

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE HON. KENT J. DAWSON, JUDGE PRESIDING

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

REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 3) and  
ORDER TO SHOW CAUSE HEARING RE: JOHN ANTHONY MALAN

Thursday, September 14, 2005

APPEARANCES: (See Page 2)

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

1 APPEARANCES:

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1 APPEARANCES: (Continued)

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8 Also Present:

9 Adam Steiner, Special Agent, IRS  
10 Sam Holland, Special Agent, IRS  
11 Gary Modafferi, J.D.  
12 Cynthia Neun, Defendant  
13 Lawrence Cohen, Defendant  
14 John Anthony, Malan

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## 1 I N D E X

2 WITNESS: Direct Cross Redirect Recross Further  
3 Government's: Redirect

4 Government's:

5	Antoinette Mitchell	--	464-S 578-C 613-B	627-N	641-S 653-C	--
6	Ann Kennedy	657-I	696-C 712-S	--	--	--
7	Ted Wethje	728-N	--	--	--	--

8

9

## 10 EXHIBITS

11

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

13	23 through 25	--	744
	66	--	749
14	67 through 72	--	656

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1 LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 14, 2005; 9:00 A.M.

2 --oOo--

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

4 THE CLERK: All rise.

5 THE COURT: Thank you. Please be seated.

6 THE CLERK: CR-S-04-119-KJD(LRL), United States United  
7 States of America vs. Irwin Schiff, Cynthia Neun, and Lawrence  
8 Cohen. This is an Order to Show Cause regarding Mr. Malan.

9 Counsel, come forward and enter your appearance.

10 MR. JACKSON: Terrence Jackson. I'm here on behalf of  
11 Mr. Malan for today's appearance.

12 THE COURT: Thank you.

13 MR. SCHEISS: Your Honor, Daniel Scheiss on behalf of  
14 the United States.

15 THE COURT: Thank you.

16 Mr. Malan is before the Court based upon statements  
17 from members of the jury panel for this -- the case that is now  
18 proceeding in this courtroom. The jurors claimed that  
19 statements have been made to them, uh, as a group by Mr. Malan.

20 The Court took the panel members to sidebar and in the  
21 presence of counsel for the parties to -- to this case inquired  
22 of them as to what had been said. Several of the jurors, uh,  
23 were able to identify Mr. Malan and I believe two identified him  
24 as having lunch or being seen having lunch seated at the table  
25 of Defendant Schiff.

1           In the course of questioning the, uh, panel members at  
2 sidebar, the Court also learned that several of them were  
3 concerned over the conduct of Mr. Malan and wondered what they  
4 were getting into. Because of that, I ordered Mr. Malan to  
5 appear this morning for further proceedings.

6           In considering what my role should be, the -- the  
7 contemptuous, or allegedly contemptuous, conduct took place  
8 outside of the presence of the Court. The Court, uh, is likely  
9 to -- myself is likely to be a witness, uh, in any contempt  
10 proceeding. So my inclination is to -- to send this to the  
11 Clerk's office for random assignment to another judge so that I  
12 can testify as to the effect that Mr. Malan's conduct had on  
13 jury selection in this case.

14           I will hear from -- from the attorneys though before I  
15 make my decision.

16           Mr. Scheiss.

17           MR. SCHEISS: Your Honor, years ago I dealt with a  
18 similar situation. And, to be honest with you, I can't -- that  
19 situation occurred in the presence of the Court and the Court  
20 was able to handle it then. It was a bankruptcy matter  
21 involving an assault in front of a judge.

22           I would just need time to research the law quickly to  
23 decide whether under the contempt statute you can still hear a  
24 matter that involved -- a matter pending before you but which  
25 you were not -- which occurred outside of your presence.

1           Um, if this case were to go forward at this point in  
2 time, the Government is prepared to put on a witness that would  
3 go to the defendant's willfulness, that he was warned that he  
4 couldn't do that before he did it.

5           So, if you want to give me time to research that, I can  
6 do it. If you want to make the call without the research, then  
7 I'll go with whatever you want.

