

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THE HON. KENT J. DAWSON, JUDGE PRESIDING

4
5 UNITED STATES OF AMERICA,)

)

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

)

7 vs.)

)

8 IRWIN SCHIFF, CYNTHIA NEUN,)

and LAWRENCE COHEN,)

9)

Defendants.)

10)

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12
13
14
15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 17)

16 Tuesday, October 11, 2005

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20 APPEARANCES: (See Page 2)

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

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

I N D E X

Further

WITNESS:	Direct	Cross	Redirect	Recross	Redirect
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Defendant Schiff's:

Calvin Border	4433S	4446I	4458S	--	--
David Holland	4473S	4503I	4505S	--	--
Irwin Schiff	4509L	--	--	--	--
	4573L				
Robert Schulz	4566S	4569I	--	--	--
John Turner	4593S	4597I	4598S	--	--
		4599B			

EXHIBITS

EXHIBIT NO.:	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
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Government's:

335	4446	4448
336	4446	--
Defendant Schiff's:		
2115	4580	4581

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 11, 2005; 9:31 A.M.

2 --oOo--

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

4 THE CLERK: All rise.

5 THE COURT: Are we ready to bring the jury in?

6 THE CLERK: Mr. Schiff is not here.

7 MR. IGNALL: And we have -- we have one brief issue we
8 just learned of, your Honor.

9 THE COURT: Okay.

10 MR. IGNALL: Well, that's --

11 THE COURT: I'm sorry?

12 MR. IGNALL: We have a couple -- we have one brief
13 issue we learned of, that we'll wait for Mr. Schiff to hear --
14 to come here, and then we have -- I'll say we want to know what
15 witnesses are coming on and what their proffered testimony is.
16 Again, we have to wait for Mr. Schiff for that.

17 THE COURT: All right. Well, be seated while we wait
18 for Mr. Schiff.

19 MR. LEVENTHAL: Judge, I saw him walking into the
20 building now. I saw him -- he's on his way into the building.

21 THE COURT: Okay.

22 (Pause in the proceedings.)

23 MR. BOWERS: I'm sorry, your Honor.

24 I have a renewal of the -- the motion regarding
25 Mr. Cohen. I provided it to counsel and I -- I faxed it to your

1 chambers yesterday. I don't know if you got it. I have another
2 copy if you didn't.

3 THE COURT: I did.

4 Is that something that needs to be discussed right now?

5 MR. BOWERS: No. I just wanted to make sure the
6 Court --

7 THE COURT: Yeah.

8 MR. BOWERS: -- received it.

9 THE COURT: I did.

10 MR. BOWERS: Thank you.

11 (Pause in the proceedings.)

12 MR. SCHIFF: Sorry I'm late. Sorry I'm late. I had so
13 much to do.

14 (Pause in the proceedings.)

15 MR. SCHIFF: Your Honor, what I'm looking for is --
16 I -- I wrote all -- the witness list and I wanted to file it. I
17 don't know. Maybe I gave it to... This is ridiculous.

18 (Pause in the proceedings.)

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

21 MR. SCHIFF: Your Honor, I just did it. Here's the
22 witness list. But then I...

23 (Pause in the proceedings.)

24 MR. SCHIFF: I must -- I must apologize, your Honor.

25

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

3 (Pause in the proceedings.)

4 MR. SCHIFF: This is something. I got it.

5 THE COURT: Hand it to the Government.

6 MR. SCHIFF: Should I give it to the Government?

7 Now, what I did, your Honor, I didn't do it for every
8 witness, my list, but I did it for a significant -- here.

9 (Document handed to Government counsel.)

10 MR. SCHIFF: I also filed them with the clerk.

11 Do you want to see them?

12 THE COURT: Yes.

13 MR. SCHIFF: Pardon me?

14 THE COURT: Yes.

15 (Document handed to the Court.)

16 MR. SCHIFF: Um, I also filed a Motion for Mistrial. I
17 filed this this morning.

18 (Document handed to counsel and to the
19 Court.)

20 MR. SCHIFF: I filed...

21 (Pause in the proceedings.)

22 MR. SCHIFF: Here it is. I filed this this morning.

23 (Pause in the proceedings.)

24 MR. SCHIFF: I filed this this morning.

25 (Documents handed to counsel.)

1 MR. SCHIFF: Did you get this submitted Motion for --

2 MR. IGNALL: What is this?

3 (Document handed to Government counsel.)

4 MR. SCHIFF: Did you get that?

5 MR. IGNALL: No.

6 MR. NEIMAN: Nope.

7 MR. SCHIFF: I need a copy.

8 I also filed this. This one I filed this morning.

9 (Document handed to the Court.)

10 MR. SCHIFF: Where the heck are my copies?

11 (Pause in the proceedings.)

12 THE COURT: Mr. Schiff, go ahead.

13 MR. SCHIFF: Your Honor, in my -- in my supplement --
14 you had said I could supplement my, uh, Rule 29 motion, I guess,
15 and I did. And the basic thing I'm suggesting is that the
16 Government either has to use the entire CFR report in its
17 entirety or it uses none of it. It can't use that portion of it
18 as notice to me and forget the rest of the report.

19 Uh, that report either says that the, uh, charges have
20 to be dismissed because the income tax is not imposed as the
21 excise tax that that report claims it to be or we can throw out
22 the whole -- the whole report if you want. But I don't think
23 the Government should be allowed to, uh, use portions that --
24 that it finds suitable for its own purposes.

25 Also, I must object. I'm gonna try to do my best. But

1 even Todd has told me that there's -- there's so much in my case
2 that, uh, is overwhelming me. Normally a lawyer in a criminal
3 case has two or three statutes that he's -- knows about. If
4 it's a murder case, you know, the three statutes for a murder;
5 rape. But we're talking about a whole Internal Revenue Code
6 here. We're talking about, uh, probation violations. We're
7 talking about deficiency notices.

8 You'll notice the Government put in about 30 tax
9 returns. Uh, this has to do with the meaning of income. I'll
10 try and get the questions to 'em. But I -- I -- I think that I
11 should either be allowed to testify in, um -- what do you call
12 it? -- form. Or if he can ask me questions that I can respond
13 in somewhat of a discorsa (phonetic) form.

14 And I feel it's -- that it's really an abuse of your
15 discretion to make me write out all these questions, especially
16 when it comes to cross-examination of me. I don't know what the
17 Government is gonna object to or not object to. If I am
18 testifying in -- I forgot what you call it --

19 MR. CRISTALLI: Narrative.

20 MR. LEVENTHAL: Narrative.

21 MR. SCHIFF: -- narrative form, if they object to one
22 thing, then I could change my -- what I wanna say.

23 Also, your Honor, in all -- in -- in order for me to
24 prepare a final argument, I really have somewhat of a
25 recollection what witnesses have testified to, but I cannot make

1 an effective final argument unless I have transcripts.

2 I mean, I -- I don't hear one-third of what's goin' on.
3 So I must request somehow that I get transcripts of what has
4 transpired so I can make some kind of a final argument when the
5 time comes around for me to make final argument. I really can't
6 say I think the witness said this or I think the witness said
7 that. I wanna know what they really said. I have an idea what
8 they said. But I -- I was willing to pay for expedited
9 transcripts. But, without transcripts, I really cannot -- you
10 have even corrected me sometime -- I've used the wrong name.
11 I -- I -- I didn't remember what I said.

12 Now, I have one other request to make of you. My
13 sister in -- youngest sister in -- she's older than me,
14 though -- is in, uh, New York, and for the last three years
15 she's been suffering with cancer and doing very well. About a
16 year ago they gave her six months to live and she's done very
17 well.

18 Yesterday for the first time I spoke to the nurse who
19 is taking care of her and she said she doesn't wanna eat, she
20 doesn't wanna take any more medication and she may die before
21 the week is up. Um, if I could get Thursday off or two -- I
22 know it's an imposition. But, um, she may not live out the rest
23 of the week and I would like to see her.

24 I -- I try -- she doesn't even talk now -- and I tried
25 to persuade her to take her medication, at least after this

1 trial is over. And I can appreciate the fact that she doesn't
2 wanna live anymore because she's been suffering. But now she
3 doesn't want any food, the nurse told me; she doesn't want any
4 medication. So she's gonna die soon. So, if I could take off
5 Thursday and Friday, if possible, I would appreciate it.

6 Uh, now, also, I filed a Motion for Mistrial based on
7 the ex parte communication between you and the Government. I
8 believe I had a right to know about this and to be invited to
9 participate, especially since I really believe that this Court
10 has subjected me to certain conditions that it hasn't subjected
11 to the Government.

12 And, in a tax case involving the federal government,
13 it's obvious federal judges are not neutral. They can't be
14 neutral. Therefore, I believe it's incumbent on a federal judge
15 to bend over backwards to show the appearance of justice. And I
16 believe an ex parte hearing with the Government's attorneys to
17 which I was not notified does not preserve the appearance of
18 justice. And, since a number of people are following this
19 trial, I believe that this, uh, reflects unfavorably on the
20 Court system and will make members of the public further --
21 further dissatisfied with the way they believe justice is being,
22 uh, administered in our courts, especially with respect to the
23 federal Tax Court.

24 Therefore, based upon that, I either ask that the --
25 that a mistrial be, uh, entered or before we proceed any further

1 that I be provided with the transcript of what took place at
2 that ex parte hearing at the Government's expense. So I believe
3 either one or two of those alternatives is called for.

4 Is there anything else I have to say?

5 MR. LEVENTHAL: I don't believe so.

6 MR. SCHIFF: Also, I want the record to reflect --
7 because someone told me I said "okay" a few times to your
8 rulings with respect to certain things and I didn't want to
9 appear that I am agreeing to, uh, the, uh, sanctions that you're
10 imposing on me. I don't know how many days I got now.

11 But when you double, you know -- once you get six
12 months, it's a year, two years, four years. Uh, I am vehemently
13 objecting to these sanctions on the grounds that the Government
14 seems to put anything it wants in. And, when I raise an issue
15 which is not irrelevant -- when -- when I ask somebody to read
16 the first line of the statute and the Government says irrelevant
17 and you sustain it, I cannot see how the first line of the
18 statute which is directly related to the Government's -- what
19 the Government's witness is testifying to can be irrelevant.

20 And, therefore, I'm amazed at this. And I'm trying to
21 explore ways of bringing that statute in, which I think is
22 relevant to my defense and if I don't move on as quickly as you
23 tell me -- I'm tryin' to search my brain to figure out how to
24 get this statute in that I think is relevant and then I get
25 sanctioned, I don't think it's fair. And I just want the record

1 to reflect that.

2 Also -- also, your Honor, uh, in my Amended Complaint
3 it should be noted that the Government hasn't put in one
4 scintilla of evidence that anything I say, uh, is a violation of
5 law. The Government in one of those motions referred to my
6 putting on seminars in which I advocate violation of law. They
7 have transcripts, they made recordings of two of those seminars.
8 Yet they hadn't taken out a snippet and played it to the jury as
9 evidence of my advocating violations of law. And the reason
10 that they didn't do it is my seminar doesn't advocate violations
11 of law. So I think that charge is out.

12 Uh, the charge that I advocate people fraudulently
13 claim exempt on a W-4. A number of, uh, witnesses have already
14 testified how they claim exempt on the W-4 pursuant to the
15 provisions of Section 3402(n), which is explained in my book,
16 the Government has not cross-examined one of those witnesses to
17 point out why their claim of exempt is fraudulent.

18 So how could I be accused in the Indictment of
19 advocating fraudulent uses of the W-4 when at least, I don't
20 know, 10 people have testified that they've done that and the
21 Government has -- at no time -- also, a number of witnesses have
22 filed -- have claimed that they are not liable for the tax. The
23 Government hasn't gone up there and shown them where they are
24 liable for the tax. All the Government has been able to do is
25 say, well, did -- did Schiff -- did you file this document based

1 upon Schiff's information? Well, yeah, except I did additional
2 information.

3 But at no time has the Government taken any of my zero
4 returns or anything I've done, they haven't taken one thing in
5 any of my books or in any of my seminars and -- and attempted to
6 claim that that's false. So everything that they say is
7 contrived and based on pure fantasy. So I believe that the --
8 certainly the, uh -- the -- the, uh -- the, uh, claim that I
9 interfered with the IRS's, uh, assessment/collection of taxes.

10 Well, I know and I wanted to demonstrate that nowhere
11 in the Internal Revenue Code is the IRS given any authority to
12 do any of those four things. That's clear. Every time I say to
13 somebody, well, did -- did you ever see in the Code where you're
14 authorized to do that? Objection.

15 How could I -- or the other defendants be guilty of a
16 conspiracy to prevent the IRS from doing something that no law
17 allows them to do in the first place?

18 And the Government has not presented any statute that
19 shows the IRS is authorized to collect taxes, assess taxes, do
20 anything with respect to taxes. So, obviously, the conspiracy
21 charge has to be thrown out, unless they can come in here and
22 cite a section which allows the IRS to assess and collect and do
23 all these other things.

24 But they can't do it because all of such authority is
25 given to the Secretary and the Secretary has never delegated any

1 of his authority to the IRS nor has any such delegation order
2 ever been published in The Federal Register. So the IRS has no
3 authority to do anything. So the conspiracy charge is -- you
4 might as well charge me with kidnapping the Lindbergh baby.

5 Thank you very much.

6 THE COURT: Government's response.

7 MR. IGNALL: I'm not sure I have any response to what
8 Mr. Schiff just said. I think the Court's already ruled on all
9 of that.

10 And in terms of -- just briefly, in terms of the
11 authority of the IRS, I think in the Cheek decision, that
12 Mr. Schiff I know relies on extensively, makes clear that
13 someone who thinks that, you know, the Internal Revenue laws are
14 unconstitutional that that belief is irrelevant to the
15 determination of willfulness; that willfulness goes to an
16 innocent mistake of law that someone may have made given the
17 complexity of the tax laws.

18 But, beyond that, I think the Court's addressed
19 everything else that Mr. Schiff has raised.

20 The two things that we would like to raise: One is,
21 uh, Agent Holland saw someone holding some signs outside on the
22 way into the courthouse today. It had something to do with what
23 the law was. Apparently they weren't there for very long. When
24 Agent Water went out there, they weren't there anymore. But
25 we'd request an instruction to the jury just to further inform

1 them that they need to rely on the Court's instruction of the
2 law and no other source.

3 Secondarily, and I think more importantly, I think we
4 need to address the witnesses that Mr. Schiff intends to call
5 today. We've looked at his proffer. And I think there may be
6 two that are minimally relevant; the others I don't think are
7 relevant at all. But I don't know when the Court wants to
8 address that.

9 THE COURT: Let's address the two that you think are
10 relevant.

11 MR. IGNALL: Uh, looks like Mr. Bean and Mr. Borders or
12 Border. I don't know how -- it's written both ways here.

13 The relevance, again, being limited to -- like
14 Mr. Border, you know, got a \$41,000 refund from the IRS and told
15 Mr. Schiff about it. And then Mr. Bean apparently has filed
16 zero returns and has told Mr. Schiff that nothing's happened. I
17 think that's of very minimal relevance, but it has some
18 relevance.

19 MR. SCHIFF: Your Honor, first of all, I'd like respond
20 to something --

21 THE COURT: Well, you're not going to get a chance to
22 respond until you allow other counsel to respond --

23 MR. SCHIFF: Well --

24 THE COURT: -- take your turn.

25 MR. SCHIFF: -- what I'm saying -- I don't --

1 THE COURT: You take your turn.

2 MR. SCHIFF: -- say the laws are unconstitutional.

3 THE COURT: You take your turn.

4 MR. SCHIFF: I never say that.

5 THE COURT: You take your turn.

6 MR. SCHIFF: I'm sorry.

7 THE COURT: Mr. Cristalli.

8 MR. SCHIFF: I happen to have a list -- I gave --

9 THE COURT: Mr. Schiff. Mr. Schiff, take your turn.

10 Slow down. Wait for your turn.

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

12 MR. CRISTALLI: Thank you, your Honor.

13 The, uh, two witnesses that the Government just

14 referred to indicating that they believed that they are

15 minimally relevant, they are probably two witnesses that I don't

16 really care much about at all.

17 Uh, the witness that I was going to call to the stand

18 on Thursday was, uh, Mr. Jan Lindsey, uh, who is a, uh, former

19 FBI agent out of Austin, Texas, I believe, or Houston, Texas,

20 who specialized for a number of years in investigating Title 18

21 crimes, wire fraud, mail fraud, money laundering, I think.

22 Things of that nature.

23 Uh, the purpose of Mr. Lindsey's testimony, as far as I

24 am concerned, is obviously he had an opportunity to listen to

25 Mr. Schiff's material; uh, heard him on the radio; went into

1 Freedom Books; gathered the information; digested the
2 information; cross-referenced the information; and then had a
3 sitdown, uh, with Cindy; had a sitdown with Cindy about, uh,
4 the, um -- the issue as to whether or not there is a law, uh,
5 requiring one to pay income tax. Um, he had a discussion with
6 her about her, uh -- or his due process collection hearing for
7 which one of the witnesses who testified, uh, for the
8 Government, um, was Ms. -- Ms. Donna Fisher.

9 Ms. Donna Fisher, interestingly enough, testified
10 almost on all of the occasions for which she sat in on due
11 process hearings with individuals claiming no -- no -- no tax
12 liability, uh, for the purposes, obviously, that we've been
13 discussing here during the course of this trial. She tried to
14 advise them of the law and to, uh, indicate to them where their
15 responsibility lie. Uh, Mr., uh, Turner, will say the opposite.
16 And we have a due process hearing transcript from his hearing
17 which suggests that she didn't discuss the law with, uh, him.
18 Um, he then discussed these issues with Ms. Neun.

19 Uh, your Honor, it -- the -- the Government produced a
20 number of witnesses to demonstrate that notice was given to
21 Ms. Neun with regard to her liability. We have witnesses that
22 will contradict their testimony which would suggest that no
23 notice was given and that she relied on these individuals'
24 experiences as law enforcement officers, that her, um, ideals or
25 philosophies for which she, um, embraced from Mr. Irwin Schiff

1 were not illegal.

2 The only thing I have to establish in terms of
3 identifying evidence as relevant or not relevant is pursuant to
4 Rule 401. Relevant evidence means any -- means evidence having
5 any tendency to make the existence of any fact that is of
6 consequences -- of consequence to the determination of the
7 action more probable or less probable than it would be without
8 the evidence.

9 Certainly that type of testimony goes directly to the
10 notice issue and to the reliance issue as it related to
11 Ms. Neun. And I think it's relevant. I think it should come
12 in. I obviously understand why the Government doesn't want it
13 to come in. Um, I am not going to be asserting that the law is,
14 uh, something different than what the Court is instructing.
15 This merely goes to my client's, uh, uh, notice and reliance.
16 And it's important for them to -- in determination by this jury
17 as to whether or not she willfully violated the law.

18 MR. IGNALL: Your Honor, may I respond or should we go
19 around --

20 THE COURT: I'm gonna give Mr. Bowers --

21 MR. IGNALL: Okay.

22 THE COURT: -- an opportunity to respond.

23 MR. BOWERS: I'm sorry, Judge. Just very briefly.

24 Um, Mr. Lindsey -- and I -- and I -- apparently there's
25 some sort of proffer I haven't seen. So I'm not exactly sure

1 exactly what -- what's out there -- Mr. Lindsey did have a
2 conversation with Mr. Cohen where he told Mr. Cohen some things
3 that I believe would provide direct -- or not direct. I'm
4 sorry -- circumstantial evidence of Mr. Cohen's actions. That
5 would make it relevant, I believe. He would not testify as to
6 what Larry said or what Larry believed but would testify to
7 specific conversation where he provided Larry with information
8 about not liable returns. So, for that purpose, I believe
9 Mr. Lindsey would be relevant for our defense.

10 Um, with respect to Irwin's request for transcripts, I
11 would, uh, like to join, not based on the fact that I can't
12 hear, but this has been a long trial and there are one or two
13 witnesses if transcripts were available that would be extremely
14 helpful.

15 And I would have no opposition, uh, obviously, to
16 Mr. Schiff being provided time for a visit to his dying sister.
17 I mean, I don't want this trial to go on any longer than anyone
18 else. But that's, you know, my thoughts on that subject.

19 THE COURT: Thank you.

20 All right. That's --

21 MR. SCHIFF: Well --

22 THE COURT: -- I don't --

23 MR. SCHIFF: -- now, your Honor, I would like to say
24 one thing here. And, if the Government does it again, I'm gonna
25 call a mistrial. I -- I have filed at least 15 pretrial

1 motions. At no time have I ever given any reason to believe I
2 think our laws are unconstitutional. I believe they are fully
3 constitutional. I believe they are legal. And, if they argue
4 to the jury that I believe that the income tax laws are
5 unconstitutional, then I want a mistrial. They know -- they --
6 they would be arguing to the jury something that I never said.
7 If I believe the laws are voluntary --

8 THE COURT: Well, why don't you wait and see if they --
9 why don't you wait and see if they say that at the end.

10 MR. SCHIFF: I --

11 THE COURT: That's enough. That's enough.

12 MR. SCHIFF: I don't believe the laws are
13 unconstitutional.

14 THE COURT: Well, you can --

15 MR. SCHIFF: I want you to put --

16 THE COURT: -- you can so testify if you decide to take
17 the stand.

18 MR. SCHIFF: Pardon me?

19 THE COURT: You can so testify if you decide to take
20 the stand.

21 MR. SCHIFF: I'm gonna take the stand. But they can't
22 tell the jury something that is not true. I have filed --

23 THE COURT: Mr. Schiff --

24 MR. SCHIFF: -- at least --

25 THE COURT: -- you do not decide how the Government

1 argues its case. If you have --

2 MR. SCHIFF: Well, they can't make --

3 THE COURT: -- an objection --

4 MR. SCHIFF: -- misstatements of fact.

5 THE COURT: If you have an objection to something that
6 they say in closing argument, then you raise it then.

7 MR. SCHIFF: No evidence has yet been introduced at
8 this trial that I believe the income tax laws are
9 unconstitutional.

10 First of all, the Government knows that I believe they
11 are voluntary. How could I believe that a law that imposes no
12 obligation could be unconstitutional? That's ridiculous.

13 THE COURT: Mr. Schiff --

14 MR. SCHIFF: What the Government is doing
15 deliberately --

16 THE COURT: Mr. Schiff --

17 MR. SCHIFF: -- is misleading the jury.

18 THE COURT: Mr. Schiff, sit down.

19 MR. SCHIFF: It's a Rule 11 violation.

20 THE COURT: Sit down.

21 With respect to the request for mistrial, the Court
22 denies the request for mistrial. The defendant is free to take
23 the matter to the Ninth Circuit. The Court will be more than
24 happy to provide a in-camera transcript for review by the Ninth
25 Circuit. There has been no violation of the defendants' rights.

1 With respect to the request for a transcript, as I've
2 already said, that is impossible given the fact that our -- we
3 have one court reporter. Had you wanted dailies, you should
4 have asked for that.

5 Further, any request, Mr. Bowers, for additional
6 allocation of resources is a budgetary item and, as you know,
7 must be conducted outside the presence of the Government.

8 MR. BOWERS: I'm sorry, your Honor.

9 THE COURT: So, if you wish to make any request, then
10 you do it ex parte --

11 MR. BOWERS: Okay.

12 THE COURT: -- that is without the Government present.

13 With respect to the, uh, the witnesses, the Court has
14 required the defendant to, uh, provide a proffer. The reason
15 for that has already been explained and that is that the
16 defendant has misrepresented what the testimony would be. He
17 has presented witnesses for the purpose of buttressing his
18 arguments as to the -- the tax laws. Those matters have already
19 been decided. They've been decided not only by this Court but
20 the Ninth Circuit Court of Appeals against the position of
21 Mr. Schiff.

22 And so proffer will be required -- continue to be
23 required because the defendant does not voluntarily honor the --
24 the orders of the Court with respect to relevancy. And I have
25 no choice given the fact that the defendant disregards the --

1 the orders of the Court.

2 Uh, with respect to the -- uh, the issue of, uh,
3 sanctions, the sanctions have been few and far between. They
4 have been imposed only after the defendant repeatedly tried to
5 get information in that the Court had ruled was irrelevant.

6 Unfortunately, for the Court and the jury, the -- the
7 problem is that the defendant does not honor rulings of the
8 Court and there is nothing that will phase him except sanctions.
9 And so they have been imposed but not nearly as often as I could
10 have. If I were to allow the defendant to put in whatever
11 evidence he wanted, I would be violating my duty to -- to this
12 trial to admit only relevant evidence.

13 The tax laws are not on trial. They have already been
14 established very clearly, uh, by the courts. The fact that the
15 defendant and his followers choose to disregard court decisions
16 is something that I can't control.

17 With respect to the witnesses, the Court finds that the
18 testimony of Bean and Orders (phonetic) are marginally relevant.
19 The others are simply with -- and also with respect to Jan
20 Lindsey -- are attempts to buttress the defendants' views of the
21 law. They cannot rely on the views of others to establish good
22 faith on their own part. And the uninformed opinion of victims
23 is -- is -- is not --

24 MR. SCHIFF: Your Honor --

25 THE COURT: -- not relevant. Don't argue with me.

1 MR. SCHIFF: No, I'm not arguing. I said I wanted to
2 use Jan Lindsey as a character witness. He's gonna testify to
3 my, uh -- he's not gonna testify on anything other than --

4 THE COURT: Well, others want to use him for something
5 else.

6 MR. SCHIFF: Pardon me?

7 THE COURT: The others want to use him for something
8 else.

9 MR. SCHIFF: Well, I just wanna use him as character
10 witness. That's all. I'm just gonna ask him if he has any
11 knowledge of my reputation for truth and honesty in the
12 community. That's all I'm gonna ask him.

13 Now, was there an objection -- was there an objection
14 to any other of my witnesses?

15 THE COURT: Yes. All of the others are objected to.

16 MR. CRISTALLI: Wait.

17 MR. SCHIFF: I wasn't aware --

18 MR. CRISTALLI: Irwin.

19 Your Honor, I just wanna be clear. So it's -- it's the
20 Court's position that my, uh -- my -- the reason for me putting
21 up, uh, Jan Lindsey is to buttress Irwin Schiff's philosophy on
22 the tax laws? That's clearly not what I stated in my proffer.

23 I stated in my proffer that Ms. Neun relied on Irwin
24 Schiff. Ms. Neun relied on a number of individuals in
25 establishing her belief system. It was not Ms. Neun, as the

1 Court has indicated, simply rejecting court decisions and court
2 rulings, your Honor. There hasn't been -- there is -- there is
3 no evidence to suggest that. I am not --

4 THE COURT: Now, Mr. Lindsey, I'm sure you're aware,
5 has appealed his, uh, matters to the District Court. The
6 District Court ruled against him; found his arguments to be
7 utterly frivolous; sanctioned him, uh, as well as affirmed the
8 frivolous penalty. So --

9 MR. CRISTALLI: I actually did not know that, and the
10 Government certainly could have cross-examined him on that
11 issue. And I wasn't even going to discuss that with him because
12 I did not know about it. I was merely going to discuss his
13 interactions with Ms. Cynthia Neun.

14 I mean, I gotta tell ya, your Honor, I feel really
15 bootstrapped on this very issue because that's not what I was
16 doing. I was not trying to buttress or establish that Irwin
17 Schiff's tax philosophies are legitimate. I respect the Court's
18 ruling on the law. I understand it. I understand the terms of
19 relevance as defined under Rule 401 of the Federal Rule of
20 Evidence. I can directly connect this particular witness's
21 testimony into my client's reliance and the lack of notice.

22 I have -- I have direct contradiction to a due process
23 hearing for which Ms. Fisher had testified on the stand that she
24 has noticed almost everybody as far as the law is concerned, for
25 which I have a collection due process hearing transcript which

1 suggests that she doesn't which goes directly to, um, her
2 credibility in terms of what she testified here in -- in front
3 of your Honor. I mean, I don't --

4 THE COURT: Well, I don't think you do. I think you're
5 reaching. She didn't say she did it with everyone. And
6 you're -- you're trying to bring up one example of where she
7 didn't. And she didn't.

8 MR. CRISTALLI: Your Honor, that's how they are trying
9 to establish notice against my client. That's the whole rel- --

10 THE COURT: Well --

11 MR. CRISTALLI: -- that's the whole purpose of her
12 testimony --

13 THE COURT: Well --

14 MR. CRISTALLI: -- is the notice issue. And I --

15 THE COURT: But -- but the fact --

16 MR. CRISTALLI: -- I have to be able --

17 THE COURT: -- that she didn't do it with everyone does
18 not contradict her testimony because her testimony was that --

19 MR. CRISTALLI: Yeah.

20 THE COURT: -- she didn't do it with everyone.

21 MR. CRISTALLI: But somebody directly involved with
22 Ms. Neun. I mean --

23 THE COURT: Counsel, I've ruled and --

24 MR. CRISTALLI: Yes, your Honor.

25 THE COURT: -- that's the ruling.

1 MR. CRISTALLI: Yes, your Honor.

2 THE COURT: Any other matters before we bring --

3 MR. CRISTALLI: Oh --

4 THE COURT: -- in the jury?

5 MR. CRISTALLI: -- your Honor, just so that, um, we're
6 clear -- and I just wanted -- just so we're clear on
7 everything -- there was a number of witnesses that we were gonna
8 call for the purpose as what I've articulated in my proffer:
9 Bob Schulz, John Turner.

10 Bob Schulz participated with Ms. Neun, um, on a number
11 of occasions. Um, Jan Lindsey obviously. Uh, Jim Davies. So
12 Bob Schulz, John Turner, Jan Lindsey, Jim Davies, all of which
13 are directly connected in terms of their testimony to the
14 proffer that I made to this Court to which I think all of their
15 testimony would be re- -- relevant to rebut notice and to
16 establish reliance.

17 And, your Honor, the only further, um, statement I need
18 to make is that, you know, with all due respect the Government
19 has paraded a number of individuals who come off as, um, some of
20 them more timid and weak, not educated; some individuals who did
21 not form their own opinions based on their own research.

22 Um, I have witnesses -- at least right now Bob Schulz,
23 John Turner, Jan Lindsey -- Bob -- Bob Schulz has an extended
24 professional career; John Turner, is a former IRS agent; Jan
25 Lindsey, a former FBI agent for 20 years. All of the

1 individuals that I'm going to present are well-educated people,
2 um, for which it should be presented in terms of reliance on my
3 client's behalf.

4 My client doesn't -- the Government's gonna say that
5 she just bought into Irwin Schiff's, uh, ideals and philosophies
6 and they are gonna try to buttress it into like a
7 telemarketing-type philosophy in that she did it to profit, as a
8 profiteering, as they indicated in their radio shows and the
9 commercials and things like that. I have -- I have witnesses
10 that will contradict that and say that it's not about the
11 marketing aspects; it's what she relied on, what she talked to
12 them about and that they -- what they communicated to her. And
13 it's not just Irwin communicating it to her.

14 Forget about what -- the relevance as it relates to
15 Irwin Schiff. I'm talking about the relevance as it relates to
16 Cynthia Neun. She didn't -- we all have to understand, too,
17 here that Irwin Schiff was doing this well before Ms. Neun got
18 involved. Ms. Neun got involved in Freedom Books in 1999. I
19 mean, that -- that's when she met, uh, Jan Lindsey. I mean,
20 this is well -- Irwin Schiff was doin' this since the '60s in
21 some capacity or another. She certainly wasn't the creator of
22 the philosophy or the ideals, your Honor.

23 MR. BOWERS: Just very briefly, your Honor.

24 As I understand this Court's ruling -- and I'm looking
25 for clarification -- um, the -- the Government read some

1 documents and some testimony that goes to notice to all of the
2 defendants and it wasn't limited. But I think that that was
3 clearly circumstantial evidence of notice. For example, the
4 Congressional Research document found within the office --
5 there's nothing to tie that directly to Mr. Cohen, but it was --
6 it was offered against him.

7 Um, what I'm understanding this Court to say -- and I'm
8 trying to get a clarification because it's very important to my
9 defense -- is that I cannot, uh, argue willfulness from
10 circumstantial evidence. Is that -- is that -- or am I
11 misunderstanding this Court's ruling? Is the Court saying it
12 has to be direct testimony as to reliance?

13 THE COURT: No. No. I -- I've made my ruling. It had
14 nothing to do with requiring direct as opposed to circumstantial
15 evidence. Those words were never mentioned, as you know.

16 MR. BOWERS: Okay.

17 MR. CRISTALLI: I mean, based on the Court's ruling, I
18 don't know that there's gonna be any witnesses. Um...

19 MR. SCHIFF: Do they have my proffer? Do you have my
20 proffer?

21 THE COURT: Well, Mr. Cristalli --

22 MR. SCHIFF: I don't have theirs.

23 THE COURT: -- your -- your strategy in attempting to
24 put in witnesses that have titles or who have had work
25 experience and their beliefs, uh, is not going to be, uh, used

1 to buttress the belief of your client because those -- those
2 beliefs are, as a matter of law, legally incorrect.

3 Beyond that, there is -- there is a certain concern
4 that I have, a very real concern, that although you -- you try
5 to distance yourself from the position of Mr. Schiff --

6 MR. SCHIFF: Your Honor --

7 THE COURT: -- with regard to the tax laws you're --
8 you still want to use people who have false beliefs about the
9 tax laws to try to convey an appearance to the jury that there
10 is some question about the law. So the prejudicial effect of
11 the testimony of even the former FBI agent who, as the Court has
12 already indicated, found his arguments to be ridiculous and
13 sanctioned him, uh, has a more prejudicial effect than it does
14 prej- -- probative value. And, uh, you can't -- can't have it
15 both ways.

16 MR. CRISTALLI: And, your Honor, that's fine. I
17 understand the Court's ruling. I will respect the Court's
18 ruling.

