- -- and documents and, uh, radio show tapes.

18 Q. And did you listen to the five-and-a-half-hour seminar and

19 look at the book?

20 A. Yes, I did. I read The Federal Mafia and I listened to

21 those tapes goin' down the road, over and over -- they were

22 quite inspiring -- and the, uh, five-and-a-half-hour seminar.

23 Q. And, as a result of listening to that material, uh, were you

24 somewhat persuaded that you didn't have to pay income taxes and

25 keep books and records?

- 1 A. Not at that time.
- 2 Q. Oh, it didn't persuade you?
- 3 A. No, it didn't persuade me that I didn't have to pay. But I  
4 did research and I sent out --
- 5 Q. Well --
- 6 A. -- and I got the rest of your stuff after I --
- 7 Q. Well, wait.
- 8 So after you, uh, listened to that initially, did you  
9 make any effort to check out the material?
- 10 A. Yes, I did. I went to the Green Castle Library and I got  
11 the Internal Revenue Code book out and I looked up some of  
12 those, um, statutes that you had listed in The Federal Mafia.  
13 And then I went to the librarian with some of the court cases  
14 that you had listed in there and I had her pull 'em up on the  
15 computer because I'm computer illiterate.
- 16 Q. So the librarian brought up on the computer the court  
17 decisions that I had indicated --
- 18 A. Yes, sir.
- 19 Q. -- in The Federal Mafia?
- 20 A. Yes, sir.
- 21 Q. And was every -- did -- did everything you found in the  
22 library and the court cases -- did I quote those statutes and  
23 court cases accurately --
- 24 A. Yes.
- 25 Q. -- as far as you know?

1 A. Yes, sir, they was.

2 Q. So -- so you checked the material in my -- in that book?

3 A. Yes, I did.

4 Q. Then what did you do?

5 A. Then I sent out and I got my own Internal Revenue Code book

6 and the rest of the materials that you had.

7 Q. When you say "the rest of the material," do you recall what

8 that might have consisted of?

9 A. Well, there was a W-4 Packet; uh, Lien and Levy Packet. Uh,

10 I -- I -- I just can't remember all of it right -- right off.

11 Q. What essentially was the W-4 Packet?

12 A. W-4 explained to me how I could quit -- stop my employer

13 from takin', uh, the extortion out of my paycheck.

14 Q. And there was a Lien and Levy Packet?

15 A. Yes, sir.

16 Q. What essentially did that attempt to do?

17 A. Stop -- stop liens and stop 'em from goin' in and takin' my

18 bank accounts, seize --

19 Q. And did you get any other books?

20 A. Pardon?

21 Q. Did you get any other books?

22 A. Yeah. I got The Great Income Tax Hoax. Uh, and there was

23 another book, but I can't -- I can't recall the name.

24 Q. The Biggest Con?

25 A. The Biggest Con, yeah.

1 Q. What's The Biggest Con about?

2 MR. NEIMAN: I'm just gonna object to relevance.

3 MR. SCHIFF: Well, there's a lot of material.

4 BY MR. SCHIFF:

5 Q. Now --

6 THE COURT: Sustained.

7 BY MR. SCHIFF:

8 Q. Now, in other words, you got a lot of material from us?

9 A. That's correct.

10 Q. In going over the material, did you come across anything

11 that didn't sound truthful or didn't -- you couldn't verify?

12 MR. NEIMAN: Objection. Uh --

13 THE COURT: Sustained.

14 BY MR. SCHIFF:

15 Q. Okay. Now, did you do anything else to verify the material?

16 A. Yes. I went to the IRS and asked 'em if they could identify

17 for me the statute that required me to pay taxes.

18 Q. You went to the IRS?

19 A. Yes, yes, I did. I went to Terra Haute, the Terra Haute

20 office.

21 Q. The Terra Haute office.

22 A. Right.

23 Q. Do you remember who you spoke to there?

24 A. I believe her name was Ms. Asher.

25 Q. Ms...

1 A. Asher --

2 Q. Ashley [sic].

3 A. -- A-s-h-e-r, yeah.

4 Q. And you asked her?

5 A. I asked her if she could identify for me the statute that  
6 required me to pay an income tax or show me the law requiring me  
7 to pay income tax.

8 Q. What did she tell you?

9 A. She said that that was a small office, that I would have to  
10 go to a bigger office, that they would have it.

11 Q. What office did she tell you to go to?

12 A. Well, I'd have -- she said I would have to go to  
13 Indianapolis, uh, Cincinnati, Atlanta, or someplace like that  
14 where it was a bigger office.

15 Q. So did you go to a bigger office?

16 A. No. I called.

17 Q. You called.

18 A. I called. I called the Indianapolis office and --

19 Q. Who --

20 A. -- the girl --

21 Q. -- who did you speak to?

22 A. I can't recall her name. But, uh, she gave me, uh, uh -- a,  
23 uh, 800 number to call an attorney who works for the IRS.

24 Q. So you called that attorney for the IRS?

25 A. Right. And he was -- he was in Atlanta.

1 Q. Do you know his name or do you recall?

2 A. No, I -- I don't recall.

3 Q. So you called that 800 number?

4 A. Right.

5 Q. And who did you speak to?

6 A. It was a -- I assume it was a tax attorney because when I --

7 when the receptionist answered the phone after I went through

8 all their reels of tape, uh, I told her that I wanted to speak

9 with -- with a tax attorney there and she said, well, there's

10 one available and she put me with him.

11 Q. And what happened in that conversation?

12 A. Well, I asked him if he could identify for me the law that

13 required me to pay taxes or the statute in the Internal Revenue

14 Code book that I could look up that requires me to pay a tax on

15 my income and --

16 Q. What -- what did he tell you?

17 A. He said I was a tax protestor. And I told him I'm not

18 protesting any tax. I said all I'm tryin' to do was find the

19 law. That's all I wanted, to find this law. And the phone went

20 dead.

21 Q. What happened?

22 A. The phone went dead. He hung it up.

23 Q. Just hung up on you?

24 A. Yeah. And when I tried to -- I did try to call back,

25 incidentally. And, uh --

1 Q. So you did --

2 A. -- there was --

3 Q. -- pay visits to the IRS to try to --

4 MR. NEIMAN: Your Honor --

5 MR. SCHIFF: All right.

6 MR. NEIMAN: -- I'm gonna object to --

7 MR. SCHIFF: All right.

8 MR. NEIMAN: -- the fact that this isn't being tied

9 back to these defendants which is --

10 MR. SCHIFF: Okay.

11 MR. NEIMAN: -- the issue.

12 BY MR. SCHIFF:

13 Q. What did you do next?

14 A. What did I do next?

15 Q. Yes.

16 A. Well, after I tried to call and I couldn't get anybody, then

17 I -- I proceeded then to stoppin' them from takin' the extortion

18 out of my paycheck.

19 Q. You stopped? You tried to stop your employer from taking

20 taxes out of your paycheck?

21 A. Right.

22 Q. Well, how did you do that?

23 A. I went down and I asked 'em for -- I told 'em that I needed

24 to redo my W-4. So they gave me one. I filled it out exempt.

25 Q. Well, wait a minute.

1           Why did you -- why did you believe you could claim  
2 exempt?

3       A.   3402(n).

4           MR. NEIMAN:  Objection.  Misstating the law.

5           MR. SCHIFF:  Well --

6           THE COURT:  Sustained.

7           MR. NEIMAN:  And, once again, none of this testimony  
8 has been tied into Defendant Schiff.

9       BY MR. SCHIFF:

10       Q.  Where did you discover that you can --

11           THE COURT:  Don't ignore the objection.

12           MR. SCHIFF:  I'm sorry.

13           THE COURT:  You have to be able to tie it in to some  
14 communication with you that caused you to -- to believe that  
15 what you were doing was right.  You haven't done it.  You've  
16 just ignored every objection.

17                       (Discussion between Mr. Leventhal and  
18                       Mr. Schiff.)

19       BY MR. SCHIFF:

20       Q.  Was there an explanation --

21           MR. SCHIFF:  The Federal Mafia is in an exhibit.  Can  
22 you give the witness The Federal Mafia.

23                       (Exhibit placed before the witness.)

24                       (Discussion between Mr. Schiff and  
25                       Mr. Leventhal.)

1 BY MR. SCHIFF:

2 Q. Did you rely on pages 154 and 155 of The Federal Mafia?

3 MR. NEIMAN: Objection. Again, your Honor, what's  
4 relevant here is what he told Mr. Schiff and when. Other than  
5 that --

6 THE COURT: Sustained.

7 BY MR. SCHIFF:

8 Q. All right. In any case, you stopped the withholding of  
9 taxes from your pay; is that correct?

10 A. That's correct.

11 Q. And what happened as a result of that?

12 MR. NEIMAN: Same objection, your Honor. If we --

13 THE COURT: Sustained.

14 MR. SCHIFF: Well, he eventually called me after his --

15 THE COURT: Why don't you ask him about that then  
16 rather than.

17 MR. SCHIFF: Okay. Well --

18 THE COURT: -- ignoring the objections and the Court's  
19 ruling.

20 MR. SCHIFF: Your Honor --

21 THE COURT: Ask him about the call.

22 MR. SCHIFF: Ask him about the what? Ask him about --

23 THE COURT: Look --

24 BY MR. SCHIFF:

25 Q. In other words, you stopped the withholding of taxes from

1 your pay; is that right?

2 THE COURT: Mr. Schiff, the Government has objected  
3 that it has not been tied in to something he told you.

4 MR. SCHIFF: Oh, yeah, about my belief that it works.

5 THE COURT: No.

6 MR. SCHIFF: Well, your Honor, can I have a sidebar on  
7 this?

8 THE COURT: We've gone over it and over it, Mr. Schiff.  
9 And I --

10 MR. SCHIFF: Everybody who has my --

11 THE COURT: -- we've spent a half hour on this before  
12 lunch.

13 MR. SCHIFF: Well, what I don't understand --

14 THE COURT: And I made it very clear what you're  
15 allowed to bring in from these witnesses and it has to be tied  
16 into your good-faith belief.

17 BY MR. SCHIFF:

18 Q. Did you ever call me to tell me, uh, that this worked and  
19 that your lifestyle had changed? Did you ever call me to tell  
20 me about the success you enjoyed with this?

21 A. Yes, I did. About three weeks after I filed that -- refiled  
22 my W-4, I got my first full paycheck with no taxes taken out.  
23 And I couldn't believe the difference of how much more money  
24 that I had.

25 Q. So you called me to tell me?

1 A. Yes, I did.

2 Q. You called me to tell me how you appreciated --

3 A. Right.

4 Q. -- the ability now to -- okay.

5 MR. NEIMAN: Objection. Leading.

6 THE COURT: Sustained.

7 MR. SCHIFF: But he called to tell me it worked.

8 THE COURT: Sustained.

9 BY MR. SCHIFF:

10 Q. Did that continue --

11 THE COURT: Testifying. Strike.

12 MR. SCHIFF: Pardon me?

13 THE COURT: You're testifying again. You're using

14 leading questions. Ask him a question that doesn't suggest the

15 answer to be given.

16 BY MR. SCHIFF:

17 Q. And how long did this continue?

18 A. Until I terminated my employment with that employer and --

19 Q. And how long was that for?

20 A. Uh, it was about -- about four months.

21 Q. Then you went to another employer?

22 A. Yes, I did.

23 Q. Who was that employer?

24 A. I -- I went to work for J.B. Hunt at that time and I filed

25 my W-4 exempt and they honored it.

1 Q. And how long did you work for J.B. Hunt?

2 MR. NEIMAN: Objection again. Is there another phone  
3 call or not?

4 THE COURT: Sustained.

5 MR. NEIMAN: If we could focus this just to the phone  
6 calls and what was said during them.

7 MR. SCHIFF: Your Honor, I have 90,000 books in  
8 circulation. Not everybody who uses this material calls me  
9 every time --

10 THE COURT: You're presenting him as someone who did.

11 MR. SCHIFF: Well, he did. He called me when it  
12 worked. He doesn't call me every time he changes his job.

13 THE COURT: Well, that's what you've got to show is  
14 that he called you; he communicated it to you.

15 MR. SCHIFF: Well, he called -- all right.

16 BY MR. SCHIFF:

17 Q. How many times do you recall calling me at Freedom Books for  
18 getting -- for information for one reason or another?

19 A. I've called your office at least once every three months  
20 since I started -- and sometimes even more often than that --  
21 since I started not payin' the taxes.