8           THE COURT: I -- I think prudence dictates that I have  
9 another judge hear it because of the likelihood that I would be  
10 a witness --

11          MR. SCHEISS: Okay.

12          THE COURT: -- in the proceeding. Thank you.

13          MR. SCHEISS: All right.

14          If -- if you assign the matter to another judge and I  
15 have the opportunity to research it and the Ninth Circuit says  
16 that it can and should be remain before you, may I then file a  
17 motion for reconsideration at that time?

18          THE COURT: Yes, you may.

19          MR. SCHEISS: Thank you.

20          THE COURT: Mr. Jackson.

21          MR. JACKSON: Good morning, your Honor.

22          Uh, Mr. Malan contacted me yesterday afternoon and I  
23 told him I would appear for him this morning. Whether he  
24 retains me to represent him further, uh, that's his decision.  
25 But I -- appearing today I didn't know really anything about it

1 before late yesterday afternoon and he spoke to me just briefly  
2 before court.

3 I did research just briefly in the law library this  
4 morning for about 10 minutes concerning the contempt statute and  
5 the question of willfulness. I spoke briefly with my client  
6 yesterday for about five minutes. So my knowledge of what's  
7 happening here is limited.

8 I spoke with the prosecutor, Mr. Scheiss, before court  
9 this morning and he gave me some information concerning what one  
10 of the witnesses told him. If it went forward, I would, of  
11 course, like all the information the Government has, uh, if --  
12 if there's the necessity of a hearing.

13 But, based on what I've heard, I don't know if this  
14 matter hasn't been exaggerated and if we're creating a -- a  
15 mountain out of a molehill here. I had hoped to come here today  
16 and see if we could resolve this matter because my client has  
17 advised me that he had a plane flight going back to Wyoming this  
18 morning. But, if it is necessary to have a hearing, um, it may  
19 be prudent to send this to another judge if the Court was going  
20 to be a witness and I would concur in that.

21 The research that I have done reflects that any  
22 ambiguity should be resolved in a defendant's favor in terms of  
23 any statements a defendant might have made. I don't know what  
24 or how the defendant might have influenced the jury, uh, but the  
25 law appears to suggest that unless someone tries to hinder or

1 obstruct the court in the administration of justice. There's --  
2 there's not a contempt if someone is merely stating his views or  
3 responding to a question from a juror. I don't think that  
4 arises to the level of contempt.

5 Now, then again, I wasn't there. I don't know what was  
6 said. I've just heard allegations. Uh, and what I've heard  
7 from the defendant is inconsistent from what the prosecutor told  
8 me that some witnesses told him. I don't know what the jurors  
9 told your Honor. I wasn't here on Monday.

10 But if the Court wishes to -- to assign this to another  
11 judge and hold a hearing, I will discuss the matter with my  
12 client. And, if he wishes to retain me, I can be prepared to  
13 proceed.

14 THE COURT: I'm going to --

15 MR. JACKSON: I would simply submit it with that.

16 THE COURT: Thank you, Mr. Jackson.

17 I'm going to set this matter out for 30 days to allow  
18 me to conclude this trial and also to -- to take a look at any  
19 witness affidavits that might be developed from the jurors and  
20 other witnesses and also to -- to determine whether or not I  
21 will need to recuse myself based on the fact that I would be a  
22 witness. And it may not be necessary for me to be a witness  
23 given the fact that Mr. Scheiss apparently has already spoken  
24 with -- with one or more witnesses and is -- is -- has some --  
25 some evidence that is independent of my knowledge.

1           So with that, Ms. Clerk, let's set this out for  
2 approximately 30 days. This trial was anticipated to be a  
3 five-week trial. So let's go out to sometime in early October.