19 But, just so we're clear, I'm certainly not presenting
20 this testimony to buttress the, uh, philosophies of Freedom
21 Books. It's just not the case. It's strictly for the sole
22 reason to demonstrate that this woman relied on a number of
23 sources, not just Irwin Schiff in, uh, defining her beliefs.

24 And, your Honor, pursuant to Cheeks [sic] --

25 THE COURT: We'll see what --

1 MR. CRISTALLI: Well --

2 THE COURT: -- we'll see what -- what she says when she
3 takes the stand, if and when she takes the stand.

4 MR. CRISTALLI: Right. Exactly. If and when she takes
5 the stand.

6 THE COURT: And maybe if she takes the stand I will
7 take a further look at Lindsey. But, uh, based on what I know
8 now about the -- about Mr. Lindsey, uh, his --

9 MR. CRISTALLI: Well --

10 THE COURT: -- his belief, his -- his mens rea has
11 nothing to do with hers.

12 MR. CRISTALLI: Your Honor, I'm not talking -- I
13 gave -- I gave a very specific proffer. I just want the record
14 to be clear because it appears that it's not, that every time I
15 make a proffer it's -- it's getting twisted in some respect.

16 I am not presenting that witness for the purpose of
17 discussing his tax beliefs. It's absolutely incorrect that I'm
18 doing that. I'm putting this witness up on the stand --

19 THE COURT: But you're getting it in anyway in front of
20 the jury. And, as I indicated already, uh, the law is very --
21 very clear. Whether -- whether the defendants and their
22 followers want to acknowledge that, the law is crystal clear in
23 this area. It's --

24 MR. CRISTALLI: Your Honor, it's not --

25 THE COURT: -- it's indisputable.

1 MR. CRISTALLI: -- that's not the standard.

2 THE COURT: Well --

3 MR. CRISTALLI: The standard under Cheeks is not
4 whether or not an --

5 THE COURT: I understand the standard under Cheek.

6 MR. CRISTALLI: Well, I need to make a record, your
7 Honor. I need --

8 THE COURT: I --

9 MR. CRISTALLI: -- need to make a record.

10 THE COURT: I very well understand --

11 MR. CRISTALLI: I --

12 THE COURT: -- what Cheek is about.

13 MR. CRISTALLI: I appreciate that, but I would like to
14 make a record if I could for the purposes of my client and the
15 purposes of the appellate record.

16 My -- under Cheeks, one does not have to be objectively
17 reasonable. As the Court has indicated and suggested, as the
18 Court may see it being crystal clear, others may not. And, if
19 this individual relied on other sources to develop her reliance
20 and her beliefs, no matter how this Court believes it's
21 objectively reasonable; if it's subjectively reasonable -- if
22 this jury believes based on the information that this woman had
23 she did not willfully commit a crime, then it's relevant. It
24 should come in. And that's what the basis, the nexus, of this
25 particular testimony is.

1 THE COURT: You're -- you're trying to -- the obvious,
2 uh, reason for your urgency is the position this man held which
3 really is not meaningful to me. Whether he was a janitor or a
4 person who worked for the IRS, uh, he is certainly capable of
5 mistaken view as to the law. And the fact that he had a title
6 or that he at some time worked for someone I don't think it
7 should be determinative of whether she gave him credibility or
8 not, especially in light of the fact that she was being
9 continually informed as to the -- according to the evidence
10 that's been adduced so far, as to the actual state of the law.

11 MR. CRISTALLI: And that's my point --

12 THE COURT: So --

13 MR. CRISTALLI: -- if he --

14 THE COURT: -- you're using his position. You say
15 you're not. But the net effect is the same and the urgency with
16 which you're pressing this and rearguing it over and over again
17 is clear to me that you want to parade someone in front of the
18 jury who -- who had some position with the IRS.

19 MR. CRISTALLI: No, it's not an IRS agent. It's an FBI
20 agent. It has nothing to do with his involvements with the
21 Internal Revenue Service.

22 THE COURT: Or the FBI --

23 MR. CRISTALLI: It has to do --

24 THE COURT: -- either one.

25 MR. CRISTALLI: -- with the fact that he has worked as

1 a federal agent for 20 years.

2 The Government put Agent Steiner. He has looked and
3 reviewed -- whether or not he's right or wrong or whatever, it
4 doesn't matter. It's whether or not she -- he communicated to
5 this woman and she relied on it. I'm not -- I'm not gonna try
6 to argue that what he -- and if he has -- if he has a -- as the
7 Court has indicated, if -- if this -- if this federal, uh, agent
8 has a misunderstanding of the law, then why can't she have a
9 misunderstanding of the law?

10 THE COURT: Well, his good-faith mis- -- or his
11 misunderstanding, whether it has good faith or not, is not the
12 issue in this case. And that's the whole point of the ruling.

13 MR. SCHIFF: Your Honor, I have -- I have a comment to
14 make.

15 THE COURT: We're through.

16 MR. SCHIFF: Now --

17 THE COURT: We're going to --

18 MR. SCHIFF: -- I have to point --

19 THE COURT: -- to take a recess and we're going to
20 bring the jury in.

21 MR. SCHIFF: Can I -- can I make my comment?

22 THE COURT: You've made your comments already.

23 MR. SCHIFF: No, I didn't.

24 THE COURT: You have made your --

25 MR. SCHIFF: You just said --

1 THE COURT: -- comments already.

2 MR. SCHIFF: -- something -- well, I -- I reserve the
3 right to make this comment.

4 It's not what Ms. Neun or I should have believed; it's
5 what we did believe. I mean, the question is -- you just said
6 she has been continually informed as to -- she's been advised --
7 adduced this far as to the actual state of the law. You're
8 suggesting that because someone told her what the law is,
9 therefore, she understood that. That is not the standard in a
10 willful, willful failure to file. You are, uh, misstating the
11 standard. The standard is what she actually believed, not what
12 she should have believed, not what the Government told her to
13 believe.

14 As a matter of fact, the mere fact that Mr. Holland
15 testified that he heard my show for three years and knew I was
16 offering 5,000 bucks to anybody who would call my show and he
17 never called the show she had a perfect right to believe that
18 there was no law that made anybody liable. If Ms. Neun had a
19 dream and 12 green monkeys told her that she didn't have to pay
20 income taxes and she believed that, it doesn't make any
21 difference what the law is. It's what she believed the law to
22 be.

23 THE COURT: Mr. Schiff --

24 MR. SCHIFF: Now, that is the standard. And you are
25 throwing out the entire willful standard when you say that she

1 was told what the law is, as if she should have believed it.

2 THE COURT: We --

3 MR. SCHIFF: Doesn't make any difference what the law
4 is.

5 THE COURT: We've already gone over this and I've
6 ruled.

7 MR. SCHIFF: Right. It's what she --

8 THE COURT: The ruling is --

9 MR. SCHIFF: All right.

10 THE COURT: -- as I said.

11 MR. SCHIFF: You're using --

12 THE COURT: All right.

13 MR. SCHIFF: -- you're throwing --

14 THE COURT: We're in recess.

15 MR. SCHIFF: -- you're throwing out the entire willful
16 defense.

17 THE COURT: We're in recess.

18 THE CLERK: All rise.

19 MR. CRISTALLI: Your Honor, if I may just mark these,
20 uh, for the purposes of the record. Um, they are, uh,
21 basically, um, letters from -- basically, um, outlining the
22 proffers that have been made from these witnesses had they
23 testified and taken the stand.

24 THE COURT: The clerk will mark the --

25 MR. CRISTALLI: Thank you, your Honor.

1 MR. BOWERS: Judge --

2 THE COURT: -- the requested --

3 MR. BOWERS: -- I'm sorry.

4 THE COURT: -- exhibits.

5 MR. BOWERS: Very, very briefly.

6 I don't want to rehash Mr. Cristalli's arguments. I --

7 I will join them. I think based on my proffer they apply. And

8 that's all.

9 MR. CRISTALLI: Your Honor, before we -- if we may have

10 a moment before the jury comes in, obviously, because as a

11 result of the Court's ruling I think things are gonna be, um,

12 shaken up a little bit and I'm not quite sure how this is all

13 going to, uh, play out. But if we could just have an

14 opportunity to -- I mean, certainly if we're -- we're now -- if

15 our witnesses are gonna be defendants, um, if that's the case

16 and if we have to make decisions as to whether or not a

17 defendant is gonna take the -- take the stand now, um --

18 THE COURT: If our witnesses are going to be

19 defendants?

20 MR. CRISTALLI: Yeah, yeah. If our witnesses are -- if

21 there's no other witnesses now and the only witnesses left --

22 THE COURT: Oh, I see.

23 MR. CRISTALLI: -- are defendants --

24 THE COURT: All right.

25 MR. CRISTALLI: -- I certainly want an opportunity to

1 converse with her before this happens.

2 THE COURT: All right. We'll give you that
3 opportunity.

4 THE CLERK: Are we in recess?

5 THE COURT: Yes. Let the jury know that --

6 THE CLERK: Okay.

7 THE COURT: -- what's going on, at least as far as that
8 we had matters that had to be discussed --

9 THE CLERK: Correct.

10 THE COURT: -- outside of their presence.

11 THE CLERK: And maybe a slightly longer delay.

12 THE COURT: There'll be more delay because we need a
13 recess now.

14 I'll see counsel at sidebar.

15 (Sidebar conference was held as follows:)

16 THE COURT: All right. The Government has requested
17 that I instruct the jury to disregard the signs. I will -- I'm
18 going to look into whether you're violating the terms of your,
19 uh, pretrial release because what I see is I see, uh, I see you
20 trying to stir people in the courtroom, uh -- yes, you do.

21 MR. SCHIFF: I'm -- I'm making my case, your Honor.

22 I --

23 THE COURT: You're -- you're --

24 MR. SCHIFF: -- I would do the same thing if the
25 courtroom was empty.

1 THE COURT: You're -- you're obviously playing to
2 people; uh, you're creating further issues. You continually
3 impugn the integrity of the Court. And I'm gonna look into it.
4 And, if -- if you don't stop it and you're violating the terms
5 of your pretrial release, I'm gonna remand you.

6 MR. SCHIFF: Can I -- can I suggest something to you?
7 I believe that you misstated the willfulness statute. The
8 statute is not what we should have believed but what I did
9 believe. And I believe that --

10 THE COURT: We're not --

11 MR. SCHIFF: -- to be valid.

12 THE COURT: -- we're not gonna go over again and again.

13 MR. SCHIFF: Look, your Honor. If I lose this trial, I
14 go to jail for life. So I have a perfect right to --

15 THE COURT: Yeah. You don't have a right to do all
16 that you've been doing. And I'm warning you --

17 MR. SCHIFF: I'm gonna take the stand.

18 THE COURT: -- warning counsel, don't participate in --

19 MR. CRISTALLI: Wait. Your Honor, with all due
20 respect, I think you've made a reference to me in terms of
21 inflaming any -- any -- I have -- I have done nothing in this
22 case other than follow the rules of law.

23 THE COURT: When I -- when I rule and I --

24 MR. CRISTALLI: And I respected your ruling --

25 THE COURT: -- and you --

1 MR. CRISTALLI: -- but I have to make a record.

2 THE COURT: -- and you continue to argue it.

3 MR. CRISTALLI: I have to make a record, your Honor.

4 THE COURT: Well, you've made your record.

5 MR. CRISTALLI: No, I didn't. I didn't make my full
6 record. And that's the only reason why I wanted to continue.
7 I, as a lawyer, represent a client in a case for which she is --

8 THE COURT: You can -- you can tone down so that --

9 MR. CRISTALLI: I wasn't --

10 THE COURT: -- they don't hear you outside of --

11 MR. CRISTALLI: Your Honor, I was not loud, with all
12 due respect. And I have -- I can support --

13 THE COURT: You're being very loud right now.

14 MR. CRISTALLI: Your Honor, I am not loud and I have
15 only --

16 THE COURT: You can be heard outside of the -- outside
17 of this sidebar.

18 MR. SCHIFF: Your Honor --

19 MR. CRISTALLI: And, just so we're clear, I don't think
20 my voice is any louder than your Honor's voice at this
21 particular time. We have Government counsel here that can
22 either verify that or deny that.

23 MR. NEIMAN: Don't bring us into this.

24 MR. SCHIFF: And, also, I will say I do not believe any
25 of the laws are unconstitutional.

1 THE COURT: Well, that --

2 MR. SCHIFF: And he knows it; the Government knows
3 that. So they are continually misstating my position. And you
4 know they are misstating my position.

5 THE COURT: They are not testifying.

6 MR. SCHIFF: But if they argue that to the jury.

7 THE COURT: Well, you don't know what they are going to
8 argue to the jury.

9 MR. BOWERS: Your Honor, if I may, I'll --

10 MR. SCHIFF: Well, they outta be reprimanded.

11 THE COURT: Yes.

12 MR. BOWERS: Um, in -- in light of the Court's rulings,
13 I -- I had hoped to, uh, request a renewal regarding
14 Dr. Roitman. I -- I don't know if the Court has any interest in
15 hearing that. I certainly don't wanna -- I'm not making a
16 financial request or anything like that. I just wanted to
17 consider the ruling. I have one additional case. If I could
18 just submit that as additional authority, I could -- I could let
19 that go.

20 THE COURT: What -- what does Dr. Roitman have to do
21 with this?

22 MR. BOWERS: Dr. Roitman was a psychiatrist that
23 examined Mr. Cohen.

24 THE COURT: Oh.

25 MR. BOWERS: The Court precluded it.

1 THE COURT: Yeah.

2 MR. BOWERS: I just wanted to renew my, um, objection
3 and -- or my opposition in full and supplement one case. I
4 could do that orally; I could do it in writing.

5 My concern is at the rate we're going if evidence
6 closes, you know, today, um, that -- I guess I didn't foresee
7 that happening quite so quickly. And so I'm -- I'm requesting
8 if I could provide a case and authority for the record that that
9 would suffice or however the Court would like to handle that.

10 THE COURT: Well, you can present whatever cases you
11 want in -- in your -- in your request. I thought you'd already
12 done that.

13 MR. BOWERS: Well, there was additional cases. And so
14 I -- I can orally make that offer --

15 THE COURT: Okay.

16 MR. BOWERS: -- and I'll leave it at that.

17 THE COURT: All right.

18 MR. BOWERS: Thank you, your Honor.

19 MR. LEVENTHAL: I've got one other issue. I don't
20 believe you ruled on whether or not Mr. Schiff is gonna be able
21 to do it in a narrative. That was his --

22 THE COURT: He's not allowed to do it in the narrative
23 and -- for the reasons I've already stated.

24 MR. SCHIFF: What was that?

25 MR. LEVENTHAL: The narrative.

1 THE COURT: You're not allowed to testify in the
2 narrative. I want questions written out.

3 MR. SCHIFF: I haven't --

4 THE COURT: You've had four days.

5 MR. SCHIFF: I had -- I had to do a lot of other
6 things. I filed those motions.

7 THE COURT: You didn't have to do those things.

8 MR. SCHIFF: I had to call -- I had to call the
9 witnesses to see who is gonna come in, to see what they were
10 gonna --

11 MR. NEIMAN: Your Honor --

12 MR. SCHIFF: -- testify about.

13 THE COURT: That's a very small part of what you did
14 over the weekend.

15 MR. SCHIFF: Look, I was even late this morning.

16 THE COURT: Government. Government. I know you
17 were --

18 MR. NEIMAN: Now, just --

19 THE COURT: -- and I didn't sanction you for it.

20 MR. NEIMAN: Just so this --

21 THE COURT: You should have been sanctioned.

22 MR. NEIMAN: Just so this --

23 THE COURT: The jury has waited a long time.

24 MR. SCHIFF: I didn't -- I didn't do it deliberately.

25 MR. NEIMAN: Just so the Court understands, Mr. Schiff

1 spent a least three hours, I believe, Friday night, Saturday
2 night, and Sunday promoting his -- his scheme, encouraging large
3 turnouts, disregarding all the ruling -- every ruling in the
4 court he gets back on the radio for three hours and
5 criticizes --

6 MR. SCHIFF: I wasn't on the radio for three hours.

7 THE COURT: Oh, come on.

8 MR. NEIMAN: -- whatever it is and --

9 MR. SCHIFF: I was maybe 15 minutes.

10 MR. NEIMAN: It's not that he doesn't have the time;
11 he's choosing not to have the time.

12 THE COURT: He is creating significant risks for the
13 safety of this Court in doing so.

14 MR. SCHIFF: I --

15 MR. NEIMAN: Thank you, your Honor.

16 MR. SCHIFF: That I went three hours is nonsense.

17 THE COURT: You want to say something, Mr. Leventhal?

18 MR. LEVENTHAL: Well, I'm not sure how this is gonna go
19 when I don't have questions, your Honor. And not only that when
20 cross-examine comes and --

21 THE COURT: You better --

22 MR. LEVENTHAL: -- recross comes up, how is he gonna
23 ask or how am I gonna -- you better...

24 THE COURT: Um, then it's the areas that were gone into
25 on cross.

1 MR. LEVENTHAL: And I have -- I've put together
2 something, an outline, but specific questions and whether or not
3 I would be able to talk about whether -- you know, the relevancy
4 of it or any objections the Government makes, I would not be
5 able to. I'm not prepared to. So...

6 MR. SCHIFF: I -- I gave you an outline this morning.
7 I worked on it yesterday.

8 MR. LEVENTHAL: It's just basic areas. Nothing
9 specific.

10 THE COURT: You just have to ask him questions from --
11 from your notes then.

12 MR. SCHIFF: Didn't I give you an outline this morning?

13 MR. LEVENTHAL: Not yet. We'll get --

14 MR. SCHIFF: We spent a lot of time on Sunday on this.

15 THE COURT: Give him the outline.

16 MR. SCHIFF: I did.

17 (Sidebar conference concluded and the

18 following is held in open court:)

19 (Recess from, 10:43 to 11:03 a.m.)

20 THE COURT: Please be seated.

21 I'm just checking on some notes.

22 (Pause in the proceedings.)

23 MR. SCHIFF: Your Honor...

24 (Discussion between Mr. Modafferi and

25 Mr. Schiff.)

1 (Recess from 11:04 a.m. to 11:07 a.m.)

2 THE COURT: Mr. Bowers, did you provide me with that
3 case that you wanted --

4 MR. BOWERS: No.

5 THE COURT: -- the Court to consider?

6 MR. BOWERS: I didn't, but I'd be happy to right now.
7 I have a copy of it. It's -- I have a copy for everyone.

8 If I may approach?

9 THE COURT: You may.

10 MR. BOWERS: And, again, your Honor, this just goes to
11 supplement my opposition. I think that that decision's relevant
12 and on point as to, uh, that witness. I'll -- I'll leave it at
13 that unless the Court wants more. I'm prepared to offer a more
14 detailed proffer, but...

15 (Document handed to the Court.)

16 MR. NEIMAN: Your Honor, just for the record, I -- I
17 think this was actually cited in our, um, response to
18 Mr. Bowers'. I'll double-check that.

19 MR. BOWERS: And it -- it may have been. I'm not
20 denying that. I just wanted the Court to be aware of this fact,
21 pattern, and circumstances because I think they apply to this
22 witness.

23 THE COURT: Okay. I'll take a look at it when I have
24 time.

25 Okay. Anything before we bring in the jury?

1 MR. CRISTALLI: Your Honor, we requested that we have a
2 moment at sidebar for something.

3 MR. SCHIFF: Wait. Your Honor, can I -- before the
4 jury comes in, I --

5 MR. BOWERS: We're gonna --

6 THE COURT: We'll do it at --

7 MR. SCHIFF: -- that we --

8 THE COURT: We're doing it at sidebar.

9 MR. SCHIFF: Oh, sidebar. Okay.

10 (Sidebar conference was held as follows:)

11 MR. CRISTALLI: Your Honor, I just wanted to -- I
12 wanted to do this at sidebar because I certainly didn't want any
13 accusations that I was doing anything to inflame the crowd.
14 That's just absolutely not the case nor has it ever been during
15 the course --

16 THE COURT: Well, I had hoped --

17 MR. CRISTALLI: -- of this trial.

18 THE COURT: -- I had hoped that you would be concerned
19 about not doing it rather than accusations of doing it.

20 MR. CRISTALLI: I haven't done it. That's -- that's my
21 concern, that I was accused of doing something improper during
22 the course of this trial. I think the record speaks for itself
23 that I have not done anything improper and I have not spoken to
24 anybody outside of this courtroom in inference to this
25 particular case nor have I done anything to suggest anything in

1 the course of this trial, um, to inflame anyone in the audience.
2 Uh, my concern is the jury, not the audience, your Honor. It's
3 always been as an attorney.

4 But, in any event, with regard to, um, uh, an
5 individual, uh, by the name of Bob Schulz that I was prevented
6 from calling as a witness, um, and it's -- and I wanted to just
7 make one final request not to do anything other than see if I
8 would be allowed to present this witness on behalf of my client.

9 Just so the Court's aware, Mr. Schulz was, uh, from
10 New York. We flew him in. He's a -- he does have postgraduate
11 degrees, has an engineering background, he's a former radio talk
12 show host. He's not involved in any -- he's not involved as an
13 IRS agent, a FBI agent.

14 Um, he is involved in an organization called "We The
15 People" organization, basically an organization that has been,
16 um, developed in order to attempt to facilitate answers to
17 people's questions as they relate to the tax laws.

18 There was a specific seminar held -- well, first of
19 all, he met Cindy in 2001 here in Las Vegas, um, at a We The
20 People organization conference and workshop preparing for a
21 Truth in Taxation hearing which was scheduled for September 27,
22 2001, in Washington, D.C.

23 Um, Cindy attended the, uh, event and spoke to him
24 directly. Uh, since that time, he has spent more hours with
25 Cindy and -- and participated in online discussion groups with

1 her and attended conferences and events with her.

2 Um, there is a number of exhibits that I was going to
3 get in through him which was, number one, a Citizens Redress
4 Grievance Conference notebook, um, that he is familiar with that
5 Cindy prepared, uh, during the course of the conference. Uh, he
6 understands and -- and knows the contents of the notebook.

7 Um...

8 (Pause in the proceedings.)

9 MR. CRISTALLI: And it's marked 2526 as Defendant's
10 Proposed.

11 THE COURT: 20526?

12 MR. MODAFFERI: 2526.

13 MR. CRISTALLI: 2526. I'm sorry.

14 Specifically in terms of what happened in D.C.,
15 Washington, D.C., during the course of those particular
16 hearings, um, the conference was specifically -- it was held at
17 the National Press Club to announce -- it would be a forum where
18 people could get answers and to articulate their positions and
19 hopefully members from Congress, uh, would have attended and
20 articulated their positions with regard to, uh, the tax laws.

21 Um, you know, he would have further testified that
22 despite the many hours that, um, were had during the course of
23 those conferences, um, nobody, um, um, had an opportunity to sit
24 down -- no Congressman, uh, or administrative official sat down
25 with him, advised them of what their liability was under the

1 law.

2 This is not an individual who, based on the information
3 I have, prescribes to an unconventional tax belief, but
4 merely -- I may be wrong. I mean, I -- I don't know. But it's
5 my understanding that his purpose with this organization is to
6 try to facilitate answers through the government.

7 Um, if I'm precluded from presenting him, which it
8 appears that I have and I certainly will respect the Court's
9 ruling with regard to that, I need to understand the scope. If
10 I -- if I have to make a decision to present my, um -- my client
11 as a witness in this particular case, the scope of my, uh,
12 examination as far as what I'm gonna be able to have her testify
13 to and what, um, I can't have her testify to. Certainly it's of
14 importance to me to establish other, um, sources of information
15 other than Mr. Irwin Schiff in establishing her reliance base.
16 Um, I know the Government probably has an objection to that.
17 But I would like to get into some of these --

18 THE COURT: They are indicating they don't.

19 MR. CRISTALLI: Oh, okay.

20 MR. IGNALL: I -- I think -- just to be clear, I
21 think --

22 THE COURT: Hold on just a second. Let's get this
23 microphone over here.

24 MR. IGNALL: If Ms. Neun decides to testify, I think
25 that certainly creates a broader area of inquiry as to what she

1 believed and what she relied on. I think what we're going into
2 here with some of these witnesses is kind of -- what I might
3 call a misplaced-reliance-on-advice-of-counsel-type defense.
4 And there have been some cases, including the Cheek case on
5 remand that talk about you can't just go to a lawyer once you've
6 already started on a course of conduct to try and validate what
7 you're already doing which seems to be where this evidence is
8 going.

9 And, if she's testifying about what she knew and that
10 she says I never heard when the IRS told me something or
11 something like that, that certainly is within, I think, her
12 right as a witness testifying for herself.

13 THE COURT: Mr. Cristalli.

14 MR. CRISTALLI: Um, only -- you know, in that light
15 obviously I have a different position with regard to it. She's
16 not -- it's not my position that she's, like, selectively
17 choosing what to rely and what not to rely on. That's why I
18 wanted to get in John -- Jan Lindsey to establish that he went
19 to the IRS, uh, due process collection here with Ms. Fisher.
20 Ms. Fisher did not, uh, discuss the law with him. And that was,
21 um, what the Government produced in an effort to establish
22 notice that that was the case, that they did put them on notice,
23 they did --

24 THE COURT: She didn't specify the cases. We've kind
25 of addressed that already --

1 MR. CRISTALLI: I understand.

2 THE COURT: -- Counsel.

3 MR. CRISTALLI: I understand.

4 MR. BOWERS: Your Honor, I'm sorry. Just while we're
5 here, very briefly.

6 Can I make a proffer with respect to what --

7 THE COURT: Well, let Mr. Cristalli finish.

8 MR. BOWERS: Oh, I'm sorry. I thought he was done. I
9 apologize.

10 THE COURT: He's -- maybe has some additional.

11 MR. CRISTALLI: Yeah. I mean this would be somethin'
12 that if, um, Ms. Neun testified it is -- the news conference
13 that was held at the National Press Club in Washington, D.C.,
14 that I would like an opportunity to play.

15 MR. NEIMAN: We've never been provided it.

16 MR. CRISTALLI: Yeah.

17 MR. IGNALL: Never seen it.

18 MR. CRISTALLI: I got -- well, I just got it through
19 Mr. Lindsey today.

20 MR. MODAFFERI: It was seized in --

21 MR. CRISTALLI: And it was seized --

22 MR. SCHIFF: Sam Holland came to our office when he
23 played that. He saw it.

24 MR. CRISTALLI: Yeah, Sam Holland did see it. He
25 did -- he did get it.

1 MR. IGNALL: We can't decide whether we object or not
2 until we have seen it.

3 MR. CRISTALLI: Maybe if I can provide a copy to the
4 Government with regard --

5 THE COURT: We'll cross --

6 MR. CRISTALLI: -- to that.

7 THE COURT: -- that bridge at a later time. Okay.

8 MR. SCHIFF: Can I --

9 THE COURT: Just a minute.

10 MR. CRISTALLI: So I guess my first request would be
11 whether or not I could present, um, John -- I mean, Robert
12 Schulz as a witness. That would be my first request, based on
13 that proffer that I just articulated.

14 THE COURT: Yeah. If -- if -- I agree that some of
15 these witnesses may be relevant if your clients take the stand.
16 And that -- that broadens it out to -- to -- when they talk
17 about so-and-so, uh, then it may be relevant, especially if the
18 Government challenges, you know, their reliance on those, uh,
19 sources. But until that, uh, it's -- it's just an attempt to,
20 in my opinion, to -- to get the witness -- or the defendants'
21 belief in through someone else.

22 MR. SCHIFF: Can I have -- when -- when we were
23 discussing this --

24 THE COURT: Wait a minute. Wait a minute. Wait a
25 minute.

1 MR. SCHIFF: I'm sorry.

2 THE COURT: We're finishing up Mr. Cristalli.

3 MR. CRISTALLI: Yeah. And then I just want to make
4 sure -- if I just get a parameter here -- with regard to, um,
5 possible exhibits.

6 Um, there's just -- I may have -- just so they are
7 all -- I mean, I've gotten a bunch of information today, as the
8 Government has seen, by Mr. Schulz. I need an opportunity,
9 obviously, to examine it. There may be a request that I get
10 some of that documentation in through Cynthia Neun if and when
11 she testifies. So I guess we'll address that if and when the
12 time comes.

13 THE COURT: Okay.

14 Mr. Bowers, you were next.

15 MR. BOWERS: Well, Bob Schulz and Mr. John Turner, I
16 understand the Court has some reservations about several of
17 those individuals for their titles.

18 THE COURT: Jan, Jan.

19 MR. BOWERS: Jan Lindsey. I apologize.

20 THE COURT: Jan Lindsey.

21 MR. BOWERS: And John Turner. But John Turner and Joe
22 Banister, who were proffered by Mr. Schiff, were affiliated with
23 the IRS. And I just wanted to proffer that I intended to use
24 those witnesses for the purpose of establishing that their
25 material was widespread and well known; that they had frequent

1 and regular contact with, uh, Freedom Books; that they had
2 contact with Larry at Freedom Books, not that Larry says I
3 believe this or I believe that but simply offered for the
4 contact was there.

5 As I understand --

6 THE COURT: If he takes the stand, it -- it may be --

7 MR. BOWERS: Okay.

8 THE COURT: -- may be something we'll consider again.

9 MR. BOWERS: And that leads me to the conclusion
10 that -- if I understand the Court's ruling correctly, that it is
11 not, according to this Court's ruling, permissible to say, um,
12 there -- there were all these sources of information out there,
13 uh, and argue that circumstantially defendants' belief on those
14 sources; that in order to get this evidence in the defendant has
15 to directly state I relied on this. And I -- I can't argue
16 circumstantial evidence from the inference of his belief?

17 THE COURT: That things were around the office --

18 MR. BOWERS: Yes.

19 THE COURT: -- that he might have read them?

20 MR. BOWERS: Yes.

21 THE COURT: Too speculative.

22 MR. BOWERS: Okay.

23 THE COURT: Very speculative. Till he says he did.

24 MR. BOWERS: Well, I -- I'm just trying to clarify the
25 Court's ruling on that issue.

1 MR. SCHIFF: Okay.

2 THE COURT: Is that all you had?

3 MR. BOWERS: That's it.

4 MR. SCHIFF: Okay.

5 MR. BOWERS: Well, I mean, I'm assuming you've got the
6 Roitman thing. I'll stay away from that and then the other
7 motions.

8 MR. SCHIFF: Now, when we were talking about witnesses
9 coming in, I thought we were talking about Jan Lindsey. I
10 didn't realize that you were making a determination concerning
11 all my witnesses.

12 Now, as far as Robert Schulz is concerned, one of the
13 reasons that I -- that his -- his testimony is very important to
14 me. The Government keeps indicating that, uh, I had money in
15 Belize, I had money there in order to basically conceal, uh,
16 from the IRS.

17 Now, Mr. Schulz was the one who was responsible for
18 getting the decision, which I have, Schulz versus the IRS, in
19 which the Second Circuit said IRS summonses apply no force to
20 taxpayers and no consequences whatever can befall a taxpayer who
21 refuses, ignores, or otherwise does not comply with an IRS
22 summons until that summons is backed by a federal court order.

23 Now, this is one of the reasons why I believed this is
24 true with respect to any communication from the IRS. If a bank
25 or if an individual doesn't have to comply with an IRS summons,

1 which is very ominous if you look at it -- you are required to
2 bring -- then why would a bank or anybody else have to comply
3 with a Notice of Levy?

4 Well, this explains why I might have my assets
5 someplace, not to conceal anything, but I know that IRS notices
6 of levy don't have to be complied with.

7 In addition, two of my witnesses um -- and I didn't
8 have time to fill it out but I'm gonna tell you right now that
9 Noel Spaid believes that banks turn over money through notices
10 of levy without waiting to get an actual levy.

11 And the reason I have Mr., uh -- I didn't have a chance
12 to finish when I had to come over here. I was occupied with
13 tryin' to figure out who's comin' down here; people were callin'
14 me; witnesses -- but Mr. Joel Hanson represented an appeal.
15 I -- I got -- here, the Boulder Dam Credit Union. One of my
16 individuals, they turned over, uh, 1800 bucks. The Boulder Dam
17 Credit Union and Joel -- is she went down and we got a favorable
18 decision from -- from a -- what do you call it? -- small claims
19 court judge; he was a judge. And he ruled that we were right on
20 both the law and the facts. And he ruled, uh, the judge -- I
21 forgot his name -- studied the facts that the Notice of Levy was
22 not a levy and, therefore, they didn't have to comply with it.

23 However, the, uh -- the, um -- the credit union
24 appealed and Joel Hanson represented -- we paid him over 7,000
25 from the Freedom Foundation. And it's Joel Hanson's belief that

1 the credit union was correct in that, uh -- that banks turn over
2 money pursuant to notices of levy without waiting to get an
3 actual levy.

4 Now, their testimony, such testimony, is important to
5 support my belief that I didn't have the money there to hide
6 anything. Incidentally, all my transfers were by checks. I
7 just wanted to get my money in a place which wouldn't respond to
8 notices of levy which two of my witnesses, two attorneys, would
9 testify.

10 THE COURT: You can testify to that.

11 MR. SCHIFF: No. But that's me. They don't believe
12 me. These are two lawyers.

13 THE COURT: Who doesn't believe you?

14 MR. SCHIFF: I mean, why would they believe me.

15 THE COURT: The jury, why would they believe you? I
16 don't know.

17 MR. SCHIFF: I'm just saying these two lawyers who
18 support my believe.

19 THE COURT: I don't know why --

20 MR. SCHIFF: Now --

21 THE COURT: -- they'd believe or not --

22 MR. SCHIFF: Well, the two --

23 THE COURT: -- or disbelieve you.

24 MR. SCHIFF: I'm not through yet, your Honor. This is
25 very important.

1 Uh, as far as John Turner is concerned, I was told by
2 you -- that's why he's here -- that I have to -- I could get
3 witnesses on whose experiences I relied on.