22 Q. So you were basically in constant communication with us?

23 A. Yes, I was. And I still am.

24 Q. So, when you changed you changed jobs and you claimed  
25 exempt, we would know about it?

1 A. Right.

2 Q. So -- so at that job you also -- now -- claimed exempt,  
3 right, and it worked?

4 A. Right. And then --

5 Q. Then what happened?

6 A. Well, the second time that I went to work for J.B. Hunt. I  
7 worked for 'em for about eleven months and then they -- they,  
8 uh, sent that W-4 in and they got a W-4 back -- or a -- a letter  
9 from Fresno from Ms. Washington. And I received one in my mail.  
10 It instruct --

11 Q. Can you speak a little louder, please?

12 A. -- it instructed J.B. Hunt to disregard my W-4, put me at  
13 zero, single status, and take extortion out of my paycheck.

14 Q. So the -- the government sent a letter to J.B. Hunt telling  
15 them not to honor your W-4 anymore?

16 A. This is correct.

17 Q. And what did J.B. Hunt do?

18 A. They started taking extortion out of my paycheck.

19 Q. About how much money did they take out of your paycheck?

20 A. About 30 percent.

21 Q. Despite the fact that you had given J.B. Hunt a sworn  
22 statement that you were exempt?

23 A. That's correct.

24 Q. Did you speak -- how did you feel when they did that?

25 MR. NEIMAN: Objection. Relevance.

1                   THE COURT: Sustained.

2           BY MR. SCHIFF:

3           Q. Did you feel it was legal?

4                   THE COURT: Did you hear what I said?

5                   MR. SCHIFF: All right.

6           BY MR. SCHIFF:

7           Q. What did you do --

8                   THE COURT: Sustained.

9           BY MR. SCHIFF:

10          Q. Did you speak to the legal counsel?

11                  MR. NEIMAN: Objection, unless this is again tied back

12          to Mr. Schiff.

13          BY MR. SCHIFF:

14          Q. Well, what did you do when they took 30 percent of your

15          money out of your paycheck?

16                  MR. NEIMAN: Same objection, your Honor.

17                  THE COURT: Sustained.

18          BY MR. SCHIFF:

19          Q. Well, what did you do when that happened?

20                  THE COURT: Sustained.

21                  MR. SCHIFF: Well, can I ask him what he --

22                  THE COURT: Don't ask it again. It's sustained.

23          BY MR. SCHIFF:

24          Q. Did you continue working and having -- allowing 30 percent

25          of your pay taken from you?

1 A. Yes, I did for about three, maybe four weeks. I called your  
2 office and confronted you about it and you told me what tape to  
3 listen to. And I got the tape out and I listened to it. I  
4 called my -- I called J.B. Hunt's office, payroll, and asked 'em  
5 why they was takin' extortion out of my paycheck and I needed a  
6 copy of that letter.

7 So they sent me a copy of that letter. And I told 'em  
8 I wanted any other documents they had with that letter. They  
9 sent -- sent me the letter and they had -- their letter was  
10 exactly the same as mine only it had a stamp on it of the date  
11 that they received it. And, uh, so I called 'em back and I  
12 asked 'em where the court order was for it. Well, the girl that  
13 works in the office she don't know anything about that. So I  
14 said, well, let me talk to the tax attorney down there.

15 MR. NEIMAN: I'm gonna object to relevance, your Honor.

16 THE COURT: Sustained.

17 BY MR. SCHIFF:

18 Q. Well, what -- what did the tax lawyer tell you?

19 MR. NEIMAN: Objection.

20 THE COURT: Sustained.

21 BY MR. SCHIFF:

22 Q. Well, what did you do as a consequence of their taking this  
23 money out of your pay? Did you continue working there?

24 A. They gave me two options: pay the extortion or quit. And I  
25 asked him, "Where do you want this truck parked?" And I took

1 the truck to Columbus, Ohio, and I parked it. I cleaned my  
2 stuff out and gave 'em back their truck. I went to work for  
3 somebody else.

4 Q. And then what did you do?

5 A. Then I became an owner/operator.

6 Q. So you didn't have to contend with W-4's; is that right?

7 A. This is correct.

8 Q. And that's your situation today?

9 A. Yes, it is.

10 MR. SCHIFF: No further questions.

11 THE COURT: Mr. Cristalli?

12 MR. CRISTALLI: No questions of this witness, your  
13 Honor.

14 THE COURT: Mr. Bowers?

15 MR. BOWERS: I have nothing, your Honor.

16 THE COURT: Mr. Neiman?

17 MR. NEIMAN: Thank you, your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. NEIMAN:

21 Q. Mr. Murphy, Mr. Schiff's program didn't work for long, did  
22 it?

23 A. Do what?

24 Q. Let me try that again.

25 You filed an exempt W-4 with your employer?

1 A. Yes, I did.

2 Q. And then it got rejected or your employer or the IRS  
3 disagreed with the exempt W-4 and they told --

4 A. No. My employer did not.

5 Q. You had to quit -- you had to quit your job, didn't you?

6 A. The only reason I quit my job was because of the fact that  
7 the IRS in Fresno, California, Ms. Washington, sent them a  
8 letter unsigned, no court order.

9 Q. Because of this extortion, I believe is your word --

10 A. That's correct.

11 Q. -- was being taken?

12 A. This is what it is.

13 Q. What's extortion? What are you referring to when you say  
14 "extortion"?

15 A. It's takin' money without my permission.

16 Q. You said you bought the Truck Driver's Special for \$95?

17 A. Yes, sir.

18 Q. Do you remember the set of tapes that you referred to when  
19 you -- when you called up?

20 A. Yes, sir.

21 Q. How much did you pay for the set of tapes?

22 A. Well, you -- the Truck Driver's Special cost me \$95.

23 Q. What other products did you buy from Freedom Books?

24 A. The rest of the materials that I bought from -- from Irwin  
25 Schiff, uh, was The Complete Package. And it was, uh, an

1 additional \$700 because I already paid the 95. It was \$795 at  
2 that time. And, then by my buyin' the Truck Driver's Special,  
3 which I already had that material, they did not duplicate the  
4 material; they sent me what -- the other material and made The  
5 Complete Package, what they call The Complete Package.

6 Q. You gave Mr. Schiff about \$800 for the products?

7 A. Yes, sir.

8 Q. All right. Uh, you said you went to the library and looked  
9 at Code sections; is that correct?

10 A. That's right.

11 Q. Did you look at the Code sections referred to by Mr. Schiff?

12 A. Yes, sir.

13 Q. And you looked at court cases; correct?

14 A. That is correct.

15 Q. Just looked in the court cases to make sure the sentences  
16 that Mr. Schiff had in the book were in the court case, didn't  
17 you?

18 A. What -- what do you mean?

19 Q. When you looked at the court cases --

20 A. Yeah.

21 Q. -- did you just look in The Federal Mafia to make sure that  
22 the sentence in The Federal Mafia was also in the court case?

23 A. I didn't -- no, I didn't look in The Federal -- I knew what  
24 The Federal Mafia said. But, when I looked up the court cases,  
25 they read what Mr. Schiff had put in this book, yes.

1 Q. Did Mr. Schiff ever refer you to any of the cases which  
2 called these arguments "blatant nonsense"?

3 A. Do what?

4 Q. Did Mr. Schiff ever refer you to any of the court cases  
5 which called his arguments "blatant nonsense"?

6 A. Not that I recall.

7 MR. NEIMAN: I have nothing further.

8

9 REDIRECT EXAMINATION

10 BY MR. SCHIFF:

11 Q. When you read my books, did anything appear to be blatant  
12 nonsense to you?

13 MR. NEIMAN: Objection. It calls for a legal  
14 conclusion to some extent. But...

15 MR. SCHIFF: I asked him --

16 MR. NEIMAN: The question was just whether or not he  
17 was aware of the court cases or Mr. Schiff referred 'em to him.  
18 Nothing further about those cases.

19 THE COURT: You can ask --

20 MR. SCHIFF: I asked him --

21 THE COURT: -- you can ask about the court cases. Go  
22 ahead.

23 MR. SCHIFF: Well, I asked him first about my book,  
24 does it appear to be blatant nonsense.

25

1 BY MR. SCHIFF:

2 Q. Oh. When you read --

3 THE COURT: Sustained.

4 BY MR. SCHIFF:

5 Q. -- the court cases did -- did the court cases -- uh, I  
6 mean -- when you -- when you read a court case referred to in my  
7 book, I mean; you read more than what was quoted in my book, I  
8 assume? You just didn't look for the quotes and just read those  
9 quotes and not read what was above the quote or below the quote?

10 A. No. I read -- I read the entire case.

11 Q. You read the entire case.

12 A. Yes.

13 Q. So, when I quoted cases that tried to make a legal point the  
14 cases seemed to justify the arguments I put in my book?

15 A. Yes, sir. I have not found one thing in this book or in any  
16 of the publications or in any of the tapes that I've got from  
17 you that can be disputed.

18 Q. Support -- suppose some judge happened to say my material  
19 was blatant nonsense. Does that mean it's blatant nonsense just  
20 because some judge says it's blatant nonsense?

21 A. He's entitled to his opinion.

22 Q. Right.

23 And I'm entitled to mine?

24 A. And I'm entitled to mine.

25 Q. And do you think any federal judge has sold a book that sold

1 200,000 copies on the law?

2 A. Not that I know of.

3 Q. Thank you very much.

4 MR. SCHIFF: No further.

5 THE COURT: Anything further?

6 MR. NEIMAN: Nothing from the United States.

7 THE COURT: The witness is excused.

8 Call your next witness.

9 MR. SCHIFF: Get my next witness.

10 MR. IGNALL: Your Honor, can we request a sidebar on

11 this next witness?

12 THE COURT: Yes.

13 MR. NEIMAN: As soon as we find out who it is.

14 THE COURT: Let's see who it is first.

15 (Pause in the proceedings.)

16 THE COURT: Still need sidebar?

17 MR. NEIMAN: We need a sidebar, your Honor.

18 THE CLERK: Sir, why don't you just go on up and take

19 the witness stand right now and we'll be with you in a moment.

20 (Kenneth Nicholson takes the witness stand.)

21 (Sidebar conference was held as follows:)

22 MR. IGNALL: Is everyone here.

23 THE COURT: Yes.

24 MR. IGNALL: All right.

25 Your Honor, we have two issues with -- this is

1 Mr. Nicholson, I believe?

2 MR. SCHIFF: Yeah, Ken Nicholson, yeah.

3 MR. IGNALL: Question one is I'm not sure what the  
4 relevance of his testimony is. I believe he's gonna testify  
5 that he was attacked by someone at the IRS during a collection  
6 due process hearing and he may or may not have relayed that  
7 back. We believe he relayed that back to defendants, because  
8 there's a tape of that. I don't know what the relevance of that  
9 in terms of -- in terms of a good-faith belief. And I think  
10 it's unfairly prejudicial and it seems like the IRS is, you  
11 know, attacking people and that's not really the issue here.  
12 The issue is what do these defendants understand or  
13 misunderstand in good faith.

14 Secondly, we have some evidence and I don't have  
15 anything more than, uh, an initial NCIC printout that  
16 Mr. Nicholson has a felony conviction for assault with a deadly  
17 weapon. Uh, it looks like it goes back to 1993, but I don't  
18 know when he was released. I don't know if it's within the last  
19 10 years or not. I would like to inquire on that on  
20 cross-examination because I think if he does get to testify  
21 about getting in a fight with someone his conviction is relevant  
22 to his truthfulness or untruthfulness given that he's been  
23 convicted of a crime before. But our initial objection is that  
24 this whole testimony is not relevant. We should probably deal  
25 with one issue at a time.

1           MR. SCHIFF: That's 20 years ago. He's self-employed.  
2 He has a pool business. This is not gonna affect his truth.  
3 He's been to more of my seminars I think than anybody else,  
4 about five or six.

5           And one of the reasons that I want to use him is that  
6 there's been -- the Government has represented, again, that my  
7 seminars are nothing but a paid infomercial. And he's been to  
8 enough of my seminars to know what goes on. And, uh, he --  
9 he -- he is almost in constant contact with me. And, uh, I  
10 wanted him to confirm the fact that my seminars are not paid  
11 infomercials and responsible people go. And I cover a wide  
12 variety of material that people apparently rely on.

13           And, uh, he hasn't paid income taxes based on material  
14 he's gotten from my book. And he -- he's found that, uh, the  
15 information is accurate.

16           And, uh, he's -- he's one of these people who -- who --  
17 who take my material and check it out and research it. The  
18 Government has put on people who read my book, oh, I'll claim  
19 exempt and they don't do anything about it, which is not what I  
20 like to do. And I -- and I think that it's important to --

21           THE COURT: What --

22           MR. SCHIFF: -- to my good-faith belief that if people  
23 use this stuff and they call me and they believe it's valid --

24           THE COURT: That doesn't cut it.

25           MR. SCHIFF: Well -- well, then why --

1 THE COURT: The fact that people buy your material does  
2 not mean that it's good or that you have a good-faith belief  
3 because people --

4 MR. SCHIFF: Well --

5 THE COURT: -- follow your program.

6 MR. SCHIFF: -- how would I prove I have a good-faith  
7 belief?

8 THE COURT: By asking him if he used your material and  
9 got a refund, for example.

10 MR. SCHIFF: Well, not everybody gets re- -- I never  
11 tell people they are gonna get refunds. A lot of people don't  
12 request refunds. I tell people not to request refunds  
13 necessarily. They don't have to request refunds. Most of the  
14 times they don't get refunds.