4           THE CLERK: Friday, October 7th.

5           THE COURT: I think -- I don't think that's --

6           THE CLERK: No?

7           THE COURT: -- far enough out --

8           THE CLERK: Okay.

9           THE COURT: -- for us to conclude this trial. Let's  
10 try October 21st.

11          THE CLERK: Yes, your Honor. That's 11:00 o'clock a.m.

12          THE COURT: And I will expect, Mr. Jackson, that if --  
13 that you will provide the Court with the defendant's address  
14 if -- if you are not --

15          MR. JACKSON: Will he be required to be present on that  
16 date or...

17          THE COURT: Unless -- unless otherwise notified. That  
18 date could be changed. But, if -- if it's going to be set for a  
19 hearing, he will be served with formal -- formal pleadings.

20          MR. JACKSON: All right. So --

21          THE COURT: And -- and if -- unless otherwise ordered,  
22 he is ordered to be here at the U.S. District Court on October  
23 21st at 11:00 a.m.

24          MR. JACKSON: Unless there's a stipulation or something  
25 like that. Thank you.

1 THE COURT: Thank you.

2 MR. SCHEISS: Your Honor, just so there's no dispute  
3 later on, would you ask the defendant if he understands what you  
4 just said, that he has to be here at that time and date?

5 THE COURT: Do you understand that, sir --

6 THE DEFENDANT: Yes, I do.

7 THE COURT: -- the order?

8 October 21st, 11:00 a.m., you must be here unless  
9 otherwise ordered.

10 (Pause in the proceedings.)

11 THE COURT: We'll take a short break before we start --

12 MR. BOWERS: Well --

13 THE COURT: -- and allow everyone to get set up and see  
14 if the jury's here.

15 Mr. Bower [sic].

16 MR. BOWERS: A very brief procedural matter before this  
17 Court.

18 Last Friday the Court issued its ruling on my --  
19 Dr. Roitman's evaluation of Mr. Cohen. That -- that ruling was  
20 unequivocal. We've had some banter back and forth that maybe I  
21 would -- I would like to rebrief that issue. Um, you know,  
22 what -- whatever the rules are for a standard motion to  
23 reconsider. Because we're in trial now, I'm wondering if the  
24 Government would object or the Court would be willing to set,  
25 like, maybe Monday or Tuesday of next week for me to have

1 something to the Court if I try to do that. I think otherwise  
2 it's due before then. With all due respect to the Court, it's  
3 been kind of a busy week and I need to be in San Francisco  
4 Friday.

5 MR. IGNALL: Your Honor, the Government has indicated  
6 to Mr. Bowers that we wouldn't object to him trying to file that  
7 if there's something different that was not in his original  
8 motion.

9 THE COURT: It still has to comply with the standards  
10 for a rehearing.

11 MR. BOWERS: I understand that.

12 THE COURT: I'm not waiving that by telling you to go  
13 ahead. You can do that. And the Government's saying they are  
14 not gonna hold you to the timeline. So...

15 MR. BOWERS: That's all I was wondering. Thank you,  
16 your Honor.

17 THE COURT: So do you want to check and see if the  
18 jury's in?

19 THE CLERK: Yes, sir.

20 (Recess from 9:12 a.m. to 9:19 a.m.)

21 THE CLERK: All rise.

22 THE COURT: Ms. Clerk, will you bring in the jury,  
23 please?

24 THE CLERK: Yes, sir.

25 MR. NEIMAN: Your Honor, should we bring Ms. Mitchell

1 in as well?

2 THE COURT: Please. Thank you.

3 (Antoinette Mitchell takes the witness  
4 stand.)

5 (Pause in the proceedings.)

6 THE CLERK: Are we ready?

7 THE COURT: Ready.

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

9 THE COURT: Please be seated.

10 Will counsel stipulate to the presence of the jury?

11 MR. NEIMAN: Yes, your Honor.

12 MR. CRISTALLI: Yes, your Honor.

13 MR. BOWERS: Of course, Judge. Yes.

14 MR. SCHIFF: Yes, your Honor.

15 THE COURT: Mr. Schiff, you may resume your  
16 cross-examination of the witness.

17 MR. SCHIFF: Okay.

18

19 CROSS-EXAMINATION (Continued)

20 BY MR. SCHIFF:

21 Q. Now, Toni, when I was examining you, we were going over the  
22 return that you had filed and we had gone over paragraphs 1, 2,  
23 3, and 4. And I just was gonna start in paragraph 5.