4 Now, if you want to know about John Turner through a
5 more greater extent --

6 THE COURT: I don't.

7 MR. SCHIFF: -- well, the point is he challenged me
8 at -- at a meeting and he -- he really didn't believe what I was
9 saying. He challenged me at this conference. But I said a few
10 things that, um, apparently piqued his interest. He goes back.
11 He -- he now studies in greater detail, uh, the training
12 material that he was received and then notifies me of certain
13 things that I didn't know about, leaves the IRS. And all this
14 does is support my belief. And then I relied on certain things
15 he told me.

16 THE COURT: Okay.

17 MR. SCHIFF: But this supports my belief that in doing
18 what I'm doing I'm not breaking any laws because he simply
19 verified that fact by leaving the IRS.

20 But, more important -- same thing with Joe Banister --
21 but, more important, Robert Brown is a very important witness
22 because with Robert Brown -- uh, and this shows that -- the
23 Government introduced testimony which makes it appear that I,
24 uh -- I don't care about the people who follow my, um,
25 procedures and I -- and I just leave them when nothing works.

1 Robert Brown filed one of the first claims for refund.
2 Here is the case number. I don't know who the -- must have been
3 Pro, Judge Pro. Well, they turned him down. Naturally, I
4 prepared --

5 THE COURT: I've read all this.

6 MR. SCHIFF: Well, yeah.

7 THE COURT: He lost.

8 MR. SCHIFF: So what?

9 THE COURT: The Browns are losers.

10 MR. SCHIFF: But that's not the point. Look at all the
11 time and effort I spent.

12 Would I go up to the Supreme Court if I believed that
13 we didn't have a legitimate basis for going up to the Supreme
14 Court? This -- this demonstrates my belief in what I'm doing,
15 my lack of willfulness. And, also, I didn't charge him a
16 penny. All he paid, your Honor, is the filing fees. What would
17 a lawyer have charged him to do a district court case, an
18 appellate case, and an appeal to the Supreme Court?

19 What this does it demonstrates my, um, belief in what
20 I'm doing. Just because I lost, I believed I was gonna win. I
21 thought the Supreme Court was gonna hear the case because we --

22 THE COURT: That cuts against you.

23 MR. SCHIFF: Pardon me?

24 THE COURT: If you found out that he lost with your
25 ideas, it cuts against you.

1 MR. SCHIFF: But the point is this: It shows the --
2 the extent --

3 THE COURT: No.

4 MR. SCHIFF: -- that I devoted my time.

5 THE COURT: No, it doesn't show a good-faith belief.
6 What it --

7 MR. SCHIFF: Well, how --

8 THE COURT: -- shows is a --

9 MR. SCHIFF: -- do you know how many hours I spent
10 on --

11 THE COURT: -- refusal to believe that you're getting
12 hit --

13 MR. SCHIFF: Well, wait.

14 THE COURT: -- between the eyes with a 2 by 4.

15 MR. SCHIFF: Well, your Honor --

16 THE COURT: It shows stubbornness.

17 MR. SCHIFF: -- would I waste my time with this if I
18 didn't think I had a chance?

19 THE COURT: Yeah, yeah, I think you would.

20 MR. SCHIFF: Why would I do that?

21 THE COURT: That's a jury issue. For money.

22 MR. SCHIFF: For money?

23 THE COURT: Yeah.

24 MR. SCHIFF: Do you know how much time I put in this?
25 I didn't charge him a penny.

1 THE COURT: Yeah. Well, and -- and --

2 MR. SCHIFF: I didn't charge him a penny.

3 THE COURT: You should have paid him for givin' him bad
4 advice.

5 MR. SCHIFF: But I think the jury should know --

6 THE COURT: Pay is irrelevant.

7 MR. SCHIFF: Well, this demonstrates my --

8 THE COURT: I've already ruled.

9 MR. SCHIFF: All right. Now, the other persons I
10 wanna -- I wanna -- well, Calvin's gonna --

11 THE COURT: I've already ruled on all of them.

12 MR. SCHIFF: All right, all right. Now, but there's
13 some people you haven't because I didn't finish. Some people
14 came here before I could tell them to hold off.

15 THE COURT: It's like I said --

16 MR. SCHIFF: All right. Now, Robert Wellsley
17 (phonetic), let me tell you, he's outside. If you want to
18 question him, let me tell you about Robert Wellsley.

19 THE COURT: You didn't provide me with a written
20 synopsis.

21 MR. SCHIFF: Because he came and he's not here.

22 THE COURT: Well --

23 MR. SCHIFF: I'm gonna tell you --

24 THE COURT: -- he came and he's not here that --

25 MR. SCHIFF: I mean, he -- he's here.

1 I can very quickly tell you -- see, one of the things
2 that the Government is saying is that we had all of these
3 appeals and we -- and we -- we jammed up their procedures and
4 they couldn't -- but, what Robert Wesley is -- he went to a --
5 he's a parole officer. So he's -- he's not a dumb guy. I mean,
6 he knows something about, you know, law. He went to a
7 collection due process hearing, got no information, and he
8 believed that they were not complying with the law with respect
9 to collection due process hearings.

10 So he was at college and he needed a master thesis --
11 you can talk to him -- and he wanted to do a master thesis on
12 collection due process hearings. So we sent him 30 transcripts
13 and he analyzed 30 transcripts. And he did a thesis on this,
14 which he can bring, and his thesis showed that in practically
15 every case the IRS didn't comply with the law.

16 Now, this explains why they had so many of these
17 appeals from us because the public at large, A, wouldn't know
18 how to appeal; secondly, wouldn't know the documents that they
19 were required to get. So the impression so far on the jury is
20 that we were filing frivolous appeals of collection due process
21 hearings.

22 Now, if you want to speak to Mr. -- and I think his
23 testimony is important to show that we simply were not filing
24 frivolous appeals; that there was a basis. He did a study. He
25 did his -- he got a master's degree by using that study. So I

1 think his testimony is important. I just told you what he's
2 gonna testify to.

3 He's a parole officer in -- in New York someplace. I
4 forget. He's here right now.

5 THE COURT: I heard that.

6 MR. SCHIFF: Okay. So can I --

7 THE COURT: Don't repeat it.

8 MR. SCHIFF: -- can I call him as a witness?

9 THE COURT: Let me here from the Government.

10 MR. IGNALL: This is like the other witnesses. It's
11 kind of a backdoor way to try and bolster the validity of
12 Mr. Schiff's teachings when, in fact, they are not valid. They
13 are not valid as a matter of law. And, just because someone did
14 a master's thesis and came to the conclusion that he thought
15 they were valid is not relevant.

16 MR. SCHIFF: Well, first of all, they don't have to
17 be --

18 MR. IGNALL: And also --

19 MR. SCHIFF: -- valid as a matter of law. I mean, they
20 have to be my beliefs.

21 THE COURT: It doesn't come in. Okay?

22 MR. IGNALL: All right.

23 THE COURT: What's your next point?

24 MR. SCHIFF: Well, I wanted to be able to -- he's here.
25 You can -- well, I'm trying to see -- oh. I told David Sealy

1 there's another fellow here who I wanted to call who went to Tax
2 Court.

3 THE COURT: Who?

4 MR. SCHIFF: Well, he's not here. You said I can -- I
5 can have this. But I think Robert Brown is a very important
6 witness.

7 THE COURT: Don't go back over the ones --

8 MR. SCHIFF: Okay.

9 THE COURT: -- we've already addressed.

10 MR. SCHIFF: Okay. I won't.

11 Now, I wanted to call Jan Lindsey simply --

12 THE COURT: No.

13 MR. SCHIFF: -- I have a right for character witness.
14 You're tellin' me I can't -- and -- and, um, Noel Spaid's
15 testimony is very important. She's represented me in a number
16 of cases. Okay? Number of cases. As a matter of fact, she
17 defended me in a lawsuit where someone sued me because I
18 apparently -- claiming I gave him false advice and because he
19 followed my advice he supposedly, um, you know, got into trouble
20 with the IRS and we got a summary judgment, uh, you know. And
21 she would testify about that case. Also --

22 THE COURT: In what kind of a case?

23 MR. SCHIFF: Well, it was the --

24 THE COURT: Fraud case?

25 MR. SCHIFF: -- case right here. It was right here.

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

3 MR. SCHIFF: Yeah. Well, it goes to aiding and
4 abetting [sic], as my lawyer just said. It goes to aiding and
5 abetting.

6 She -- she represented me when somebody sued me because
7 they allegedly followed my advice. And I forgot -- I don't
8 know. The file was so long ago. And we got a summary judgment
9 against the individual.

10 She also wants to testify regarding my reputation. You
11 know, she also wants to give you -- uh, testify about my
12 reputation regarding my beliefs. I mean, you can't deny me
13 character -- the courts have ruled that in tax evasion trials --

14 THE COURT: Don't tell me what the courts have ruled.

15 MR. SCHIFF: Well --

16 THE COURT: Tell me what you want to do.

17 MR. SCHIFF: The courts have ruled that --

18 THE COURT: You don't know what the courts have ruled.

19 MR. SCHIFF: Yes, I have. I read the --

20 THE COURT: We already established that.

21 MR. SCHIFF: -- that the courts have ruled that in a
22 tax evasion trial one's reputation for truth and honesty is very
23 important because only people who don't tell the truth would
24 evade taxes.

25 So what you're doing is at this point you're denying

1 me, uh, character evidence.

2 Now, you know, if I were in New Haven, I could get a
3 lot of people, uh, because I could go back to high school.
4 But -- but Bob Schulz knows me for a long time and he knows what
5 my reputation is. If I call Bob Schulz just as a character,
6 uh --

7 THE COURT: We're already done with Bob Schulz.

8 MR. SCHIFF: But --

9 THE COURT: You're addressing Noel Spaid.

10 MR. SCHIFF: Noel Spaid is an attorney who wants to
11 testify about a case --

12 THE COURT: Don't repeat.

13 MR. SCHIFF: All right.

14 THE COURT: We already heard it.

15 Are you through?

16 MR. SCHIFF: Yeah.

17 THE COURT: All right. Let me hear the Government.

18 Step over here so they can get to the mic.

19 MR. IGNALL: From that proffer, I'm not really sure we
20 can respond to what Ms. Spaid is gonna testify about. Insofar
21 as it's some sort of reliance, I think it goes back to the
22 imperfect reliance whereas, again, I think the best case on that
23 point is the U.S. v. Cheek on remand to the Seventh Circuit that
24 going to a lawyer with a course of conduct you've already begun
25 to try and validate it is not a valid reliance defense. It

1 doesn't meet any of the five elements of, you know, full
2 disclosure, et cetera. So I'm not -- insofar as that's what
3 Ms. Spaid is gonna testify to, I don't think it's relevant.

4 But truth be told --

5 THE COURT: What about character, character for truth
6 and honesty in --

7 MR. IGNALL: Character --

8 THE COURT: -- in the community?

9 MR. IGNALL: Truth be told, I'd like -- if we could
10 raise that one during the break and give me a chance to do a
11 little bit of research because I didn't know that was the issue
12 coming up and, in all honesty, I'm pleading ignorance on that
13 one at the moment.

14 MR. SCHIFF: Is it --

15 MR. LEVENTHAL: I might be able to help with Noel Spaid
16 if you want.

17 MR. SCHIFF: Yes.

18 MR. LEVENTHAL: I don't know if he wants me to --

19 THE COURT: Go ahead.

20 MR. LEVENTHAL: -- or not.

21 Noel Spaid was his attorney at his civil trial where
22 one of his followers actually sued him and summary judgment was
23 entered. And, I guess, Judge Pro said that the ruling of the
24 Court was no that nobody could rely upon Mr. Schiff; that it
25 goes directly to the relevance of the aiding and abetting charge

1 that he can't aid and abet somebody who can't really rely upon
2 him.

3 MR. SCHIFF: No, it wasn't Judge Pro; it was another
4 judge. I forgot who it was.

5 Oh, the other thing I'd like to do -- this reminds
6 me -- I would like to play -- it's something I sell in the
7 normal course of events. The Government got it through the
8 Grand Jury -- my tape, um, um, "Leading An Income Tax Free
9 Life."

10 Now, this goes to my willfulness. The Government
11 claims that I promote tax evasion. And one of the things that I
12 sell is my three-and-a-half-hour seminar. And it's very simple.
13 If I promote tax evasion, it'll show up on that tape. It'll
14 show up on that tape.

15 Now, it's very important to my good-faith defense
16 that -- that I show that tape. Now, the Government's got the
17 tape. I sell it in the normal course of events. Uh, I -- I can
18 play a lot of radio tapes, which I don't want to do. But I
19 think I should be entitled to show the jury a
20 three-and-a-half-hour seminar that I sell. And, if there's
21 anything on there that promotes tax evasion, they'll see it.
22 And the Government can pull it apart and the Government can
23 watch the tape and tell the jury where in that tape I'm
24 promoting tax evasion.

25 But, your Honor, you have to give me a right to defend

1 myself. If you're gonna knock off all my witnesses, the least
2 you can allow me to do is play a three-and-a-half-hour video
3 that I sell --

4 THE COURT: Okay.

5 MR. SCHIFF: -- to the public.

6 THE COURT: Thank you. Step aside. Let the Government
7 respond.

8 MR. IGNALL: With respect to Ms. Spaid, the -- the
9 reliance is not an element of 7206(2). In fact, there are cases
10 that say even if the taxpayer is innocent a preparer, someone
11 who aids and assists in the preparation of a tax return, can be
12 found guilty. So there's no -- so whatever the relevance of
13 that summary judgment is I don't -- I don't think applies to a
14 7206(2) count.

15 In terms of the tape, again, I think there's a 403
16 problem with wasting time and confusing the jury. Beyond that
17 at best, even if what Mr. Schiff says is true, that's the legal
18 equivalent of saying you accused me of robbing the bank on
19 Wednesday, but I walked by that same bank on Tuesday and didn't
20 rob it. That's not --

21 MR. SCHIFF: No.

22 MR. IGNALL: -- anything we've tried to prove there.

23 So --

24 MR. SCHIFF: You know why --

25 MR. IGNALL: I don't think it's relevant. And whatever

1 minimal relevance it may have is substantially outweighed by the
2 risk of confusing the jury and wasting time.

3 MR. SCHIFF: All right. Let me respond to the
4 Government.

5 The reason why the Government doesn't wanna play that
6 tape is that he can't find anything in it in which I promote tax
7 evasion. And that's why he doesn't want the tape played.
8 That's why he doesn't want the tape played. That's why they
9 didn't play any excerpts from -- from two seminars that they
10 taped.

11 And what the Government doesn't want me to do is be
12 able to put on a defense to show I don't promote tax evasion.
13 And you're denying me --

14 THE COURT: Quiet down.

15 MR. SCHIFF: I'm sorry.

16 THE COURT: Quiet down.

17 MR. SCHIFF: All right. I'm sorry.

18 Naturally, the Government put on witnesses who
19 testified that they got in trouble even when they didn't read my
20 book. They testified that they didn't read my book. They just
21 filed something. Didn't bother. And I was responsible; right?

22 As a matter of fact, one of the witnesses, Dr. Farooq,
23 I specifically said to him before I even would sign that
24 thing -- when I signed it, I said I believe it's true. I said,
25 "But did you watch the video?" And he said, "Yes." He said he

1 watched the video.

2 I think the video is important to my good-faith
3 defense. And, if you don't allow me to play that video, what
4 you're saying is that we're not gonna allow you to put on a
5 defense. We're not gonna allow any of your witnesses in and
6 we're not going to allow you to put on what you sell in the
7 normal course of your business.

8 Oh, I gotta mention this. And, before the Grand Jury,
9 uh, uh, David -- Sam Holland told the jury that I run an illegal
10 business. That's what he said, I run an illegal business.
11 Well, let's see what's illegal on my three-and-a-half-hour
12 seminar.

13 Yeah. What, you want me to show you where he said
14 that?

15 THE COURT: Well, the fact that you didn't do it on one
16 tape is not relevant, but you did it at other times.

17 MR. SCHIFF: Want me to bring all my tapes in? Can I
18 bring in all my tapes? I got a lot of tapes. I got a lot of
19 tapes.

20 THE COURT: No, you're not going to play them.

21 MR. SCHIFF: I wanna play just one.

22 THE COURT: No. The answer is no.

23 MR. SCHIFF: I can't play any of my tapes?

24 THE COURT: Did you see what I said? No. Listen. No.

25 MR. SCHIFF: In other words, I can't put on a defense.

1 That's what you're telling me. That's what you're telling me.

2 THE COURT: No, that's not what I said.

3 MR. SCHIFF: Well, how could -- let me ask a question.

4 How am I supposed to defend myself to a charge of willful
5 failure to file --

6 THE COURT: I've ruled --

7 MR. SCHIFF: -- and the fact that --

8 THE COURT: -- I've ruled the tape is irrelevant.

9 MR. SCHIFF: Can I ask, what is relevant for my
10 defense? Can I ask you one question? What is relevant --

11 THE COURT: I'm not going to give you legal advice.
12 You figure that out yourself.

13 MR. SCHIFF: I can't figure it out.

14 THE COURT: You don't --

15 MR. SCHIFF: Everybody said run the tape.

16 THE COURT: -- you don't listen. So...

17 MR. SCHIFF: Well, I'm just telling you --

18 THE COURT: All right.

19 MR. IGNALL: Are we ready to --

20 MR. SCHIFF: -- you're telling me --

21 THE COURT: The record reflects it is 20 minutes to
22 12:00. We have not brought the jury in yet this morning.

23 MR. IGNALL: Are we ready for Mr. Border? We have a
24 witness ready?

25 MR. SCHIFF: Yeah, I'll put Mr. Border on.

1 MR. IGNALL: All right.

2 (Sidebar conference concluded and the

3 following is held in open court:)

4 MR. IGNALL: Your Honor --

5 THE COURT: Yes.

6 MR. IGNALL: -- maybe we could just, before the jury

7 comes in, at sidebar with this witness -- the Court may want to

8 address with Mr. Border the same way the Court's addressed some

9 other witnesses.

10 THE COURT: We'll bring the witness in first before

11 we...

12 THE CLERK: Okay.

13 (Pause in the proceedings.)

14 (Calvin Border takes the witness stand.)

15 THE CLERK: Go on up there. Just go ahead and have a

16 seat.

17 THE COURT: All right.

18 Mr. Border, the Court advises you that anything you say

19 in this proceeding can be used against you and you have the

20 right to consult legal counsel if you wish before testifying.

21 And, if you do not wish to testify, you can assert the Fifth

22 Amendment.

23 MR. BORDER: Okay. I'm gonna testify.

24 THE COURT: Okay.

25 All right. Bring in the jury.

1 THE CLERK: Yes, sir.

2 THE COURT: Oh. Also, do not -- if you see counsel
3 standing to object, don't answer until I've ruled on the
4 objection.

5 MR. BORDER: Yes, your Honor.

6 THE COURT: Keep an eye on the attorneys.

7 (Jury enters the courtroom at 11:41 a.m.)

8 THE COURT: Please be seated.

9 Will counsel stipulate to the presence of the jury?

10 MR. IGNALL: Yes, your Honor.

11 MR. CRISTALLI: Yes, your Honor.

12 MR. BOWERS: Yes, your Honor.

13 THE CLERK: Sir, could you please stand and raise your
14 right hand?

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

18 THE WITNESS: I do.

19 THE CLERK: Please be seated.

20 Please state for the record your full name and spell
21 your last name.

22 THE WITNESS: Calvin P. Border. That's B-o-r-d-e-r.

23 THE COURT: Go ahead.

24

25

1 CALVIN BORDER,
2 called as a witness on behalf of Defendant Schiff, having been
3 first duly sworn, was examined and testified as follows:

4

5 THE COURT: Let me remind you before I forget. As
6 you're stepping down, there's a step there that's dangerous.
7 See right out there in front of you?

8 THE WITNESS: I saw it, yes.

9 THE COURT: All right.

10 THE WITNESS: Thank you.

11 THE COURT: Don't forget about that.

12 THE WITNESS: Okay.

13 THE COURT: Go ahead.

14

15 DIRECT EXAMINATION

16 BY MR. SCHIFF:

17 Q. Mr. Border, um, where are you from, Mr. Border?

18 A. I live here.

19 Q. You live here in Las Vegas?

20 A. Las Vegas, yes, sir.

21 Q. And what kind of work do you do?

22 A. I'm a facility engineer at the Rivera Hotel.

23 Q. Can you speak louder, Mr. Border? I'm --

24 A. I'm sorry.

25 I'm a facility engineer at the Rivera Hotel.

1 Q. Rivera Hotel.

2 When did you first hear about me or come in contact
3 with me?

4 A. Uh, the first hearing was in 1995; I heard you on the radio
5 show.

6 Q. 1995?

7 A. Correct.

8 And I -- I disregarded you at that time thinking that
9 you were not credible. Uh, it wasn't till a year later,
10 actually January of '96, that I took you more seriously, uh,
11 by --

12 Q. Hold on.

13 Did you hear me on the radio?

14 A. Yes. I'm sorry. I did hear you on the radio. Once
15 again --

16 Q. Let me ask --

17 A. -- surfing channels.

18 Q. -- you a question.

19 THE COURT: Just answer questions.

20 BY MR. SCHIFF:

21 Q. Cal, just wait until I ask you a question.

22 A. I'm sorry.

23 Q. I'll try to get it out.

24 THE COURT: Mr. Border, the rule is that you don't
25 volunteer information.

1 THE WITNESS: Okay.

2 THE COURT: You respond only to the questions that are
3 requested.

4 THE WITNESS: Okay.

5 BY MR. SCHIFF:

6 Q. Okay. Did you just hear me occasionally or were you, um, a
7 listener that listened every Thursday or Wednesday?

8 A. I became a regular listener after, um, January of 1996.

9 Q. So you heard me at least every week?

10 A. Uh, not every week but usually. I'm a very...

11 Q. Okay. And -- and, when you listened to my talk, did you
12 hear me offer \$5,000 -- did I make any unusual offers?

13 A. Yes, you did.

14 Q. What kind of an offer did I make?

15 A. Uh --

16 MR. IGNALL: Objection, your Honor. This goes beyond
17 the scope of the witness's proffered testimony.

18 THE COURT: Sustained.

19 MR. SCHIFF: Was there an objection to that?

20 THE COURT: There was an objection. It goes beyond the
21 scope of the proffered testimony.

22 MR. SCHIFF: Okay.

23 THE COURT: The objection is sustained.

24 BY MR. SCHIFF:

25 Q. Okay. Now, as a result of listening to my radio show, what

- 1 did you do?
- 2 A. I went down to Denny's Restaurant on Paradise Road where you
3 were having a meeting after the radio show -- this was the first
4 time I heard you in 1996. Excuse me -- and I bought a book and
5 a tape that you were selling there at the location.
- 6 Q. What book did you buy?
- 7 A. The Federal Mafia.
- 8 Q. Federal Mafia.
- 9 And you bought a tape?
- 10 A. Uh, yes. I just recall a tape. I don't know which one it
11 was, but I did buy a tape. That's all I remember.
- 12 Q. Was it a seminar-type tape or...
- 13 A. I think it was sort of an introductory to the book --
- 14 Q. Okay.
- 15 A. -- giving an overview of that.
- 16 Q. So you read my book, The Federal Mafia --
- 17 MR. SCHIFF: Oh, this is an exhibit. Do you want to
18 give Mr....
- 19 BY MR. SCHIFF:
- 20 Q. So you read this book; is that correct?
- 21 A. That's correct. Yes, sir.
- 22 Q. When you read this book, Cal, did it change your attitude
23 towards whether or not you had had to pay income taxes or not?
- 24 A. Yes, it did.
- 25 Q. In what respect did it do that?

1 A. Well, I was under the impression before that everyone had to
2 pay income tax -- or I should say there was a legal obligation
3 to pay an income tax. And, from reading your book, that
4 changed.

5 Q. How -- how did the book specifically change that belief that
6 you had?

7 A. Well, you pointed out there -- there was actually no
8 liability for the income tax. That was one thing. You did
9 point out a court case that said that, uh -- where the Supreme
10 Court had ruled it was voluntary --

11 Q. Well --

12 A. -- based on voluntary -- excuse me.

13 Q. Was there anything in Chapter 1 that might have helped you
14 form that belief?

15 MR. IGNALL: Objection. Relevance and also --

16 BY MR. SCHIFF:

17 Q. Could you --

18 MR. IGNALL: -- beyond the scope of the proffer.

19 BY MR. SCHIFF:

20 Q. -- can you open up the book to Chapter 1?

21 THE COURT: Sustained.

22 MR. SCHIFF: He hasn't looked at it in a long time.

23 THE COURT: Sustained.

24 THE WITNESS: Okay. Should I --

25 THE COURT: The objection is sustained.

1 MR. SCHIFF: Pardon me?

2 THE COURT: The objection is sustained.

3 MR. SCHIFF: You're sustaining the objection?

4 THE COURT: Yes.

5 MR. SCHIFF: Okay. I sent for my hearing aids, your
6 Honor. So I didn't hear that.

7 BY MR. SCHIFF:

8 Q. Uh, so there was material in the book.

9 A. Yes.

10 Q. All right. So what did you do based upon the change of your
11 state of mind with respect to the federal income tax? What did
12 you do?

13 A. Well, I -- I investigated further by going to other sources.
14 Uh, one thing I did do is went -- went to the library.

15 Q. What library did you go to?

16 A. Public library. And also the law library here downtown as
17 well to reiterate -- or, I should say, maybe to verify what you
18 have said in the book.

19 Q. So you tried to verify the material in the book?

20 A. Correct.

21 Q. And, when you attempted to verify the material in the book
22 by going to a law library, what did you discover?

23 A. I discovered that what --

24 MR. IGNALL: Objection to --

25 THE WITNESS: -- you said was --

1 MR. IGNALL: -- the witness's --

2 THE WITNESS: -- very credible.

3 MR. IGNALL: -- discovery. The witness may be

4 mischaracterizing the law by his discovery.

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. Um, did you read -- did you discover that I cited a number

8 of --

9 THE COURT: I sustained the objection.

10 MR. SCHIFF: Pardon?

11 BY MR. SCHIFF:

12 Q. Well, I was gonna say: --

13 THE COURT: Move on to --

14 BY MR. SCHIFF:

15 Q. -- did you --

16 THE COURT: No, no.

17 BY MR. SCHIFF:

18 Q. -- court decisions?

19 THE COURT: The Court has already ruled on --

20 MR. SCHIFF: Can I ask him that?

21 THE COURT: No.

22 MR. SCHIFF: Okay. Okay.

23 THE COURT: What you may ask him --

24 BY MR. SCHIFF:

25 Q. Now --

1 THE COURT: -- is what you brought forth in your
2 proffer.

3 MR. SCHIFF: Okay. Can I get this --

4 THE COURT: Look at your proffer.

5 MR. SCHIFF: -- can I bring this over here?

6 THE COURT: Get the proffer.

7 (Pause in the proceedings.)

8 BY MR. SCHIFF:

9 Q. All right. Calvin, I'm going to ask you to speak up. Okay.

10 A. Sure.

11 Q. Um, so what happened -- what's the next thing that you did
12 after you absorbed all this information?

13 A. The next thing I did was to file, um, amended returns for
14 1992, '93, '94, and also a regular zero return, as you know, for
15 1995. All at once in April of 1996.

16 Q. And what year was that?

17 A. 1996.

18 Q. So you filed a zero return?

19 A. That's correct.

20 Q. And you amended prior returns?

21 A. That's correct.

22 Q. And what happened as a result of doing that?

23 A. Uh, the IRS, uh, did nothing for approximately a year. Uh,
24 they finally sent me a notice of -- a frivolous notice in 1997,
25 uh, saying that those -- those returns were not acceptable to

1 them based on their desires. Uh, I answered those, uh, letters
2 according to the way that you advised me to do that. And that
3 was the next thing that happened, yes.

4 Q. Well, then what happened?

5 A. Uh, this went back and forth, I guess, during 1997,
6 remainder of that year. An agent had actually assessed
7 penalties -- and, I should say, a frivolous penalty and also an
8 interest and accuracy penalty on me for the year 1995. And I
9 consulted with the Code and also you as to whether or not all of
10 those penalties were, uh, proper and discovered that, uh, the
11 interest --

12 Q. Did we discuss -- did you discuss with me whether those
13 penalties were proper?

14 A. Yes. I recall doing that, yes.

15 Q. So, after discussing with me whether those penalties were
16 proper, what happened?

17 A. I called the agent who drafted up the, uh, assessment and
18 questioned her authority to make those penalties saying that I
19 didn't think that they were proper. And she said she would
20 check with the lawyers of the IRS to -- to verify either way
21 which was correct.

22 Q. Well, what -- what happened to the penalties?

23 A. Uh, the agent called me back approximately three or four
24 weeks later and said: "Cal, you're right. You don't owe the
25 accuracy penalty. I'm gonna drop that." And she redrafted the

1 paper and issued a new assessment for 1995.

2 Q. But what happened with respect to your claim for refund?

3 A. Uh, nothing actually occurred until the following year,
4 1998. I actually received a refund check for all four years, in
5 August of that year, 1998.

6 Q. How much was the refund?

7 A. Refund check was for \$41,000 and some change, uh, which
8 included interest on the four years that were involved.

9 Q. Is that why they call you "41K Cal"?

10 A. Yes.

11 Q. Okay. Now, has the IRS made any attempt since then to get
12 back that 41,000?

13 A. No, they have not.

14 Q. Uh, made no attempt. Now --

15 A. None whatsoever.

16 Q. -- now, did you ever make an attempt to stop the withholding
17 of taxes from your pay?

18 A. Yes, I did. Uh, actually in 1997, I reduced the amount of
19 money that was coming out of my pay, uh, to -- by submitting a
20 W-4 for nine allowances which was the -- the next best thing to
21 going exempt, which I knew I was qualified to do but was afraid
22 to do so.

23 Q. So you didn't claim exempt?

24 A. Not immediately, no. I didn't do that till 20 00. Mid
25 2000, I did claim exempt and it was honored by my employer.

- 1 Q. Oh, so you did claim exempt?
- 2 A. Yes. It was sometime later after I got the refund.
- 3 Q. So, when you claimed exempt, what happened? What happened?
- 4 A. They stopped taking money out of my paycheck.
- 5 Q. They stopped paying [sic] money out of your paycheck.
- 6 A. Stopped removing money, yes, for the IRS.
- 7 Q. What made you believe you could claim exempt and stop the
- 8 withholding of taxes from your pay?
- 9 A. Well, the form itself and also the Code says -- I guess it's
- 10 52 -- or 3402 says if you are exempt -- or if you're not liable
- 11 for any tax for the previous year and the year involved, you
- 12 could claim exempt.
- 13 Q. And so you made a determination that you were not liable for
- 14 the tax?
- 15 A. That's correct.
- 16 Q. How did you arrive at that determination?
- 17 MR. IGNALL: Objection, your Honor. This goes beyond
- 18 just relying on Mr. Schiff.
- 19 MR. SCHIFF: Well --
- 20 MR. IGNALL: So it's not relevant.
- 21 THE COURT: Sustained.
- 22 MR. SCHIFF: Sustained?
- 23 THE COURT: Sustained.
- 24 BY MR. SCHIFF:
- 25 Q. Um, now, have you spent a lot of time in my office?

1 A. Not a lot of time. Some time.

2 Q. Okay. But you conferred with me from time to time?

3 A. Yes, I did.

4 Q. Have I given you any reason to believe that I don't hold the
5 beliefs I hold truthfully and with sincerity?

6 A. No reason whatsoever.

7 Q. From time to time, you speak to people in my office?

8 A. That's correct, yes.

9 Q. Have you ever met anybody in my office who you believed --
10 who gave you any reason to believe that they didn't believe what
11 they were doing was perfectly legal?

12 A. I never did.

13 MR. IGNALL: Objection. Calls for speculation as to
14 what --

15 THE COURT: Sustained.

16 MR. IGNALL: -- he believed someone else believed that
17 Mr. Schiff believed, I think. Was that --

18 THE COURT: Sustained.

19 MR. SCHIFF: All right.

20 BY MR. SCHIFF:

21 Q. Did anybody in my office ever give you any reason to believe
22 that they didn't believe that what they were doing was legal?

23 A. No, they did not.

24 Q. How many books of mine did you read? Did you just stop with
25 The Federal Mafia?

1 A. No. I bought The Great Income Tax Hoax; uh, some other --
2 another book on economy. I forgot what the name of it was.

3 Q. How An Economy Grows.

4 A. How An Economy Grows and how it doesn't -- uh, How Anyone
5 Could Stop Paying Income Tax.

6 Q. Yeah.

7 A. And, I guess, one other one. I forgot what it was. But,
8 yes, I did read those books.

9 Q. Have you ever read one line or one phrase in any of my books
10 that did not appear truthful or reasonable to you?

11 MR. IGNALL: Objection. Calls for speculation.

12 THE COURT: Sustained.

13 MR. SCHIFF: Well, I'm -- well, your Honor, this is
14 a -- this is a -- I'm asking him something directly related to
15 how a certain book hits him.

16 MR. IGNALL: Objection.

17 THE COURT: Sustained.

18 MR. SCHIFF: What was that?

19 THE COURT: Sustained.

20 MR. SCHIFF: That was sustained.

21 All right. No further questions.

22 THE COURT: Cristalli?

23 MR. CRISTALLI: I have no questions of this witness,
24 your Honor.

25 THE COURT: Mr. Bowers?

1 MR. BOWERS: Nothing.

2 THE COURT: Government?

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

4 THE COURT: You may.

5 MR. IGNALL: May I have these marked, whatever the next
6 two Government exhibits are?

7 THE CLERK: Okay.

8 (Pause in the proceedings.)

9 (Government's Exhibit No. 335 and 336, marked
10 for identification.)

11 THE COURT: Let me see what they are first in case they
12 have an objection.

13 (Exhibits handed to the Court.)