15 THE COURT: You can ask him questions about whether he  
16 followed you and if it worked and -- and relative to your  
17 good-faith belief. But you're not going to rehash your  
18 seminars.

19 MR. IGNALL: Your Honor, as long as it's tied back to  
20 something he told Mr. Schiff --

21 THE COURT: Exactly.

22 MR. IGNALL: -- whether it worked or not.

23 THE COURT: Yeah. Exactly.

24 MR. SCHIFF: Yeah. Well --

25 MR. CRISTALLI: Your Honor, the only, um, concern I

1 have is that the Government did take excerpts from certain, um,  
2 radio shows and things of that nature. If -- and then they also  
3 had testimony from witnesses in terms of, uh, certain portions  
4 of the seminars and certain portions of the teachings. I think  
5 it's fair game, to a certain extent, while I'll acknowledge it  
6 may be limited, to get into some of that as far as the substance  
7 of the materials and what this person relied on.

8 MR. SCHIFF: Well, the Government put on one witness  
9 of -- a woman who -- she got into trouble. She even admits she  
10 didn't -- she didn't read the book. A man buys this -- the  
11 video seminar. Then says -- tells him he listens to it. Then  
12 on examination tells me he didn't listen to it.

13 THE COURT: It's gotta be tied in. So --

14 MR. SCHIFF: I'll --

15 THE COURT: -- that's the ruling.

16 MR. SCHIFF: -- I'll try to tie it in.

17 MR. IGNALL: Do we have instruction not to go into  
18 the --

19 THE COURT: Yes.

20 MR. SCHIFF: -- the alleged fight with the IRS?

21 THE COURT: Absolutely.

22 MR. SCHIFF: Well, I can't ask him about --

23 THE COURT: No, you can't.

24 MR. SCHIFF: -- the seminars?

25 MR. CRISTALLI: No. The fight.

1 MR. SCHIFF: What?

2 MR. CRISTALLI: The fight.

3 MR. MODAFFERI: The fight, Irwin. Don't --

4 MR. SCHIFF: No. I won't -- all right. I won't  
5 mention the fight. All right. That I can do without. But  
6 he --

7 THE COURT: It's gotta be tied in.

8 MR. SCHIFF: Well, I'll tie it in. But I won't mention  
9 the fight.

10 THE COURT: You can --

11 MR. SCHIFF: No problem.

12 THE COURT: -- you can call -- we can stay here for the  
13 next ten years listening to people that attended the seminars.

14 MR. SCHIFF: Well, look how many witnesses the  
15 Government put on. I'm not putting on anywheres near that.

16 THE COURT: It's gotta be relevant.

17 MR. SCHIFF: Everything is relevant.

18 THE COURT: No, it isn't.

19 MR. IGNALL: Thank you, your Honor.

20 (Sidebar conference concluded and the  
21 following is held in open court:)

22 THE CLERK: Sir, could you please stand and raise your  
23 right hand?

24 You do solemnly swear that the testimony you shall give  
25 in the cause now pending before this court shall be the truth,

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

2 THE WITNESS: I do.

3 THE CLERK: Please be seated.

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

6 THE WITNESS: Kenneth Nicholson, N-i-c-h-o-l-s-o-n.

7

8 KENNETH NICHOLSON,  
9 called as a witness on behalf of Defendant Schiff, having been  
10 first duly sworn, was examined and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MR. SCHIFF:

14 Q. Mr. Nicholson --

15 A. Yes.

16 Q. -- I'm gonna ask you to speak louder so I can --

17 A. Okay.

18 Q. -- you know. Okay.

19 Where are you from, Mr. Nicholson?

20 A. Originally, California. But I've lived here in Vegas for  
21 about 10 years now.

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

23 A. About 10 years.

24 Q. Ten years.

25 And what kinda work do you do?

1 A. I'm a pool man, clean swimming pools.

2 Q. Are you self-employed or you work for wages?

3 A. Self-employed.

4 Q. So you run your own swimming pool business?

5 A. That's correct.

6 Q. Uh, Mr. Nicholson, do you pay income taxes?

7 A. No, not at the moment.

8 Q. You don't pay them at the moment.

9 Was there a time that you did pay income taxes?

10 A. Yes, there was at a time. Um-hum.

11 Q. What caused you to stop paying income taxes?

12 A. The materials I found within your book showed me that there

13 was no law and I couldn't find one. And, as of today, I still

14 have not been able to find one.

15 Q. Okay. So, um, I take it you were listening -- did you

16 listen to my radio show?

17 A. That's true. That's correct.

18 Q. Is that the first contact you had with me?

19 A. That's correct, yes.

20 Q. Was there something you heard in my radio show that perked

21 your interest in --

22 A. Specifically you were talking with John Ensign, Senator John

23 Ensign, on the radio asking him to produce the liability section

24 to you. And, in that conversation, he told you he couldn't find

25 it. And if he could -- when you asked him somethin' to the

1 effect of, well, what do I do from this point forward? He said,  
2 well, whatever you do that's your choice.

3 Q. Yeah. So you heard John Ensign being interviewed on my  
4 radio show and the Congressman said he couldn't find a law that  
5 says you gotta --

6 MR. IGNALL: Objection. Asked and answered --

7 THE WITNESS: That's correct.

8 MR. IGNALL: -- and irrelevant.

9 THE COURT: Sustained on both grounds.

10 BY MR. SCHIFF:

11 Q. So that piqued your interest?

12 A. That's correct.

13 Q. So what did you do -- did you hear more than one radio show  
14 at least?

15 A. Well, I heard the original radio show. But I listened to  
16 you for a period of several years over the radio.

17 Q. Okay.

18 A. So many shows.

19 Q. So eventually what happened -- what happened? Did you order  
20 material?

21 A. Yeah. Eventually I came into your shop and I -- I bought  
22 your book and I took it home. And, you know, on further study  
23 of your book, I -- I concluded that you were correct. And, in  
24 that correction, I continued further with purchasing a few more  
25 materials from you to further study your material to find out

1       whether or not you're telling us the truth or not, I guess,  
2       is...

3       Q.   Did you purchase the Internal Revenue Code?

4       A.   I bought it.  Yeah, I bought a couple of 'em.

5       Q.   During the years that you were paying income taxes, had you  
6       ever looked into the Internal Revenue Code?

7       A.   I never even seen one.

8       Q.   Never?

9       A.   Never seen one.

10      Q.   You just took everybody's word for it?

11      A.   That's correct.  Before I got your materials, I never even  
12      looked at the Constitution or the Bill of Rights either.

13      Q.   Did you -- did you do any other further research to verify  
14      anything?

15      A.   I went onto the Internet, pulled down pretty much most of  
16      the cases that you had cited in your book to verify that what  
17      you were saying in your book was what -- was correct with what  
18      was being said in the court cases.  And I found that -- your  
19      interpretation to be very much in line with what the court was  
20      saying.

21      Q.   Did you attend any of my seminars?

22      A.   I'd say roughly about six -- six seminars or so.  Couple of  
23      workshops --

24      Q.   You attended --

25      A.   -- in there.

1 Q. -- about six seminars?

2 A. Couple of workshops in there as well.

3 Q. Some of those seminars, like workshops?

4 A. Correct, correct.

5 Q. What is the difference between a workshop seminar and a  
6 regular seminar?

7 A. Uh, the workshop seminar was where we could come in and  
8 basically sit down over -- have someone pretend to be an IRS  
9 agent or a collection agent on that end and then we would go in  
10 and kinda role play. You know, you say there's a tax I'm liable  
11 for. Could your show me the law?

12 Q. Okay.

13 A. Those kinds of questions back and forth.

14 Q. Okay. It's role playing.

15 A. Yeah.

16 Q. Um. But in my regular seminar, do you recall -- would you  
17 say, uh, we do an in-depth analysis and study of the history of  
18 the income tax?

19 A. Yeah. It was more --

20 MR. IGNALL: Objection. Relevance and leading.

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. Well, would you characterize my seminar as an extended sales  
24 pitch?

25 A. No. No, sir. No.

1 Q. How would you characterize it?

2 A. It was a informational training seminar. It was, uh --

3 basically you telling us what your interpretation was and then

4 we could go home from there and -- and study it to further

5 verify.

6 Q. We go into --

7 A. Yeah.

8 Q. Okay. Do you happen to recall what my policy was with

9 respect to taxes -- uh, with respect to lawyers and accountants

10 who, uh --

11 A. Yeah.

12 Q. -- attendees might rely on for information?

13 A. I remember specifically with the San Remo seminar, which I

14 attended, you asked the -- if there was any accountants or IRS

15 agents in the room. And I thought at the moment that you were

16 going to ask them to leave the seminar. But, instead, you asked

17 them to come forward if they had any questions to make sure to

18 ask you those questions so that we all could hear the answers

19 and the questions both together. So it was quite surprising.

20 Q. Uh, do you remember there's a point in the seminar where I

21 ask for a show of hands about something?

22 A. How many of us believed that there was no law that made us

23 liable at this -- I remember about 45 minutes, maybe an hour

24 into the seminar you asked us if we believed that there was a

25 law.

1           Most of us at this point in time did not raise our hand  
2 because we believed that you were correct, there was no law. So  
3 you basically say, okay, my work's done. And kinda clapped your  
4 hands and started to, like, leave and we all laughed and  
5 thought, you know, that's -- that's it?

6 Q. Now --

7 A. And, of course, you were playing.

8 Q. -- do you recall that in my seminars we always left plenty  
9 of time for answers and questions -- questions and answers at  
10 the end of the seminar?

11 A. Yes.

12           MR. IGNALL: Objection. Relevance.

13           THE COURT: Sustained.

14           MR. CRISTALLI: Your Honor, it is --

15           MR. SCHIFF: Well, relevance is -- okay.

16           MR. CRISTALLI: I -- I would respect the Court's  
17 ruling.

18           MR. SCHIFF: Okay.

19 BY MR. SCHIFF:

20 Q. Now, as a result of being exposed to the information at my  
21 seminar, my books -- and didn't you stop at my office a number  
22 of times during this period?

23 A. Several times, yes. Many times.

24 Q. And you spoke to me personally?

25 A. Spoke to you personally and a couple of your other staff

1 members as well, yes.

2 Q. And if you had any questions...

3 A. I could ask them, ask you.

4 Q. Well, the prosecutor indicated how much money you paid for  
5 my material. Did -- did you think you overpaid --

6 THE COURT: Wait a minute.

7 BY MR. SCHIFF:

8 Q. -- for anything?

9 THE COURT: Wait a minute.

10 MR. SCHIFF: All right.

11 THE COURT: The prosecutor hasn't asked any questions  
12 yet.

13 MR. SCHIFF: Well, somebody --

14 THE COURT: How can you say he indicated --

15 MR. SCHIFF: Oh, I'm getting him confused then with the  
16 other witness.

17 THE COURT: -- that he overpaid. The prosecutor has  
18 made no --

19 MR. SCHIFF: I made a mistake.

20 THE COURT: -- such statement.

21 MR. SCHIFF: I'm thinking of the other witness. I  
22 thought -- oh, I'm sorry. Maybe -- I don't know.

23 THE COURT: Do you wish to withdraw the question?

24 BY MR. SCHIFF:

25 Q. Now, looking at the overall, would -- would you say that I,

1 myself personally, was responsible for you stopping the payment  
2 of income tax?

3 A. No, sir. I'm responsible for my own actions.

4 Q. And what actually caused you to stop paying income tax?

5 MR. IGNALL: Objection, your Honor. This needs to tie  
6 into something Mr. Schiff did or that he said to Mr. Schiff.

7 MR. SCHIFF: No.

8 THE COURT: Sustained.

9 MR. SCHIFF: I'm asking him what -- what was  
10 responsible for him stopping the payment of income tax.

11 THE COURT: Sustained.

12 MR. SCHIFF: It's sustained?

13 THE COURT: Yes.

14 BY MR. SCHIFF:

15 Q. Did you stop paying income taxes because I told you to stop  
16 paying?

17 A. No, sir. Your materials led me to a belief or to a  
18 conclusion and in that conclusion I made my own choice to stop  
19 paying.

20 Q. Did you ever file a zero return?

21 A. Did I ever file a zero return?

22 Q. Yes.

23 A. No, sir. No.

24 Q. So you didn't even --

25 A. I quit filing. I -- I couldn't find a statute that required

1 me or made me liable -- I couldn't find me a statute to require  
2 even books and records to support the liability statute. I  
3 couldn't find anything in the Internal Revenue Code: fines,  
4 penalties, payment, liability. Nothing. So, with that in my  
5 mind, under that conclusion, you were right in your collusion  
6 that it was a voluntary compliance or a voluntary tax. We could  
7 choose to file if we wanted to or we could choose not to file if  
8 we didn't want to. It was our choice. So I chose not to.