24 Do you have a copy of the return that you filed?

25 A. I don't have a copy.

1 Q. That was a Government's exhibit.

2 A. It was Government Exhibit 5.

3 Q. I have a copy here.

4 MR. SCHIFF: Can I ask that she be given a copy --

5 THE COURT: Yes, you may.

6 MR. SCHIFF: -- of her return?

7 MR. NEIMAN: Your Honor, I believe it's Government's  
8 Exhibit 5.

9 BY MR. SCHIFF:

10 Q. Okay. Just to review for a moment shortly, we covered  
11 paragraphs 1, where you had some comments about liability of  
12 payment. Paragraph 3 you discussed the Privacy Act Notice.  
13 Paragraph 4 you had discussed the question of all information on  
14 tax return being -- capable of being used against you.

15 Now, you want to read paragraph 5, please?

16 A. "With respect to the information I included in my return, I  
17 wish to point out that the courts have ruled that 'A (1040) form  
18 with 'zeroes' inserted in the space provided...qualified as a  
19 return." It cites several court cases "and a Las Vegas  
20 bankruptcy Court held that 'zeroes entered on a Form 1040  
21 constitutes a return.'"

22 Q. Well, that's not what -- see -- don't you cite four cases  
23 there?

24 A. There's four cases cited --

25 Q. Do you --

1 A. -- yes.

2 Q. -- wanna read the whole paragraph?

3 A. U.S. v. Moore, U.S. v. Long, U.S. v. Kimball, U.S. v. Moore,  
4 and Cross v. U.S.

5 Q. Okay. So in that paragraph, if I can summarize, you  
6 included four -- five cases where Ninth Circuit -- well, most of  
7 them were Ninth Circuit cases where they said a zero return  
8 qualified as a return; is that correct?

9 MR. NEIMAN: Objection. He's summarizing, your Honor.

10 THE COURT: Sustained.

11 BY MR. SCHIFF:

12 Q. Did you -- did you read those cases? Did you look at those  
13 cases?

14 A. Um, portions of them. I specifically did not read them all.

15 Q. All right. Let me ask you something, Toni. I haven't  
16 spoken to you in how long? How many years?

17 A. Couple of years.

18 Q. I don't even recall when you terminated working. Was that  
19 after the raid on my floor and I couldn't prepare documents?

20 A. That was the week, yes. That week of the raid.

21 Q. The raid. Okay.

22 So, that was in February -- February of 19- -- of 2003.  
23 2003. So I -- I haven't spoken to you.

24 But we had those cases -- if I showed you the cases --  
25 if I showed you the cases, would you recall having looked at

1 them?

2 A. Portions of them --

3 MR. NEIMAN: Objection --

4 THE WITNESS: -- yes.

5 MR. NEIMAN: Your Honor. The witness has already  
6 testified that she saw the portions that Mr. Schiff had shown  
7 her.

8 MR. SCHIFF: Well, I --

9 THE COURT: Sustained.

10 MR. SCHIFF: Your Honor, if I could just say something.  
11 You know, she hasn't -- she hasn't been in my office for three  
12 years. If she saw the cases three years ago, um, she could have  
13 forgotten them. I'm just -- I wanna give her the cases. Maybe  
14 it will refresh her recollection. I have all those cases.

15 THE COURT: Her recollection is not in doubt.

16 BY MR. SCHIFF:

17 Q. Would you have checked those cases if we had them in the  
18 office?

19 THE COURT: She already answered that question. She  
20 said she read parts of them.

21 Objection is sustained.

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

24 BY MR. SCHIFF:

25 Q. In any case -- in any case, you put on the return certain

1 legal cases that you thought justified the zero return?