14

15 CROSS-EXAMINATION

16 BY MR. IGNALL:

17 Q. All right. Mr. Border, is it Border or Borders?

18 A. It's just -- without the "S" --

19 Q. Singular.

20 A. -- yes.

21 Q. Okay.

22 A. Yes.

23 Q. Were you getting paid for working -- were you working at the
24 Rivera during the years that you filed these zero returns?

25 A. That's correct.

1 Q. Were you getting paid?

2 A. Yes, I was getting paid.

3 Q. Did you tell Mr. Schiff you were getting paid?

4 A. Yes.

5 Q. All right. Have you filed zero returns since you got this
6 refund?

7 A. I filed a zero return through the year of 2000, starting
8 with 1992, uh, through the year 2000.

9 Q. What happened with those returns?

10 A. Well, for the first four years, I got a refund check, as I
11 explained to Mr. Schiff.

12 Q. What about for the years '96, '97, '98, '99, 2000?

13 A. Okay. Nothing had changed with my situation. But the IRS
14 proceeded to, uh, attempt to levy me for the year 1996 through
15 2000, yes.

16 Q. Did you tell Mr. Schiff that?

17 A. Yes. He was aware of it.

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

19 THE COURT: You may.

20 THE CLERK: Sir, I've provided those to him --

21 MR. IGNALL: Okay.

22 THE CLERK: -- number 335 and 336.

23 MR. IGNALL: Which one is which?

24 BY MR. IGNALL:

25 Q. Well, if I could ask you to look at Exhibit 335 and I'll ask

1 you if you recognize that and...

2 A. Yes, I do.

3 Q. What is Exhibit 335?

4 A. It's a Notice of Federal Tax Lien that was issued to me on
5 December 29th, I believe, of 2000.

6 Q. Did you ever discuss this tax lien with Mr. Schiff?

7 A. Yes, I did.

8 MR. IGNALL: At this point, the Government moves into
9 evidence Exhibit 335.

10 THE COURT: Any objection, Mr. Cristalli?

11 MR. CRISTALLI: No objection.

12 THE COURT: Bowers?

13 MR. BOWERS: No.

14 THE COURT: Schiff?

15 MR. SCHIFF: He's putting this document in? No
16 objection.

17 THE COURT: 335 is received.

18 (Government's Exhibit No. 335, received into
19 evidence.)

20 BY MR. IGNALL:

21 Q. And what tax period is this tax lien for?

22 A. Uh, it shows a number of years here. It's got 1996, uh, '7,
23 '8. Those three years, I believe, on here.

24 Q. Are those --

25 A. Yes.

1 Q. -- years for which you filed a zero return?

2 A. That's correct.

3 Q. What's the date of the federal tax lien?

4 A. The sale date was --

5 MR. SCHIFF: Objection. Objection. It's not a tax
6 lien. It's a Notice of Federal Tax Lien. There's a difference.
7 So, if you're gonna refer to it, refer to it as a Notice of
8 Federal Tax Lien, not a tax lien.

9 Can you put it -- were you gonna put it up so they can
10 see it?

11 THE COURT: Let me see it.

12 (Exhibit handed to the Court.)

13 THE COURT: Government's response to the objection?

14 MR. IGNALL: We're happy to call it "notice" although
15 the distinction may be something we want the Court to address
16 with the jury. But I don't think it's even a relevant
17 distinction, but...

18 THE COURT: It's not a relevant distinction, but --

19 BY MR. IGNALL:

20 Q. But what's the date of this Notice of Federal Tax Lien,
21 Mr. Border?

22 A. Uh, the date on here is the 25th of December of 2000.

23 Q. Is that around the time you got this tax lien?

24 MR. SCHIFF: Objection.

25

1 BY MR. IGNALL:

2 Q. This Notice --

3 MR. SCHIFF: Objection.

4 BY MR. IGNALL:

5 Q. -- excuse me -- this Notice of Federal Tax Lien?

6 THE COURT: Mr. Schiff, the distinction is not -- is

7 not even relevant. It's the same -- it's one and the same.

8 Go ahead.

9 THE WITNESS: Could you repeat the question? I forgot

10 what you said.

11 BY MR. IGNALL:

12 Q. Did -- did you get this, uh, Notice of Federal Tax Lien

13 around Christmastime of 2000?

14 A. It was, uh, a few days later. I think it was around the,

15 um -- maybe the first of the year. But it was not exactly on

16 that date, of course. I had called -- oh, sorry.

17 Q. Hold on.

18 A. Sorry about that.

19 Q. When -- when did you provide this to Mr. Schiff?

20 A. When did I show it to him?

21 Q. Yes.

22 A. Uh, it must have been shortly thereafter. I don't remember

23 the exact day.

24 Q. Okay. Did you show it to anyone else at Freedom Books?

25 A. I think I did, yes, because it looked kinda ridiculous.

1 Q. And who else did you show it to at Freedom Books?

2 A. I do not recall that.

3 Q. All right. If you could look at Exhibit 336.

4 A. Yes.

5 Q. Do you recognize Exhibit 336?

6 A. It's got my name on it. As far as recalling getting it, um,

7 I do not. But it -- it's probably -- probably true.

8 Q. Did you file a zero return for the year 2000?

9 A. I did, yes.

10 Q. Did you get a letter from the IRS saying that that return

11 was frivolous and had no basis in law?

12 A. I know it was a standard letter they sent out for even the

13 years that I received refunds for.

14 Q. Did you -- for the year 2000 --

15 A. That's correct, I did.

16 Q. -- did you get a letter?

17 A. Yes.

18 Q. Did you discuss that letter with Mr. Schiff?

19 A. Uh, it was redundant, so I did not do that I don't think.

20 It's possible, but I don't recall doing that.

21 Q. All right. So it's safe to say the IRS believes you owe

22 them for the money for the years you filed zero returns; is that

23 correct?

24 A. Well, I don't think -- to say safe. Since I got a refund

25 for four years and I did not -- or they came after me for these

1 other four years --

2 Q. For the years --

3 A. -- the situation didn't change. So I can't say that. No.

4 Q. Does the IRS claim that you owe them money for the years

5 1996 forward?

6 A. Yes, they do.

7 Q. Do you disagree with that?

8 A. Well, I thought that they disagree with themselves by the

9 fact that they gave me the refund for four years and then the

10 situation didn't change and then they came back after me for

11 these other years.

12 Q. But you told Mr. Schiff that the IRS had come back after you

13 for those other years; correct?

14 A. He was aware of it, yes.

15 Q. And you don't agree with the IRS that you owe the money for

16 those other years?

17 A. Well, now we're getting into a law matter, and I don't think

18 we're supposed to talk about that. Right?

19 Q. May we --

20 A. Am I correct on that?

21 Q. No. Sorry.

22 THE COURT: No, you don't ask questions, sir --

23 THE WITNESS: Okay.

24 THE COURT: -- or make statements.

25 THE WITNESS: I'm sorry --

1 BY MR. IGNALL:

2 Q. Have you ever --

3 THE WITNESS: -- about that.

4 THE COURT: Wait for the question.

5 BY MR. IGNALL:

6 Q. Have you ever challenged the IRS in court for trying to
7 assess these taxes and collect the money?

8 A. Well, I had a collection due process hearing -- I think it
9 was in October of 2002 -- and I got an adverse determination on
10 that. And I went to do a, uh, District Court challenge of that
11 determination. And Mr. Schiff was in court the following March,
12 the day the Iraq war started. And, because he was in court, it
13 looked like it was not a good idea for me to proceed with
14 that --

15 Q. So you never --

16 A. -- challenge. So I dropped the challenge. I actually
17 dismissed it.

18 Q. So you've never challenged the IRS in Court; is that
19 correct?

20 A. That's correct.

21 Q. All right. Thank you.

22 MR. IGNALL: May we show the witness Exhibit 225,
23 please?

24 (Pause in the proceedings.)

25

1 BY MR. IGNALL:

2 Q. All right. Uh, Mr. Border, do you call into Mr. Schiff's --

3 have you ever called into Mr. Schiff's radio show?

4 A. Yes, I have.

5 Q. When you called in, have you talked about getting this

6 \$41,000 refund?

7 A. That's correct, yes.

8 Q. Have you ever talked about, uh, the Notice of Lien that I

9 showed you as Exhibit 335?

10 A. I don't recall doing that specifically, no.

11 Q. Did you ever talk about any other action the IRS has taken

12 against you for these 1996 through 2000 returns?

13 A. I'm not sure I recall that either. It's possible, yes.

14 I'm -- I'm not sure, though. I couldn't say -- testify to that.

15 Q. How -- how often do you -- were you -- did you call

16 Mr. Schiff's radio show?

17 A. Uh, it was not on a regular basis. In fact, there was a

18 couple years there after I got the refund that I was -- they --

19 they kinda -- I kinda disappeared. Um, so I came back to it and

20 started calling into the show, uh, not on a regular basis but

21 periodically. I can't even say how often it was for sure.

22 Q. If I can turn your attention to what we've marked as

23 Exhibit 225.

24 A. Yes.

25 Q. Have you ever seen this document before?

1 MR. CRISTALLI: Your Honor, I don't have it, your
2 Honor. I don't have that.

3 THE COURT: You don't have it yet?

4 MR. CRISTALLI: I don't know what he's referring to.

5 MR. IGNALL: It's the CRS Report.

6 THE COURT: Hold on a minute.

7 THE CLERK: It's admitted.

8 MR. CRISTALLI: I'm gonna object, your Honor. I don't
9 know how this is relevant to this particular witness. It's also
10 beyond the scope of direct -- direct examination.

11 MR. BOWERS: I'd join in --

12 MR. SCHIFF: What is the document?

13 MR. BOWERS: -- the objection, your Honor.

14 THE COURT: It's the CRS Report. And how -- how was
15 it -- how was it gone into on direct?

16 MR. IGNALL: Well, I need another foundational question
17 or two to find out whether there was any discussions with
18 Mr. Schiff or anyone else at Freedom Books.

19 THE COURT: Okay.

20 MR. IGNALL: That's the relevance. And if he says --
21 you know.

22 THE COURT: Overruled pending --

23 BY MR. IGNALL:

24 Q. Have you ever seen --

25 THE COURT: -- connection.

1 BY MR. IGNALL:

2 Q. -- Exhibit 225 before?

3 A. Yes, I have.

4 Q. When did you first see it?

5 A. Actually, I had requested a copy of this from John Ensign's

6 office.

7 Q. Do you remember when that was?

8 A. I don't recall the exact time. No, I don't.

9 Q. Did you ever discuss this, uh, report with anyone at Freedom

10 Books?

11 A. I believe I did, yes.

12 Q. With whom?

13 A. I'm not sure who now. I can't remember. I'm sorry. I

14 don't.

15 Q. Did you discuss it with Mr. Schiff?

16 MR. CRISTALLI: Objection.

17 THE WITNESS: Yes --

18 MR. CRISTALLI: Asked and answered.

19 THE WITNESS: -- I did.

20 BY MR. IGNALL:

21 Q. Did you discuss it with Ms. Neun?

22 MR. CRISTALLI: Objection. Asked --

23 THE COURT: Different question.

24 MR. CRISTALLI: -- and answered.

25 THE COURT: Different question, from the general to the

1 specific. Overruled.

2 Go ahead. Your answer?

3 THE WITNESS: I don't recall discussing it with anybody
4 else except Irwin.

5 BY MR. IGNALL:

6 Q. All right. So --

7 A. It's possible. But, again, I don't -- I don't recall who,
8 if any...

9 Q. What's the status of the IRS's attempts to collect the money
10 that they say you owe right now?

11 A. The status? You mean in person what -- what --

12 Q. With you.

13 A. -- what I'm doing right now?

14 Q. Yes.

15 A. Right now I'm current with the IRS because I'm under
16 bankruptcy as a result of a -- do you want me to go any further?

17 Q. No. That's enough.

18 A. Okay.

19 Q. Did you discuss the bankruptcy with Mr. Schiff?

20 A. Yes, I have.

21 Q. All right.

22 MR. IGNALL: No further questions.

23

24

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REDIRECT EXAMINATION

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BY MR. SCHIFF:

Q. Cal, you want to take a look at that Notice of Lien, Federal Tax Lien.

A. Yes.

Q. Is it signed at all?

MR. IGNALL: Objection. Relevance.

MR. SCHIFF: The relevance is he's making a big deal out of a Notice of Lien that's not signed. What is the legality of this document which is not even signed?

MR. IGNALL: Objection, your Honor. We'd --

THE COURT: Sustained.

MR. IGNALL: -- request an instruction to the jury about the validity. This is not relevant. But now that Mr. Schiff has stated the law and the jury is entitled to know what the law is.

MR. SCHIFF: All right. All right.

THE COURT: Sustained.

MR. SCHIFF: All right.

BY MR. SCHIFF:

Q. Is this certified? Is this Notice of Federal Tax Lien -- do you -- do you -- all right. Is it certified?

A. My knowledge of what the Internal Revenue Code --

THE COURT: Just --

THE WITNESS: -- in 6061 --

1 THE COURT: Sir. Sir, you'll answer the questions.
2 You will not volunteer statements of your belief as to the law.
3 The question was is it certified.

4 THE WITNESS: No, it's not -- it's not certified. No.

5 BY MR. SCHIFF:

6 Q. Okay. Did anybody sign it?

7 A. It's not signed.

8 Q. Is the description of the -- it says for Jay Pruitt; is that
9 right?

10 A. That's correct.

11 MR. IGNALL: Objection, your Honor. This is not
12 relevant and --

13 BY MR. SCHIFF:

14 Q. Well, who --

15 MR. SCHIFF: It is relevant to --

16 MR. IGNALL: -- it's misstating the law.

17 MR. SCHIFF: -- the legitimacy -- the Government put
18 into this [sic] document. And, because I wanna prove the
19 document is a fraud --

20 THE COURT: Let me see the document.

21 (Document handed to the Court.)

22 MR. CRISTALLI: And, your Honor, just so that we're
23 clear, I'm not quite sure how a document introduced by the
24 Government how they could argue that it's not relevant at
25 this --

1 THE COURT: Well, it's --

2 MR. CRISTALLI: -- particular time.

3 THE COURT: -- whether it's signed, whether it is

4 certified -- those are the objections, not that the --

5 MR. SCHIFF: Well --

6 THE COURT: -- document itself is irrelevant.

7 MR. IGNALL: And, your Honor --

8 MR. SCHIFF: Well --

9 MR. IGNALL: -- if I may address it briefly --

10 MR. SCHIFF: -- your Honor, the laws of the state of --

11 THE COURT: Hold on.

12 MR. IGNALL: Your Honor, if I may address this briefly.

13 Mr. Schiff's misconception about what the authority of

14 IRS is, is not relevant and the case law is clear on that. The

15 only relevance to this document is notice to Mr. Schiff that his

16 program is not working and that Mr. Borders has gotten this

17 Notice of Federal Tax Lien from the IRS.

18 MR. SCHIFF: No. The relevance of the doc- -- I'm

19 sorry. Go ahead -- the relevance of the document, your Honor,

20 is to substantiate my understanding that the IRS is trying to

21 pull the wool over the eyes of people who get this. They assume

22 that the, uh, Recorder will confuse a notice of a lien with an

23 actual lien. If the IRS gets a court order and if anybody --

24 they put a lien; they don't call it a notice of lien.

25 MR. IGNALL: Objection, your Honor. That's testimony

1 here now.

2 THE COURT: Sustained.

3 MR. SCHIFF: Well, he's what -- all right. I'll ask --

4 THE COURT: Sustained.

5 MR. SCHIFF: All right.

6 BY MR. SCHIFF:

7 Q. Now, Calvin, in connection with this document, does the

8 document indicate the -- the title or the position of

9 Mr. Pruitt? Does it say who he is?

10 THE COURT: I've --

11 MR. IGNALL: Same objection, your Honor.

12 THE COURT: -- sustained the objection.

13 MR. SCHIFF: Pardon?

14 THE COURT: I've sustained the objection.

15 MR. SCHIFF: Well, suppose he's a custodian or

16 somebody?

17 THE COURT: It doesn't matter. It's --

18 MR. SCHIFF: All right. It doesn't matter --

19 THE COURT: -- notice to you.

20 MR. SCHIFF: -- who he is.

21 BY MR. SCHIFF:

22 Q. Uh, Mr. -- Mr. Border, are you familiar with, um, the IRS's

23 policy of issuing pocket commissions?

24 MR. IGNALL: Objection, your Honor. Same objection.

25 THE COURT: Sustained.

1 BY MR. SCHIFF:

2 Q. In other words, we have no proof that this document has any
3 legality whatsoever; is that correct?

4 MR. IGNALL: Objection, your Honor. And we're gonna
5 make a request outside the presence of the jury. Thank you.

6 THE COURT: Sustained.

7 MR. SCHIFF: Well, your Honor, he's saying that this
8 is -- this is -- this is a document of some kind. He first
9 tried to misrepresent it by calling it a lien when it's not a
10 lien. Now he wants to object to the fact --

11 THE COURT: I've already ruled on that, Mr. Schiff.
12 Sustained.

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. Mr. Border, the -- the Government's attorney reminded you
16 that you received wages. Based on your understanding of the
17 law, do you consider wages taxable?

18 A. No, I don't.

19 Q. No, you don't.

20 What do you consider as taxable under the law?

21 MR. IGNALL: Objection to the what the witness
22 considers taxable.

23 THE COURT: Sustained. Irrelevant.

24 MR. SCHIFF: Well, if he doesn't consider wages
25 taxable, he ought to have a reason for it. He's --

1 THE COURT: Sustained.

2 MR. SCHIFF: -- just not throwing darts --

3 THE COURT: I sustained --

4 MR. SCHIFF: -- against the wall. What?

5 THE COURT: Sustained.

6 MR. SCHIFF: Okay.

7 BY MR. SCHIFF:

8 Q. Um, now, the Government pointed out that you got a frivolous
9 letter; is that correct?

10 A. That's correct.

11 Q. I don't have a copy of a return that you filed. But, um,
12 approximately how many legal references did you put on the
13 return to justify your claim that you had zero income and you
14 were entitled to a refund? Approximately how many references
15 did you --

16 A. If I recall --

17 Q. -- did you put in that return?

18 A. -- it was something like 13 or 14 court cases backing up my
19 claim.

20 Q. How about Code sections?

21 A. I don't recall how many of those were on there.

22 Q. Just because the IRS called it frivolous, did you consider
23 it frivolous?

24 A. No, I did not.

25 Q. If the IRS said you were King of Romania, would -- would you

1 believe you're the King of Romania?

2 MR. IGNALL: Objection. Argumentative.

3 THE COURT: Sustained.

4 MR. SCHIFF: All right.

5 BY MR. SCHIFF:

6 Q. Um, incidentally, when they wrote back to you, did they cite
7 any claim you put on your zero return and tell you why your
8 claim, specific claim, was incorrect?

9 A. All of the citations by the IRS were general in nature and
10 not -- not specific.

11 Q. It wasn't even responsive? Would that be a correct?

12 A. There were no court cases specifically mentioned, no.

13 Q. Now, based upon your own research, your own research, not
14 based upon what I told you, you have concluded somewhere along
15 the line that you're not required to pay income tax; is that
16 correct?

17 A. The government requires it, but the law -- the actual law as
18 I perceive it does not.

19 Q. And, therefore, we can assume that the IRS is collecting
20 income taxes illegally, is that correct --

21 MR. IGNALL: Objection, your Honor.

22 BY MR. SCHIFF:

23 Q. -- based upon your understanding of the law?

24 MR. IGNALL: Mischaracterization of the law and --

25 THE COURT: Sustained.

1 MR. IGNALL: -- this witness's view of the law is not
2 relevant.

3 THE COURT: Sustained.

4 MR. SCHIFF: Well, the Government --

5 THE COURT: Mr. Schiff, sustained.

6 MR. SCHIFF: Okay. Okay.

7 BY MR. SCHIFF:

8 Q. Were you aware that the laws of the State of Nevada require
9 all tax liens to be certified? Were you aware of that?

10 MR. IGNALL: Objection. Relevance.

11 THE COURT: What is the relevance?

12 MR. SCHIFF: Well, I'm asking if he's -- if he's aware
13 of it.

14 THE COURT: No. What is the relevance?

15 MR. SCHIFF: Well, it would be relevant to whether this
16 document has any legitimacy at all.

17 THE COURT: The issue is notice. Sustained. The
18 objection is sustained.

19 MR. SCHIFF: No further questions.

20 THE COURT: Cristalli?

21 MR. CRISTALLI: No questions, your Honor.

22 THE COURT: Bowers?

23 MR. BOWERS: I have nothing, your Honor.

24 THE COURT: Government?

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

1 THE COURT: Witness is excused. Again, watch your
2 step, sir.

3 THE WITNESS: What about the documents?

4 THE COURT: Leave them there. Just leave them there.
5 The clerk will pick them up.

6 Okay. We're going to take a break until 1:30 for
7 lunch.

8 The Court instructs the jury to not discuss the
9 testimony of the witnesses, to discuss any matter regarding the
10 trial among themselves. The Court further instructs the jury to
11 disregard any placards and signs that might be carried as you
12 come to and from the courthouse and to report any attempt at
13 communication with you to the Court if -- if it occurs. You
14 will not form any conclusions until the case is submitted to you
15 for deliberation.

16 Thank you. We're in recess.

17 (Jury leaves the courtroom at 12:14 p.m.)

18 THE COURT: We're in recess.

19 MR. IGNALL: All right. Thank you, your Honor.

20 And, your Honor, just for the record -- sorry -- just
21 to tell everyone on the record here, I believe we're gonna ask
22 for a curative instruction about the authority of the IRS and
23 we'll work on that over lunchtime.

24 MR. BOWERS: Oh, was this until 1:30?

25 (Lunch break, 12:15 p.m. to 1:34 p.m.)

1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 Matters of business.

4 MR. IGNALL: Your Honor, we had one thing.

5 I think at the sidebar we mentioned Mr. Schiff had
6 proffered some witnesses to testify about his character for
7 truthfulness. We did a little more research, and we think we'd
8 have to concede that probably is admissible under Rule 404(a).
9 But I think it does open the door to the Government in rebuttal
10 potentially providing evidence of Mr. Schiff's character for
11 untruthfulness. So -- and I think these witnesses certainly
12 need to be limited simply to how long have you known Mr. Schiff,
13 in what context, and what is your opinion for his character for
14 truthfulness. And that -- well, on that limited basis, I think
15 that evidence is admissible, although, like I said, under Rule
16 404(a) that does open the door to the Government potentially
17 bringing in, uh, evidence to counter that under 404(a) as well.

18 THE COURT: Well, is it admissible as character in the
19 community in general rather than specific instances?

20 MR. IGNALL: I -- I don't know how Mr. Schiff is
21 intending to use it. That was my understanding. But -- but
22 that it was he has -- his character for truthfulness. I don't
23 know. I'm doing the best I can to assume what Mr. Schiff is
24 going to get into.

25 THE COURT: Okay.

1 Mr. Schiff --

2 MR. SCHIFF: Yes.

3 THE COURT: -- your proffer with --

4 MR. SCHIFF: Pardon me?

5 THE COURT: Your proffer regarding evidence of your
6 character. Is it -- as I understood your offer at sidebar, it
7 was an offer of character for truthfulness in the community. Is
8 that -- is that right, rather than specific instances?

9 MR. SCHIFF: I just didn't hear exactly what you said.

10 THE COURT: Do you have your hearing aid in --

11 MR. SCHIFF: Yes.

12 THE COURT: -- in now? Okay.

13 The offer that you made regarding character testimony,
14 what was it?

15 MR. SCHIFF: What was it, is what you said?

16 THE COURT: Yes. What type of testimony.

17 MR. SCHIFF: Well, I wanted Mr. Schulz to just, um --
18 regarding...

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

21 MR. SCHIFF: He was just gonna testify regarding his
22 knowledge of whether I have a reputation for truthful and
23 honesty within the community.

24 THE COURT: In the community. Okay. So that one --
25 that'll be allowed. That was --

1 MR. SCHIFF: Well, you better get him. I think he left
2 already.

3 THE COURT: No. The Court --

4 MR. SCHIFF: And the other one --

5 THE COURT: -- Court reserved ruling on that. The
6 Government was --

7 MR. SCHIFF: Pardon me?

8 THE COURT: -- the Government was going to look at it
9 over the break and they did. And the Court reserved ruling
10 on --

11 MR. SCHIFF: Can somebody --

12 THE COURT: -- on the issue of character --

13 MR. SCHIFF: -- somebody get him?

14 THE COURT: -- character testimony of your witnesses.

15 MR. SCHIFF: And -- oh, I wanted Jan Lindsey for the
16 same thing, for -- Jan Lindsey and Bob Schulz and I also wanted
17 Noel Spaid to -- to give character, uh, testimony.

18 THE COURT: Restricted to those items.

19 MR. SCHIFF: Pardon me?

20 THE COURT: Restricted to that, uh, the testimony will
21 be permitted.

22 MR. SCHIFF: From Noel Spaid too?

23 THE COURT: From Noel Spaid and from the other --

24 MR. SCHIFF: Well --

25 THE COURT: -- witness.

1 MR. SCHIFF: -- we'll try to get them in, if I can
2 reach them.

3 THE COURT: The other witness being Robert Schulz.
4 Okay. Next witness.

5 MR. SCHIFF: Uh, I'm gonna call -- Sam Holland will be
6 my next witness. He'll be an adverse witness.

7 MR. IGNALL: We'd like a proffer on Agent Holland
8 obviously.

9 MR. SCHIFF: I'm gonna cross-examine Holland -- I'm
10 gonna cross-examine Holland. Holland is likely responsible --
11 uh, he screened witnesses; he testified numerous times in front
12 of the Grand Jury. So I want to have him as my -- an average
13 witness. So he can take the stand and get sworn in.

14 THE COURT: We'll just do it on a --

15 MR. SCHIFF: Pardon me?

16 THE COURT: -- question-by-question basis.

17 MR. SCHIFF: Pardon me?

18 THE COURT: We'll do it on a question-by-question
19 basis.

20 MR. IGNALL: All right.

21 MR. SCHIFF: I don't understand.

22 Well, first of all, he characterized my -- my business
23 as a -- before the Grand Jury he said it was a criminal
24 operation.

25 MR. IGNALL: Your Honor, there's no testimony about

1 that from --

2 MR. SCHIFF: I don't --

3 MR. IGNALL: -- Agent Holland in the case in chief.
4 I'm not sure what he testified in the Grand Jury is relevant.
5 It's not an inconsistent statement. I mean, I still haven't
6 heard anything that he's proffering from Mr. -- or Agent Holland
7 to testify about that's relevant. But we're happy to do it on a
8 case-by-case or question-by --

9 THE COURT: We're gonna have to do it --

10 MR. IGNALL: -- -question basis.

11 THE COURT: -- on a question-by-question basis.

12 (Pause in the proceedings.)

13 THE COURT: Are you calling him or not?

14 MR. SCHIFF: Yes, I'm calling him. I had some
15 questions here written up.

16 THE CLERK: I'll go line the jury up.

17 MR. BOWERS: Your Honor, before we grab the jury, would
18 it be the Court's position that if either of us have questions
19 of Agent Holland that if we didn't ask them now that we would
20 waive that right somehow?

21 THE COURT: No.

22 MR. BOWERS: Okay. I just -- I wouldn't think so. I
23 just wanted to make sure. Thank you.

24 MR. IGNALL: But, your Honor, I'd just like to -- I'm
25 sorry.

1 THE COURT: What were you going --

2 MR. IGNALL: Just like some -- I'd like some
3 clarification that if the point of this testimony is to show
4 that Agent Holland has done sort of a bad investigation I don't
5 understand what the relevance of that would be. I'm not saying
6 that's what Mr. Schiff is doing. But that's --

7 THE COURT: Well, we'll find out --

8 MR. IGNALL: Okay.

9 THE COURT: -- very quickly.

10 (Pause in the proceedings.)

11 (David Holland takes the witness stand.)

12 (Jury enters the courtroom at 1:41 p.m.)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. IGNALL: Yes, your Honor.

16 MR. BOWERS: Yes, your Honor.

17 MR. CRISTALLI: Yes, your Honor.

18 THE COURT: Go ahead, Mr. Schiff.

19 MR. SCHIFF: Yes.

20

21 DAVID HOLLAND,

22 called as an adverse witness on behalf of Defendant Schiff,
23 having been previously duly sworn, was examined and testified as
24 follows:

25

DIRECT EXAMINATION

1
2 BY MR. SCHIFF:
3 Q. Okay. Mr. Holland, are you familiar, uh, with CPD
4 hearings --
5 A. Uh --
6 Q. -- collection due process hearings?
7 A. -- not particularly, no. Vaguely I am. But I've never
8 participated in one.
9 Q. Um, do you know what the purpose of a collection due process
10 hearing is?
11 MR. IGNALL: Objection. Relevance.
12 MR. SCHIFF: I just wanna know if he knows what the
13 purpose of a collection due process hearing is.
14 THE WITNESS: I've heard the testimony here in court.
15 BY MR. SCHIFF:
16 Q. Pardon me?
17 A. I've heard the testimony here in court.
18 Q. But you have no idea what a collection due process hearing
19 is all about?
20 MR. IGNALL: Objection, again, to relevance of this
21 line of questioning --
22 MR. SCHIFF: Well --
23 MR. IGNALL: -- with Agent Holland.
24 THE COURT: What is the relevance?
25

1 BY MR. SCHIFF:

2 Q. Well, if I showed you your testimony before the Grand Jury,
3 you seem to be an expert on the subject. If I showed you your
4 testimony, would that refresh your recollection?

5 THE COURT: Ask him if he --

6 MR. SCHIFF: Pardon?

7 THE COURT: You can ask him a question about whether --

8 MR. SCHIFF: Well --

9 THE COURT: -- whether --

10 BY MR. SCHIFF:

11 Q. -- well, you were asked before the Grand -- well, isn't it
12 fair to say you were asked before the Grand Jury what the
13 purpose of a CPD hearing was?

14 A. If I could see my testimony.

15 Q. Do you know what you told the Grand Jury your --

16 A. I can't recall --

17 Q. -- purpose was?

18 A. -- no.

19 Q. You don't have the vaguest idea?

20 A. I'd have to see my testimony to refresh my recollection.

21 Q. Okay.

22 A. (Reviewing Grand Jury transcript.) Okay.

23 Q. So what did you tell the Grand Jury the purpose was?

24 A. Would you like me to read it?

25 Q. Yeah, you can read it. It's all right with me.

1 A. Okay. The question: "Tell us a little bit about the
2 collection due process hearing of the IRS. What is the purpose?

3 "A collection due process hearing is basically a
4 hearing where a taxpayer owes the IRS money and they're having
5 problems. They receive a lien or a levy or something to be --
6 or something is about to be seized from them and it's an
7 opportunity to come in and settle up with the IRS. I don't want
8 you" -- let me see -- "I don't want you to seize my car or my
9 bank account. This is how much money I make. Let's work
10 something out."

11 Q. So basically what you told the Grand Jury is that the
12 purpose of a collection due process hearing is where a person
13 comes in and tries to make, uh, arrangements to pay what the IRS
14 says he owes; is that correct?

15 MR. IGNALL: Objection. Asked and answered. And I
16 also don't --

17 MR. SCHIFF: Well, I'm just --

18 MR. IGNALL: -- understand the relevance of this line
19 of questioning.

20 THE COURT: What is the relevance?

21 MR. SCHIFF: I wanna make sure I heard him right, your
22 Honor.

23 THE COURT: No. What is the relevance?

24 BY MR. SCHIFF:

25 Q. Is that -- is that the purpose of a -- do you want --

1 THE COURT: What is the relevance?

2 BY MR. SCHIFF:

3 Q. -- your testimony?

4 THE COURT: What is the relevance? Sustained then.

5 BY MR. SCHIFF:

6 Q. If I were to show --

7 THE COURT: If you can't give me a reason that it's

8 relevant, it is sustained.

9 Move on. Next question.

10 MR. SCHIFF: Your Honor, he gave wrong -- he -- he

11 misled the Grand Jury.

12 THE COURT: No, he didn't.

13 MR. SCHIFF: Well, I --

14 THE COURT: That is a correct answer.

15 Mr. Schiff, you're not going to argue the law. Put it

16 down. Move on.

17 MR. SCHIFF: Can I have --

18 THE COURT: Move on.

19 MR. SCHIFF: Can I have a sidebar?

20 THE COURT: No. I've ruled. That's it. Move on.

21 No more questions?

22 MR. SCHIFF: Well, I have a lot of questions.

23 THE COURT: Then you better ask them.

24 MR. SCHIFF: Well, I... All right.

25

1 BY MR. SCHIFF:

2 Q. Um, do you regard Freedom Books as -- as having -- as
3 running an illegal operation?

4 A. We didn't charge that in the Indictment. But that's
5 certainly debatable. You give false and misleading
6 information --

7 Q. Oh, oh --

8 A. -- to the public --

9 Q. -- I give false --

10 A. -- and it's harmful to the public.

11 Q. Okay. So your testimony is I give false and misleading
12 information.

13 MR. SCHIFF: Uh, can I give him my -- this has been in
14 evidence. Can you give him a copy of The Federal Mafia?

15 THE CLERK: Yes, sir.

16 BY MR. SCHIFF:

17 Q. Have you read The Federal Mafia?

18 A. No, I have not.

19 Q. Oh, you haven't read The Federal Mafia?

20 A. No.

21 Q. Have you come to any of my seminars?

22 A. No.

23 Q. So how do you know I give false and misleading information?

24 A. I did a criminal --

25 MR. IGNALL: Objection, your Honor. I'm not sure what

1 the relevance of this is. We're perfectly happy to let
2 Agent Holland answer that. But --

3 MR. SCHIFF: The relevance --

4 MR. IGNALL: -- the area he's going into allowing
5 Agent Holland to relay hearsay as part of his investigation
6 which in --

7 MR. SCHIFF: The relevance --

8 MR. IGNALL: -- if Mr. Schiff wants to go into that,
9 that's fine. But I'm not sure it's an efficient use of the
10 Court's time to do that.