9 Q. So that's a conclusion that you came based on your own  
10 understanding and analysis?

11 A. That's correct, sir.

12 Q. Did you also conclude that there might be a difference  
13 between what is taxable as income in the legal sense and the  
14 word "income" in the ordinary sense?

15 MR. IGNALL: Objection, your Honor. Again, this has to  
16 tie into Mr. Schiff or someone at Freedom Books for it to be  
17 relevant.

18 THE COURT: Sustained. Don't ask it again.

19 MR. SCHIFF: Okay. I'm asking him --

20 THE COURT: You need to tie it in. I warned you at  
21 sidebar you need to tie it in. If you can't tie it in, stop  
22 now.

23 BY MR. SCHIFF:

24 Q. Well, did you learn that at my seminar?

25 THE COURT: Did you hear what I said?

1 MR. SCHIFF: Yeah. I'm -- we discussed that at great  
2 language at my seminar.

3 THE COURT: I don't care what you discussed at your  
4 seminar. You have to use --

5 MR. SCHIFF: Well --

6 THE COURT: -- this witness to --

7 MR. SCHIFF: Okay.

8 THE COURT: -- to --

9 BY MR. SCHIFF:

10 Q. Did we --

11 THE COURT: -- establish that he told you something  
12 that buttressed your good-faith belief.

13 BY MR. SCHIFF:

14 Q. Did we discuss these distinctions at my office?

15 THE COURT: Mr. Schiff, how many times do I need to  
16 tell you? You just continue to ask the same question over and  
17 over again regardless of the rulings of the Court.

18 MR. SCHIFF: We discussed --

19 THE COURT: Do you understand you have to tie something  
20 this witness communicated to you that buttressed your good-faith  
21 belief.

22 MR. SCHIFF: Well, we discussed this --

23 THE COURT: I'm waiting --

24 MR. SCHIFF: -- at my seminar.

25 THE COURT: I don't care.

1 MR. SCHIFF: Well, how -- how --

2 THE COURT: -- waiting to hear what -- what happened

3 that he did with the IRS that --

4 MR. SCHIFF: Okay.

5 THE COURT: -- led you to believe you were correct.

6 MR. SCHIFF: Okay.

7 BY MR. SCHIFF:

8 Q. Well, so he -- you stopped paying; right?

9 A. That's correct.

10 I did ask you, I did come into your office first on

11 the -- on the first conclusion and ask you what you would you

12 suggest that I do. And, upon that suggestion, you told me

13 probably not file anymore. With that in mind, I did go home and

14 sit down and think about it and then I did -- I chose not to

15 file based upon some of the advice you gave me.

16 Q. So --

17 A. But, again --

18 Q. -- so you relied upon me and our discussions --

19 A. Your materials --

20 Q. -- my books --

21 A. -- your books.

22 Q. -- my books and our discussions from time to time and the

23 fact that you told me about you had a improved lifestyle?

24 A. Much more -- much better. It's not -- I'm not tryin' to be

25 silly or anything. But, as a pool boy, my -- my money's

1 limited. And it was nice to have a few extra dollars in my  
2 pockets at the end of the year, um, not to have to pay on a  
3 tax --

4 Q. Now --

5 A. -- that I didn't think I was required to pay. I couldn't  
6 find the liability statute. So...

7 Q. In all the discussions that we had -- at my seminar, in my  
8 office, with respect to my books -- did I ever give you any  
9 reason to believe that I didn't believe the information I put in  
10 my books, I didn't believe the information I was communicating  
11 to you personally, and/or I didn't believe, uh, what I said at  
12 my seminar was other than my good-faith, sincere beliefs --

13 A. No, I believed --

14 Q. -- in how --

15 MR. IGNALL: Object --

16 BY MR. SCHIFF:

17 Q. -- I regarded the income tax?

18 THE COURT: There is an objection. When the prosecutor  
19 stands, you don't answer until he's made his statement.

20 MR. IGNALL: Objection. Calls for the witness to  
21 comment on Mr. Schiff's state of mind.

22 THE COURT: Sustained.

23 MR. SCHIFF: No further questions.

24 THE COURT: Mr. Cristalli?

25 MR. CRISTALLI: Your Honor, I have no questions of this

1 witness. Thank you.

2 THE COURT: Thank you.

3 Mr. Bowers?

4 MR. BOWERS: I don't -- I don't have anything, your  
5 Honor.

6 THE COURT: Thank you.

7 Mr. Ignall?

8

9 CROSS-EXAMINATION

10 BY MR. IGNALL:

11 Q. Mr. Nicholson, what was the year that you stopped paying  
12 taxes and stopped filing?

13 A. '96, I believe.

14 Q. Have you earned money since 1996?

15 A. What's money?

16 Q. Have you been paid for your services?

17 A. Depends on what you mean by "paid"? I don't want to get  
18 into a tricky, fancy kinda game with you. But, when you start  
19 getting into money and -- I -- I've been searching a lot of  
20 things and I've studied a lot of things. And these are tricky  
21 kinda words: money, reside. All these kinda of things.

22 So did I -- did I receive compensation for my labor?

23 Yes.

24 Q. How much compensation do you receive for your labor since  
25 1996?

1 A. I have no idea. I haven't calculated. I don't keep books  
2 and records. I don't keep any -- nothin'.

3 MR. CRISTALLI: Objection as to relevancy.

4 BY MR. IGNALL:

5 Q. Has the IRS ever agreed with your position that you don't  
6 have to file?

7 A. He assaulted me when I asked him for the Code section.

8 Q. Mr. --

9 MR. IGNALL: Your Honor --

10 MR. CRISTALLI: He opened the door, your Honor.

11 MR. BOWERS: I agree. I join.

12 THE COURT: That opened the door?

13 MR. CRISTALLI: Sounded like it.

14 THE COURT: I'm not sure about that.

15 BY MR. IGNALL:

16 Q. Has the IRS ever --

17 THE COURT: Strike. That response will be stricken as  
18 nonresponsive.

19 BY MR. IGNALL:

20 Q. Has the IRS ever sent you any notices?

21 A. No.

22 Q. Of any kind?

23 A. No letters, no notices. I have received nothin' from the  
24 IRS in 10 years. That's the truth.

25 Q. IRS has never indicated to you that you owe any money?

1 A. Nothing.

2 Q. You've had no communication --

3 A. No communications --

4 Q. -- with the IRS?

5 A. -- from the IRS whatsoever in the last 10 years.

6 Q. Now --

7 A. That's another reason why I believed Irwin's telling me the

8 truth.

9 MR. IGNALL: Move --

10 THE COURT: Strike.

11 MR. IGNALL: -- to strike as nonresponsive.

12 THE COURT: Strike as --

13 MR. IGNALL: No further questions.

14 THE COURT: -- nonresponsive.

15 Anything further? (No response.)

16 The witness is excused.

17 We'll take our mid-afternoon break, 15 minutes.

18 (Jury leaves the courtroom at 2:59 p.m.)

19 MR. BOWERS: Your Honor, is the Court in recess?

20 THE COURT: It is.

21 (Recess from 3:00 p.m. to 3:26 p.m.)

22 THE CLERK: All rise.

23 THE COURT: Please be seated.

24 Business before we bring in the jury?

25 MR. IGNALL: Yes.

1           MR. SCHIFF: Um, um, your Honor, I have a witness who I  
2 didn't proffer because I didn't know he was coming in. But I  
3 didn't want -- I didn't wanna call him until next week. He just  
4 came in from -- he's a elderly gentleman -- Ray Hartman. He  
5 was -- he was a optometrist. But he has a lot to say about how  
6 he relied on me. I stopped the -- he was at the raid when they  
7 raided me in my apartment and they maced me. So he can talk  
8 about that raid.

9           Also, they were taking a hundred percent of his Social  
10 Security. I -- I stopped them. He got a refund check of 9,000.  
11 They no longer take the Social Security. But he goes back a  
12 long time.

13           But I didn't put him on the witness list yesterday  
14 because I didn't know he was coming in. He's coming in from  
15 Pittsburgh and he got in late last night. So he's in the  
16 witness room. But, um -- so he has a lot to say about a lot of  
17 issues that have come up at this trial.

18           As a matter of fact, he -- but, you know, I didn't put  
19 him on the proffer list because (A) I didn't think I was gonna  
20 need him. But he's here. He probably won't even finish his  
21 testimony because there are a lot of aspects of our relationship  
22 which bears on this trial. So I just wanna tell you he's here.

23           THE COURT: Thank you.

24           MR. IGNALL: I'm sorry, your Honor. Is he the next  
25 witness on the --

1 THE COURT: Well, that's what he's -- I assume  
2 that's --

3 MR. SCHIFF: Pardon?

4 MR. IGNALL: Who's your next witness, Mr. Schiff?

5 MR. SCHIFF: Jan Lindsey.

6 MR. IGNALL: Okay. So we might want to address this  
7 after the next witness.

8 From the proffer there, I'm not sure what's relevant.  
9 The only happy camper part about that that -- that it sounds  
10 like he relayed back to Mr. Schiff was something about levying  
11 Social Security and that only was an issue that Mr. Schiff tried  
12 to get into tangentially, I believe, with Mr. Talley.

13 MR. SCHIFF: I got him back a check -- his -- a check  
14 of 9,000. I got him back all his Social Security and he's  
15 getting his full Social Security check today.

16 MR. IGNALL: And I'm not sure --

17 THE COURT: Well, that's --

18 MR. IGNALL: -- how that's relevant to --

19 THE COURT: -- that's not related --

20 MR. IGNALL: -- Mr. Schiff's good faith --

21 THE COURT: -- to the charges against Schiff.

22 MR. IGNALL: -- on what he's --

23 MR. SCHIFF: You said --

24 MR. IGNALL: -- instructing people to do.

25 MR. SCHIFF: He told me about successes he's had.

1 THE COURT: Relative to the charges you're facing, the  
2 good faith, you're not --

3 MR. SCHIFF: Well, I've also --

4 THE COURT: -- charged with Social Security violations.

5 MR. SCHIFF: -- he was a witness -- he was with me when  
6 they maced me and they --

7 THE COURT: Irrelevant.

8 MR. SCHIFF: Well, how is that irrelevant? He doesn't  
9 pay income taxes either based upon my advice today. He -- he --  
10 he drove out here with me when I moved from New York here. I --  
11 your Honor --

12 THE COURT: The last witness you brought in did not --  
13 did not do what I told you the witnesses had to do. It was just  
14 a -- a --

15 MR. SCHIFF: Well --

16 THE COURT: -- a ruse on your part that --

17 MR. SCHIFF: Well, I didn't --

18 THE COURT: -- got any testimony out of him --

19 MR. SCHIFF: -- I still can't hear you.

20 THE COURT: -- because had I known what he was going to  
21 testify to I would have excluded it because he had no -- no  
22 evidence of your good-faith reliance to offer.

23 MR. SCHIFF: Who's --

24 THE COURT: The last witness.

25 MR. SCHIFF: He -- he's come to -- he came to five of

1 my seminars. He used to come in my office all the time. The  
2 IRS hasn't bothered him in 10 years. I -- I don't understand.  
3 He --

4 THE COURT: So --

5 MR. SCHIFF: -- if the IRS does nothing to these  
6 people, your Honor, if -- if you're self-employed and he filed  
7 no return, nothin' happened. He has nothin' to report to me.  
8 All he does is we -- we discuss various things.

9 But I -- when you said to me --

10 THE COURT: But nothin' happens is not evidence of your  
11 good faith.

12 MR. SCHIFF: Your Honor, you said to me what did he  
13 tell you. He used to stop in my office at least once a week.  
14 Nothin' is happening to him. I mean, they don't give me a big  
15 report --

16 THE COURT: The fact that nothing is happening is not  
17 evidence that you are right, sir, or that you have a right to  
18 rely on that as -- as proof of --

19 MR. SCHIFF: All right.

20 THE COURT: -- your own good faith.

21 MR. SCHIFF: Now Mr. Ray Hartman, they -- they were  
22 taking his entire Social Security.

23 THE COURT: I've already ruled on that. It's  
24 irrelevant.

25 MR. SCHIFF: Pardon?

1           THE COURT: I've already ruled on that. His testimony  
2 as you have outlined it, is irrelevant.

3           MR. SCHIFF: I -- I -- well, the -- the question came  
4 up --

5           THE COURT: I've ruled, sir.

6           MR. SCHIFF: Well, you mean to tell me --

7           THE COURT: I've ruled.

8           MR. SCHIFF: He can't testify?

9           THE COURT: Mr. Schiff, I have ruled.

10          MR. SCHIFF: Well, your Honor, I --

11          THE COURT: But, based on your proffer, the testimony  
12 is irrelevant.

13          MR. SCHIFF: Well, how about the fact that he was at my  
14 apartment when they raided me and they -- and they -- and they  
15 took and pulled me out of my car and they threw me over the  
16 trunk of the adjoining car and they maced me and he was a  
17 witness at that -- at that proceeding and then they took me --  
18 they handcuffed me and they brought me to jail? Why is that not  
19 relevant?