2 A. That's correct.

3 Q. Okay. Incidentally, we talked about your getting a  
4 frivolous letter. Did you ever hear from -- the IRS telling you  
5 that these cases didn't apply?

6 A. Specifically those cases? No.

7 Q. Now, did they ever tell you they didn't apply?

8 A. No, they didn't.

9 Q. Okay. Now, will you please read paragraph 6?

10 A. "It should also be noted that I had 'zero' income according  
11 to The Supreme Court's definition of income ..., since in  
12 Merchant's Loan & Trust Co. v. Smietanka, ..., that court held  
13 that 'The word (income) must be given the same meaning in all of  
14 the Income Tax acts of Congress that was given to it in the  
15 Corporate" -- "Corporation Excise Tax Act of 1909.'" Therefore,  
16 since I had no Earnings in 1997, that would have been taxable as  
17 'income' under Corporate [sic] Excise Tax Act of 1909, I can  
18 only swear to having 'zero' income in 1997."

19 Q. When you wrote that paragraph, what did it mean to you?

20 THE COURT: Well, wait a minute. That's a misleading  
21 question. She -- she didn't write this paragraph. She filled  
22 in her name and years on this paragraph.

23 MR. SCHIFF: Yeah. But when she -- but she -- so she  
24 signed under penalty of perjury. So she had to...

25

1 BY MR. SCHIFF:

2 Q. Well did you -- did you read the corpor- -- did you read the  
3 Merchant's & Loan and Trust Company case before you...

4 A. Portions of it, yes.

5 Q. Pardon me?

6 A. Portions of it.

7 Q. Did you read that --

8 A. I didn't read --

9 Q. -- portion of it --

10 A. -- the whole case.

11 Q. -- in the case itself?

12 A. Yes.

13 Q. Yes.

14 So, according to the case that you read, you didn't  
15 believe you had any income?

16 A. That's correct.

17 Q. So, when you put zero on your return, you thought you were  
18 telling the truth?

19 MR. NEIMAN: Objection. Relevance.

20 MR. SCHIFF: All right.

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. In any case, you read the case or that portion --

24 A. Portion of the case, yes.

25 Q. Yes. Okay.

1           So when -- when you got back a letter saying that your  
2 zero return was frivolous, they didn't tell you in that letter  
3 that that case didn't apply? Or did they?

4           MR. NEIMAN: Objection. Asked and answered.

5           MR. SCHIFF: All right. I'll get --

6           THE COURT: Sustained.

7           MR. SCHIFF: I'll get to her letter.

8           THE COURT: It was asked and answered.

9           MR. SCHIFF: Okay. I'm sorry.

10          BY MR. SCHIFF:

11          Q. Okay. You wanna read paragraph 7?

12          A. "I am also putting the IRS on notice that my 1997 income tax  
13 return does not constitute a 'frivolous' return pursuant to Code  
14 Section 6702. My return is based on 13 Preem Scort [sic]" --  
15 "Supreme Court decisions, 9 Internal Revenue Code Sections, 3  
16 Privacy Act Notice provisions, and numerous other references.  
17 As such, it cannot be termed 'frivolous' on any basis as that  
18 term is defined and understood. In addition, my return is not  
19 designed to 'delay' or impede the administration of Federal  
20 Income Tax Laws", since it is designed to be my final statement  
21 under those 'laws'. In addition, no IRS employee has any  
22 delegated authority to impose a 'frivolous' penalty, nor is  
23 there any legislation" -- "legislative regulation implementing  
24 Section 6702, thus the statute is benign. Obviously, since I  
25 know the legal definition of 'income', if I were to swear to

1 having received any other amount of 'income', I would be  
2 committing perjury under both 18 U.S.C. 1621 and U.S.C. 7206.  
3 Therefore" --

4 Q. So -- I'm sorry. I'm sorry. Continue.

5 A. -- "not wishing to commit perjury under either statute, I  
6 can only swear to having 'zero' income for 1997."

7 Q. When you filed this return, did you believe that you had no  
8 income and that you believed income was a corporate profit?