11 BY MR. SCHIFF:

12 Q. Um, did you tell the Grand Jury that I haven't filed -- oh.
13 I'm sorry.

14 Did you give me those -- is it -- is it your testimony
15 that I haven't filed a legitimate return in 15 years?

16 A. If not more.

17 Q. Okay.

18 (Discussion between Mr. Leventhal and
19 Mr. Schiff.)

20 MR. SCHIFF: I want two of the tax returns that the
21 Government claims are false. What are the two tax returns?

22 THE COURT: You decide what they are.

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

25 MR. SCHIFF: Put 37 and 39. Why don't you give me the

1 returns, please.

2 (Pause in the proceedings.)

3 MR. IGNALL: Your Honor, we object to this line of
4 inquiry. Although Agent Holland certainly may have an opinion,
5 I think in all fairness to both sides, it's up to the Court to
6 instruct what the law is. And, insofar as this is gonna be a
7 debate back and forth about the law --

8 THE COURT: Well, it sounds like that's where it's
9 going and it --

10 MR. IGNALL: I don't think it's appropriate with any
11 witness.

12 MR. SCHIFF: Where is -- he said my -- he told the
13 Grand Jury that my returns aren't legitimate. And I want him to
14 point out -- you didn't give the first page of the document.
15 Will someone give me the first page? Does someone have -- you
16 have, um, Government document -- any document. I -- I -- I --
17 Todd, I asked you if...

18 (Discussion between Mr. Leventhal and
19 Mr. Schiff.)

20 THE CLERK: 2003 is 45.

21 MR. IGNALL: Is that admitted, Ms. Vannozzi?

22 THE CLERK: Yes.

23 MR. IGNALL: It is? Okay.

24 MR. SCHIFF: This is 1 of 4. This is not complete.

25 THE COURT: Mr. Schiff?

1 MR. SCHIFF: Yes.

2 THE COURT: I need you to get organized. You're
3 meandering around. You're --

4 MR. SCHIFF: I just want --

5 THE COURT: -- you're starting statements, stopping mid
6 sentence and changing to something else. I need you to just get
7 focused --

8 MR. SCHIFF: I'm sorry?

9 THE COURT: -- and stop wasting time.

10 MR. SCHIFF: Okay. Here's my 2003. And I'm accused
11 that this is a --

12 THE COURT: Don't testify. He already has the
13 documents in front of him.

14 MR. SCHIFF: Oh, he does have it. All right. Okay.

15 THE WITNESS: I don't have 2003, your Honor.

16 MR. SCHIFF: Okay, I didn't know that.

17 BY MR. SCHIFF:

18 Q. Okay. Looking at the return for 2003, you said it's not a
19 legitimate return.

20 A. I'm sorry. I don't have 2003 in front of me.

21 THE COURT: Is 2003 in evidence?

22 THE CLERK: Um, your Honor, I thought it was Exhibit
23 No. 45.

24 MR. IGNALL: It's Exhibit 46, your Honor. I'm not sure
25 that's moved into evidence. That's not one of the charged

1 counts. So it may not be in evidence.

2 MR. SCHIFF: Yeah, I'm charged --

3 THE CLERK: Excuse me. Actually it is.

4 MR. SCHIFF: -- I'm charged with filing a false return
5 for the year 2003. If you'll look in the Indictment --

6 MR. IGNALL: Your Honor, I think the last charged year
7 is 2002.

8 MR. SCHIFF: 2003.

9 MR. IGNALL: It's filed in 2003. It's for the 2002 tax
10 year.

11 MR. SCHIFF: Yeah. That's a 2003 return.

12 THE COURT: Is it a return for the year 2002 or 2003?

13 MR. SCHIFF: Uh, either one. I'm charged with filing a
14 false return for the year 2002 and 2003. I changed them
15 slightly. So I'm dealing with 2003 first.

16 THE COURT: Well, Government says that you're not
17 charged with 2003 --

18 MR. SCHIFF: I've --

19 THE COURT: -- false return.

20 MR. SCHIFF: -- looked at the Indictment. Yes, I am.
21 Look in the Indictment.

22 MR. IGNALL: The Indictment was returned before that
23 return was filed, your Honor.

24 MR. SCHIFF: I had the Indictment.

25 THE COURT: Well, then it's irrelevant.

1 MR. SCHIFF: Well, somebody has the Indictment.

2 MR. MODAFFERI: I got it.

3 (Pause in the proceedings.)

4 THE COURT: What exhibit are you referring to,
5 Mr. Schiff?

6 MR. SCHIFF: I guess taking the year 2002. All right.

7 THE COURT: He has that already.

8 MR. SCHIFF: I'm sorry.

9 BY MR. SCHIFF:

10 Q. Do you have that in front of you?

11 A. Yes, I do.

12 Q. Okay. Now, looking at that return, I reported zero income;
13 is that correct?

14 A. That's what you reported.

15 Q. Yeah.

16 Now, looking at the attachment, paragraph 1 -- well,
17 will you just look at the attachment and tell me any statement
18 on that that you consider to be false or fraudulent?

19 MR. IGNALL: Objection, your Honor. I think as a
20 matter of consistency. It's appropriate for the Court to be the
21 only one to opine on what parts may be an accurate or inaccurate
22 statement of the law.

23 MR. SCHIFF: Well --

24 MR. IGNALL: We've objected when Mr. Schiff tried to
25 bring that up other witnesses. I think it's appropriate that no

1 witness on either side go into that. We leave that to the
2 Court.

3 THE COURT: Sustained.

4 MR. SCHIFF: Uh, your Honor, he told the Grand Jury --
5 he said that I haven't filed -- I haven't filed a legitimate
6 return in 15 years. I'd like know what what's illegitimate
7 about this return.

8 MR. IGNALL: Objection, your Honor. It's inappropriate
9 to try and bring Agent Holland on to cross-examine something
10 that didn't happen in court. Simply because it may or may not
11 be in the Grand Jury testimony doesn't --

12 MR. SCHIFF: Your Honor --

13 MR. IGNALL: -- make it relevant simply because it's in
14 the testimony.

15 MR. SCHIFF: Your Honor, I was charged with filing a
16 false document largely based on the testimony of Mr. Holland.

17 THE COURT: No. The jury will decide the issue of your
18 innocence or guilt. And you're not going to go into this.

19 MR. SCHIFF: Yeah. But how could -- how could they
20 make that decision unless he explained to them why the document
21 is fraudulent? Now, I wouldn't expect --

22 THE COURT: The Court --

23 MR. SCHIFF: -- them to just --

24 THE COURT: -- the Court instructs on the law,
25 Mr. Schiff. The Court has already addressed the attachments or

1 will address them later if I haven't addressed them already.

2 MR. SCHIFF: Your Honor --

3 THE COURT: The --

4 MR. SCHIFF: -- I don't remember.

5 THE COURT: -- the Court addresses the jury as to the
6 law. You do not. You do not argue the law with the witness.

7 MR. SCHIFF: Your Honor, I'm not arguing the law. I
8 just wanna know what's wrong on the returns I filed. Why can't
9 he --

10 THE COURT: I have sustained the objection, Mr. Schiff.
11 Move on to your next area of inquiry.

12 MR. SCHIFF: Okay.

13 BY MR. SCHIFF:

14 Q. Did you -- the Indictment also accused me of misleading the
15 public, uh, getting them to file fraudulent W-4's. Are you
16 aware you of that?

17 A. If that's what the Indictment said, yes.

18 Q. Well, didn't you state in your, um, uh, sealed affidavit in
19 order to get the search warrant that I teach people how to file
20 fraudulent W-4's? Didn't you say that?

21 MR. IGNALL: Objection, your Honor, to relevance again.
22 It's up to the jury to decide --

23 THE COURT: It's not relevant. The Court has already
24 ruled on the search warrant and the search.

25 MR. SCHIFF: I'm not --

1 THE COURT: You know that. They ruled against your
2 position. Now move on.

3 MR. SCHIFF: Well, I wanna know where in my book I show
4 people how to file false W-4's.

5 MR. IGNALL: Same -- same objection, your Honor.

6 THE COURT: Sustained.

7 MR. SCHIFF: Same objection.

8 In other words, Government is not gonna introduce any
9 evidence as to why my returns are false, why I give false
10 information --

11 THE COURT: You know, they're not going to argue the
12 law with you, sir. And as I pointed out --

13 MR. SCHIFF: I haven't --

14 THE COURT: -- the Court and courts have ruled against
15 you on your positions.

16 MR. SCHIFF: Your Honor, if I can point out the
17 relevancy of this. I'm not arguing the law. I could be dead
18 wrong in the law. I haven't said that I was right on -- on
19 anything. But neither has the Government said I was wrong on
20 anything.

21 And let me point out that one of the issues --

22 THE COURT: Mr. Schiff --

23 MR. SCHIFF: -- in this case --

24 THE COURT: Move on. I've ruled against you. Move on.

25

1 BY MR. SCHIFF:

2 Q. Okay. Now, weren't you called -- hold it. (Pause.)

3 Well, do you recall somebody asking you while you were
4 testifying what law made them -- what law required them to pay
5 income taxes?

6 A. No.

7 Q. Do you recall -- do you recall -- you don't recall that.

8 If -- if I showed you your testimony, do you think that
9 might refresh your recollection?

10 MR. IGNALL: Objection, your Honor. He's talking about
11 the Grand Jury testimony again and I don't know what the
12 relevance of that is. And we're still getting into --

13 THE COURT: It's not relevant.

14 MR. IGNALL: -- an issue --

15 MR. SCHIFF: Well --

16 THE COURT: Sustained.

17 MR. IGNALL: -- that's trying to --

18 MR. SCHIFF: Well --

19 MR. IGNALL: -- confuse the jury. I think it's
20 appropriate for the Court --

21 THE COURT: Sustained.

22 MR. IGNALL: -- to instruct the jury.

23 MR. SCHIFF: Well, his --

24 THE COURT: Move on.

25 MR. SCHIFF: -- testimony is inconsistent with what

1 he --

2 THE COURT: Move on.

3 BY MR. SCHIFF:

4 Q. Did you, uh -- were you --

5 MR. SCHIFF: Could I have -- could somebody -- where is

6 the CRS Report?

7 MR. IGNALL: Exhibit 225.

8 MR. SCHIFF: Where -- where is the CRS Report?

9 MR. IGNALL: It's Exhibit 225.

10 MR. SCHIFF: Can I have the CRS Report?

11 THE CLERK: Yes. I can provide it to the witness.

12 MR. SCHIFF: Yeah, give it to the witness. I had the

13 copy of the pages of this.

14 BY MR. SCHIFF:

15 Q. Uh, were you aware that, uh, the Government is using that

16 that report is notice to me that I'm required to file and pay

17 income taxes?

18 MR. IGNALL: Objection, your Honor. Asking the witness

19 to comment on what the prosecution --

20 MR. SCHIFF: Does someone --

21 MR. IGNALL: -- is using a document for.

22 THE COURT: Sustained.

23 (Discussion between Mr. Schiff and

24 Mr. Modafferi.)

25 MR. SCHIFF: Okay. Yeah.

1 (Document displayed in open court.)

2 MR. SCHIFF: Can you continue to move ahead on this

3 report? Can you continue to move ahead on this report. Next

4 page, please. Next page. Next page, please. Next page. Next

5 page. Next page. Next page. Okay, leave it there.

6 BY MR. SCHIFF:

7 Q. Are you familiar with this report?

8 A. I found this report in your office.

9 Q. Well, is the report accurate?

10 MR. IGNALL: Objection, your Honor. This was

11 introduced solely for the fact that it was found in Mr. Schiff's

12 desk and elsewhere in the office.

13 BY MR. SCHIFF:

14 Q. Yeah, but --

15 THE COURT: Sustained.

16 BY MR. SCHIFF:

17 Q. -- do you know the purpose? Do you know --

18 THE COURT: Sustained.

19 MR. SCHIFF: All right.

20 THE COURT: The objection is --

21 MR. SCHIFF: Okay.

22 THE COURT: -- sustained.

23 BY MR. SCHIFF:

24 Q. Now, do you wanna read what that headline says there, "WHAT

25 DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX IS IN THE

1 NATURE OF AN EXCISE TAX?" Can you read that from the report?

2 A. You mean this last paragraph here?

3 Q. Yeah. It's the Government's exhibit. What does it say?

4 Yeah. "WHAT DOES THE COURT MEAN"...

5 A. "WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX

6 IS IN THE NATURE OF AN EXCISE TAX?"

7 Q. Now, when it refers to "the court," what court are they

8 referring to?

9 MR. IGNALL: Objection, your Honor. I think it's

10 appropriate for the witness to read something from it. But I

11 don't think --

12 MR. SCHIFF: Oh, it's appropriate --

13 MR. IGNALL: -- it's appropriate for the witness to

14 comment on it.

15 MR. SCHIFF: Well, the jury may not know who the court

16 is.

17 BY MR. SCHIFF:

18 Q. Do you know who the Court is there?

19 A. This court.

20 Q. What?

21 MR. IGNALL: Objection, your Honor.

22 BY MR. SCHIFF:

23 Q. What court?

24 MR. IGNALL: The jury can read it and then make --

25 THE COURT: Sustained.

1 MR. IGNALL: -- it's own determination, I think.

2 BY MR. SCHIFF:

3 Q. Is it the Supreme Court?

4 THE COURT: Sustained. The objection is --

5 MR. SCHIFF: Okay.

6 THE COURT: -- sustained.

7 BY MR. SCHIFF:

8 Q. Okay. Now, do you agree that the income tax is imposed as
9 the excise tax the Supreme Court ruled it to be?

10 MR. IGNALL: Objection, your Honor.

11 THE COURT: Sustained.

12 MR. SCHIFF: Well, this -- this is the Government's
13 exhibit. I'm asking if he agrees with what's in the
14 Government's exhibit.

15 THE COURT: It's not his exhibit.

16 MR. SCHIFF: Pardon me?

17 THE COURT: It's not his exhibit. He did not introduce
18 it except to say that he found it in your office.

19 MR. SCHIFF: Well, of course. There's a lot of
20 things --

21 THE COURT: He doesn't --

22 MR. SCHIFF: -- in my office.

23 THE COURT: -- have to vouch for it; he doesn't --

24 MR. SCHIFF: It was in my --

25 THE COURT: -- have to answer legal questions --

1 MR. SCHIFF: It was in my --

2 THE COURT: -- about it. Sustained.

3 MR. SCHIFF: It was in my office so I could show the
4 type of tax --

5 THE COURT: Sustained.

6 MR. SCHIFF: -- that the Supreme Court ruled the income
7 tax to be.

8 THE COURT: Sustained.

9 MR. SCHIFF: All right.

10 BY MR. SCHIFF:

11 Q. Mr. Holland, how long have you been with the IRS?

12 A. 18 years.

13 Q. 18 years.

14 Are you familiar with the laws pursuant to which the
15 income tax is imposed?

16 A. I'm familiar.

17 Q. Huh?

18 A. I am familiar.

19 Q. Do you know the difference between direct taxes and excise
20 taxes?

21 MR. IGNALL: Objection, your Honor. Again, it's a
22 waste of time --

23 THE COURT: Sustained.

24 MR. IGNALL: -- and invades on the province of the
25 Court to instruct the jury on what the law is.

1 THE COURT: Mr. Schiff, I have ordered you to --

2 MR. SCHIFF: Well --

3 THE COURT: -- abandon this line of questioning --

4 MR. SCHIFF: All right.

5 THE COURT: -- you continue to do it.

6 MR. SCHIFF: I --

7 THE COURT: Sanctions. Sanctions.

8 MR. SCHIFF: Your Honor, they --

9 THE COURT: Mr. Schiff --

10 MR. SCHIFF: -- introduced the report.

11 THE COURT: -- I have sustained the objection. Move

12 on.

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. Let me continue with this.

16 THE COURT: Don't continue with it. I've ordered you

17 to move on.

18 MR. SCHIFF: I am. I wanna look at my next question.

19 I wrote 'em out. I did this during lunch.

20 BY MR. SCHIFF:

21 Q. Oh, looking at my tax --

22 MR. SCHIFF: Oh. Do we abandon my tax return? I can't

23 ask him any questions on that?

24 THE COURT: I don't know. I don't know what your

25 next --

1 MR. SCHIFF: Uh, okay.

2 THE COURT: -- question is going to be.

3 BY MR. SCHIFF:

4 Q. Now, when you testified before the Grand Jury, did you make
5 any effort to understand what I put on my return?

6 MR. IGNALL: Objection, your Honor. Relevance. And
7 the evidence is before the Court.

8 MR. SCHIFF: All right.

9 MR. IGNALL: The jury can make its --

10 MR. SCHIFF: All right.

11 MR. IGNALL: -- own determination.

12 BY MR. SCHIFF:

13 Q. Didn't you --

14 THE COURT: Sustained.

15 BY MR. SCHIFF:

16 Q. -- didn't you just testify that Schiff advises people to put
17 zeroes on his [sic] return?

18 MR. IGNALL: Objection. We're now referring back to
19 the question to which I think we had a sustained objection.

20 MR. SCHIFF: All right.

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. All right. Did you make any effort to explain to those
24 people in front of the Grand Jury --

25 MR. IGNALL: Objection, your Honor.

1 BY MR. SCHIFF:

2 Q. -- the reason --

3 THE COURT: I have sustained the objection, Mr. Schiff.

4 MR. SCHIFF: Okay.

5 THE COURT: I am instructing you not to go --

6 MR. SCHIFF: All right.

7 THE COURT: -- into that --

8 MR. SCHIFF: I won't go there.

9 THE COURT: -- any further.

10 MR. SCHIFF: I won't go there.

11 BY MR. SCHIFF:

12 Q. Is it your testimony --

13 THE COURT: Lights, Ms. Clerk.

14 THE CLERK: Yes, sir.

15 (Pause in the proceedings.)

16 MR. SCHIFF: Sorry.

17 BY MR. SCHIFF:

18 Q. Uh... Sorry. (Pause.)

19 Uh, was it your experience that people who were asking
20 the IRS to show us the law that required us to pay income taxes?

21 MR. IGNALL: Objection.

22 BY MR. SCHIFF:

23 Q. Were you --

24 MR. IGNALL: Relevance.

25

1 BY MR. SCHIFF:

2 Q. -- were you ever confronted by people who said show us the
3 law?

4 MR. IGNALL: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. Mr. Holland, you said you heard my radio show over three
8 years.

9 A. Yes, sir.

10 Q. Every Thursday from -- what was it? -- 2:00 to 4:00.

11 A. 4:00 to 6:00.

12 Q. 4:00 to 6:00. Okay.

13 And you heard me repeatedly ask people to call and cite
14 a law that required them to pay income taxes; is that correct?

15 A. Repeat the question again, please.

16 Q. You said that you heard me practically every week for three
17 years on my radio show offer to pay \$5,000 to anybody who'd call
18 my show and cite a law that required them to pay income taxes;
19 is that correct?

20 A. I heard that. And, Mr. Schiff, you won't pay it.

21 Q. How do you know?

22 A. You've been sued a couple of times by people. You won't pay
23 it.

24 FEMALE VOICE: Objection.

25

1 BY MR. SCHIFF:

2 Q. I've been sued. Did I ever lose a lawsuit involving --

3 THE COURT: Who made that --

4 BY MR. SCHIFF:

5 Q. -- the requirement --

6 THE COURT: -- remark?

7 BY MR. SCHIFF:

8 Q. -- did I ever lose?

9 THE COURT: Who made that remark?

10 BY MR. SCHIFF:

11 Q. The point is that's --

12 FEMALE VOICE: I'm sorry.

13 BY MR. SCHIFF:

14 Q. -- why I --

15 THE COURT: You will leave the courtroom.

16 MR. SCHIFF: Pardon me?

17 THE COURT: You are in contempt. You will leave the

18 courtroom.

19 BY MR. SCHIFF:

20 Q. That's why --

21 THE COURT: The Marshals will obtain your name.

22 BY MR. SCHIFF:

23 Q. That's why I reduced it to a reasonable amount. That was

24 the hundred thousand. But I won the lawsuit so I didn't have to

25 pay it. The point is --

1 A. You won the lawsuit because of a contractual reason, not
2 because your basis of the law. As a matter of fact, I think the
3 judge ruled that your -- your views on income tax were
4 frivolous --

5 Q. What -- all right.

6 A. -- and nonsense. Blatant nonsense, I think, was the
7 words --

8 Q. Okay, okay.

9 A. -- he used.

10 Q. What were -- okay. In other words, the lawyer who called me
11 called when the show was over; is that correct?

12 A. He called when the show aired the next morning.

13 Q. What was my offer on CBS overnight? As long as you brought
14 it up.

15 A. I think I recall it was 50 grand.

16 Q. No. It was a hundred thousand.

17 But what was my offer on that radio show?

18 A. That if anybody could show you the law where you're liable
19 for income taxes that you would pay 'em --

20 Q. No.

21 A. -- a hundred thousand dollars.

22 Q. The offer was if anybody --

23 MR. IGNALL: Objection.

24 BY MR. SCHIFF:

25 Q. -- cited a law that required --

1 MR. IGNALL: Testimony.

2 THE COURT: Sustained.

3 MR. SCHIFF: I think --

4 BY MR. SCHIFF:

5 Q. -- that required --

6 THE COURT: Sustained.

7 BY MR. SCHIFF:

8 Q. -- that required --

9 MR. SCHIFF: He brought it up.

10 THE COURT: Sustained.

11 MR. SCHIFF: All right.

12 THE COURT: You are not allowed to --

13 MR. IGNALL: Judge, I think we've gone --

14 THE COURT: -- testify regardless --

15 MR. SCHIFF: All right.

16 THE COURT: -- of who brought it up.

17 MR. SCHIFF: We'll talk about that.

18 MR. IGNALL: -- we've gone beyond just --

19 MR. SCHIFF: Okay.

20 THE COURT: In fact --

21 MR. IGNALL: -- why Agent Holland --

22 THE COURT: -- you're the one that brought it up.

23 MR. SCHIFF: All right. He brought it up, your Honor.

24 I didn't bring it up.

25

1 BY MR. SCHIFF:

2 Q. But the point is let's assume I didn't pay it --

3 THE COURT: Mr. Schiff --

4 MR. SCHIFF: All right.

5 THE COURT: -- did you hear?

6 MR. SCHIFF: What? I didn't hear.

7 THE COURT: The objection is sustained.

8 MR. SCHIFF: All right. Objection to what? I'm not

9 sure what the objection was to.

10 BY MR. SCHIFF:

11 Q. All I'm saying is forget the reward.

12 THE COURT: Don't -- don't -- don't testify.

13 BY MR. SCHIFF:

14 Q. Wouldn't it have helped prevent you from misleading the

15 people, even forget the 5,000, if they could have heard over my

16 radio show a statute that required them to pay income taxes?

17 Even if I offered nothing, shouldn't you have called the show?

18 A. Mr. Schiff, are you talking about me personally?

19 Q. Yes.

20 A. Sir, my job is to investigate criminal violations of the

21 Internal Revenue Code, not to argue with people on live radio.

22 Q. Well, you could have given the information --

23 A. I couldn't have --

24 Q. -- to somebody --

25 A. -- have done that.

1 Q. -- else to call.

2 A. That's not within the scope of my duties.

3 Q. I'm saying that you had a duty as a --

4 THE COURT: Mr. Schiff --

5 MR. SCHIFF: All right.

6 THE COURT: -- you will not testify.

7 MR. SCHIFF: I'm not test- -- I'm just simply saying he

8 had a duty to call --

9 THE COURT: You are --

10 MR. SCHIFF: -- my show.

11 THE COURT: -- testifying.

12 MR. SCHIFF: All right.

13 THE COURT: Stop it.

14 MR. SCHIFF: Now... (Pause.)

15 BY MR. SCHIFF:

16 Q. Do you believe that during the years when I reported zero

17 income I actually had income?

18 A. I --

19 MR. IGNALL: Objection --

20 THE WITNESS: -- yes, I do.

21 MR. IGNALL: -- your Honor. Again, I think to be

22 consistent the Court needs to be the one to instruct the jury on

23 what constitutes income, not from either side. Even though --

24 THE COURT: Sustained.

25 MR. IGNALL: -- Agent Holland, I'm sure, has an

1 opinion, we would not object to it in general. But --

2 THE COURT: Sustained.

3 MR. IGNALL: -- I think for consistencies' sake --

4 MR. SCHIFF: It wasn't the Court that testified before
5 the Grand Jury that secured my indictment.

6 THE COURT: Well, we've already ruled you won't go into
7 that, Mr. Schiff, unless you --

8 MR. SCHIFF: Well, again --

9 THE COURT: -- can show that --

10 MR. SCHIFF: -- I'd like to --

11 THE COURT: -- he has made some --

12 MR. SCHIFF: -- point out --

13 THE COURT: -- statement in this trial that is
14 contradictory to what he testified --

15 MR. SCHIFF: Your Honor, I must --

16 THE COURT: -- before the Grand Jury.

17 MR. SCHIFF: -- point out that it's my belief what the
18 law is, not what the law actually is.

19 THE WITNESS: I believe you disagree with the law,
20 Mr. Schiff.

21 BY MR. SCHIFF:

22 Q. Pardon me?

23 MR. IGNALL: Objection, your Honor.

24 THE WITNESS: You disagree with the law.

25 THE COURT: Sustained.

1 BY MR. SCHIFF:

2 Q. Okay. You believe I disagree with the law.

3 MR. IGNALL: I don't think it's an appropriate --

4 BY MR. SCHIFF:

5 Q. -- what --

6 THE COURT: It is not.

7 MR. SCHIFF: He made the statement.

8 THE COURT: It is not.

9 BY MR. SCHIFF:

10 Q. Let me give you the law.

11 THE COURT: Mr. Schiff --

12 BY MR. SCHIFF:

13 Q. You show me --

14 THE COURT: Mr. Schiff --

15 BY MR. SCHIFF:

16 Q. -- a statute --

17 THE COURT: -- I've already -- I've already ruled on

18 this. I've given the jury an instruction on the validity of the

19 income tax laws. And I'll read it again if I need to, but --

20 MR. SCHIFF: Your Honor, you don't have to. I agree

21 with the validity. I don't have any problem --

22 THE COURT: I have already --

23 MR. SCHIFF: -- with the law.

24 THE COURT: -- ruled against you, Mr. Schiff, on this

25 line of inquiry. And --

1 MR. SCHIFF: He brought it up.

2 THE COURT: -- the Government's -- no. You brought it
3 up. You're the one who is asking the questions.

4 MR. SCHIFF: I -- I want it understood that I --

5 THE COURT: Don't testify.

6 MR. SCHIFF: -- agree that the laws are valid. That's
7 why I sell the Code.

8 All right. Let me see if I had can find another
9 question.

10 (Pause in the proceedings.)

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

12 THE COURT: Cross-examination?

13 MR. CRISTALLI: No questions, your Honor.

14 THE COURT: Mr. Bowers?

15 MR. BOWERS: Um, Court's indulgence for just a moment,
16 your Honor. Is that okay?

17 (Discussion between Mr. Bowers and
18 Mr. Leventhal.)

19 MR. BOWERS: Uh, I have no questions, your Honor.

20 THE COURT: Thank you.

21 Cross-examination?

22

23 CROSS-EXAMINATION

24 BY MR. IGNALL:

25 Q. Agent Holland, Mr. Schiff talked to you about you listening

1 to the radio show and not calling in. Are you aware are there
2 any IRS regulations --

3 THE COURT: Mr. Schiff.

4 BY MR. IGNALL:

5 Q. -- or rules that prevent you --

6 THE COURT: Mr. Schiff, what are you -- Mr. Schiff.

7 MR. SCHIFF: Yeah.

8 THE COURT: You're out of order.

9 MR. SCHIFF: Oh. Let me get my stuff.

10 (Pause in the proceedings.)

11 BY MR. IGNALL:

12 Q. Agent Holland, are there any IRS rules or regulations or
13 Code sections that --

14 MR. CRISTALLI: Your Honor, I'm gonna --

15 BY MR. IGNALL:

16 Q. -- prevent you from calling?

17 MR. CRISTALLI: -- I'm gonna lodge an objection. I
18 believe this is beyond the scope of direct examination. I'm not
19 quite sure if Mr. Schiff was able to get any questions answered
20 to be -- with all due respect.

21 THE COURT: Well, he -- Mr. Ignall has not been able to
22 complete the question that he was asking because of your
23 objection. So I'm not sure --

24 MR. CRISTALLI: Okay. I'm sorry.

25 THE COURT: -- what the question was. You stopped him

1 midstream.

2 BY MR. IGNALL:

3 Q. Let me start again.

4 Agent Holland, do you remember testifying a moment ago
5 that you didn't call into the radio show when Mr. Schiff made
6 his offer; is that correct?

7 A. Yes, I do.

8 Q. Are there any -- are you aware of any IRS regulations,
9 rules, or statutes that prevented you from calling?

10 A. There are.

11 Q. Is that why you didn't call?

12 A. That's why I didn't call.

13 MR. IGNALL: Thank you.

14

15 REDIRECT EXAMINATION

16 BY MR. SCHIFF:

17 Q. Mr. Holland, is there any IRS regulations that would have
18 prevented you from giving that information to somebody else so
19 they could call?

20 A. Mr. Schiff, that's -- that's not my job.

21 Q. Okay. That's not your job. Okay.

22 THE COURT: Anything further?

23 MR. IGNALL: Nothing further from the Government, your
24 Honor.

25 THE COURT: Mr. Schiff, you will call your next

1 witness.

2 MR. SCHIFF: Well, I guess, since you won't let my
3 other witnesses testify, I guess I'll testify.

4 THE COURT: Well, that's not exactly true. Your other
5 witnesses were --

6 MR. SCHIFF: All right.

7 THE COURT: -- allowed to testify --

8 MR. SCHIFF: All right.

9 THE COURT: -- as to certain things. But, if you wish
10 to take the stand now, you may.

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

13 MR. SCHIFF: Did you allow Robert Wesley to testify?
14 He's here. I thought you just said the ones who were gonna
15 testify concerning --

16 THE COURT: You had some that are going to testify as
17 to character.

18 MR. SCHIFF: He was gonna testify about --

19 MR. NEIMAN: Your Honor, we would just ask that the
20 proffer be done either at sidebar or -- otherwise we void the
21 purpose of the proffer.

22 MR. SCHIFF: I didn't -- I didn't know he was allowed
23 to. He's -- someone just handed me a note that Robert Wesley
24 can testify.

25 Was he one of the witness you allowed to testify?

1 THE COURT: Well, you haven't given me a proffer on
2 him, so I don't know.

3 MR. SCHIFF: I explained the situation in -- in, um,
4 sidebar. I said I didn't have time to write it out and I
5 explained he wrote a thesis --

6 MR. IGNALL: Oh. Objection, your Honor. Yes, I now
7 remember this. We definitely object. That's in no way
8 relevant. We're happy to address it at sidebar again if the
9 Court would like.

10 MR. SCHIFF: I explained he wrote his --

11 MR. IGNALL: Objection, your Honor.

12 MR. SCHIFF: -- master thesis on the CPD hearing.

13 THE COURT: I -- I've already ruled on him. You're
14 correct.

15 MR. SCHIFF: Can he testify?

16 THE COURT: No, not on the items that you proffered --

17 MR. SCHIFF: All right.

18 THE COURT: -- at sidebar.

19 MR. SCHIFF: That's what I thought.

20 THE COURT: Go ahead, Mr. Schiff. Are you your next
21 witness?

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

24 THE COURT: Mr. Schiff. Mr. Schiff, we're waiting.

25

1 appropriate for you to address the jury that Mr. Leventhal is
2 just reading questions provided to him by Mr. Schiff so that we
3 avoid --

4 THE COURT: That's correct.

5 The Court has ordered that the defendant not testify in
6 a narrative fashion so that the Court can have an opportunity to
7 rule on any objections that might be made. And --

8 MR. SCHIFF: Your Honor -- I'm sorry. I'm sorry.

9 THE COURT: -- accordingly, Mr. Leventhal is asking
10 questions that have been prepared by Mr. Schiff for him to read.

11 MR. SCHIFF: Your Honor, let me point out. I couldn't
12 write every specific question out, so these are sort of general
13 category questions. I -- I can't give you my whole history in
14 question-and-answer form.

15 THE COURT: You're going to -- you have to respond to
16 specific questions. Mr. Leventhal can do his best to tailor the
17 questions to direct you to a specific answer --

18 MR. SCHIFF: Okay.

19 THE COURT: -- rather than a narrative.

20 MR. LEVENTHAL: Thank you, your Honor.

21

22 DIRECT EXAMINATION

23 BY MR. LEVENTHAL:

24 Q. Mr. Schiff, first question. Do you agree or disagree with
25 any of the IRS laws?

1 A. I agree with all of them. I believe every law is valid.
2 That's why I sell the Code. And one of the these days the IRS
3 may start obeying those laws.

4 Q. Mr. Schiff, where were you born?

5 A. Pardon me?

6 Q. Where were you born?

7 A. New Haven, Connecticut.

8 Q. And, uh, did you go to the university?

9 A. Pardon me?

10 Q. What university did you go to?

11 A. University of Connecticut.

12 Q. What did you major in?

13 A. Accounting and economics.

14 Those were the days you could still work your way
15 through college without borrowing all kinds of money.

16 Q. How many books have you written?

17 A. About six.

18 Q. Name the book -- what was your first book?

19 A. My first book was entitled, The Biggest Con: How the
20 Government Is Fleecing. It came out in hard cover. And it's
21 probably sold a hundred thousand copies in hard and soft cover.