20          THE COURT: What does that have to do with the charges  
21 in the Indictment?

22          MR. SCHIFF: Pardon me?

23          THE COURT: What does that have to do with the charges  
24 in the Indictment?

25          MR. SCHIFF: Well, it's in the Indictment about the

1 fact that I interfered with the Government's seizure of my car.  
2 That's directly related to one of the charges in the Indictment.  
3 He was a witness to what occurred there. And the way it was  
4 presented in the Indictment is not the way it occurred.

5 As a matter of fact, I have his affidavit as to what  
6 occurred. They were trying to get him to leave the scene and he  
7 refused to leave the scene and he's a witness to one of the  
8 charges in the Indictment. He's a material witness.

9 THE COURT: Well, we'll deal with him after we take our  
10 next witness, which you've --

11 MR. IGNALL: Your Honor --

12 THE COURT: -- already said is Mr. --

13 MR. IGNALL: -- with respect --

14 THE COURT: -- Lindsey --

15 MR. IGNALL: -- with respect to Mr. Lindsey, I think we  
16 have two issues. One is that -- and the Court may want to  
17 inquire of Mr. Lindsey as the Court had with the first couple  
18 witnesses. Uh, second, uh, from the proffer that we have here,  
19 again, I don't see anything that talks about some sort of  
20 success that Mr. Lindsey had or something that Mr. Schiff could  
21 rely on in good faith. It seems that the testimony gives --  
22 insofar as it's relevant at all shows his intent -- his attempt  
23 to instruct and impede the IRS as well, perhaps on --

24 MR. SCHIFF: Well --

25 MR. IGNALL: -- Mr. Schiff's advice but --

1           MR. SCHIFF: -- well, I could tell you what -- I can  
2 tell you what the revelance [sic] about my good faith is.

3           Mr. Lindsey, who has been an FBI agent for 26 years,  
4 certainly can recognize somebody committing a crime or not. I  
5 think he specialized in mail fraud. He reads my books; um,  
6 comes in the office and tells me how he thinks the books are  
7 good and what have you and he can't find anything in them that  
8 advocates violations of law.

9           And, frankly, what he did is -- he specialized, I  
10 understand, in mail fraud and he agreed with me that the Notice  
11 of Levy is an example of mail fraud and he filed a complaint,  
12 uh, with the FBI claiming that the Notice of Levy is an example  
13 of mail fraud. And he did it.

14          MR. IGNALL: Your Honor, this seems to be a way that  
15 Mr. Schiff's trying to bolster his beliefs through someone who  
16 may have been -- was an FBI agent at one point. He's not saying  
17 that he did anything in reliance on what Mr. Lindsey told him.  
18 In fact, Mr. Lindsey learned of this stuff from Mr. Schiff to  
19 begin with.

20          So I'm not sure what relevance this has to Mr. Schiff's  
21 good faith. And any minimal relevance it has is certainly  
22 substantially outweighed by the danger of misleading and  
23 confusing the jury by having someone who will stand up and say  
24 he's a retired FBI agent specializing in mail fraud and opining  
25 in some sort of expert manner on the validity of Mr. Schiff's,

1 uh, beliefs --

2 MR. SCHIFF: Well --

3 MR. IGNALL: -- when in fact Mr. Schiff held those  
4 beliefs before ever contacting Mr. Lindsey. So, again,  
5 there's --

6 MR. SCHIFF: Well --

7 MR. IGNALL: -- if there's any relevance at all it's  
8 awfully small and certainly outweighed by --

9 MR. SCHIFF: Well --

10 MR. IGNALL: -- 403 considerations.

11 MR. SCHIFF: Well, your Honor, the Indictment  
12 continually accuses me of having false beliefs and believing  
13 they are false.

14 Now, if law enforcement officers of the United States  
15 read my material and agree with it and don't see that it  
16 promotes violations of law, doesn't that bolster my belief in  
17 the truthfulness of my beliefs?

18 THE COURT: No.

19 MR. SCHIFF: I mean, how do you prove that you believe  
20 what you say you believe?

21 THE COURT: You don't prove that --

22 MR. SCHIFF: Pardon?

23 THE COURT: -- by the beliefs of others. And the  
24 Government is correct --

25 MR. SCHIFF: Well --

1 THE COURT: -- it is bolstering. It is not permitted  
2 by the rules of evidence.

3 MR. SCHIFF: Well, I don't understand, your Honor. How  
4 can I -- all right. Let me ask you a question.

5 How can I prove by witnesses that I believe what I say  
6 I believe? I could get in and say I believe what I say I  
7 believe. But isn't it better evidence that people who are in  
8 related fields read --

9 THE COURT: You're seeking --

10 MR. SCHIFF: -- my material.

11 THE COURT: -- to adduce evidence that other people  
12 believe you. And, as I said, that is bolstering. It is clearly  
13 not permitted.

14 MR. SCHIFF: And there's -- there's another thing. Jan  
15 also attended and heard me speak at the "We The People, Truth In  
16 Taxation" hearings. He heard me speak in front of large -- a  
17 large audience, uh, where people had questions about my beliefs  
18 and others' beliefs. I think I met him in Washington, D.C. You  
19 know, I -- I think his testimony is relevant to the legitimacy  
20 with which I hold my beliefs.

21 I mean, the Government puts on witnesses -- I mean,  
22 there was one of -- one of the Government witness who  
23 pretended -- or not pretended; maybe she was sincere -- that  
24 when she called me I didn't give her the attention that she  
25 thought she was entitled to. She got into trouble because she

1 didn't read the material. And then they want to blame me. And  
2 the jury gets to thinking that I'm some callous individual who  
3 puts out this information which is designed to get people in  
4 trouble and I do it deliberately.

5 Now, here law enforcement people of FBI, read my  
6 material, believe it does not promote violations of law.

7 MR. IGNALL: Your Honor, I think that --

8 MR. SCHIFF: The implication of the Government is that  
9 I deliberately put on information that I know are gonna get  
10 people in trouble. That's the implication of the Government's  
11 claim.

12 Now, a law enforcement officer of this country, who  
13 served 28 years in the FBI, who could read my material and  
14 testify that, as far as he can tell, it doesn't promote the  
15 violations of law, refutes the Government claim that I  
16 deliberately wanna get people in trouble. And that's the  
17 implication of the Government's case.

18 THE COURT: His opinion on --

19 MR. SCHIFF: Pardon me?

20 THE COURT: -- his opinion, the witness's opinion, on  
21 whether you're correct or incorrect legally is -- is -- invades  
22 the providence of the Court --

23 MR. SCHIFF: Well, but are you gonna test- --

24 THE COURT: -- in instructing on the law. I will  
25 instruct on the law.

1           The -- with respect to the fact that he might believe  
2           that you believe, that is also irrelevant. If you, uh -- if you  
3           have nothing more than what you've told me, then the objection  
4           is sustained. The witness's testimony is irrelevant.

5           MR. SCHIFF: Your Honor, you keep saying -- you keep  
6           saying that the law is what you say it is. However, under the  
7           Cheek decision, the Government has a burden of proving that I --  
8           that (A) the law imposes upon me an obligation and (2) I  
9           recognize that obligation. It's not what you think the law is;  
10          it's what I think the law is. And one of the obli- -- one of  
11          the obligations of the Government is to prove that I believe  
12          that the law imposes an obligation.

13          Now, I could be wrong. But the mere fact that a FBI  
14          agent -- he has some knowledge of reading the law. He could be  
15          wrong -- but believes with me that the law doesn't impose any  
16          obligation addresses the second prong on the spines --  
17          obligation of what the Government must prove.

18          Now, the Constitution says I have a right to call  
19          witnesses in my defense. And I don't think it's fair for the  
20          Court to screen my witnesses, especially an issue involving the  
21          federal government and taxation because obviously judges cannot  
22          be expected to be purely objective in this kind of a  
23          prosecution. A judge can -- a federal judge can be objective if  
24          it's murder, it's rape, if it's something. But this is an issue  
25          that affects, directly, the Court. It affects the wages the

1 Court gets. The Court is a part of the federal government,  
2 which I claim is collecting taxes illegally. It's obvious that  
3 the Court cannot be -- as a matter of fact, there are judges who  
4 have even said that. I can get the cases.

5 So I think the Court should bend over backwards to  
6 display objectivity here. And I have a right to call a  
7 witness -- I mean, I don't wanna take up the Court's time -- who  
8 I always -- somebody told me that I said "okay" or something  
9 which indicated I would concur somehow with the screening of my  
10 witnesses. I don't concur with that at all. I object to it.  
11 And I believe it's unfair of the Court to screen my witnesses  
12 and tell me who I can call, uh, and exercise a prior restraint  
13 before they actually testify.

14 So you're not gonna allow Mr. Lindsey to test- --

15 THE COURT: You heard me already.

16 MR. SCHIFF: So I can't call him?

17 THE COURT: The fact that you don't want any  
18 restrictions placed on what you bring into evidence in this case  
19 does not mean that the Court, uh, is biased in enforcing  
20 restrictions and enforcing the rules of evidence.

21 MR. SCHIFF: Well --

22 THE COURT: I have already stated the reasons for my  
23 decision that, uh -- and, that is, that you have not provided me  
24 with any -- any evidence that would -- that would bear on the  
25 issue before the Court. And having failed to -- to satisfy me

1 that this witness is going to be able to testify to anything  
2 that relates to your good-faith belief other than you got  
3 someone who worked for the government to believe you, I'm not  
4 going to allow it.

5 Now, with respect to Mr. Hartman, the -- the issue is,  
6 is he a percipient witness to the -- to any charge alleged in  
7 the Indictment.

8 MR. SCHIFF: And, also, he has testimony with respect  
9 to an issue that's -- that's already been raised. The fact is  
10 I -- the issue has been raised about Social Security and Social  
11 Security payments.

12 THE COURT: That is --

13 MR. SCHIFF: And he has testimony that bear directly --

14 THE COURT: That is as to Defendant Neun, not as to any  
15 charge you're facing.

16 MR. SCHIFF: I -- I got all the Social Security back,  
17 your Honor.

18 THE COURT: What is -- which -- which count are you  
19 referring to that you claim --

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

21 MR. IGNALL: Your Honor --

22 THE COURT: -- Mr. Hartman is a percipient witness?

23 MR. IGNALL: Your Honor, if I may interject, I think I  
24 may be able to speed this up a little bit.

25 Uh, it's Count 17 and it looks like it's paragraph 39.

1 It's on paragraph 14 of the Indictment. I believe that's what  
2 Mr. Schiff is talking about.

3 MR. SCHIFF: I mean, there he was.

4 MR. IGNALL: Insofar as his testimony is limited to  
5 whether Mr. Schiff interfered with the execution of a levy on  
6 his Chrysler or not, I suppose that's probably relevant to  
7 what's alleged to Count 39. But I think his testimony has to be  
8 limited to that one subject area.

9 MR. SCHIFF: Um, yeah, he -- he -- well, he's also,  
10 um -- he doesn't pay any taxes. He follows my procedures.  
11 Let's me know. Also -- but I think the Social Security is very  
12 relevant. He now gets his full Social Security check.

13 THE COURT: Mr. Schiff, the Court has ruled. You can  
14 introduce him for the limited purpose of testifying on whether  
15 you interfered in the seizure of your automobile.

16 MR. SCHIFF: I -- I didn't -- you're gonna let him in  
17 for the purpose of what?

18 THE COURT: To testify concerning the -- whether you  
19 interfered with the seizure of your automobile.

20 MR. SCHIFF: I -- I have his affidavit in connection  
21 with that. I got it someplace.

22 MR. IGNALL: We'd request the affidavit to be produced  
23 at least by the end of his testimony pursuant to the Jencks Act.

24 MR. SCHIFF: Well, can I go -- I didn't think he was  
25 gonna be here today. Can I have five minutes to go dig it out?

1 Huh? Can I have five -- I have his affidavit here. As a matter  
2 of fact, the Government has it. We submitted it at the time.

3 Do you want to give me five minutes to find his  
4 affidavit?

5 THE COURT: Do you want it? Do you want to wait for  
6 it?

7 MR. IGNALL: I think -- I mean, we can get it at the  
8 end of his direct. That's -- or by the end of his direct under  
9 the Jencks Act.