9 MR. NEIMAN: Objection. Relevance.

10 MR. BOWERS: Your Honor, I --

11 MR. SCHIFF: I'm just clarifying what she said. I...

12 MR. BOWERS: Can I request a sidebar, your Honor? This  
13 is an issue that I need to develop at some length. And we can  
14 wait until my testimony [sic], but it's not gonna go away.

15 THE COURT: I sustained the objection.

16 MR. BOWERS: Okay. Then we'll wait till it comes up  
17 again. Thank you, Judge.

18 BY MR. SCHIFF:

19 Q. All right. So, according to that paragraph which you signed  
20 under penalty of perjury, you believed that if you reported  
21 anything other than zero income, you would be committing  
22 perjury.

23 A. That's correct.

24 Q. Because as of the date you sent this in, you believed that  
25 income was a corporate profit.

1 A. Yes.

2 Q. Okay. Do you wanna read paragraph 8?

3 A. "Moreover, no assessment for 1997 income taxes (as provided  
4 in Chapter 63) has ever been made against me for 1997 income  
5 taxes."

6 Q. Oh. All right. Look at this. You were asking for a  
7 refund, is that correct, of \$1600 --

8 A. That's --

9 Q. -- \$1600?

10 A. -- that's correct.

11 Q. Okay. All right. As of the date you filed this document,  
12 you believed that no assessment had been made against you?  
13 Explain that -- what you meant by paragraph 8?

14 MR. NEIMAN: Objection. The defendant wrote paragraph  
15 8, not Ms. Mitchell.

16 THE COURT: Correct.

17 MR. SCHIFF: No, no, no. No, no, no, no.

18 THE COURT: Correct.

19 MR. SCHIFF: No, no.

20 THE COURT: You keep doing that, Mr. Schiff. And I'm  
21 gonna warn you again. You imply that she wrote it. You wrote  
22 it.

23 MR. SCHIFF: Yeah. But --

24 THE COURT: It's out of your book. She filled in the  
25 dates and her name.

1 MR. SCHIFF: Let me clarify something here, your Honor.  
2 If she didn't believe it, she could have struck it out. The  
3 people who filed this had to believe it. They signed it under  
4 penalty of perjury because they couldn't create the document.  
5 I -- I will take full responsibility for creating the document.  
6 But I told 'em if they don't understand this document they're  
7 not supposed to file it. I mean, these people aren't little  
8 puppets that do exactly as I say.

9 THE COURT: Mr. Schiff --

10 MR. SCHIFF: I'm sorry.

11 THE COURT: -- my point is don't say she wrote the  
12 document.

13 MR. SCHIFF: I wrote the document. No question about  
14 it.

15 BY MR. SCHIFF:

16 Q. But, when you read that paragraph, you believed it applied  
17 to you?

18 MR. NEIMAN: Objection. Relevance again.

19 THE COURT: Sustained.

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

22 BY MR. SCHIFF:

23 Q. Okay. When you filed this document, you checked the various  
24 Code sections and statutes that I referred to; is that right?

25 A. That's correct.

1 Q. And then you adopted those Code sections and the court  
2 decisions as your own.

3 A. That's correct.

4 Q. So, despite the fact that I wrote this document, I guided  
5 you -- you couldn't have -- could you have written this document  
6 all by yourself?

7 A. No.

8 Q. No.

9 So I prepared a document which you could adopt as your  
10 own after you checked out the Code sections and the statutes and  
11 if you believed it.

12 A. Yes.

13 Q. And is that what you did substantially?

14 A. That's what I did, yes.

15 Q. Okay. So you adopted all of these things. Okay. All  
16 right.

17 Now, when you wrote in paragraph 8 that no assessment  
18 for 1997 income taxes had ever been made, how did that -- how  
19 did you relate that to your claim for refund?

20 A. I believed at that time, based on this, that I didn't have  
21 an assessment unless I assessed myself.

22 Q. So how did that relate to your claim for refund?

23 A. If I -- if I -- if I did not assess myself anything, then  
24 anything that was withheld I believed I should have gotten back.