22 Q. When did you write that book?

23 A. In the years '74 and '75. But it was published by Arlington
24 House in 1976.

25 Q. What was the substance of that book?

1 A. The substance of that book is how I believe the income tax
2 was literally undermining and destroying our entire industrial
3 base. And, if we didn't stop the growth of government, there'll
4 be a total collapse; that government was growing like a cancer
5 from -- from the imposition of withholding taxes which started
6 in 1943. Nobody really paid income tax in this country until
7 1943. During the second World War, the government imposed
8 withholding taxes, which at that time was called a "Victory
9 Tax."

10 And the American public was told that this was gonna
11 last for the duration of the war. But then, when the war was
12 over, the politicians in Washington saw that this war-imposed
13 tax produced a virtual current of revenue. So they proceeded to
14 create one government agency after another to spend the money.
15 And the government has grown like a cancer ever since.

16 I remember the days when a man could be a milkman and
17 make 50 bucks a week and support a family. And his wife didn't
18 have to work. He would come home, see his kids, when all the
19 products we use were made in America.

20 I couldn't go to a girl's house when I was in junior
21 high and her mother wouldn't be there. I used to sell magazine
22 subscriptions door to door. And, when I rang the bell, somebody
23 came to the door. And you had vacuum cleaner salesman and you
24 had encyclopedia salesman and you had all kinds of door-to-door
25 salesman because people use to be home. And you could buy a

1 postcard for a penny. You could buy penny candy. They used to
2 wait on you if all you had was a penny to spend. We used to
3 have two mail deliveries a day. It was a --

4 THE COURT: Does that --

5 THE WITNESS: -- great country then.

6 THE COURT: -- does that answer your question, Counselor?

7 THE WITNESS: Does that answer your question?

8 MR. LEVENTHAL: Well, they're not my questions.

9 THE COURT: Yeah. Well, that's a --

10 THE WITNESS: But that --

11 THE COURT: -- that's narrative.

12 THE WITNESS: All right.

13 THE COURT: And that's what I told you --

14 THE WITNESS: All right.

15 THE COURT: -- you can't do.

16 THE WITNESS: Well, he asked me what my first book was
17 about --

18 THE COURT: Well --

19 THE WITNESS: -- the 12 -- the 12 chapter. I'd like to
20 introduce the books as --

21 THE COURT: He didn't ask you about the Encyclopedia
22 Britannica.

23 THE WITNESS: I didn't --

24 THE COURT: He asked you --

25 THE WITNESS: I didn't write that.

1 THE COURT: -- a question.

2 THE WITNESS: That one I didn't write.

3 THE COURT: He asked you a simple question. Please
4 confine your answers to the questions that are asked.

5 BY MR. LEVENTHAL:

6 Q. What was the next book that you -- you -- you authored,
7 Mr. Schiff?

8 A. The next book I wrote -- the next book I wrote was called
9 The Kingdom of Maltz. It was a book that explained inflation in
10 cartoon form. And the reason I did it that way is that the
11 average person doesn't understand what inflation is. He thinks
12 that when prices go up that's inflation.

13 Actually, inflation is when the government expands
14 supplies of money and credit then prices go up. Inflation is
15 always caused by government. And, when inflation goes up
16 2 percent, the money in the bank goes down 2 percent. You lose
17 2 percent on all your savings. Well, when you lose it, who gets
18 it? The government.

19 Inflation is nothing more but a hidden tax where the
20 government steals money from your -- from your savings accounts,
21 from your bank accounts, and they create money and spend it into
22 circulation. And you don't know that they are causing
23 inflation. They want you think that people are raising prices;
24 they are not. Prices go up because they inflate supplies of
25 money and credit. And that's what that book was designed to

1 explain in cartoon form.

2 Q. Have you conducted any seminars?

3 A. Pardon me?

4 Q. Seminars. Have you conducted any seminars?

5 A. Hundreds, I think. Around the country. Probably in every
6 major city.

7 Q. And we've heard testimony that you've been involved in radio
8 and television shows?

9 A. Yes, I have.

10 Q. Were you involved with Larry King?

11 A. He interviewed me on radio, Larry King, yes.

12 Q. What other shows were you involved with?

13 A. I've been on "20/20," "Crossfire," "David Suskind," AM
14 New York, AM San Francisco, AM --

15 Q. And the --

16 A. -- AM everything.

17 Q. -- the substance --

18 A. I don't know. All kinds of shows all over the country.

19 Q. The substance of your television shows --

20 A. Pardon me?

21 Q. What was the substance of being on these television shows?

22 A. Well, I used to go on television shows and tell people that
23 there's no law requiring them to pay income taxes; that they've
24 been hoodwinked, misled by the federal government to pay a tax
25 that no law required them to pay.

1 Now, I always made the distinction. I said, look, if
2 you want to pay a tax, pay it. But I don't think the public
3 should be misled into thinking that they are required to pay a
4 tax for which no one can be liable. The law -- see, the
5 Internal Revenue Code was designed to be lawful. As a matter of
6 fact, my next book is gonna be -- the income tax was -- in my
7 view, was repealed in 1954, repealed, when they changed the
8 Internal Revenue Code from the 1939 Code to the '54 Code. And
9 the '54 Code took out all of the enforcement provisions that
10 existed in the '39 Code.

11 Q. Mr. Schiff, you claim that the payment of federal tax is --

12 A. Pardon me? I didn't hear you. Speak a little louder.

13 Q. You claimed that the imposition of a federal tax is
14 voluntary. What do you mean by that?

15 A. Well, it's very simple. Anybody can figure this out in five
16 minutes. If you look in the index of the Internal Revenue
17 Code -- let's say you look up alcohol taxes -- you'll see
18 entries that say payment, penalties -- payment, penalties,
19 liability. You look up tobacco in the index and you'll see
20 entries: liability, payment, penalties. Tobacco taxes,
21 wagering tacks -- all the variety of taxes. If you go to the
22 Code and you look up income tax, it's there. And you won't find
23 any entry labeled "payment," "liability," or "penalties."

24 Now, you can also go to the Code in the index and you
25 can look up, for instance, books and records. You know, we keep

1 books and records. And you'll see an entry: beer taxes, wine
2 taxes, alcohol. You won't see any reference to income tax. As
3 a matter of fact, if you go to the index and you look up
4 penalties, it lists all kinds of taxes. But the income tax is
5 missing.

6 You look up liability for tax, which is very important,
7 because the Privacy Act Notice informs the American public.
8 American public is told by the government in the Privacy Act --

9 MR. NEIMAN: Your Honor --

10 THE WITNESS: -- which is in a 1040 booklet --

11 MR. NEIMAN: -- I just wanna object just so it's clear.

12 Mr. Schiff could testify as to his understanding of
13 what the laws are -- or misunderstanding of what the laws are,
14 not what the laws actually are.

15 THE COURT: That's correct.

16 MR. NEIMAN: And I just wanna make sure that that --

17 THE COURT: Court --

18 MR. NEIMAN: -- distinction --

19 THE COURT: Court --

20 THE WITNESS: I haven't testified --

21 THE COURT: Court --

22 THE WITNESS: -- what the law is. I'm just testifying
23 about the index of the Code.

24 THE COURT: No. You're testifying as to your version.

25 THE WITNESS: All right. I could be wrong. Well,

1 they --

2 THE COURT: The objection is sustained.

3 THE WITNESS: -- they can prove me wrong by taking the

4 Code --

5 THE COURT: Court --

6 THE WITNESS: -- and show me where it's included.

7 THE COURT: The court --

8 THE WITNESS: They can cross-examin --

9 BY MR. LEVENTHAL:

10 Q. So Mr. Schiff --

11 THE WITNESS: -- anyway, anyway --

12 BY MR. LEVENTHAL:

13 Q. This is your brief; is that correct?

14 A. So my belief is --

15 THE WITNESS: Look. There may be a law, your Honor,

16 that says you have to pay income taxes. I've just never found

17 it. I hope the Government can show it to me.

18 BY MR. LEVENTHAL:

19 Q. Well --

20 A. So, anyway, the key is in the Privacy Act of a 1040 booklet

21 it specifically says --

22 THE COURT: Mr. Schiff --

23 THE WITNESS: -- you have to pay any tax for which you

24 are liable.

25 THE COURT: Mr. Schiff, I have sustained --

1 THE WITNESS: Okay.

2 THE COURT: -- the objection --

3 THE WITNESS: -- all right.

4 THE COURT: -- of the Government on your narrative as
5 to what the law is.

6 THE WITNESS: I'm not saying what the law is.

7 THE COURT: You just --

8 THE WITNESS: I'm just saying what the index shows.
9 Maybe they just left it out of the index by mistake. I haven't
10 testified what --

11 THE COURT: Court is --

12 THE WITNESS: -- the law is.

13 THE COURT: -- the Court is the exclusive source of the
14 law, Mr. Schiff.

15 THE WITNESS: What was your question? The question
16 was...

17 BY MR. LEVENTHAL:

18 Q. My question was: You believe that --

19 A. That's what I believe.

20 Q. -- the federal income --

21 A. I have never been able to find a law --

22 Q. -- is voluntary.

23 A. -- that says you gotta pay income taxes, that you're liable
24 for income taxes, that you have to keep books and records. And,
25 if the Government shows me such a law, I'll take back everything

1 I've ever said about the IRS; take all my books off the market;
2 and put in an application to McDonald's.

3 THE COURT: Mr. Schiff --

4 THE WITNESS: That's what I'll do.

5 THE COURT: Mr. Schiff --

6 THE WITNESS: Yes.

7 THE COURT: -- are you hearing?

8 THE WITNESS: Yes, I can hear.

9 THE COURT: Can you hear me?

10 Well, you interrupted the question that was being asked
11 by Mr. Leventhal to --

12 THE WITNESS: Okay.

13 THE COURT: -- to go off on that tangent.

14 THE WITNESS: I won't go... I apologize.

15 THE COURT: You are going off on tangents. And --

16 THE WITNESS: All right. I'll --

17 THE COURT: -- I am --

18 THE WITNESS: -- try not to.

19 THE COURT: -- instructing you not to do it.

20 THE WITNESS: Okay.

21 BY MR. LEVENTHAL:

22 Q. How many -- you filed a zero return; is that correct?

23 A. Yes, I do.

24 Q. How many years do you -- have you filed a zero return?

25 A. Well, I've been filing a zero return -- probably started in

1 1996. How many years would that be? I don't know.

2 THE COURT: Are you --

3 THE WITNESS: No.

4 THE COURT: -- asking a question?

5 THE WITNESS: Hold it. I think I started in 1996.

6 BY MR. LEVENTHAL:

7 Q. And what made you believe that the zero return was legal?

8 A. That's a good question. Did I give you that one?

9 Q. No.

10 A. Okay.

11 Well, in 1976, I was in jail. And presumably my parole
12 officer believed that part of the terms of my parole was that I
13 file tax returns as part of my parole. And, fortunately for me,
14 because I didn't think of the idea, somebody had filed a zero
15 return here in the Ninth Circuit, the U.S. v. Sonia, and he had
16 filed a return showing zeroes on it.

17 So I said to my parole officer -- and I understood that
18 income meant a corporate profit -- so I filed a return and I put
19 zeroes on it. And my parole officer initially doubted that I
20 could do that. And I showed him the case. I think it's U.S. v.
21 King or -- I forgot the name. It's on my return.

22 And I showed him that. And I said to my parole
23 officer: Look. I'm signing under penalty of perjury. I'm
24 gonna put zero here. I said, if you think I earned more, I'll
25 put whatever you want me to put: a million dollars, 50 dollars.

1 I believed I had zero income.

2 And I said to him -- and I explained the deficiency,
3 what a deficiency is. I said, I'll send it in. And, if the
4 government thinks I owe more, they will send me a deficiency
5 notice saying I owe more and we'll litigate it in Tax Court.
6 But I said to him, for the purposes of parole, I am -- as a
7 matter of fact -- I -- I -- I -- for the purposes of parole, I'm
8 filing a return.

9 Now, I said to him, you want me to commit perjury and
10 report something that I don't believe I owe? So my parole
11 officer believed that I complied with the terms of my parole and
12 probation and left me alone.

13 MR. LEVENTHAL: I'd like to put up Exhibit 36 which
14 is -- it's been marked as Government's Exhibit 36. It's your
15 addendum.

16 BY MR. LEVENTHAL:

17 Q. Do you see it there?

18 (Document displayed in open court.)

19 BY MR. LEVENTHAL:

20 Q. Now, Exhibit 36 is your addendum for year 1993; is that
21 correct?

22 A. I'm looking -- yeah, yeah. I'm looking at -- uh, yeah.
23 Yeah, that -- that's the kind of returns I was filing, I think,
24 when I was on parole. '93. I was already out of jail in '93.

25 Q. Okay.

1 A. The -- the -- the returns that I was filing when I was on
2 parole I believe were the six-page returns. But this is close
3 enough.

4 Q. Okay. And you filed a zero return for that year; is that
5 correct?

6 A. Yeah.

7 Q. Okay. Turning to the addendum --

8 A. Pardon me?

9 Q. Turning to the addendum --

10 A. Yes.

11 Q. -- you wrote, "I am" -- tell me. What was -- what's the
12 first line that you wrote there?

13 A. Well, I didn't hear what you said.

14 Q. What is the first sentence that you wrote in your addendum?

15 A. The first sentence?

16 Q. That's correct.

17 A. "I am submitting this statement as part of my 1993 income
18 tax return. Even though I know that no section of the Internal
19 Revenue Code:

20 "establishes an income tax 'liability' as, for example,
21 Code Sections 4401, 5005, and 5703 do with respect to
22 wagering, alcohol, and tobacco taxes" or --

23 Q. Okay. Stop right there.

24 What did you mean by that, Mr. Schiff?

25 A. Well, if you look in Section 4401, -- do you want to give me

1 my Code -- where's my Code book?

2 Now, I'm not saying this is the law. This is how I
3 understand the law. I could be dead wrong in this. I'm not
4 suggesting to the jury --

5 MR. LEVENTHAL: Your Honor, my I approach?

6 THE WITNESS: -- for one moment -- yeah --

7 THE COURT: You may.

8 THE WITNESS: -- I'm not suggesting this is the law.
9 But I am suggesting this is my understanding of the law. And,
10 remember, I only got one eye. So I might not see everything.

11 When you turn to Section 4401, I -- see, I put red tabs
12 there -- 4401 says, "Each person who is engaged in the business
13 of accepting wagers." This applies to bookmakers. There's a
14 tax on bookmakers who accept wagers. It's called a wagering
15 tax. And it says, "Each person who is engaged in the business
16 of accepting wagers shall be liable for and shall pay the tax
17 under this subchapter." Clear? "Shall be liable for and shall
18 pay the tax."

19 Now, when I went to Section, uh, 5005, I found -- 5005
20 says, "The distiller or importer of distilled spirits shall be
21 liable for the taxes imposed ... by section 5001..." There it
22 is, 505 [sic]. So I found that.

23 And then, when I went to Section 5703, we'll say, it
24 has to do with tobacco taxes. It says, "The manufacturer or
25 importer of tobacco products and cigarette papers ... shall be

1 liable for the taxes imposed ... by Section 5701." And further
2 on it says, "[and] Such taxes shall be paid on the basis of [a]
3 return."

4 Now, I couldn't find --

5 BY MR. LEVENTHAL:

6 Q. So --

7 A. -- similar provisions with respect to income tax.

8 Q. So what's common between 4401 --

9 A. Pardon me?

10 Q. What -- what is the commonality between 4401, 5005, and
11 5703?

12 A. Well, each of them specifically provided a liability.

13 When the Government introduced that report, uh, the CRS
14 Report, they cited five sections and they said all of them
15 working together makes you liable. But in none of those five
16 sections in the CRS Report does the word "liability" appear.
17 And I couldn't find five sections that required bookmakers to
18 pay the bookmaking tax. I couldn't find -- you needed five
19 sections to figure out if you owed tobacco taxes. It was all in
20 one section.

21 Q. All right. Let's move on to, uh, subsection 2. Can you
22 read that for us?

23 A. Pardon me?

24 Q. Subsection 2.

25 A. Yes.

1 Q. Read that, please.

2 A. Well, I said I couldn't find a section --

3 Q. No. Starting with "provides that."

4 A. "provides that income taxes 'have to be paid on the basis of
5 a return' - as, for example, Code Section[] 4374, 4401(c),
6 5051(a), and 5703(b) provide with respect to other taxes."

7 Q. Okay. Stop right there.

8 What did you mean by that subparagraph?

9 A. Well, when I went -- see -- well, each section related to
10 some federal tax, either makes a provision for liability or
11 payment. Sometimes it doesn't use the word "liability," but it
12 says you have to pay the tax. So I'm looking for one thing or
13 the other.

14 So if you go to Section 4374, for example -- now, I'm
15 not saying this is the law. This is the way I interpret the
16 law, the way I understand the law. And my understanding could
17 be wrong -- let me see. I'm looking for 4374. (Pause.) 4374.
18 Oh, yeah.

19 4374. Okay. This has to do with, uh, taxes paid by
20 foreign insurance companies in the -- who do business in the
21 United States. And it says, "The tax imposed by this
22 chapter" -- the government likes to suggest that the imposition
23 of a tax is what makes you liable. But you'll notice every
24 section here both imposes the tax but then later on says who has
25 to pay the tax imposed. That's very important -- it says, "The

1 tax imposed by this chapter shall be paid, on the basis of a
2 return." Clear. That's what -- that's what that section says,
3 4374.

4 Now -- all right. Now, if you go to 4401 --

5 Q. Subsection (c).

6 A. -- 4401(c). I've already cited this because this says
7 liability and payment at the same time. Uh, 44 -- 44 -- uh,
8 4401(c) says -- yeah -- "Each person who is engaged in the
9 business of accepting wagers shall be liable for and shall pay
10 the tax."

11 Now, the tax, the wagering tax, is imposed in Section
12 4401(a), but the requirement to pay the tax and who is liable is
13 established in Section 4401(c). Okay?

14 Now, the next section I cite is 5061. 5061. 5061.
15 Yeah, 5061. "The taxes on distilled spirits, wines, and beer
16 shall be collected on the basis of ... return. The Secretary
17 shall, by regulation, prescribe the period or event for which
18 such return shall be filed, the time [and payment of] filing
19 such return, the information to be shown, and the time for
20 payment of such tax." Time or payment of such tax.

21 So it provides for the payment of, um, taxes on wines
22 and beer and distilled spirits, 5061.

23 And 5703 -- 5703 says -- okay. 5703(b) says, "Method
24 of payment." This has to do with excise taxes on, uh -- on --
25 on tobacco, cigars, and cigarettes. It says, "The taxes imposed

1 by section 5701 shall be determined at the time of removal of
2 the tobacco products ... cigarettes [and] papers [And]
3 Such taxes shall be paid on the basis of [a] return." That's
4 what it says.

5 So what I'm saying -- at the beginning, I'm citing all
6 of these Code sections that re- -- that make persons liable and
7 require them to pay a variety of taxes. But I couldn't find any
8 such provision in the Code with respect to income tax. Okay?

9 Q. Okay. So we'll be moving on down to the next paragraph --

10 A. Yes.

11 Q. -- you start out, "I am filing anyway." Could you --

12 A. Right.

13 Q. -- read --

14 A. Right.

15 Q. -- read just the first sentence there, please?

16 A. Right.

17 Remember, I'm in jail when I first started to file
18 these, you know. And I was in jail because supposedly --

19 Q. Mr. Schiff --

20 A. -- one of the reasons is I didn't file a tax return.

21 So I said -- even though I know that there's no law
22 requiring me to file, "[I'm] filing anyway, because I have been
23 illegally prosecuted twice by the government for failing to file
24 income tax returns by the government criminally claiming that
25 failure to file income tax returns is a crime pursuant to Code

1 section 60- -- 7203, and a lesser included offense with respect
2 to Code Section 7201. Therefore, [I said] this return is not
3 being filed voluntarily, but is being filed out of fear that if
4 I did not file this return, I could again be (illegally)
5 prosecuted for failing to file an income tax return for the year
6 1993."

7 Now, notice I put on this return I wasn't filing
8 voluntarily. So this was coerced. Therefore, it shouldn't have
9 been admitted in this case because the Government is using
10 coerced information against --

11 THE COURT: Okay.

12 MR. NEIMAN: I -- I've been well behaved. I have to
13 object to that point --

14 THE WITNESS: All right.

15 MR. NEIMAN: -- up to that point, your Honor.

16 THE COURT: Sustained. Strike.

17 THE WITNESS: All right.

18 THE COURT: That remark --

19 THE WITNESS: I just wanted to point that out.

20 THE COURT: Yeah. Well, it's stricken.

21 THE WITNESS: All right. I -- I didn't file this --

22 THE COURT: Go ahead.

23 THE WITNESS: -- return voluntarily.

24 But I filed --

25 THE COURT: Mr. Schiff --

1 THE WITNESS: -- in order to prevent --

2 THE COURT: -- wait for the question. Wait for the
3 next question.

4 BY MR. LEVENTHAL:

5 Q. So you said --

6 A. You understood I --

7 Q. -- you didn't file this?

8 A. -- filed in order to -- not to be --

9 THE COURT: Wait for the next question.

10 THE WITNESS: All right.

11 THE COURT: No speeches.

12 THE WITNESS: Okay. Go ahead.

13 BY MR. LEVENTHAL:

14 Q. So you're saying here that you did not file this report
15 voluntarily; is that correct?

16 A. Yeah. In order to prevent -- not to be prosecuted for
17 failing to file or tax evasion. I went to jail twice for
18 failing to file tax returns. So I didn't want to take a chance
19 again.

20 Q. Okay. Moving on where it starts "In addition" --

21 A. "In addition to the" --

22 Q. -- can you read the next --

23 A. Yeah.

24 Q. -- go ahead.

25 A. I said, "[I'm] filing even though:

1 "The 'Privacy Act Notice'" --

2 Q. Stop right there.

3 What is the Privacy Act Notice?

4 A. Oh. Well, I -- I have a 1040 booklet here someplace. The

5 most important part of a 1040 booklet, which is -- there's a

6 Privacy Act Notice in the 1040 booklet which nobody reads

7 because it's small type. If somebody has -- I have a 1040

8 booklet over there someplace.

9 When I put on my seminars, I find that nobody ever read

10 this. Yes.

11 Q. Is this what --

12 A. Yes. Yeah, that's it. Can you give it to me?

13 MR. LEVENTHAL: Judge, may I approach?

14 THE COURT: You may.

15 THE WITNESS: Yes.

16 I've had thousands of people come to my seminar.

17 Nobody ever read this until I point it out to 'em.

18 BY MR. LEVENTHAL:

19 Q. Can you turn to where your --

20 A. Well, it's called, "The Disclosure and Privacy Act and

21 Paperwork Reduction Act Notice." In this return, it is shown on

22 page 72. Therefore -- where's 72 here for cryin'... Oh, here

23 it is.

24 Q. Do you have it? Do you have it?

25 A. Yeah.

1 Q. What is your understanding of what --

2 A. Here's 72. See.

3 Q. What is your understanding of what the Privacy Act Notice
4 entails?

5 A. Well, this is where -- this is notice -- it's called a
6 notice -- notice is very important in law. Notice is notice to
7 you by the government.

8 The Government tried to make believe that some document
9 was notice to me. But this is the official notice. If you have
10 to pay income taxes, the government has to tell you or else how
11 would you know?

12 So, in this Privacy Act, there was a law passed where
13 the government had to tell you, uh, what -- if you had to give
14 them the information, what they can do with the information,
15 what might happen to you if you don't give them the information.
16 They gotta give you that information.

17 So in the Privacy Act it says, "Our legal right to ask
18 for information is Internal Revenue Code section[] 6001, 6011,
19 and 6012, They say ... you must file a return or statement
20 with us for any tax you are liable for."

21 Now, the government doesn't tell you what section makes
22 you liable, as they do in other excise taxes where they
23 specifically tell you where you're liable. The government
24 said -- but they do tell you you only have to file and pay for
25 any tax you are liable for. The government tells you that.

1 So it's very easy. You take the Internal Revenue Code
2 and you can go to the index 'cuz ya gotta find it. And the
3 quickest way to find it is to go to the Internal Revenue Code
4 and you see it says "Liability for tax." And you run your
5 finger down to see what taxes you're liable for and the income
6 isn't there.

7 So what are you supposed to conclude? You conclude --
8 my conclusion was this Privacy Act Notice told me I wasn't
9 required to file and pay income taxes because I couldn't find a
10 Code section that made me liable.

11 Also, they tell ya a lot of other things here. They
12 tell ya all the information you put on the return can be used
13 against you. It can be sent to foreign governments, can sent
14 [sic] to states, the government can look over it. That's why
15 Senator Eagleton it was revealed -- uh, it was all kinds of
16 things.

17 Q. Okay.

18 A. President Nixon used to sick his -- the IRS us. And all
19 right.

20 Q. Continue.

21 A. This is -- this is -- so in my -- in my document I said,
22 "The 'Privacy Act Notice' [on] the face of this return directs
23 [us] to, states that I need only file a return for 'any tax' I
24 may be 'liable' for, and since no Code section makes me
25 'liable' -- this is -- well, maybe there -- maybe there is one.

1 I just couldn't find it -- "your Privacy Act ... clearly
2 notifies me that I do not have to file an income tax return."

3 "In addition" -- this was a little tricky. I dropped
4 this 'cuz -- all right. All right. So -- so that's how I used
5 the Privacy Act Notice.

6 Q. Okay. Moving on to --

7 A. You wanna go to 4 or something?

8 Q. -- subparagraph --

9 A. Okay.

10 Paragraph 4 I said -- well, "26 CFR" -- that means the
11 Code of Federal Regulations. And this is a regulation
12 602.101 -- "does not list a 1040" -- this is complicated.

13 The -- if you'll take a tax return and if you look at a
14 tax return -- where's the tax return? -- up in the corner -- you
15 gotta -- up in the corner there's what we call an "OMB number."
16 It's a little number. And any government agency -- can you put
17 a tax return up there? -- any government agency that asks for
18 information --

19 Q. Hold on, Mr. Schiff. We're gonna get it.

20 A. -- must give the document to the Office of Money and Budget.
21 Can you see it? It's right up in there in the corner. It's
22 right up there if you can --

23 (Document displayed in open court.)

24 THE WITNESS: Ah, there it is. Okay.

25

1 BY MR. LEVENTHAL:

2 Q. What is that OMB number?

3 A. Okay. Now, OMB No. 154-0074 [sic]. Okay.

4 See, if the government asks for information, you don't
5 have to give it to 'em unless the document contains an OMB
6 number because any government bureaucrat can send you a letter
7 saying give us this information, give us that information.
8 Well, how do you know if you have to give it? If it doesn't
9 have an OMB number, it's considered a bootlegged document and
10 you don't have to give 'em the information.

11 So there's an OMB number right there. However, that
12 OMB number is the OMB number assigned to reporting, as I said,
13 foreign earned income. Foreign earned income. Uh, no. I'm
14 sorry. Yeah, 54 -- uh, which I discovered is for reporting
15 foreign earned -- and, since I have no foreign-earned income to
16 report, there seems to be no other document or return that CFR
17 602.101 makes available to the income tax imposed on Section 1.
18 So I believe that, uh, Section 1 only applied to reporting
19 foreign-earned income. I eventually dropped this out of my
20 attachment because it was too complicated for people to
21 understand. So...

22 Q. But you still believed at the time --

23 A. Yeah --

24 Q. -- that this was --

25 A. -- I still believe it. I still believe that there is no OMB

1 number assigned to Section 1 that deals with income tax. Okay?

2 Now, you want -- want me to get to the fifth paragraph?

3 Q. Yes, please.

4 A. Okay.

5 In the fifth paragraph I stated, "Section[] 6013(h)
6 [sic] & (i) provide that all return information can be used
7 against you [sic]" -- "can be used against me to determine and
8 impose both criminal and civil fines and penalties."

9 Q. How did you determine that?

10 A. Well, it tells you that in the -- in the Privacy Act Notice.
11 It says -- it says -- it says right here -- it says, for
12 example, "we may disclose your tax information to the Department
13 of Justice to enforce the tax laws, both civil and criminal, and
14 to cities, states, the District of Columbia, U.S. commonwealths
15 or possessions, and certain foreign governments to carry out
16 their tax laws. We may disclose your tax information to the
17 Department of [the] Treasury and contractors for tax
18 administration."

19 So they are telling you this right here. So, if you
20 give them the information, you're saying it's okay with me; take
21 my return information, give it to anybody you wanna give it to.

22 Q. Okay.

23 A. That's how they use it.

24 Q. Okay. And then reading --

25 A. But the average American doesn't know that that's what they

1 can do with the information on a tax return.

2 Q. Okay. Then reading on from "Therefore."

3 A. Yeah. So -- and I -- I don't believe that the federal
4 government has a right to compel Americans to give them
5 information that they could distribute all over the world if
6 they want to. I believe that the Fourth and Fifth Amendment has
7 something -- something to say about this. Anyway....

8 Oh. And then I cite -- oh.

9 Q. Starting from "Therefore."

10 A. Yeah. Then I continue and I say that to do this -- and I
11 believe -- maybe the Court's disagree with me on this -- but I
12 believe that doing this with the information in your tax return
13 is not consistent with the Fifth Amendment which says you can't
14 be compelled to be a witness against yourself.

15 And the courts have ruled, cases -- I cite a couple of
16 cases here -- which they say the Fifth Amendment applies to both
17 civil and criminal matters. And what they do is they impose
18 civil fines in connection with income tax. They use your tax
19 return to report civil fine. So I happen to believe it's a
20 total violation of the Fourth and Fifth Amendment. But maybe
21 I'm wrong.

22 Q. Okay. And you found this out of these two cases; is that
23 correct?

24 A. Yeah.

25 Q. That's U.S. --

1 A. Those two cases said that the Fifth Amendment protects you
2 from having to disclose information that can be used against
3 you, either civilly or criminally. Again, my interpretation
4 could be wrong.

5 Next.

6 Q. Okay. Reading on. "With respect to."

7 A. Yeah.

8 Now, here's where I mention those Ninth Circuit cases.
9 That's one of the reasons I moved to Nevada. I thought I'd get
10 the protection of the Ninth Circuit with respect to U.S. v. Long
11 and U.S. v. Kimball because in -- the Ninth Circuit had "ruled
12 that 'A (1040) form with 'zeros' inserted in the space
13 provided...qualified as a return.' See U.S. v. Long, 618
14 F. 2d." And this was reaffirmed 10 years later in U.S. v.
15 Kimball, 896 F.2d 1218, and also the Seventh Circuit in U.S. v.
16 Moore, 612 Fed 830 [sic], said, as I understood it, that -- that
17 in ruling as they did the Ninth Circuit was right.

18 Now, the reason they said that is that some people had
19 filed Fifth Amendment returns; some people -- which is what I
20 did in '74, '75, or '76 -- some people, you know, put little
21 numbers on it. And the, um, Ninth Circuit said, look, if you
22 put zeroes on, you're giving information. Information may not
23 be correct, but it's information. You can determine the tax
24 from zeroes. You can't determine a tax if you just write "Fifth
25 Amendment."

1 So they I said this a return for tax purposes. May not
2 be a correct return. The government certainly can charge you
3 with tax evasion if they want or -- but it's a return. And
4 presumably they can't charge you with failing to file.

5 I mean, many people file returns and the government
6 says it's wrong. That's what Tax Court is all about. The
7 government litigates with taxpayers because the government
8 believes they owe more in -- had more income than they put on
9 their return.

10 But these two Ninth Circuit cases said, as far as
11 filing a return, presumably you can't be charged with failing to
12 file if you file a return, sign it under penalty of perjury, and
13 report zeroes. At least you're filing a report. That's
14 somewhat better than not filing or pleading the Fifth or giving
15 us other information.

16 So I believed that I was complying with the law as
17 understood by the Ninth Circuit. So I put it down there. And I
18 showed that to my probation officer at the time and he
19 understood.

20 Q. Okay. So the holding of the Ninth Circuit cases, Kimball
21 and Long, basically under your understanding is, is that a zero
22 return qualified as a return?

23 A. As a return --

24 Q. Okay.

25 A. -- not that it -- it may be an accurate report of what you

1 owe. But there are many people that the IRS doesn't agree with
2 what they report.

3 Q. Okay. Moving on to the next paragraph --

4 A. Now --

5 Q. -- starting with --

6 A. -- you want to go --

7 Q. -- "It should ... be noted."

8 A. -- to the next paragraph?

9 Q. Yes.

10 A. Okay.

11 I said here, "It should also be noted that I had 'zero'
12 income according to the Supreme Court's definition of income
13 [then I put] (See Note ...1), [because]" -- "[I said] since in
14 Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509, (at
15 pages 518 & 519) that Court held that 'The word (income) must be
16 given the same meaning in all of the Income Tax Acts of Congress
17 that was giving to it in the Corporation Excise Tax Act (of
18 1909)."

19 Now, you'll notice that this -- this case was a 1922
20 case.

21 Q. That's Merchants' Loan?

22 A. Yeah.

23 "Therefore, since" -- yeah, I'll continue --

24 "Therefore, since I had no earnings in 1993 that would have been
25 taxable under the Corporation Excise Tax Act of 1909 ...,' I can

1 only swear to having 'zero' -- "'zero' income in 1993.
2 Obviously, since I know the legal definition of 'income,' if I
3 were to swear to having received any other amount of 'income,' I
4 would be swearing falsely, and thus would be committing a crime
5 both under 18 U.S.C. 1621 and 26 U.S. [sic] 7206 [which makes it
6 a crime to commit perjury]. So, not wishing to violate either
7 statute, I can only swear to having 'zero' income for 1993."