10 MR. SCHIFF: Yeah.

11 MR. IGNALL: So...

12 MR. SCHIFF: I'll get it then. I don't know.

13 THE COURT: Okay.

14 Mr. Bowers, do you have something you wish to say?

15 MR. BOWERS: I do.

16 Just for the record, your Honor, it appears that, um --  
17 and this affects me, of course, because I'm a codefendant of  
18 Defendant Schiff's -- that the Court's standard, um, is -- is  
19 obviously either is it specifically mentioned in the Indictment  
20 or does it somehow tie into Defendant Schiff, which is fine.

21 I would just suggest that there -- there is some  
22 testimony on some issues offered by the Government, um, that  
23 doesn't quite have that tight of a relationship that I -- I  
24 believe would be relevant. Now, I'm not -- I'm just saying that  
25 generally. I'm not saying that any of Mr. Schiff's witnesses

1 are improperly denied on relevance grounds. I just wanna make  
2 sure that we're not quite as tightly tied as it appears. And I  
3 guess --

4 THE COURT: Well, the --

5 MR. BOWERS: -- if we are, it's an objection.

6 THE COURT: -- the problem that we have is without that  
7 there is no restriction on what he brings in, as you are already  
8 aware with the last witness. And I'm not going to keep the jury  
9 extra weeks while we listen to people who are simply here to say  
10 they believe what Mr. Schiff believed. It has to have some  
11 tie-in so that --

12 MR. BOWERS: Well -- and, again, I'm not arguing with  
13 the Court or saying that's an incorrect standard. I just want  
14 to make sure we don't get so far down that road that wider  
15 issues that may have some bearing in this case --

16 THE COURT: Well, I'm happy to listen to --

17 MR. BOWERS: That's all I ask.

18 THE COURT: -- to the arguments --

19 MR. BOWERS: I appreciate that.

20 THE COURT: -- when they become appropriate.

21 MR. BOWERS: Thank you, your Honor.

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

24 MR. IGNALL: And, your Honor, with respect to  
25 Mr. Hartman, I think the inquiry that we talked about before is

1 also appropriate before the jury is brought back in.

2 THE COURT: Mr. Hartman? Well, if we restrict him  
3 to -- to the issue of the seizure, I don't see how he is  
4 implicated.

5 MR. IGNALL: We'll defer to the discretion of the  
6 Court. But how narrowly tailored that ends up being --

7 THE COURT: Bring in the witness.

8 MR. IGNALL: -- I suppose is an open question.

9 MR. SCHIFF: May I bring in Mr. Hartman?

10 THE COURT: Mr. Hartman.

11 MR. SCHIFF: Huh?

12 THE COURT: Yes.

13 MR. SCHIFF: And he's also somewhat famous in the  
14 annals of tax, um, decisions. He was the subject -- if you want  
15 to know when the -- prosecutor wants to know -- in -- probably  
16 one of the most quoted decisions, Hartman -- I'm sure they've  
17 seen it. It's in my book.

18 THE COURT: Are you retrieving your witness, sir?

19 MR. SCHIFF: Pardon?

20 THE COURT: Are you bringing --

21 MR. IGNALL: Well --

22 THE COURT: -- your witness in?

23 MR. IGNALL: -- I'm not sure if that's appropriate if  
24 Mr. Schiff's gonna proffer some other relevant area of his  
25 testimony.

1 MR. SCHIFF: Well, I'm just --

2 MR. IGNALL: I don't know if that's what is going on  
3 here.

4 MR. SCHIFF: I think I showed it to the Government  
5 already. It's one of the early -- here. Raymond Hartman in  
6 United States v. Hartman. It's a 1972 case.

7 (Mr. Hartman enters the courtroom)

8 THE COURT: Step outside, sir, while we --

9 MR. SCHIFF: Pardon me?

10 THE COURT: -- resolve this. Step outside.  
11 Mr. Schiff. Mr. Schiff, where are you going?

12 MR. SCHIFF: I was going to get Mr. Hartman.

13 THE COURT: I told him to stand outside while you make  
14 further argument about the relevance of his testimony.

15 Is there something that you wish to point out to the  
16 court relative to the issues that are before it?

17 MR. SCHIFF: I didn't hear that last...

18 THE COURT: Is there something you want to point out to  
19 the Court in addition to what we have already discussed?

20 MR. SCHIFF: Well, I just said he's the principal in a  
21 famous case, actually, with respect to taxes. The case is --

22 THE COURT: Well, does that have anything to do --

23 MR. SCHIFF: No.

24 THE COURT: -- with what you're going to be asking him  
25 now?

1 MR. SCHIFF: No. I just thought it would be of some  
2 interest to you. I don't know.

3 THE COURT: Well --

4 MR. SCHIFF: The case is United States v. Hartman.  
5 It's a 1972 --

6 THE COURT: Okay.

7 MR. SCHIFF: -- case.

8 THE COURT: If it's not related --

9 MR. SCHIFF: All right. I'm just commenting.

10 THE COURT: Bring him in.

11 (Raymond Hartman takes the witness stand.)

12 MR. SCHIFF: Just answer my questions.

13 (Discussion between Mr. Schiff and  
14 Mr. Hartman.)

15 (Raymond Hartman, Jr., takes the witness  
16 stand.)

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

18 MR. IGNALL: Your Honor, I believe some of the  
19 witnesses who have already been called are in the courtroom. I  
20 don't know if they've been excused from the rule. But I think  
21 Mr. Schiff wanted to raise that and make it clear that they are  
22 now clear and can't be recalled.

23 THE COURT: They -- yeah, the witnesses cannot be  
24 recalled under the Exclusionary Rule once they have sat in the  
25 courtroom --

1 MR. CRISTALLI: Your Honor, we would not abandon --

2 THE COURT: -- unless excepted.

3 MR. CRISTALLI: We would not abandon the Exclusionary  
4 Rule at this time, uh, for -- for at least one of the witnesses  
5 here and I believe that's Mr. Lindsey. I will not abandon that  
6 at this time. So we would ask that the Court instruct him to  
7 leave the courtroom.

8 THE COURT: The Court will do so.

9 Mr. Lindsey will leave.

10 (Pause in the proceedings.)

11 MR. SCHIFF: Mr. Hartman --

12 THE COURT: We don't have a jury here yet.

13 (Jury enters the courtroom at 3:52 p.m.)

14 THE COURT: Please be seated.

15 Will counsel stipulate to the presence of the jury?

16 MR. IGNALL: Yes, your Honor.

17 THE COURT: Peggie.

18 (Discussion between the Court and the clerk.)

19 THE CLERK: Sir, could you please stand and raise your  
20 right hand?

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

24 THE WITNESS: I do.

25 THE CLERK: Please be seated.

1           Please state for the record your full name and spell  
2 your last name.

3           THE WITNESS: Raymond M. Hartman, Jr., H-a-r-t-m-a-n.

4

5                                 RAYMOND HARTMAN, JR.,  
6 called as a witness on behalf of Defendant Schiff, having been  
7 first duly sworn, was examined and testified as follows:

8

9                                 DIRECT EXAMINATION

10         BY MR. SCHIFF:

11         Q. Okay. Mr. Hartman, where are you from?

12         A. Uh, Beaver, Pennsylvania.

13         Q. Beaver, Pennsylvania.

14                 They used to make steel in that city?

15         A. Beaver County, biggest steel making county in the world.

16         Q. What kinda work did you do?

17         A. I was an optometric physician.

18         Q. You were what? I didn't hear.

19         A. A doctor.

20         Q. A doctor. Okay.

21                 Now, we've known each other a long time, haven't we?

22         A. 30 years.

23         Q. And, when I moved here from New York City, you -- you rode  
24 with me on a rented vehicle. So we got out here together.

25         A. I helped you transport your equipment, your furniture out --

1 Q. Oh, wait a minute.

2 A. -- to Las Vegas.

3 Q. I forgot he was with me when I bought my automobile, which  
4 has been testified to. He was with me -- oh.

5 MR. SCHIFF: Can I -- can I get into that also?  
6 Remember I said to the manager, I said, how did I find out about  
7 your, um, showroom? And I said, did I come alone?

8 He was with me when I bought both automobiles.

9 Okay. Can I -- can I get into that? That's been...

10 THE COURT: If there is some -- if he has some  
11 testimony to offer.

12 MR. SCHIFF: Yeah, okay. Right.

13 BY MR. SCHIFF:

14 Q. Now, you were with me or you helped me purchase --

15 A. Yeah, we went to the auction and bought your car. Right.

16 Q. We went to an auction --

17 A. Right.

18 Q. -- and we purchased that Chrysler.

19 A. Yes.

20 Q. What kind of a car was it?

21 A. Chrysler New Yorker.

22 Q. And you had a friend -- well, how did I happen to buy that  
23 Chrysler New Yorker?

24 MR. IGNALL: Objection.

25 THE WITNESS: Well, he was a dealer.

1 MR. IGNALL: Relevance.

2 MR. SCHIFF: Well, can I raise --

3 THE COURT: What is the relevance?

4 THE WITNESS: He was a dealer and he was allowed -- he  
5 could go to the auction and buy cars. You picked one out and we  
6 bought it.

7 THE COURT: Sir, when there's an objection, you don't  
8 continue to answer. When any one of these attorneys stand, that  
9 means they are ready to lodge an objection. You don't  
10 continue -- you don't continue, uh, with a response while --  
11 until I rule on the objection.

12 THE WITNESS: Okay.

13 THE COURT: Do you understand?

14 THE WITNESS: Who are the attorneys so I know who we  
15 are talkin' about? Where are they seated?

16 THE COURT: They are right out here at these tables.

17 THE WITNESS: The front tables?

18 THE COURT: Right. All the way around.

19 THE WITNESS: Okay. I understand.

20 THE COURT: Thank you.

21 What is the relevance of this --

22 BY MR. SCHIFF:

23 Q. Well --

24 THE COURT: -- Mr. Schiff?

25

1 BY MR. SCHIFF:

2 Q. -- as a matter of fact, Raymond, didn't -- wasn't that car  
3 actually owned by somebody other than me, that Chrysler?

4 A. Yes.

5 Q. Who -- who owned it?

6 A. It was financed by somebody, yes.

7 Q. Someone -- when they basically seized it, I -- when the  
8 IRS --

9 A. You were makin' payments. You didn't --

10 Q. Pardon?

11 A. -- you didn't own it.

12 Q. So they seized a car that I didn't own; is that correct?

13 A. Yes.

14 Q. When the IRS seized that car -- now, I had to buy another  
15 one?

16 MR. IGNALL: Objection, your Honor. I'm not sure --

17 BY MR. SCHIFF:

18 Q. So I had to buy the Dodge; is that correct?

19 THE COURT: Testifying. Sustained.

20 BY MR. SCHIFF:

21 Q. Remember --

22 THE WITNESS: What was your ruling, sir? I didn't hear  
23 that.

24 THE COURT: I sustained the objection. Wait for the  
25 next question.

1                   MR. SCHIFF: All right.

2           BY MR. SCHIFF:

3           Q. When I -- when I purchased -- you were with me when I

4           purchased the Intrepid?

5           A. The second car, yes.

6           Q. Yes.

7                   Did I have any money to buy that car?

8           A. Uh, not to my knowledge.

9           Q. Who bought that car?

10          A. Tim Deeton.

11          Q. And he bought that car?

12          A. Yes.

13          Q. And, when he bought that car, I -- he -- he, um, set it up

14          in Pennsylvania with a --

15          A. Yes.

16          Q. -- corporation?

17                   And I leased the car -- did I lease the car from Tim

18          Deeton?

19          A. From his company.

20          Q. In other words, there's no question about that --

21          A. No.

22          Q. -- Tim Deeton bought that car?

23          A. No.

24          Q. In other words, that car was not bought with my funds?

25          A. Right.

1 Q. Okay. Now, were you at my apartment when the IRS SWAT  
2 team --

3 MR. IGNALL: Objection to the --

4 BY MR. SCHIFF:

5 Q. -- came upon --

6 MR. IGNALL: -- term "SWAT team." I think that's --

7 THE COURT: Sustained.

8 MR. IGNALL: -- a mischaracterization of what happened.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. -- and seized the -- that car? Were you at my apartment?

12 A. Yeah. We had flown in from Dallas and that when we went  
13 back out to -- uh, we were gonna take you to the airport or  
14 something. They had -- um, there was two agents there and then  
15 they brought backup and seized your car. Yes.

16 Q. Where was I going at the time they rode up?

17 A. Well --

18 Q. Where was I headed?

19 A. -- I thought we were --

20 MR. IGNALL: Objection, your Honor. Relevance. I  
21 thought the relevance of his testimony is as to paragraph 39,  
22 whether or not Mr. Schiff interfered with the execution of that  
23 seizure.

24 THE COURT: That's correct. Sustained.

25

1 BY MR. SCHIFF:

2 Q. Well, did I -- did I interfere with it?

3 A. With the seizure?

4 Q. Yeah. What did you observe?

5 A. Did you interfere with the seizure?

6 Q. Yeah.

7 A. Well...

8 Q. What did you observe --

9 THE COURT: Wait a minute. Let him answer. He's

10 answering the question.