25 Q. Okay. So, if I can summarize what you said --

1 MR. NEIMAN: Objection. I'm sorry.

2 THE COURT: Sustained.

3 MR. SCHIFF: Sustained. All right. Okay.

4 BY MR. SCHIFF:

5 Q. Do you still believe that?

6 MR. NEIMAN: Objection again to relevance.

7 THE COURT: Sustained.

8 BY MR. SCHIFF:

9 Q. Do you wanna read paragraph 9?

10 A. "In addition, don't notify me, that the IRS is" -- "is  
11 'changing' my return, since there is no statute that allows the  
12 IRS to do that. You might prepare a return (pursuant to Code  
13 Section 6020b) where no return is filed, but where, as in this  
14 case, a return has been filed, no statute authorizes IRS  
15 personnel to 'change' that return."

16 Q. What did you mean by that?

17 A. Specifically what it says, there's no -- I couldn't find a  
18 section when I researched that, um, allowed IRS agents to change  
19 returns.

20 Q. So you -- you were reporting zero income and you believed  
21 that's the way it had to be?

22 A. Yes, I did.

23 Q. Do you still believe that?

24 MR. NEIMAN: Objection. Relevance.

25 THE COURT: Sustained.

1 MR. SCHIFF: Okay.

2 BY MR. SCHIFF:

3 Q. Do you wanna read paragraph 10?

4 A. "Should the Service disagree with the figures and amounts  
5 shown on my tax return, then I demand an office or field audit  
6 to discuss these differences as required by the Administrative  
7 Procedure Act ... 5 USC 55" -- "551 (1) as provided and  
8 specified for in Treasury Regulation 601.105 and as specified  
9 and provided for in IRS documents, Publication 5, Appeal rights  
10 and Preparation of Protests for Unagreed Cases and Publication  
11 1, Your Rights As A Taxpayer before any 'changes' in my return  
12 are made and/or any penalties proposed or imposed. In addition,  
13 if any 'determination' is made that changes in my return are  
14 warranted, I demand to be notified as to where and when and may  
15 'inspect' the 'text of any written determination and any  
16 background file documents relating to such a determination' as  
17 provided by 26 USC 6110."

18 Q. So, as I understand it, you said if they disagreed with your  
19 zero return you wanted an audit of the return?

20 A. That's correct.

21 Q. Did they ever notify you that they wanted to audit that  
22 return?

23 A. Not an audit, no.

24 Q. All right. Well, we'll get to -- as I understand it, they  
25 sent you a document saying that this was frivolous?

1 A. Yes.

2 Q. Was that your testimony?

3 A. That is.

4 Q. We'll go over that because I think the -- the U.S. Attorney  
5 mentioned that you got a frivolous notice. Okay?

6 But, in any case, you said I'm ready to submit to an  
7 audit on this; Right?

8 A. That's true.

9 Q. Okay. You wanna read paragraph 11?

10 A. "In addition, I will hold IRS employees who disregard the  
11 statutes, court decisions, Privacy Act Notice provisions and  
12 other references contained in this document, accountable  
13 pursuant to 26 USC 7214 and 18 USC 241. Section 7214 makes it a  
14 crime for IRS agents to seek to extract 'other or greater sums  
15 than authorized by law' and to engage in 'extortion and wilful  
16 oppression under color of law'. To the extent that IRS  
17 employees capriciously, wantonly and arbitrarily disregard the  
18 court decisions, statutes and other references contained in this  
19 document, they will be in criminal violation of these statutes,  
20 and you are accordingly being put on such notice."