8 I could point out that when Congress passed the Income
9 Tax Acts they weren't sure what the word "income" meant. It's
10 in my book The Great Income Tax Hoax. I actually reproduce the
11 debates that took place when the income tax -- see, income is
12 a -- is a -- is an abstract accounting term. People think it's
13 easy to figure out what income is, but you can change the
14 meaning of income based on how you value inventory. It's an
15 abstract concept. And the Supreme Court admitted that they
16 didn't know what income was exactly. So they said, well, we'll
17 see what the courts say what it is.

18 And eventually the courts ruled that the word "income"
19 had to be separated from its source otherwise it would have to
20 be apportioned. That's why when you saw from the CRS Report
21 they held it to be an excise tax which didn't have to be
22 apportioned.

23 And then they ruled that income was a corporate profit
24 because the prior Supreme Court case, Pollack v. Farmer's Loan
25 and Trust Co., ruled that income from real and personal property

1 was a tax on the property itself and, therefore, had to be
2 apportioned.

3 Uh, when a person works for wages, he's merely selling
4 his labor. He sells his labor just like anybody sells a
5 screwdriver. And, when somebody sells a screwdriver, they let
6 'em deduct the cost of the screwdriver. But, when a worker
7 sells his labor for 10 bucks, they are telling him there's no
8 cost basis; you gotta pay -- how about -- how about you have to
9 have a place to sleep; I have to eat food. And the law takes --
10 recognizes that.

11 So they defined the word "income" to mean a corporate
12 profit. That's why today corporations can have millions of
13 dollars' worth of income. But, if they don't have a profit,
14 they pay no income tax. And, if you look in Section 61 of the
15 Code, the Code doesn't make a distinction between the meaning of
16 income for corporations or the meaning of income for
17 individuals. So since corporations --

18 THE COURT: I believe you're now into --

19 THE WITNESS: Okay.

20 THE COURT: -- a narrative.

21 BY MR. LEVENTHAL:

22 Q. Mr. Schiff, you've --

23 A. Okay.

24 Q. -- you've --

25 A. But this is why I believe my understanding of the law. And

1 in this case -- and you could --

2 THE COURT: Wait for the next question.

3 THE WITNESS: All right. But --

4 BY MR. LEVENTHAL:

5 Q. Mr. Schiff --

6 A. -- so --

7 Q. -- in that paragraph --

8 A. Okay, okay. Go ahead.

9 THE COURT: Wait for the next question.

10 BY MR. LEVENTHAL:

11 Q. In that paragraph --

12 A. What's the next paragraph?

13 Q. In that -- well, let's -- hold on there.

14 A. Also, I --

15 Q. Mr. Schiff, hold on.

16 In that paragraph, you said (see Note 1). Can you look

17 at Note 1 as well?

18 A. Also, I also believe that if --

19 Q. Mr. Schiff.

20 A. -- change -- on page 2 of --

21 Q. No. Mr. Schiff --

22 A. What?

23 Q. -- Note 1 --

24 A. Note 1 --

25 Q. -- below that?

1 A. -- yeah, okay.

2 Q. I'm trying to go in order here.

3 A. Okay.

4 Now, in Note 1, I added some more cases that ruled the
5 same way. I point out, "The word 'income' is not defined in the
6 Internal Revenue Code." And I cite at that time one court
7 decision -- and I said it -- U.S. v. Ballard, 535 F.2d 240.

8 They -- they held, and other cases I learned since have
9 agreed, that income is not defined in the Internal Revenue Code.
10 "But, as stated above, it can only be a derivative of corporate
11 activity. The Supreme Court [also] held [any] scientific
12 definition of 'income' ... imports, as used here...the idea" --
13 "the idea" -- according to the Supreme Court case -- "the idea
14 of gain or increase arising from corporate activities." And the
15 Supreme Court case that said that was Doyle v. Mitchell, 247
16 U.S. 179.

17 Another Supreme Court case I quoted, the Supreme Court
18 said, "Certainly the term 'income' has no broader meaning in the
19 1913 Act than in the" -- "than in that of [the] 1909 [Act] ...
20 [uh, uh] difference in its meaning as used in the two acts.'
21 Southern Pacific ... v. John Z. Lowe."

22 Now, what that refers to, in 1909 Congress passed the
23 Corporation Excise Tax Act of 1909. And what Congress did is
24 they put a tax on corporate profit. They said operating as a
25 corporation is a privilege and they put an excise tax on

1 corporate profit since it didn't have to be apportioned. So the
2 Corporation Excise Tax of 1909 only made corporate profit
3 taxable. So, if you were living in 1909 and you worked for
4 wages or you had your own -- if you weren't a corporation, you
5 didn't pay the Excise Tax of 1909.

6 So, when all of these cases said the word "income"
7 means the same thing as it meant in the Corporation Excise Tax
8 Act of 1909, all you had to do was say, well, if I were living
9 in 1909 and I had wages or dividends or whatever it was, would I
10 have paid the tax? The answer is no. So that meant to me we
11 don't have to pay a tax now.

12 Q. Is it your belief that income -- the definition of income
13 has not changed since then?

14 A. Yeah. I -- I will -- I can pull out those cases. And those
15 cases -- all the cases that I cited have never been reversed,
16 never been revoked. There is a thing called "shepardizing."
17 You know, sometimes the Supreme Court makes a ruling and maybe
18 10 years later they reverse themselves.

19 So you go down to the library and you can look up the
20 case, then you can see all the cases in which it was cited.
21 And, if it was reversed there's usually an "R" or if it's
22 changed. But, even if the case goes back to 1850 and it's never
23 been reversed or revoked, it's still supposed to be good law.

24 And, in all the cases that I cited, I could never find
25 that any of those cases have been reversed or revoked. So I

1 believed when I filed this it was totally lawful and I filed it
2 in conformity with the Privacy Act Notice and all of the court
3 decisions I cited.

4 Q. And you signed that under penalty of perjury; is that
5 correct?

6 A. Yes.

7 Q. Okay. Can we move on to --

8 A. And, of course, if the government didn't agree with me --

9 Q. -- Exhibit 46?

10 A. -- they could send me a Deficiency Notice and we could
11 litigate it in Tax Court.

12 Q. Okay. Moving on to Exhibit 46, Mr. Schiff.

13 A. Now, let me say this. I -- I was --

14 THE COURT: There's no question pending.

15 THE WITNESS: Well, he doesn't know. I --

16 THE COURT: There's no question pending.

17 THE WITNESS: I was -- I was continually revising
18 these.

19 THE COURT: No question --

20 THE WITNESS: He doesn't know that.

21 THE COURT: Don't argue with me. No question pending.
22 Wait for the question.

23 THE WITNESS: Okay.

24 BY MR. LEVENTHAL:

25 Q. Okay. Exhibit 46, that is your --

1 A. Hold -- oh, wait a minute. Let me put this together so -- I
2 don't want to lose anything here. (Pause.)

3 What is this? Exhibit 36. Okay.

4 Q. 46, Mr. Schiff.

5 A. What is this?

6 Q. Do you have Exhibit 46 in front of you? That's your 1040
7 for the year 2003.

8 A. No, I don't see it. Oh, here it is.

9 MR. NEIMAN: Your Honor, would this be an appropriate
10 time to take a restroom break or --

11 THE COURT: Yeah. We're mid afternoon.

12 MR. NEIMAN: -- 15-minute break?

13 THE COURT: It's time to take our mid-afternoon break.
14 We'll be in recess for 15 minutes.

15 (Jury leaves the courtroom at 3:04 p.m.)

16 THE COURT: Go ahead and step down, Mr. Schiff, if you
17 wish. Watch your step.

18 (Pause in the proceedings.)

19 THE COURT: Matters of business, Counsel, before we --

20 MR. IGNALL: I don't think so.

21 THE COURT: -- take a break?

22 Mr. Cristalli? Mr. Bowers?

23 MR. CRISTALLI: No, sir.

24 MR. BOWERS: Nothing, your Honor.

25 THE COURT: Mr. Schiff?

1 We're in recess.

2 MR. CRISTALLI: Yeah, the only -- oh, we do -- I do
3 have a question.

4 Am I -- um, just so we're completely clear -- I don't
5 want to violate any of the courtroom procedures or policies --
6 um, am I gonna be prevented from speaking to Mr. Schiff now that
7 he's under oath on the witness stand? I know it's -- I just
8 want to be sure that we're.... I'm not --

9 THE COURT: Well, the ruling is that a witness will not
10 discuss his testimony with other witnesses. So I assume that
11 with counsel it's not -- unless you intend to take the stand.

12 MR. CRISTALLI: No. I'm going to specifically try to
13 avoid that, your Honor.

14 THE COURT: All right. However, if you do discuss
15 things with him, it will be open to --

16 MR. CRISTALLI: Yes, sir.

17 THE COURT: -- questions by the Government.

18 MR. CRISTALLI: I understand.

19 THE COURT: Okay.

20 MR. CRISTALLI: Thank you.

21 (Recess from 3:06 p.m. to 3:27 p.m.)

22 THE CLERK: All rise.

23 MR. SCHIFF: Mr. Schulz is here. So can I put him on
24 just for the purpose of -- and then he can go?

25 THE COURT: What was he on for? Character?

1 MR. SCHIFF: Yeah, character.

2 THE COURT: Okay. All right. I'm just -- I'm just
3 gonna insist, Mr. Schiff, in allowing you to do that that you
4 restrict your questions to how long he's known you and what --
5 if he has a knowledge of your character in the community -- or
6 your reputation in the community --

7 MR. SCHIFF: That's it.

8 THE COURT: -- for truthfulness. So it'd be very
9 quick.

10 MR. SCHIFF: Okay.

11 THE COURT: I don't want --

12 MR. SCHIFF: I'll just ask him --

13 THE COURT: -- to spend a lot of time.

14 MR. SCHIFF: -- what he does.

15 THE COURT: I'm giving you the opportunity trusting
16 that --

17 MR. SCHIFF: Yes.

18 THE COURT: -- you'll do exactly that and nothing more.

19 (Discussion between Mr. Leventhal and

20 Mr. Schiff.)

21 MR. NEIMAN: Your Honor, there is one other issue.

22 THE COURT: Yes.

23 MR. NEIMAN: I believe Mr. Schiff had asked, uh, at the
24 break if the Government would object to the introduction of
25 Mr. Schiff's five previously written books. The Government

1 would object to their admission, uh, one, I think they're
2 irrelevant to the Indictment in this case; two, I think there's
3 a 403 argument to be made that they without a doubt
4 misstate/misquote the law. Uh, it has the danger of confusing
5 the issue, uh, before the jury. And that would be the basis for
6 our objection.

7 MR. CRISTALLI: And, your Honor --

8 MR. NEIMAN: That's why we're bringing it up now just
9 to resolve it outside the presence of the jury.

10 MR. CRISTALLI: And, your Honor, my position with
11 regard to that is I was going to, if Mr. Schiff wasn't able to,
12 introduce those books through him on cross-examination because
13 there's no question that not only, uh, Ms. Neun but probably all
14 of the other people that, uh, followed Mr. Schiff's philosophy
15 had digested that material and I think it's relevant in terms of
16 what they relied on in forming their opinions, whether or not --
17 it has nothing to do with whether or not what's -- the content
18 of that -- of that material is accurate or inaccurate. It goes
19 to their reliance.

20 THE COURT: Okay. Thank you.

21 Ms. Clerk, will you bring in the jury?

22 THE CLERK: Yes, sir.

23 MR. LEVENTHAL: Judge?

24 THE COURT: Not yet. I'm not going to rule on that
25 right now.

1 MR. LEVENTHAL: You're not ready for it?

2 THE COURT: No.

3 MR. LEVENTHAL: All right.

4 Are you gonna get up?

5 MR. SCHIFF: Yeah. But he says he's gonna -- I'm gonna
6 put Schulz on.

7 MR. LEVENTHAL: Oh, right now?

8 MR. SCHIFF: Tell Schulz to come in.

9 (Pause in the proceedings.)

10 (Jury enters the courtroom at 3:31 p.m.)

11 THE COURT: Please be seated.

12 Will counsel stipulate to the presence of the jury?

13 MR. NEIMAN: Yes, your Honor.

14 MR. BOWERS: Yes, your Honor.

15 (Discussion between the clerk and the Court.)

16 THE COURT: Are you okay seated?

17 JUROR: (Nods head.)

18 THE COURT: All right.

19 Mr. Schiff, were you gonna call --

20 MR. SCHIFF: They told me he's here. Is he here?

21 THE COURT: -- your next witness.

22 MR. NEIMAN: Your Honor, we may just want to make it
23 clear that we're gonna call -- that the defense is gonna call
24 one witness out of turn just because he has a flight arrangement
25 to make. So --

1 THE COURT: Yes.

2 The defense has called one witness out of turn because

3 there are some issues about his ability to stay.

4 Not there?

5 (Discussion between Mr. Modafferi and

6 Mr. Leventhal.)

7 THE COURT: All right. All right.

8 Mr. Schiff, then you'll resume the stand while we wait

9 for the witness.

10 MR. SCHIFF: Some -- I don't know.

11 (Pause in the proceedings.)

12 MR. SCHIFF: All right. All right. If he comes in,

13 I'll get off the witness stand.

14 THE COURT: Go ahead, Mr. Leventhal.

15 MR. LEVENTHAL: Thank you, your Honor.

16 Court's indulgence.

17 (Discussion between Mr. Leventhal and

18 Mr. Modafferi.)

19 BY MR. LEVENTHAL:

20 Q. Mr. Schiff --

21 A. Yes.

22 Q. -- do you know a gentleman by the name of Robert Schulz?

23 A. Yes.

24 Q. How do you know Mr. Schulz?

25 A. Mr. Schulz is the chairman of an organization called "We The

1 People" and he's out of New York.

2 Q. When did you first meet Mr. Schulz?

3 A. Well, he interviewed me on a -- his radio show a long time
4 ago. But I really got to meet him, uh, when he was holding
5 meetings in Washington in connection with, uh, trying to
6 publicize the income tax and what it means.

7 MR. NEIMAN: Your Honor, we'd just ask what year that
8 was as a foundation.

9 THE COURT: Foundation.

10 BY MR. LEVENTHAL:

11 Q. What year was it that you met Mr. Schulz?

12 A. I'm bad at memory. But it had to be four, five years ago.
13 I spoke at a -- meetings that he organized. I'm on tapes and
14 stuff that he...

15 Q. Did -- did you speak to Mr. Schulz after your initial
16 meeting?

17 A. Yes.

18 Q. Approximately how many times?

19 A. 10, 15 times at least. I mean, we spent time together when
20 I went to Washington. He visited me here for, I think, a week;
21 he was in my office.

22 Q. Now, you said that you met him through an organization
23 called "We the People"; is that correct?

24 A. Yes.

25 Q. What is We the People?

1 A. Pardon me?

2 Q. Do you know what We the People is, that organization?

3 MR. NEIMAN: I'm gonna just object to relevance.

4 THE COURT: What is the relevance?

5 MR. CRISTALLI: Your Honor, if I -- if I may speak to
6 the relevance because I believe I'm a little bit more familiar
7 with it.

8 Uh, that was an issue that we raised at sidebar that
9 depending on the scope of the testimony by, um, Mr. Schiff, uh,
10 Mr., um -- what's his name?

11 MR. MODAFFERI: Schulz.

12 MR. CRISTALLI: -- Schulz may be able to testify as to
13 some other issues relating to reliance. And I think that's
14 where -- whether or not Mr. Schiff, um, relied on any of the
15 communications or representations made by Mr. Schulz or his
16 organization.

17 MR. NEIMAN: Your Honor, the Government would just
18 argue or point out that Mr. Schiff spoke to Mr. Schulz, it
19 sounds like, in 2001 well, well, well, after Mr. Schiff engaged
20 in this activity to not pay taxes, which started in the '60s.

21 THE WITNESS: Well, if I could just say --

22 MR. CRISTALLI: And, um, you know, Mr. Schulz, along
23 with other material, was just another piece of the issue in
24 terms of the reliance as to the defendants and, uh, notice or
25 lack thereof. I think that's -- the Government has spent ample

1 opportunity trying to establish notice on their part. We're
2 trying to --

3 THE COURT: Schiff's -- or Schulz's good-faith belief
4 is not relevant to whether this -- this defendant had a
5 good-faith belief. I -- I ruled on the proffer at sidebar, as
6 you know. And I haven't -- I haven't heard anything that --
7 that changes my mind about that ruling.

8 BY MR. LEVENTHAL:

9 Q. Mr. Schiff, if I can turn your attention to what's been...

10 (Discussion between Mr. Leventhal and
11 Mr. Ignall.)

12 BY MR. LEVENTHAL:

13 Q. Do you have Exhibit 46 in front of you?

14 A. Pardon me?

15 Q. Government's Exhibit, uh, 46.

16 A. 47?

17 Q. 46.

18 A. Six. Yes.

19 MR. NEIMAN: I think it's already in.

20 THE WITNESS: Yes.

21 BY MR. LEVENTHAL:

22 Q. Okay. That is your 1040 tax return for 2003; is that
23 correct?

24 A. Yes.

25 Q. Okay. If we can put that up there.

1 (Document displayed in open court.)

2 BY MR. LEVENTHAL:

3 Q. You filed a zero return for that as well; is that correct?

4 A. That's correct.

5 Q. Okay. Going to the addendum that you attached to that, it's
6 pretty much the same, is that correct, as the one we just read?

7 A. Let me just take a look.

8 Q. I'm sorry?

9 A. Let me -- let me take a look.

10 Q. Okay.

11 A. Over the years I changed these as I -- sometimes I used
12 different provisions.

13 (Reviewing document.) I notice I added another case in
14 paragraph 4, Cross v. U.S., which is a bankruptcy case in
15 Las Vegas in which the Bankruptcy Court here in Las Vegas stated
16 "zeroes entered on Form 1040 constitute a return, Cross v. U.S.
17 9- -- so I added a case there.

18 (Reviewing document.) Yes. And what I did in
19 paragraph 5 I discovered -- I didn't know before -- I added
20 House Report 1337 and Senate Report 1622 (83rd Congress, 2d
21 Session) and I attached the House and Senate Reports to my
22 return. This is the first year I think I did that. I attached
23 the House and Senate Report which --

24 Q. Why did you --

25 A. Why did I do that?

1 Q. Why did you do that?

2 A. Okay. You know, I've always believed, as I said, income is
3 a corporate profit. And some people find it difficult to
4 understand that. But then I came across the House and Senate
5 Report which was issued when the 1954 Code came out. The
6 1950- -- there was a 1939 Code which contained provisions. But
7 then, in 1954, Congress practically rewrote the Internal Revenue
8 Code and this became the '54 Code.

9 Q. Do you know why Congress rewrote the Code?

10 A. Well, in '54 -- they did most of it in '53. But there was a
11 lot of changes. One of the biggest changes, of course, was in
12 the 1939 Code the IRS was referred to over and over again. The
13 IRS was referred to.

14 In the '54 Code, they took out all references to the
15 IRS and they -- and they replaced it with "the Secretary," which
16 means the Secretary of the Treasury. So, in the '54 Code,
17 there's no reference to the IRS and the IRS is given no
18 authority in the '54 Code.

19 Another thing they did, they changed the meaning of
20 income as it had been defined or used in the '39 Code. And what
21 they did is this: They completely changed, frankly, the meaning
22 of income. Here's what they said. They said that income in
23 the -- Section 61, Section 61 of the '54 Code, allegedly defines
24 income. It doesn't really, but it says it. And here's what
25 they said, "This definition is based upon the 16th Amendment and

1 the word 'income' is used in its constitutional sense." That's
2 what they said, "the word 'income' ... used in its
3 constitutional sense."

4 Now, this is the House and Senate Reports. And they
5 are very important because supposedly they give the intent of
6 Congress. See, the word "income" is used in Section 61, but the
7 word itself is not defined. It says, "Gross income means all
8 income." But income itself is not defined. So what does income
9 mean?

10 Well, the House and Senate Report said income is used
11 in its constitutional sense. Well, what does that mean? How is
12 income in its constitutional sense different from income in its
13 ordinary sense?

14 Q. And what did you find out?

15 A. Well, income -- well, the Supreme Court in prior cases, the
16 Brushaber case being the most important one, said income must be
17 separated from its source if its gonna avoid apportionment,
18 which I can explain if you want to hear it. And it means a
19 corporate profit. Because if you look at a profit and loss
20 statement -- I -- I think I have my -- you know, it's shown in
21 my attachment in my two-day seminar -- if you look at a profit
22 and loss statement of a company, you will see it shows gross
23 income and it shows dividends; it shows, uh, uh, fees,
24 commissions; it can show rental income and shows income, gross
25 income. Then from that it deducts its expenses, and then it

1 ends up with a profit.

2 Now, if you put a tax on the profit, you are not taxing
3 the individual sources that generated the profit. In other
4 words, a corporation does not pay a tax on its dividends; a
5 corporation does not pay a tax on rental income; corporation
6 does not pay a tax on interest. Then the Government goes to the
7 poor working man and says, well, you gotta pay a tax on your
8 interest that you receive. Corporations don't pay a tax on
9 interest. They go to the working man and say, you gotta pay a
10 tax on your income. Well, the corporations don't pay a tax on
11 their income. They only pay a tax if they have a profit.

12 So income in its constitutional sense means income
13 separated from its source. When a corporation pays a tax on its
14 profit, the sources themselves are not being taxed because a
15 prior case, which is still in force, called Pollack v. Farmer's
16 Loan and Trust Co., said if you put a tax on the source of the
17 income you gotta apportion the tax. It's very difficult for the
18 government to do that.

19 In a sense, my belief that when Congress changed the
20 meaning of income they wanted to bring the Code in line with
21 what prior Supreme Court cases had said. But, frankly, they
22 didn't want the public to know that only profit was being taxed.
23 Because if anybody looked at this and say income is used in the
24 constitutional sense, nobody would know what that means, except
25 me. I knew what it meant. It means corporate profit.

1 As a matter of fact, I did a review of a lot of the tax
2 journals when this was happening and nobody -- none of these tax
3 journals noted the change. Nobody said what is income in the
4 constitutional sense. And when the government calculates the
5 income they claim I owe, they are calculating income in the
6 ordinary sense, not income in the constitutional sense.
7 Therefore, they're calculating it wrong, and I'm calculating it
8 right.

9 Q. You -- you say --

10 A. So I attached -- I attached it --

11 Q. Yes. One moment.

12 You cited to a case, Brushaber v. United --

13 A. Oh, yeah. Let me see -- so --

14 Q. Did you read that case?

15 A. Brushaber? Of course, I read it. I wrote it. No. I'm
16 only kidding.

17 Q. What do you believe the holding to be [sic] that case to be?

18 A. Well, the holding in that case -- the Supreme Court in
19 Brushaber v. Union [sic] said the Sixteenth Amendment did not
20 amend the Constitution. That's something that even tax majors
21 at universities didn't know.

22 What the -- what the Supreme Court said in this case --
23 and I got the case here if you want to see excerpts from it --
24 they said the Sixteenth Amendment gave the government no new
25 taxing power because they said -- what the Sixteenth Amendment

1 said was income could be taxed without apportionment. Congress
2 in passing the Sixteenth Amendment thought that they were
3 amending the Constitution.

4 But, remember, the Constitution provides two classes of
5 taxes: Direct taxes which can only be imposed pursuant to the
6 Rule of Apportionment and excise taxes have to be imposed
7 pursuant to the Rule of Uniformity. If you want, I can explain
8 what this means.

9 Well, when Congress passed the Sixteenth Amendment,
10 they thought that they were giving Congress a new taxing power.
11 They could levy a direct tax, which didn't have to be
12 apportioned and therefore would not have to be imposed pursuant
13 to the Rule of Uniformity. So they would create an entirely new
14 tax which would not be provided for in the Constitution. And
15 the Supreme Court in Brushaber said, huh-uh, you can't do that.
16 You can't create a new tax which would not be restrained by
17 either the Rule of Apportionment or the Rule of Uniformity.

18 You see, Congress doesn't have an unlimited taxing
19 power. The Constitution restricts their ability to tax in
20 various ways. Of course, Congress today thinks they can do
21 anything they want to. But the Supreme Court said, huh-uh. You
22 can't create a new form of taxation not provided for in the
23 Constitution.

24 So they said what the Sixteenth Amendment did was
25 establish the income tax as an excise tax. You notice when we

1 put the CRS Report it said -- what did the Supreme Court say?
2 The income tax is an excise? Since excise taxes --

3 MR. NEIMAN: Objection. Just --

4 THE WITNESS: -- well, this is complicated. I can't
5 help it.

6 MR. NEIMAN: Your Honor, if we could just --

7 THE WITNESS: I'll be through --

8 MR. NEIMAN: Mr. Schiff is testifying as to what the
9 Supreme Court said. His interpretation, I think, is important
10 to --

11 THE COURT: Sustained.

12 MR. NEIMAN: -- to --

13 THE WITNESS: All right.

14 MR. NEIMAN: -- keep him to that.

15 THE WITNESS: All right.

16 BY MR. LEVENTHAL:

17 Q. This is what you believe the case said --

18 A. This is what --

19 Q. -- is that correct?

20 A. -- I believe.

21 So --

22 Q. Well, hold on.

23 A. But they saw it in the CRS Report. That's what it said.

24 Anyway, Congress in '54, I believe, realized that they
25 could not impose a tax as an excise nor could they impose it as

1 direct tax with apportionment, which is very complicated. So
2 the only thing they could do to make the Internal Revenue laws
3 not unconstitutional was to remove all of the enforcement
4 provisions and it became based on voluntarily compliance and
5 self-assessment.

6 That's why I find nothing at fault with the law. I
7 don't say the law is unconstitutional because the income tax
8 laws are benign. It's fine. There's no conflict between these
9 laws and the Constitution.

10 However, there was a conflict in the '39 Code because
11 the '39 Code reflected the laws passed by Congress in 1913 when
12 Congress thought the Sixteenth Amendment amended the
13 Constitution. But, when the Brushaber court said it didn't do
14 that and the Merchants' Loan & Trust Co. court said, hey, income
15 is a corporate profit, now the laws themselves, in my judgment,
16 they realized were in conflict with a variety of Supreme Court
17 decisions.

18 So, in 1954, Congress had pangs of conscience and they
19 decided to bring the law into conformity with all of these early
20 Supreme Court cases, which in my view lower courts disregard
21 today. But that's my view. So --

22 Q. Mr. Schiff, did --

23 A. -- that's why I attached --

24 Q. Mr. Schiff --

25 A. -- this is why --

1 Q. Mr. Schiff --

2 A. -- I attached --

3 Q. -- Mr. Schiff.

4 A. -- this so that the --

5 Q. Hold on.

6 A. -- IRS would know that when I said "income" I'm using it in
7 the constitutional sense, not in the ordinary sense.

8 Q. Did you attach the Internal Revenue Code of 1954 to your
9 addendum?

10 A. No. I attached the House and Senate Report.

11 Q. That's the report of the Committee on Finance?

12 A. Yeah. I attached -- I attached the House and Senate
13 Reports. And in that paragraph 5 -- yeah.

14 Q. Can you read what that says under Subchapter B?

15 A. Yeah. Those are the -- are the House and Senate Reports.

16 Q. Well, Subchapter -- Subchapter B says, "COMPUTATION" --

17 A. Yeah.

18 Q. -- "TAXABLE INCOME"?

19 A. Well, I'm reading from paragraph 5. I said, "I have
20 attached copies of those pages to" --

21 Q. No.

22 A. -- this return."

23 Q. Well, we're going right know under "SUBCHAPTER B-COMPUTATION
24 OF TAXABLE INCOME." Do you see that there?

25 A. I'm not sure I heard what you said.

1 MR. LEVENTHAL: Judge, may I approach?

2 THE WITNESS: Are you reading from paragraph 5?

3 THE COURT: No. He's on -- he's on the report, the
4 Committee on Finance. Look --

5 THE WITNESS: Yeah, I'm on the report.

6 THE COURT: -- on your screen to your left there.

7 THE WITNESS: Okay.

8 BY MR. LEVENTHAL:

9 Q. Do you see that, Mr. Schiff?

10 A. Yeah. There's --

11 Q. Did you --

12 A. -- two reports, yeah.

13 Q. -- attach this document --

14 A. Yes.

15 Q. -- to your returns?

16 A. Yes.

17 Q. And, under Subchapter B, what does that say there?
18 "Computation"?

19 A. Section B says, "Section 61 ... provides that gross income
20 includes 'all income from whatever...' This definition is based
21 [on] the 16th Amendment and the word 'income' is used in its
22 constitutional sense."

23 Now, income in its constitutional sense does not mean
24 the same thing as income in the ordinary sense. There has to be
25 a difference. The question is what is the difference. Now, I

1 explain the difference in great detail, of course, in my
2 seminars.

3 MR. LEVENTHAL: Judge?

4 THE WITNESS: Yeah. Oh. Also, I --

5 MR. LEVENTHAL: Judge, one moment.

6 THE WITNESS: -- explain in the next paragraph --

7 MR. LEVENTHAL: Mr. Schiff, one moment, please.

8 Mr. Schulz is here and he needs to go. I got a note.

9 Is it okay if we --

10 THE WITNESS: Mr. Schulz is here?

11 MR. LEVENTHAL: -- bring him on?

12 Yes.

13 Would that be okay?

14 THE COURT: Okay.

15 MR. LEVENTHAL: Thank you, Judge.

16 THE WITNESS: Okay. So I'll...

17 THE COURT: You're up.

18 THE WITNESS: Okay.

19 (Mr. Schiff's examination is interrupted to
20 take the testimony of defense witness, Robert
21 Schulz, out of order.)

22 THE COURT: Will one of the security officers bring in
23 the witness, please, if he's not coming in right now?

24 (Robert Schulz takes the witness stand.)

25 THE CLERK: Sir, remain standing and raise your right

1 hand.

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

5 THE WITNESS: I do.

6 THE CLERK: Please be seated.

7 Please state for the record your full name and spell
8 your last name.

9 THE WITNESS: My name is Robert Lewis Schulz,
10 S-c-h-u-l-z.

11

12

ROBERT SCHULZ,

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

15

16

DIRECT EXAMINATION

17 BY MR. SCHIFF:

18 Q. Mr. Schulz, where are you from?

19 A. I live in Upstate New York on the east side of Lake George.

20 Q. And what kind of business are you in -- or were you in?

21 A. I'm retired. Uh, I have a degree from the, uh --

22 engineering degree from one of the five federal academies,

23 Maritime Academy. I have a master's degree in business and

24 finance from Xavier University, completed the coursework for

25 Ph.D. in public administration.

1 I started out as an engineer with the Gen Electric
2 Company. I -- based on some work I was doing there, I was asked
3 to create and manage, run a new state agency for Connecticut,
4 which I did in the early '70s.

5 I ran a policy office for the State of New York. I was
6 a full-time advisor to the Administrator of the United States of
7 Environmental Protection Agency, Doug Costle, and, um, was a
8 public investment banker in public finance with Prudential Bates
9 Securities for four years and established a management
10 consulting company.

11 Q. When is the first time you met me or I met you? Do you know
12 how long ago that was?

13 A. It was in 1999. I was hosting a talk show on a principal
14 Albany, New York, radio station from 3:00 to 6:00 p.m., Monday
15 through Friday. Um, I had just learned about, uh, Joseph
16 Banister, the special agent from the Criminal Investigation
17 Division --

18 MR. IGNALL: Objection --

19 THE WITNESS: -- of the Internal Revenue Service.

20 MR. IGNALL: -- your Honor, the relevance of this.

21 BY MR. SCHIFF:

22 Q. Now --

23 THE COURT: Sustained.

24 BY MR. SCHIFF:

25 Q. Now, how long have you known me?

1 THE COURT: Mr. Schiff --

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

3 THE COURT: He's already answered that question. He

4 said he --

5 MR. SCHIFF: Oh.

6 BY MR. SCHIFF:

7 Q. Well, how long have you known --

8 THE COURT: -- met in 1999.

9 MR. SCHIFF: Okay.

10 THE COURT: Go ahead.

11 BY MR. SCHIFF:

12 Q. So you've known me for about what? Five years? Six years?

13 A. Six years.

14 Q. And are you head of an organization that's related to the

15 tax movement or so?

16 A. I am.

17 Q. Now, you have -- have you formed any opinion with respect to

18 how I'm regarded in the community with respect to truthfulness

19 and honesty? What kind of a reputation do I enjoy with respect

20 to, you know, honesty and truthfulness?

21 A. Um, you have a reputation in the tax honesty community of

22 being the elder statesman. You have a reputation of being

23 extraordinarily honest, high degree of integrity, extremely

24 intelligent, very passionate about your work. Um, and someone

25 who has, um, excellent credentials, is well published, and,

1 um --

2 MR. IGNALL: Objection. We're getting beyond his
3 character for truthfulness.

4 BY MR. SCHIFF:

5 Q. Honesty and truthfulness.

6 A. Certainly. I have read all of your work and have talked to
7 many, many people in the tax honesty community and everyone has,
8 uh, good things to say about you.

9 MR. SCHIFF: Thank you very much, Mr. Schulz.

10 THE COURT: Cross-examination?

11

12 CROSS-EXAMINATION

13 BY MR. IGNALL:

14 Q. Mr. Schulz, are you aware that Mr. Schiff has been convicted
15 twice for tax fraud?

16 A. I am familiar, uh, with his, uh, cases, uh, his conviction
17 from the 80's. I am, yes.

18 MR. SCHIFF: Objection. This has nothing to do with
19 truthfulness and honesty. I mean, nobody's perfect.

20 THE COURT: Okay. Objection overruled.

21 BY MR. IGNALL:

22 Q. Mr. Schulz, you don't live in the Las Vegas area, do you?

23 A. I do not. I am a frequent visitor to your wonderful town
24 here, but I'm not, uh, from this area. That's correct.

25 Q. Mr. Schulz, you sell Mr. Schiff's products, don't you?

1 A. I do not sell anything.

2 Q. Do you distribute Mr. Schiff's products?

3 A. Um, I do not.

4 MR. IGNALL: All right. No further questions.

5 THE COURT: Questions, Mr. Cristalli?

6 Cross-examination?

7 (Discussion between Mr. Cristalli and

8 Mr. Modafferi.)

9 MR. CRISTALLI: Your Honor, I just -- just based on the
10 Government's last question, I just would like to ask the Court
11 something maybe at sidebar.