11 Go ahead.

12 THE WITNESS: I -- I don't see that you interfered with

13 the agents.

14 BY MR. SCHIFF:

15 Q. What did the agents do?

16 A. Well, eventually they maced you and bound ya up and

17 handcuffed ya and took you away. But --

18 Q. How did I get out of the car?

19 A. Restate that question, please.

20 Q. How did I get out of the car?

21 A. Humm, I'd say you were pretty roughly drug out of the car,

22 if you -- if you will.

23 Q. Did they drag me out of the car?

24 A. Yes.

25 Q. And what did they do to me after they got me out of the car?

1 A. Well, they maced ya and they -- they straddled ya against  
2 their -- I think they had a Cadillac or something and --

3 Q. There was --

4 A. -- and they checked -- checked you down for --

5 Q. Well, did they --

6 A. -- and they then maced ya and they handcuffed ya and put ya  
7 in the car and drove you away.

8 Q. About how many --

9 A. That was what I observed.

10 Q. Well, did they throw me on the trunk?

11 A. Well, that's what they --

12 Q. Did you see me --

13 A. -- they put you against the car. They threw you on the  
14 trunk and -- and went over your body to see if you had any  
15 weapons, I assume. Normal police procedure.

16 Q. Did you -- did you count? Did you notice about how many  
17 agents were there?

18 A. Uh, well, there were two initially, two special agents with  
19 guns, and there were, um -- I don't know. This Cadillac was  
20 full of agents. But I -- I'm not sure -- there's at least  
21 probably four or five maybe.

22 Q. And -- and where was my car at the time? Where were we at  
23 the time?

24 A. In your carport. The car --

25 Q. The carport.

1 A. -- sitting in your carport.

2 Q. And we were on private property?

3 A. Yes.

4 Q. In the privacy of the carport?

5 A. That's right.

6 Q. What were they telling you at the time as you were observing

7 this?

8 MR. IGNALL: Objection to what they were telling

9 Mr. Hartman. I thought the issue here was whether Mr. Schiff

10 interfered with the seizure or not.

11 THE COURT: Sustained.

12 BY MR. SCHIFF:

13 Q. Well, did they file charges -- do you know whether they

14 filed charges against me?

15 MR. IGNALL: Objection. Relevance.

16 THE COURT: Sustained.

17 MR. SCHIFF: Well, the relevance is --

18 THE COURT: Sustained.

19 MR. SCHIFF: -- your Honor --

20 THE COURT: Sustained.

21 MR. SCHIFF: Well, the relevance is --

22 THE COURT: Sustained.

23 MR. SCHIFF: -- he just --

24 BY MR. SCHIFF:

25 Q. Are you aware that they dropped all the charges?

1 THE COURT: Sustained. Did you hear? I asked you not  
2 to go into it. I sustained the objection three times. Do you  
3 know what "no" means? Stop it. Ask your next question.

4 BY MR. SCHIFF:

5 Q. Um, did you call me from time to time, Ray, to get  
6 information about income taxes?

7 MR. IGNALL: Objection, your Honor. This is beyond the  
8 scope --

9 THE COURT: Sustained.

10 MR. IGNALL: -- of what's relevant.

11 MR. SCHIFF: Well, he --

12 THE COURT: Sustained.

13 MR. SCHIFF: Okay.

14 THE COURT: I told you what he would be --

15 MR. SCHIFF: All right. Then --

16 THE COURT: -- permitted to testify to.

17 MR. SCHIFF: Then there's no other relevance. Then  
18 I -- then you're not allowing me to go into any other area.

19 THE COURT: That's right.

20 MR. SCHIFF: Thank you, Mr. Hartman.

21 THE COURT: Cross-examination. Mr. Cristalli?

22 MR. CRISTALLI: No, your Honor, I don't have any --  
23 no --

24 THE COURT: Mr. Bowers?

25 MR. CRISTALLI: -- I have nothing for this witness.

1 MR. BOWERS: I have nothing.

2 THE COURT: Government?

3 MR. IGNALL: One moment, your Honor.

4 (Discussion between Mr. Ignall and  
5 Agent Lowder.)

6

7 CROSS-EXAMINATION

8 BY MR. IGNALL:

9 Q. Mr. Hartman, at the time that --

10 THE COURT: Just a moment.

11 Mr. Schiff, are you going to be seated?

12 MR. SCHIFF: Yes.

13 THE COURT: Go ahead.

14 BY MR. IGNALL:

15 Q. Mr. Hartman, at the time that you were present and  
16 Mr. Schiff's car was seized, was that about 1995? Do you recall  
17 the year?

18 A. I don't recall the year. But it was in that -- in that area  
19 at the time.

20 Q. Was Mr. Schiff cooperative when IRS agents came to seize the  
21 car?

22 A. Basically I'd say, yes.

23 Q. Did he try to drive away when they came to seize the car?

24 A. He was in the car. I don't know he -- I don't know where he  
25 could drive to. There's no way he could drive anywhere because

1 he was -- the car was facing into this back of his yard there.

2 Q. Did he --

3 A. He never --

4 Q. -- did he --

5 A. -- tried to back up.

6 Q. I'm sorry?

7 A. The only way he could get out was to back up and he never  
8 did that.

9 Q. Did he refuse to get out of the car?

10 A. I really wasn't that close to be able to say that he did or  
11 didn't.

12 Q. You just saw him being taken out of the car?

13 A. Yes.

14 Q. All right.

15 MR. IGNALL: No further questions.

16

17 REDIRECT EXAMINATION

18 BY MR. SCHIFF:

19 Q. Ray, you're familiar with The Federal Mafia; is that  
20 correct?

21 MR. IGNALL: Objection, your Honor. Beyond the scope  
22 of cross-examination.

23 THE COURT: Sustained.

24 MR. SCHIFF: I don't --

25 THE COURT: It's beyond the scope of direct [sic]

1 examination.

2 MR. SCHIFF: Well, it's not beyond the scope. It's  
3 directly related -- you don't know what I'm gonna read from it.  
4 I'm gonna read from --

5 THE COURT: Mr. Schiff --

6 MR. SCHIFF: -- the legal reference guide --

7 THE COURT: -- Mr. Schiff --

8 MR. SCHIFF: -- the Revenue officer.

9 THE COURT: -- Mr. Schiff, the objection has been  
10 sustained.

11 MR. SCHIFF: But you don't know what I'm gonna read.

12 THE COURT: I know what you have and you are not -- you  
13 are not asking questions that were asked.

14 MR. SCHIFF: It's directly related to what the U.S.  
15 Attorney said.

16 THE COURT: Is there something in that book --

17 MR. SCHIFF: Yes.

18 THE COURT: -- about your -- about this incident?

19 MR. SCHIFF: Yes. Well, not this specific incident.

20 But it says, "Property should not be forcibly removed" --

21 THE COURT: Sustained.

22 MR. SCHIFF: It instructs the IRS --

23 THE COURT: Sustained. Do not testify.

24 MR. SCHIFF: Well, I want him to test- --

25 THE COURT: I'm warning you. I'm warning you.

1 MR. SCHIFF: All I'm gonna say is that the IRS --

2 THE COURT: Mr. Schiff --

3 MR. SCHIFF: -- it says they can't do it.

4 THE COURT: -- you're not going to say anything.

5 You've said enough.

6 MR. SCHIFF: Pardon me?

7 THE COURT: I've ruled.

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

9 Well, I have no further questions.

10 THE COURT: The witness is excused.

11 Your next witness, Mr. Schiff?

12 (Mr. Hartman fell upon leaving the witness box.)

13 MR. BOWERS: Uh, your Honor --

14 THE COURT: Recess.

15 MR. BOWERS: -- security or something.

16 THE COURT: Jury will retire to the jury room.

17 (Jury leaves the courtroom at 4:07 p.m.)

18 (Pause in the proceedings.)

19 MR. BOWERS: Your Honor, could we excuse the jury?

20 THE COURT: I think we're going to excuse the jury.

21 MR. BOWERS: Could we do that, please?

22 (Pause in the proceedings.)

23 THE CLERK: We have paramedics on the way.

24 THE COURT: All right.

25 Counsel, I think we'll recess for the weekend. It

1 appears that we're just -- we're 25 minutes away from normal  
2 recess time anyway.

3 MR. NEIMAN: Your Honor, we have one issue. I don't  
4 know if you want to hold off or do it now or --

5 THE COURT: With respect to this witness?

6 MR. IGNALL: No, no, no.

7 MR. NEIMAN: No.

8 MR. BOWERS: Is this somethin' that needs to be  
9 addressed while this man's lying on the floor?

10 THE COURT: No. We're not going do it while he's on  
11 the floor.

12 We'll excuse the jury. We'll resume as soon as  
13 Mr. Hartman has medical attention.

14 (Pause in the proceedings.)

15 THE CLERK: Okay. Do you want me to go in and talk to  
16 the jury or do you want to?

17 THE COURT: Counsel, where is Mr. Cristalli.

18 DEFENDANT NEUN: He heard you and then went out to talk  
19 to Mr. Lindsey, who he was going to be calling.

20 THE COURT: The Court is going to excuse the jury from  
21 the jury room --

22 MR. CRISTALLI: Okay.

23 THE COURT: -- with the standard admonition.

24 MR. CRISTALLI: Yes, sir.

25 THE COURT: Anyone have any objection to that?

1 MR. IGNALL: No, your Honor.

2 MR. CRISTALLI: No, your Honor.

3 MR. BOWERS: No, Judge.

4 Ms. Clerk, what time do we resume on Monday?

5 THE CLERK: Tuesday.

6 THE COURT: Or Tuesday.

7 THE CLERK: We have calendar call at 9:00 o'clock. So

8 9:30.

9 THE COURT: 9:30, Tuesday.

10 DEFENDANT NEUN: 9:30 Monday.

11 THE COURT: Monday is a holiday.

12 MR. BOWERS: Tuesday.

13 MR. CRISTALLI: Yes, sir.

14 Your Honor...

15 (Pause in the proceedings.)

16 (Recess from 4:12 p.m. to 4:29 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated.

19 Matters of business.

20 MR. IGNALL: Your Honor, the only one issue we wanna

21 raise is just, uh, in terms of time on Tuesday. I don't know

22 how many more witnesses Mr. Schiff has or whether he's gonna

23 testify. But we are somewhat concerned we might be in a

24 situation where, uh, we don't have enough witnesses. So I don't

25 know if it's appropriate for the Court to direct, uh, defense

1 counsel to meet among themselves to ensure that someone is ready  
2 to present some evidence on Tuesday.

3 MR. SCHIFF: Well, if I could just ask a question.

4 Now, I -- I -- I thought because -- I have lawyers who  
5 have worked with me over the years who have a -- I thought they  
6 could testify as to...

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

9 MR. SCHIFF: But I want to ask him if I could tell them  
10 to come in.

11 MR. CRISTALLI: Um, your Honor, as far as my case is  
12 concerned, um, you know, I haven't been doing this, uh, you  
13 know, all that long with my life. But I think I'm aware in  
14 terms of my ability to practice that I need to be prepared to go  
15 forward with my witnesses. But I appreciate the Government's  
16 concern. And I certainly would be prepared to present a case on  
17 because I know this Court does not want any lag time in terms of  
18 testimony.

19 MR. IGNALL: And, your Honor, just to be clear, I  
20 wasn't trying to impugn --

21 MR. CRISTALLI: No, I understand that.

22 MR. IGNALL: -- defense counsel. And I apologize if I  
23 did.

24 MR. CRISTALLI: No, it's okay.

25 MR. IGNALL: It's just that, given the nature of

1 Mr. Schiff's witnesses and the relevance, I think that creates a  
2 risk of dead time. And, if I implied anything else, I  
3 apologize.

4 THE COURT: If I understand Mr. Cristalli, he is ready  
5 to go forward at any time or...

6 MR. CRISTALLI: Me?

7 THE COURT: Yes.

8 MR. CRISTALLI: Yeah. I mean, I think I would be  
9 prepared to go whenever I'm, uh, called upon.

10 THE COURT: Okay.

11 And, uh, Mr. Bowers?

12 MR. BOWERS: I'll -- I'll do what I'm instructed by the  
13 Court --

14 THE COURT: Well --

15 MR. BOWERS: -- with respect to this issue.

16 THE COURT: I guess the question is: Are you -- are  
17 you prepared to go out of order --

18 MR. CRISTALLI: That's what I --

19 THE COURT: -- if necessary?

20 MR. CRISTALLI: Yes, that -- that was my point.

21 THE COURT: Okay.

22 MR. CRISTALLI: Yes, we would, um, be prepared to do  
23 that.

24 THE COURT: Mr. Bowers, the same?

25 MR. BOWERS: If I need -- if I need to be and that's

1 what the Court wants, then I will be. I'm -- I'm waiting to be  
2 told what I need to do.

3 MR. IGNALL: All right.

4 And -- and, your Honor, lastly, we haven't gotten any  
5 proffers regarding the next witnesses that Mr. Schiff intends to  
6 call. So...

7 THE COURT: Well, we only have one -- one left and  
8 that's --

9 MR. IGNALL: Well, I believe those were just the first  
10 five, your Honor.

11 THE COURT: -- Calvin Border.

12 MR. IGNALL: Mr. Schiff has a witness list that's quite  
13 a bit more extensive than just the ones that have been  
14 proffered.

15 MR. CRISTALLI: Your Honor, I do, um -- the Court has  
16 precluded Mr. Lindsey, I believe, from testifying on the basis  
17 of the proffer that was given to your Honor by Mr. Schiff. I do  
18 intend to call Mr. Lindsey. Um, I will have him here. I  
19 understand the Court's rulings and I understand the parameters.  
20 Uh, I think we're all in agreement with regard to that. But I  
21 am prepared to, uh, utilize Mr. Lindsey myself.

22 THE COURT: Okay.

23 MR. IGNALL: Given the proffer of what we know, even  
24 though it's unusual, I think we'd wanna know why Mr. Lindsey's  
25 testimony is relevant beyond what was proffered by Mr. Schiff

1 that the Court's already ruled on.

2 MR. CRISTALLI: With all due respect, I did not ask the  
3 Government to proffer to me what their witnesses would testify  
4 to nor do I believe that I have a liability to do that. I  
5 understand the Court's ruling. And I will follow this Court's  
6 ruling. If the Court wants me to proffer it, I will. Um, but  
7 so be it.

8 THE COURT: Well --

9 MR. CRISTALLI: I have no problem proffering --

10 THE COURT: -- the reason -- as I've already said, the  
11 reason for requiring Mr. Schiff to proffer is because he doesn't  
12 have a good understanding of what is relevant and irrelevant,  
13 even after it's explained to him numerous times. And -- and I  
14 believe Mr. Cristalli does understand, as he's already said,  
15 the -- the requirement that it be connected up with the  
16 defendant's good-faith belief.

17 MR. CRISTALLI: Yes, sir.

18 MR. IGNALL: And, your Honor -- and, again, I wasn't  
19 trying to impugn Mr. Cristalli. Normally I agree that lawyers  
20 know the rules of evidence. It's just that we've already had a  
21 proffer about what Mr. Lindsey was gonna testify about. So this  
22 puts him in a slightly different position I believe.

23 THE COURT: Do you have something that --

24 MR. CRISTALLI: It goes directly to my client, your  
25 Honor.

1 THE COURT: All right.

2 Okay. Mr. Schiff, you will provide a proffer by, uh,  
3 Tuesday morning of your -- of the remaining witnesses --

4 MR. SCHIFF: Well, wait a minute.

5 THE COURT: -- so the Court can determine whether the  
6 testimony is relevant.

7 MR. SCHIFF: Well, your Honor, um, how can I get  
8 somebody here Tuesday to come from Connecticut if you're not  
9 gonna let them testify?

10 THE COURT: Well, you -- you've heard my rulings; you  
11 know what's required. And, uh, so you -- you subpoena who you  
12 wish and --

13 MR. SCHIFF: Pardon?

14 THE COURT: Subpoena who you wish and -- and I will  
15 consider any testimony that is relevant, as I've already  
16 outlined to you.

17 MR. SCHIFF: Well -- well, now, there's a witness who  
18 has nothing to do with my beliefs but it has to do with -- I'll  
19 tell ya what I -- I sold my insurance agency to a fellow and the  
20 IRS sent him a Notice of Levy and he didn't honor the Notice of  
21 Levy. And he gave my wife the money for the next 10 years. And  
22 nothin' happened to him, even though he was threatened by the  
23 IRS. We had a contract. And this is proof, to me anyway, that  
24 I -- now, I want him to come from Connecticut and testify. This  
25 is a fellow I sold my agency to. Now, there's nothin' to do

1 with income tax.

2 THE COURT: Well, then --

3 MR. SCHIFF: But I had -- when I sold my agency, we had  
4 a contract that he would pay a percentage to my ex-wife for 10  
5 years. And what happened is that -- I was in jail at the time.  
6 And my wife got the money for the first year and then he writes  
7 my wife or calls her and tells her he won't be able to, uh, send  
8 her anymore money because he has a Notice of Levy. And he went  
9 to a lawyer and the lawyer said, well, you better honor what the  
10 IRS -- so I called him. I think I was in jail at the time. And  
11 I said, well, show the IRS that we had a contract. And he told  
12 the IRS to come back with a court order. They said they would,  
13 and they never did. And he continued making these payments to  
14 my ex-wife for 10 years.

15 Now, I think -- I think, uh, that witness is important  
16 to me, even though he didn't rely on anything I said.

17 THE COURT: And how does that bolster your belief --

18 MR. SCHIFF: Well --

19 THE COURT: -- that your --

20 MR. SCHIFF: -- it bolsters my belief that --

21 THE COURT: -- your views of zero income tax are --

22 MR. SCHIFF: Well, it has nothing to do with it.

23 THE COURT: -- correct?

24 MR. SCHIFF: But it explains my belief why I should put  
25 money overseas because the IRS -- most banks honor them when I

1 know they don't have to honor them. And his testimony is proof  
2 that they don't -- even Simon & Schuester, if you -- told the  
3 IRS that they were not --

4 THE COURT: You apparently didn't rely on them because  
5 you continued to put money overseas. That's what you just told  
6 me.

7 MR. SCHIFF: Because -- because if they go to a bank,  
8 the bank turns over the money. It's not that I thought I was  
9 concealing money away from the IRS.

10 THE COURT: Doesn't sound like you relied on it,  
11 though, because you continued to --

12 MR. SCHIFF: Here --

13 THE COURT: -- hide money.

14 MR. SCHIFF: Pardon me?

15 THE COURT: It doesn't sound like you relied on it  
16 because, as you just said, you continued to hide your money.

17 MR. SCHIFF: Well, because most banks will just turn it  
18 over. The fact that he didn't turn it over when he got a Notice  
19 of Levy is proof that even banks don't have to turn it over.  
20 But they do.

21 THE COURT: No, that's -- that's --

22 MR. SCHIFF: Well, I could --

23 THE COURT: -- that's a legal conclusion.

24 MR. SCHIFF: Well, I have to bring him from  
25 Connecticut.

1 THE COURT: I wouldn't do it. But --

2 MR. COHEN: Why not?

3 THE COURT: Well, it's up to you. I'm just tellin' ya  
4 that if that's all you've got it's probably not comin' in.

5 MR. SCHIFF: This is proof -- his not honoring a Notice  
6 of Levy, even though he got a Notice of Levy, and he continued  
7 making payments to my ex-wife --

8 THE COURT: Well, you could probably bring in thousands  
9 of people who got a Notice of Levy and didn't honor it. But  
10 that's not --

11 MR. SCHIFF: No. They threatened --

12 THE COURT: -- has nothing to do --

13 MR. SCHIFF: -- he said --

14 THE COURT: -- with your good faith.

15 MR. SCHIFF: -- he has said get a court order and I'll  
16 give you the money. I got -- and they never did. They never  
17 bothered him and he continued to make nine payments to my  
18 ex-wife. Now, this is proof that I know that you don't have to  
19 honor a Notice of Levy.

20 THE COURT: It's not --

21 MR. SCHIFF: You don't have to honor --

22 THE COURT: -- it's not --

23 MR. SCHIFF: -- a Notice of Levy.

24 THE COURT: -- proof of that any more than someone who  
25 doesn't get a ticket proves that you don't have to obey --

1 MR. SCHIFF: Well, it proves --

2 THE COURT: -- the speed limit.

3 MR. SCHIFF: -- it proves my belief. It may not prove  
4 your belief, but it proves my belief.

5 THE COURT: No, I don't think it does.

6 MR. SCHIFF: Oh, you don't think it does?

7 THE COURT: No.

8 MR. SCHIFF: Well, why shouldn't it prove my belief?

9 THE COURT: It's not related to --

10 MR. SCHIFF: Of course it's related.

11 THE COURT: It's not.

12 MR. SCHIFF: Well, how is it not related? The man gets  
13 a Notice of Levy, doesn't honor it, and nothing happens to him.

14 THE COURT: False logic.

15 MR. SCHIFF: Well, I know other people who haven't  
16 honored it and nothin' happens to 'em.

17 THE COURT: I know people that don't obey the speed  
18 limit and nothin' happens. That --

19 MR. SCHIFF: You don't have --

20 THE COURT: -- doesn't mean anything.

21 MR. SCHIFF: -- to honor a Notice of Levy. It's not a  
22 court order. We just had the decision --

23 THE COURT: All right.

24 MR. SCHIFF: -- of Schultz v. United -- where he didn't  
25 honor a summons and the Second Circuit ruled you don't have to

1 honor a summons. You don't have to honor anything the IRS sends  
2 you. Nothin's gonna happen to you. They use fraud and  
3 intimidation. It's not a court order.

4 THE COURT: All right. You've said enough.

5 MR. SCHIFF: No. I wanna --

6 THE COURT: I've ruled. You've said enough. I've  
7 ruled and that's it.

8 We are in recess until 9:30 --

9 MR. NEIMAN: Your Honor, just --

10 THE COURT: -- Mon- -- or Tuesday morning.

11 MR. NEIMAN: I'm sorry. I'm sorry.

12 THE COURT: Yes. Another item?

13 MR. NEIMAN: Yeah. One more thing. I'm sorry.

14 I -- I know we wanna get out.

15 MR. SCHIFF: That was...

16 MR. NEIMAN: The Government's gotten a witness list  
17 from Mr. Schiff. I -- it's also in fear that it may not be a  
18 complete witness list because one of the witnesses we heard  
19 today wasn't on it. We would just ask that Mr. Schiff be --  
20 make sure that whatever he brings us Tuesday morning with the  
21 proffered detail be the full extent of his witness list so that  
22 we don't need to go through this process again. And also that  
23 he may be --

24 MR. SCHIFF: This is crazy.

25 MR. NEIMAN: -- ready to testify himself, if he plans

1 to, as soon as possible. He was complaining about not having  
2 enough time. We have a four-day weekend.

3 MR. BOWERS: Your Honor, I would just point out that --  
4 just briefly, it's my understanding that neither the joint  
5 discovery agreement in this case nor anything else requires the  
6 production of a witness list. Now, clearly the Government and  
7 us, as a matter of course and custom, have entered into sort of  
8 a factual agreement that we talk about who the witnesses might  
9 be in the next day to prepare for. But I -- I don't know why  
10 we're being held to an obligation -- the Government certainly  
11 never provided us with a witness list. I mean, I -- I think  
12 whoever we intend to call over the next day is more than  
13 appropriate. But I'm not -- I don't know where this requirement  
14 of a witness list is coming from. It's...

15 MR. IGNALL: Your Honor, to be clear, we're not asking  
16 for a witness list from defense counsel, although we did -- we  
17 had all of our witnesses at the beginning. But that's --

18 MR. CRISTALLI: And we --

19 MR. IGNALL: -- the question here is just a matter of  
20 requesting the Court exercise its discretion to ensure that  
21 Mr. Schiff's witnesses comport with the rules of evidence.

22 THE COURT: I have not required you to do anything,  
23 Mr. Bowers, unless you're speaking for Mr. Schiff.

24 MR. BOWERS: No, I'm not. I just --

25 THE COURT: Then it doesn't apply to you.

1 MR. BOWERS: I'm sorry, your Honor.

2 THE COURT: And I've already stated the reasons on the  
3 record why Mr. Schiff is --

4 MR. SCHIFF: Well, did you make a decision --

5 THE COURT: -- being required to do so.

6 MR. SCHIFF: Did you make a decision on Dr. Hayes?  
7 Because he has to have some notice.

8 THE COURT: Dr. Hayes is --

9 MR. SCHIFF: This is the Government's psychologist.

10 THE COURT: His is not coming in.  
11 If you wish to have him here, I'll let the Government  
12 take him on voir dire. But there is nothing that he can testify  
13 to that -- that would negate mens rea. And so --

14 MR. SCHIFF: Well, your Honor, he wants 10,000 to come  
15 here.

16 THE COURT: I'm telling you it's not likely I'll let  
17 him testify. So you decide.

18 MR. SCHIFF: Well, your Honor, if you're not gonna let  
19 him testify, he wants some time, you know, three or four days in  
20 advance. And I -- and he wants 10,000 bucks. There's no sense  
21 trying to get the money to him if you're not gonna let him  
22 testify.

23 THE COURT: I've already stated I do not think his --  
24 he can shed any light on whether you've formed the requisite  
25 mens rea. And so I'm not inclined to let him testify.