12 THE COURT: Okay. You mean on the convictions?

13 MR. CRISTALLI: No, no.

14 THE COURT: Oh.

15 MR. CRISTALLI: The --

16 THE COURT: Distribution?

17 MR. CRISTALLI: -- about distribution.

18 THE COURT: He said he doesn't distribute, uh --

19 MR. CRISTALLI: Mr. Schiff's products.

20 THE COURT: Correct. That was the answer. You can
21 cross-examine him on that, if you wish. You don't need a
22 sidebar for that.

23 MR. CRISTALLI: Well, I have -- I mean, I don't want to
24 violate the Court's order. That's my concern. I don't want to
25 do it in open court and I don't want to make --

1 THE COURT: All right. I'll give you a sidebar.

2 Mr. Bowers, any cross-examination before we take
3 sidebar?

4 MR. BOWERS: No. I mean, that -- no, not at this
5 moment.

6 (Sidebar conference was held as follows:)

7 MR. CRISTALLI: Your Honor, I apologize. I just -- I
8 didn't want to make a record in front of the jury.

9 THE COURT: That's all right.

10 MR. CRISTALLI: Um, the Government asked if he
11 distributed any of Mr. Schiff's material. Um, he responded that
12 he didn't -- he didn't distribute any of Mr. Schiff's material,
13 but he has generated an extensive amount of his own material for
14 which Freedom Books has used and relied on, specifically for
15 this Petition for Regress of Grievances which was in Washington,
16 D.C., um, for which Congress participated in. Um, and, uh, it's
17 just my -- and the -- as I reiterated before, this is a
18 significant piece of evidence for which Ms. Neun relied on to
19 support her beliefs and not just solely on what Mr. Schiff has
20 told her.

21 THE COURT: She can testify and it may become relevant
22 when she does.

23 MR. IGNALL: I'd like to clarify for the record. The
24 question asked was potentially to impeach for bias and nothing
25 else.

1 MR. CRISTALLI: Okay.

2 THE COURT: Yeah. Okay.

3 (Sidebar conference concluded and the

4 following is held in open court:)

5 THE COURT: Other than that?

6 MR. CRISTALLI: No questions, your Honor.

7 THE COURT: Thank you.

8 Mr. Bowers, no questions?

9 MR. BOWERS: No. No, your Honor.

10 THE COURT: Okay. Thank you.

11 MR. CRISTALLI: Your Honor, I just would reserve my

12 position obviously for --

13 THE COURT: I understand.

14 Watch your step, sir. This is kind of a tricky one

15 here.

16 Okay. Mr. Schiff, you will resume the stand.

17 (Discussion between Mr. Schulz and

18 Mr. Schiff.)

19 (Mr. Schiff resumes the witness stand.)

20 THE COURT: Go ahead, Mr. Leventhal.

21 MR. LEVENTHAL: Thank you.

22 THE COURT: Mr. Cristalli?

23 MR. CRISTALLI: Oh, I'm sorry. I was just reaching --

24 THE COURT: Okay.

25 MR. CRISTALLI: -- for something, your Honor.

1 THE COURT: Go ahead, Mr. Leventhal.

2

3 DIRECT EXAMINATION (Continued)

4 BY MR. LEVENTHAL:

5 Q. Mr. Schiff, are you familiar with what's been called as a
6 CRS Report?

7 A. Who?

8 Q. CRS Report.

9 A. Yes, yes. The C --

10 Q. What is a CRS Report?

11 A. -- the Congressional Research Report, yes.

12 MR. LEVENTHAL: Exhibit 225?

13 MR. IGNALL: 225.

14 MR. NEIMAN: 225.

15 THE WITNESS: Yeah. The Government introduced it.

16 Yes, absolutely.

17 Can you give me that report?

18 THE CLERK: I'm giving it to you now.

19 THE WITNESS: Thank you.

20 THE CLERK: Um-hum.

21 BY MR. LEVENTHAL:

22 Q. Do you use this report?

23 A. Pardon me?

24 Q. Have you used this report?

25 A. Yeah. Sometimes I use it in my seminar to show you --

1 Q. How do you use this?

2 A. Well, I show you how -- see, the person who wrote the report
3 tries to mislead the public -- but also I show and use this
4 report to show how the front of the report is accurate.

5 For example, the Government claimed that this report --
6 okay. The Government report -- the Government uses -- this is
7 how the Government used it, paragraph 8, "DO WE HAVE A VOLUNTARY
8 TAX SYSTEM?" Well, in the first chapter of my book, there are
9 all kinds of government documents that, of course, say it's
10 voluntary. Based on voluntary compliance.

11 You heard, uh, Revenue Agent, uh, uh -- not Revenue
12 agent, uh, uh -- Special Agent Holland testify that the
13 government always uses the expression "voluntary compliance."
14 He's never heard the government say compliance is compulsory.
15 Now, voluntary is what we all know it means. Voluntary means
16 voluntary.

17 If you were to get a -- when you take your driving
18 exam, you get a book of the rules of the road and it tells you
19 the speed laws. And, if the front of the book said these laws
20 are based on voluntary compliance, you'd say, well, if I wanna
21 speed, I can speed. Everybody knows what voluntary means.

22 When Moses came down to Mount Edna [sic] with the Ten
23 Commandments if they thought they were based on voluntary
24 compliance they would be called "the Ten Suggestions." But the
25 fact of the matter is voluntary means voluntary. So what --

1 what this report tries to do is confuse you with the word
2 "voluntary."

3 But also the report says, "Another semantic argument
4 put forth in this area revolves around the use of the word
5 'liable' in tax acts. The contention is made that the income
6 tax statute does not use the magic words 'individual is made
7 liable.'"

8 We contend these are magic words. Of course, the
9 Privacy Act says you gotta be liable. It's the government that
10 raises the issue of liability. And, therefore, an individual is
11 not liable for income tax.

12 The court -- the report goes on to say, "federal courts
13 have not had much time for this argument, characterizing it as
14 'arrogant sophistry.'" How could -- "and 'blatant nonsense.'"

15 And you'll notice there's two footnotes there. You see
16 the footnotes?

17 And they use cases involving me. How could it be
18 arrogant sophistry and blatant nonsense to raise the issue of
19 liability when the government itself raises it in the Privacy
20 Act and says, hey, unless you can find a statute that makes you
21 liable, you don't have to pay this tax. And, when every other
22 tax in the Internal Revenue Code -- tobacco taxes, um, uh,
23 wagering taxes, alcohol taxes, beer taxes, a whole slew of
24 taxes -- and every one of them use the word "liability." So,
25 when we raise it, oh, it's arrogant sophistry.

1 Continuing. "The proponent of this argument has set up
2 a standard that all taxes must meet."

3 No. The government has set up the standard. Right in
4 the Privacy Act they say Section 6001, 6011, 6012 say you must
5 file a return for any tax you are liable for. And then they
6 direct you to Section 6001 and 6011 and both of those
7 sections -- remember, in the Privacy Act the Government directs
8 your attention to Section 6001 and 6011.

9 So -- so you go to have Section 6011, as if everybody
10 at home has a Internal Revenue Code. But you can -- you can
11 pull down these sections on the Internet. If the Government
12 says Section 6001, 6011, 6012, you can pull them down on the
13 Internet or you go to the library.

14 And look what Section 6001 says, "Every person liable
15 for any tax imposed by this title, ..., shall" do the following.
16 "Every person liable for" each -- and then what does Section
17 6011 say? It says, "When required by regulations prescribed by
18 the Secretary any person made liable [made liable] for any tax
19 imposed ... shall do" this, that, and the other thing.

20 So the very sections that the Privacy Act Notice
21 directs your attention to makes the word "liable" fundamental to
22 whether or not you owe the tax. So, since this report can't
23 find a section that makes you liable, they trivialitize [sic] or
24 try to figure out a reason why it's unimportant.

25 So continuing -- now, that's what they say -- "The

1 federal income tax is imposed, in [Internal Revenue] Section 1."
2 Well, how would anybody know that? The Privacy Act doesn't tell
3 you to go to Section 1, and there's nothin' in Section 1 that
4 says you're liable for the tax.

5 Then they go on and they say, "is defined in [Internal
6 Revenue] ... 63." Well, would you know that? First of all,
7 it's not defined there either. It's not defined anywhere.

8 Then they say Internal Revenue 6012. Then they bring
9 up Section 61.

10 Q. Wait. Let me -- let me stop you for a minute, Mr. Schiff.

11 They say what in there?

12 A. Well --

13 Q. Start with "Every individual."

14 A. -- I'm just reading from this report.

15 Q. No. I understand. But read "Every individual."

16 A. These are the sections that they say.

17 Q. I understand, Mr. Schiff.

18 "Every individual whose gross"...

19 A. And when a return is required -- okay. Then they say --
20 then they mention another Section, 6151, and look what they say
21 at the end, "These sections, working together, make an
22 individual liable for income tax[]."

23 Now, the word "liable" doesn't even appear in any one
24 of those five or six Code sections. And, as I pointed out
25 before when I read the wagering tax, "shall be liable for and

1 shall pay the tax." In every other tax, the liability is
2 created in one statute. Doesn't take five. This is how the
3 government tries to blow the smoke in your eyes.

4 So this thing is nothing but -- shows you the length --

5 Q. Mr. Schiff --

6 A. -- to which -- however --

7 Q. -- one minute.

8 Do you know who -- have you ever heard of a man named
9 Dan Burton?

10 A. Dan Burton?

11 Q. Yes.

12 A. Yeah. But can I just finish with this --

13 Q. Well --

14 A. -- for a moment.

15 Q. -- have you ever heard of Dan Burton?

16 A. Yes, Dan Burton --

17 Q. Who is he?

18 A. -- he's a Congressman.

19 Q. He's --

20 A. Oh, very good. Yeah.

21 Q. Who is he?

22 A. He's a Congressman.

23 Q. Have you ever written to Dan Burton on this issue?

24 A. No, I never met him. But I know he --

25 Q. Not met him.

1 A. -- sent some --

2 Q. Have you ever written a letter?

3 A. Who?

4 Q. -- written a letter to him on this issue?

5 A. Somebody else wrote the letter; I didn't.

6 Q. Did you ever receive a letter back from Mr. Burton in the
7 Congress of the United States?

8 A. Yeah. It's included in all my documents that I use in my
9 seminar.

10 MR. LEVENTHAL: One moment, Mr. Schiff.

11 (Discussion between Mr. Leventhal and
12 Government counsel.)

13 THE WITNESS: Can I have a copy of my book?
14 (Pause in the proceedings.)

15 MR. LEVENTHAL: Can I put this...

16 THE CLERK: Um, admitted?

17 MR. NEIMAN: Mr. Leventhal, is that in evidence?

18 MR. LEVENTHAL: No. I'm going to put it in.

19 MR. NEIMAN: Okay.

20 Mr. Leventhal, just those two pages?

21 MR. LEVENTHAL: Yeah, just those two pages.

22 MR. NEIMAN: You may wanna yank it out.

23 MR. LEVENTHAL: I think they've been admitted through a
24 different...

25 MR. BOWERS: Package of exhibits?

1 MR. NEIMAN: If they are already in, then just take 'em
2 from there.

3 MR. LEVENTHAL: I'm not sure which packet has already
4 been admitted.

5 I apologize, your Honor.

6 (Discussion between Mr. Bowers and
7 Mr. Leventhal.)

8 MR. LEVENTHAL: There's another witness outside, too,
9 by the way, for truth and honesty.

10 THE CLERK: I'm gonna mark this 2115. You want to
11 remove just those two pages or couple pages you want? Okay.

12 MR. LEVENTHAL: Thank you.

13 THE CLERK: Um-hum.

14 (Defendant Schiff's Exhibit No. 2115, marked
15 for identification.)

16 THE WITNESS: Can I have a copy of my book? It's in
17 evidence. Can I have a copy of my book?

18 MR. NEIMAN: Your Honor, just for the record, the
19 Government doesn't object to the introduction of these two
20 pages -- uh, I'm not sure what they've been marked -- as defense
21 exhibits.

22 THE WITNESS: Thank you.

23 THE COURT: Is it 2115 or is it --

24 MR. LEVENTHAL: 2115 --

25 THE CLERK: Yes, sir, 2115.

1 MR. LEVENTHAL: -- yes, sir. And it's just the two
2 pages: One is from Congressman Dan Burton and the other one --

3 THE COURT: Any objection from --

4 MR. LEVENTHAL: -- is from Congressman John Ensign.

5 THE COURT: -- other counsel? Cristalli?

6 MR. CRISTALLI: No, your Honor.

7 MR. BOWERS: No --

8 THE COURT: Bowers?

9 MR. BOWERS: -- no, Judge.

10 THE COURT: 215 -- or 2115 is received.

11 MR. LEVENTHAL: Thank you, your Honor.

12 (Defendant Schiff's Exhibit No. 2115,
13 received into evidence.)

14 MR. NEIMAN: What are the numbers?

15 MR. LEVENTHAL: 2115.

16 BY MR. LEVENTHAL:

17 Q. Can you read that, Mr. Schiff?

18 A. Well, I think I know what this is.

19 "You are correct," is that what it says?

20 Q. Can you read the first line.

21 A. Well, it says -- somebody wrote to Congressman -- see, I
22 tell a lot of people who get my material, I say, write --

23 THE COURT: Mr. Schiff --

24 THE WITNESS: -- to your Congressman.

25 THE COURT: -- answer the question.

1 THE WITNESS: Yeah.

2 THE COURT: Answer the question.

3 THE WITNESS: Yeah.

4 "You are correct" -- somebody wrote to the
5 Congressman --

6 BY MR. LEVENTHAL:

7 Q. No.

8 A. -- and asked him what law made them liable or is there any
9 law. So this Congressman writes back and says, uh, "[I think]
10 You are correct in your" -- "in your assertion" -- is that --
11 "that the word 'liable' ... is not" -- what? -- "is not" --

12 MR. LEVENTHAL: Do you have another --

13 THE WITNESS: -- "is not" --

14 MR. LEVENTHAL: -- copy?

15 THE WITNESS: I can't see it.

16 -- "is not" -- "is not included" -- "the terminology
17 '[liable] for income tax' --

18 BY MR. LEVENTHAL:

19 Q. Let me -- let me stop you there.

20 A. -- "is not included in any section of the Internal Revenue
21 Code." That's what it said.

22 So here Congressman Burton verifies that the word
23 "liable for tax" is not included in any section of the Internal
24 Revenue Code.

25 Q. Do you use this letter in your seminars?

1 A. Yeah, yeah. In my seminars, it's included in the documents
2 we pass out. Because, remember, the Privacy Act Notice says you
3 only have to pay a tax for any tax you are liable for. Senator
4 Burton says, hey, I can't find any law that makes you liable for
5 the tax.

6 So you don't take my word for it. You can take Senator
7 Burton's word for it.

8 Q. Okay. Getting back to the CRS, you left off page, uh, 14.

9 A. Yeah. Before I go to the section, I'm still not through
10 with this segment 8 because it's under -- this is the segment
11 that the Government put in, "DO WE HAVE A VOLUNTARY TAX SYSTEM?"

12 Now, the first line of that segment, if you go back to
13 8, says, "We do not have a voluntary tax system in the sense
14 that the payment of taxes is optional." Well, if it's
15 voluntary, the word "optional" has nothing to do with it. If
16 it's voluntary, it's voluntary. What does optional got to do?

17 As a matter of fact, in the first --

18 THE COURT: Mr. Schiff --

19 THE WITNESS: Yeah --

20 THE COURT: Mr. Schiff --

21 THE WITNESS: -- I'm answering it.

22 THE COURT: -- you're not answering the question.

23 You're volunteering --

24 THE WITNESS: All right.

25 THE COURT: -- information.

1 THE WITNESS: All right.

2 The fact of the matter is --

3 THE COURT: Mr. Schiff --

4 BY MR. LEVENTHAL:

5 Q. Let --

6 A. All right.

7 Q. Mr. Schiff --

8 THE COURT: Wait for the next question.

9 MR. LEVENTHAL: Thank you.

10 THE WITNESS: I'm just saying that the first line

11 doesn't make any sense.

12 BY MR. LEVENTHAL:

13 Q. Okay. Going back to the CRS on page 13 --

14 A. Yeah, yeah.

15 Q. -- number 8 --

16 A. Yeah. It's on page 13 of the CRS Report. Okay.

17 Q. The heading there says what, Mr. Schiff?

18 A. Yeah. "DO WE HAVE A VOLUNTARY TAX SYSTEM?"

19 Q. Okay. What does -- what do you take that to mean?

20 A. Well, of course we have a voluntary tax system. He's trying

21 to hide the fact that the system is indeed voluntary.

22 For example, in the first chapter of my book, I include

23 one government exhibit after another, all of which say it's

24 voluntary. For instance, in the first exhibit of my book,

25 Figure 1-1, I quote from the 1979 Annual Report of the

1 Commission of Internal Revenue. He says, "To put these figures
2 in context, in the same ... year individuals voluntarily
3 reported nearly [1.1 trillion in [income tax paid]."

4 Then he goes on:

5 "[This] report lends considerable weight to
6 conclusions ... from [the] past [taxpayer compliance] studies
7 [reveal] that voluntary reporting is highest when incomes are
8 subject to tax withholding.

9 "In fairness to the millions of taxpayers who
10 voluntarily file..." Who voluntarily file.

11 Now, everybody who files a tax return believes they are
12 required to file. And the mission statement of the Internal
13 Revenue, which is shown in Figure 1-2, says, "The mission of the
14 Service is to encourage ... the highest possible degree of
15 voluntary compliance."

16 And what I do in the next figure, I actually introduce
17 from the teaching manual that is sent to the schools,
18 Understanding Tax Forms, and it talks about the importance of
19 the voluntary compliance. It mentions it three times, voluntary
20 compliance. They know what the word "voluntary" means.

21 Then I reproduce in Figure 1-4, uh, excerpts from a
22 recent document put out by the IRS that says, "Strengthening
23 Voluntary Compliance." And it mentions no less -- if you --
24 than one, two, three, four times that income tax is based on
25 voluntary compliance.

1 And then on Figure 1.5 [sic], the fifth exhibit, I
2 reproduce the -- the excerpts from the actual Committee report
3 put out by the House Ways and Means Committee.

4 In other words, I'm not making these statements; the
5 government is making these statements. I'm merely reproducing
6 the reports.

7 And in this document, which is from the Subcommittee
8 on -- on Ways and Means, House of Representative Dwight Avis is
9 testifying -- and he was then head of the Alcohol and Tobacco
10 Tax Division -- and he's testifying in front of Congress.

11 And he says -- he points out to the Committee: "Let me
12 point this out now: Your income tax is 100 percent voluntary
13 tax, and your liquor tax is 100 percent enforced.... Now, the
14 situation is as different as day and night."

15 So what is Mr. Avis saying? You can -- so I was
16 writing this book and I was in jail, as a matter of fact, at the
17 time. So I wrote to the Department of the Treasury from jail.
18 You see the -- the letter came to me. I was in Loretto
19 (phonetic) --

20 Q. Mr. --

21 A. -- and I wrote to the Department of Alcohol, Tobacco, and
22 Firearms --

23 Q. -- let's go back --

24 MR. NEIMAN: Your Honor --

25

1 BY MR. LEVENTHAL:

2 Q. -- let's go back to the CRS report.

3 A. I'm going to the CRS Report, how they are trying to confuse
4 the meaning of the word "voluntary."

5 Q. Okay.

6 A. So I -- let me just finish this and I'm through it.

7 THE COURT: No, no.

8 THE WITNESS: No?

9 THE COURT: No.

10 THE WITNESS: Okay.

11 THE COURT: You respond to questions.

12 THE WITNESS: Okay.

13 Now, however --

14 THE COURT: Mr. Schiff --

15 THE WITNESS: Yeah.

16 THE COURT: -- no.

17 THE WITNESS: All right.

18 THE COURT: You respond to questions.

19 THE WITNESS: Okay.

20 THE COURT: Wait for the next one.

21 THE WITNESS: All right, all right, all right. Okay.

22 BY MR. LEVENTHAL:

23 Q. So, uh --

24 A. Do you have the questions that I wrote on the front of the
25 report?

1 Q. Yeah. Let me see if there's... (Pause.)

2 A. Two, three, and... Don't you have that there?

3 Q. I don't see anything on there regarding that.

4 A. Do you have that there?

5 Q. What's that, Mr. Schiff?

6 A. Well, didn't I write down pages?

7 Q. Going to --

8 A. -- didn't I write down segments 1, 2, and 3 --

9 Q. Going to -- 1, 2, 3?

10 A. -- of the report?

11 Q. No, you didn't.

12 A. I didn't?

13 Q. No.

14 Um, okay. Going to page 5 of the CRS Report --

15 A. That's close enough. All right. Right. Okay. Right.

16 Q. -- subheading No. 3 says, "WHAT DOES THE COURT MEAN WHEN IT

17 STATES THAT THE INCOME" --

18 A. What was your question now?

19 Q. Go to, uh, CRS, page 5.

20 A. Uh, very good. CRS, page 5.

21 Q. Uh, paragraph 3.

22 A. Yes, paragraph 3. Let's put that up on the screen.

23 (Document displayed in open court.)

24 THE WITNESS: Now, just because the report was

25 incorrect --

1 THE COURT: Is there a question pending?

2 THE WITNESS: -- in connection with --

3 THE COURT: Wait a minute. There's -- there's not a
4 question pending.

5 THE WITNESS: Okay.

6 BY MR. LEVENTHAL:

7 Q. Can you read what that says there?

8 A. Yeah.

9 Well, on page 5, they were trying to explain --

10 Q. No, number 3, paragraph 3.

11 A. Yeah. Well, the paragraph 3 says --

12 Q. "WHAT DOES" --

13 A. -- "WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME
14 TAX IS IN THE NATURE OF AN EXCISE TAX?"

15 Q. Okay. How did you take that to mean?

16 A. Well, this is why I use this, frankly, at my seminars at
17 times, not -- because this -- this part of the report is very
18 accurate because this report explains what happened as a result
19 of the Sixteenth Amendment and what the income tax is.

20 And, in this part of the report, they said that the
21 Supreme Court ruled as a result of the Sixteenth Amendment that
22 the income -- that they ruled that the income tax is in the
23 nature of an excise tax.

24 And they specifically said in this report:

25 "The language of the Sixteenth Amendment, the Court

1 found in Brushaber, was solely intended to eliminate
2 "the principle upon which the Pollack Case was
3 decided, that is, of determining whether a tax
4 on income was direct not by a consideration of
5 the burden placed on the taxed income [but] upon
6 which it ... operated, but by taking into view
7 the burden which resulted on the property from
8 which the income was derived" -- income -- see,
9 income is not that simple -- "was derived since
10 in express terms the Amendment provides that
11 income tax[], from whatever source derived,
12 shall not be subject to the regulation of
13 apportionment."

14 So you see apportionment is directly related to whether
15 the government can tax income. So, in order to avoid a
16 constitutional problem, the Supreme Court said that the income
17 tax has to be imposed as an excise tax in order to avoid
18 constitutional problems.

19 Now, the income tax is not imposed as an excise tax.
20 So, therefore, it would be illegal if it were compulsory. But,
21 by being voluntary, there's nothing illegal or unconstitutional
22 about the tax.

23 Now, when the Government says from time to time that I
24 say the income tax is unconstitutional, that's not true. I
25 don't believe the tax is unconstitutional. It used to be; not

1 anymore. Congress resolved the conflict by making it voluntary.
2 And that's what voluntary compliance means. It all -- we all
3 knows what the word "voluntary" means.

4 So that's what the report -- that's how I used the
5 report. Because in my seminars, it confirms what -- because
6 this whole idea of direct and indirect taxes is complicated.
7 But this report, in this section of the report, simplifies it.

8 So, just because the report -- when it talks about
9 voluntary and liability, just because it's wrong there, doesn't
10 mean it's wrong here. So the Government introduced the report
11 for the wrong reasons. That's all. But it's still a good
12 report as far as explaining the nature of the income tax.

13 Q. And you use this report?

14 A. And that's how I use it, yeah.

15 MR. LEVENTHAL: Judge, we have -- I've been told we
16 have one more witness that needs to leave.

17 THE WITNESS: Pardon me?

18 MR. LEVENTHAL: We have one more witness that needs to
19 leave. And, if it's a short witness, then maybe we can finish
20 up with that witness and start back up tomorrow.

21 THE COURT: Where is the witness? Who is it and where
22 are they from?

23 VOICE: John Turner, California.

24 MR. LEVENTHAL: California and it's John Turner. It's
25 a character witness, John Turner, and he needs to go.

1 THE COURT: Well, we have a couple of minutes left.

2 So...

3 THE WITNESS: What's the matter?

4 MR. LEVENTHAL: I've been told it's less than
5 Mr. Schulz's testimony.

6 THE COURT: All right.

7 THE WITNESS: Well, you want me off the witness stand?

8 (Mr. Schiff's examination is interrupted to
9 take testimony of defense witness, John
10 Turner, out of order.)

11 (John Turner takes the witness stand.)

12 THE CLERK: Sir, please remain standing and raise your
13 right hand.

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

17 THE WITNESS: Yes, I do.

18 THE CLERK: Please be seated.

19 Please state for the record your full name and spell
20 your last name.

21 THE WITNESS: My full name is John Turner. My last
22 name is spelled T-u-r-n-e-r.

23

24

25

1 MR. IGNALL: It's beyond the scope of the --

2 THE COURT: Mr. Turner --

3 MR. IGNALL: -- proffered testimony.

4 THE WITNESS: Yes, sir.

5 THE COURT: -- I don't know if you've been instructed.

6 You're here only to testify as to your knowledge of the -- of

7 Mr. Schiff or any of the other defendants' reputation for truth

8 and veracity in the community.

9 BY MR. SCHIFF:

10 Q. Okay. Now, John --

11 THE WITNESS: Okay.

12 THE COURT: Your answers will be restricted to that.

13 THE WITNESS: Okay. So let's see. Repeat the

14 question.

15 BY MR. SCHIFF:

16 Q. Actually, when's the first time you just happened --

17 THE COURT: It's been asked and answered.

18 BY MR. SCHIFF:

19 Q. -- we can --

20 THE COURT: He's already --

21 BY MR. SCHIFF:

22 Q. -- first time you met me?

23 THE COURT: -- said he's known you for eight years.

24 Ask the next question.

25 MR. SCHIFF: Okay.

1 BY MR. SCHIFF:

2 Q. Now, you didn't meet me at that meeting. Okay.

3 So you've met me -- you've know me for how long?

4 A. Um, since March of 1997.

5 Q. Okay. And we've talked from time to time. Okay.

6 A. Yes.

7 Q. Now, do you have any knowledge as to how I'm regarded in the
8 community with respect to my being truthful and honest in my
9 dealings with other people?

10 A. Yes, I do.

11 Q. And what is your opinion with respect to how I am regarded
12 with respect to truth and honesty?

13 A. Well, personally, um, from my own personal self --

14 THE COURT: You have to -- you're testifying as to his
15 reputation in the community, sir.

16 THE WITNESS: Okay.

17 I've, um -- I'm aware that you are -- you have -- you
18 are well published. You have written extensively on many
19 subjects, including the income tax. I have read some of your --

20 THE COURT: Sir?

21 THE WITNESS: -- works.

22 THE COURT: Sir?

23 THE WITNESS: Yes, sir.

24 THE COURT: I'm gonna remind you again --

25

1 BY MR. SCHIFF:

2 Q. No. But how am I regarded, John?

3 THE COURT: How are you --

4 BY MR. SCHIFF:

5 Q. That's stick to --

6 THE COURT: -- the question was how is he regarded in
7 the community for the characteristics of truthfulness and
8 honesty.

9 THE WITNESS: Absolutely honest, uh, truthful in the
10 things that you have, uh, written about that I've read. I've
11 not -- personally not found any -- anything that was inaccurate,
12 not honest, or anything in the things that I've read.

13 BY MR. SCHIFF:

14 Q. But how am I regarded in the community, not how you
15 personally regard me, but --

16 A. Okay.

17 Q. -- in the community. And you've talked to a number of
18 people who know me. And how am I regarded?

19 A. Yes. You're -- you're -- I -- you are known as someone who
20 is absolutely honest, straightforward, straight shooter,
21 passionate, brilliant.

22 Q. Okay, Mr. Turner.

23 THE COURT: Cross-examination?

24 MR. CRISTALLI: Nothing, your Honor.

25 THE COURT: Thank you.

1 Mr. Bowers?

2 MR. BOWERS: No, no. Not at all, your Honor. Thank
3 you.

4 MR. IGNALL: Jumped the gun a little bit, your Honor.
5 I apologize.

6 THE COURT: Go ahead.

7

8 CROSS-EXAMINATION

9 BY MR. IGNALL:

10 Q. Mr. Turner, you're still a follower of Mr. Schiff's
11 teachings today, aren't you?

12 A. Uh, could you explain what you mean by "a follower of his
13 teachings"?

14 Q. You agree with what Mr. -- what Mr. Schiff teaches; correct?

15 A. Well, um, could you be more specific, please?

16 Q. About the income taxes.

17 A. Could you be more specific?

18 MR. CRISTALLI: Your Honor, I'm gonna object --

19 MR. SCHIFF: It's not relevant to --

20 MR. CRISTALLI: -- it's beyond the scope --

21 MR. SCHIFF: -- his testimony.

22 MR. CRISTALLI: -- of direct examination.

23 MR. IGNALL: It's impeachment for bias. I think I've
24 made the point there.

25 THE COURT: It is. Overruled. It is for -- it's

1 admissible for impeachment.

2 BY MR. IGNALL:

3 Q. When you, uh, talk about the community, what community are
4 you talking about?

5 A. Uh, I had in mind the community of people, who, uh,
6 understanding -- interested in understanding the truth about the
7 application of the income tax laws in this country.

8 Q. The way that Mr. Schiff explains it; correct?

9 A. Sure.

10 MR. IGNALL: No further questions.

11

12 REDIRECT EXAMINATION

13 BY MR. SCHIFF:

14 Q. Well, Mr. Turner, there are other people besides me in this
15 community. Uh, when the prosecutor says the way I --

16 THE COURT: You can't testify.

17 MR. SCHIFF: Oh, I can't testify. All right. I can't
18 comment on his comment?

19 THE COURT: No, you can't --

20 MR. SCHIFF: All right.

21 THE COURT: -- comment.

22 MR. BOWERS: Your Honor, might I ask one question
23 along -- as a result of the Government's question?

24 THE COURT: As long as it's -- as long as it's the
25 subject of the cross-examination you can.

1 A. No doubt about it.

2 Q. Okay. Thank you.

3 A. You bet.

4 THE COURT: Anything further?

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

6 THE COURT: The witness is excused.

7 Watch your step going down.

8 THE WITNESS: Thank you.

9 THE COURT: Okay. We're going to take our recess for
10 the evening.

11 What do we have tomorrow morning?

12 THE CLERK: Nothing.

13 THE COURT: Okay. We'll be in recess until 9:00 a.m.

14 Uh, how are you feeling? Okay. You all right?

15 JUROR NO. 7: (Nods head.)

16 THE COURT: Would you please escort her out to make
17 sure she is okay or have -- have one of the -- the CSO's --

18 THE CLERK: Make sure she gets to her car and
19 everything.

20 THE COURT: The standard admonition continues. Does
21 anyone needs to be reminded of it? (No response.)

22 Okay. Thank you.

23 (Jury leaves the courtroom at 4:35 a.m.)

24 THE COURT: Okay. Anything before we recess?

25 MR. NEIMAN: Your Honor, one -- one issue.

1 I do want to cite one case to the Court with regard to
2 the exclusion of Mr. Schiff's books. It's a Tenth Circuit case,
3 um -- I apologize -- United States v. Payne. The cite is 978
4 F.2d 1177, one one seven seven. It's a Tenth Circuit case, uh,
5 from '92. It deals with the introduction of Mr. Schiff's books
6 at one of his followers' trials in which the court -- or the
7 appeals court said it would be appropriate to include it on more
8 or less a 403 analysis.

9 THE COURT: Payne is spelled?

10 MR. NEIMAN: P-a-y-n-e.

11 THE COURT: Thank you.

12 MR. BOWERS: Is it 978 --

13 MR. SCHIFF: Now, your Honor --

14 MR. BOWERS: -- 1177?

15 MR. NEIMAN: 978 F.2d 1177.

16 MR. BOWERS: Can we address --

17 MR. SCHIFF: Yeah. But, your Honor --

18 MR. BOWERS: -- this in the morning, Judge, after we've
19 had a chance to look at the case?

20 MR. NEIMAN: That's fine.

21 THE COURT: I'll address it in the morning. I'm gonna
22 take a look at it.

23 MR. SCHIFF: But, your Honor, when it involves me
24 personally, it goes to my good-faith beliefs.

25 MR. LEVENTHAL: Irwin --

1 MR. BOWERS: Irwin --
2 MR. LEVENTHAL: -- Irwin, we're gonna do it tomorrow.
3 MR. BOWERS: Let's look at it tonight and talk about it
4 in the morning.
5 MR. LEVENTHAL: We'll look at it. We'll get it. Don't
6 worry about it. It'll be all right.
7 THE COURT: Okay. We're in recess --
8 MR. IGNALL: Thank you.
9 THE COURT: -- 9:00 a.m.

10 (Proceedings adjourned at 4:36 p.m.)

11 --oOo--

12 I hereby certify that pursuant to Section 753, Title 28, United
13 States Code, the foregoing is a true and correct transcript of
14 the stenographically reported proceedings held in the
15 above-entitled matter.

16

17 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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