21 Q. Um, Toni, when you were working at my office and you were  
22 preparing appeals to the Tax Court and appealing adverse -- you  
23 did a lot of legal research --

24 A. Yes, I did.

25 Q. -- didn't you?

1 A. I did.

2 Q. And you did a lot of this on your own because I -- I  
3 would --

4 A. Yes.

5 Q. -- bring cases to your attention. But then you go on the  
6 Internet and --

7 A. That's true.

8 Q. -- you'd look up cases and you would even bring them to me.  
9 Is that correct?

10 A. That's true.

11 Q. Now, you're not in a habit of just -- like a little puppet  
12 just writing down stuff that you don't understand?

13 A. No.

14 Q. So when you wrote that -- or when you adopted paragraph 11,  
15 you believed it?

16 MR. NEIMAN: Objection. Relevance.

17 MR. SCHIFF: No. It goes to -- your Honor, it goes to  
18 her state of mind.

19 MR. CRISTALLI: Your Honor --

20 MR. SCHIFF: Everything that's on here is relevant.

21 MR. NEIMAN: The --

22 MR. SCHIFF: It's relevant to her state of mind.

23 MR. CRISTALLI: May we have a sidebar on this?

24 (Sidebar conference was held as follows:)

25 MR. CRISTALLI: I apologize for interjecting during

1 Mr. Schiff's cross-examination. My only concern is that, um,  
2 her beliefs are essential to me, uh, because she somewhat  
3 parallels my client, uh, in that for whatever reason she relied  
4 on this information; she believed this information. And, um,  
5 despite going through the process of, um, the collect -- I mean,  
6 the due process hearing and so forth and so on, she still  
7 believes in it. I mean, that's important for me to elicit  
8 during the course of my cross-examination.

9 THE COURT: Well, let's -- let's do a hypothetical  
10 here.

11 MR. CRISTALLI: Sure.

12 THE COURT: Let's assume that we're -- we've got a case  
13 where we have some Flat Earthers, some people that believe the  
14 earth is flat --

15 MR. BOWERS: Okay.

16 THE COURT: -- and they believe it against all reason  
17 only because they are relying on someone because they choose to  
18 rely on someone because they are paying the money to believe.  
19 They are getting paid to believe that the earth is flat.

20 MR. BOWERS: Okay.

21 THE COURT: All right? That's what we have here.

22 MR. SCHIFF: Could I --

23 THE COURT: The law is very, very clear: What he put  
24 out is crap. It doesn't stand up. The Supreme Court has ruled  
25 for 91 years that the income tax laws are valid.

1           Section 1 of the Code, the very first section in the  
2 book, says an income tax is imposed, et cetera, et cetera, on  
3 everybody that has income.

4           MR. SCHIFF: But what does "income" mean?

5           MR. BOWERS: Irwin, please, please, please.

6           THE COURT: You've just --

7           MR. SCHIFF: Let --

8           MR. BOWERS: Please.

9           THE COURT: -- done a bunch of mumbo jumbo in a very  
10 confusing --

11          MR. SCHIFF: Let --

12          THE COURT: -- area to laymen --

13          MR. SCHIFF: Let me --

14          THE COURT: -- and you have made a lot of money on it.

15          MR. SCHIFF: I have made -- the government's made far  
16 more money.

17           Let me just -- let me just answer what you just said  
18 because you demonstrated hostility.

19          MR. CRISTALLI: I --

20          MR. SCHIFF: Wait a minute.

21          THE COURT: You're wasting --

22          MR. SCHIFF: In all my --

23          THE COURT: -- the Court's time taking the people  
24 through this.

25          MR. SCHIFF: On all my -- in every one of my

1 seminars -- and if I can play 'em all --

2 THE COURT: You're not going to do it.

3 MR. SCHIFF: -- I tell the people, if you don't believe  
4 this, don't send it in. Don't send it in. I do not tell  
5 people --

6 THE COURT: Listen --

7 MR. SCHIFF: -- to file these zero returns unless they  
8 understand them.

9 THE COURT: Listen to me, sir. You are not going to  
10 keep this Court for an extra five weeks in trial running people  
11 through paragraph by paragraph of something that you wrote and  
12 trying to make it sound like they wrote it.

13 MR. SCHIFF: But I -- I -- I told the jury I wrote it;  
14 she couldn't write it. I -- I put this all this based upon my  
15 research, but she --

16 THE COURT: You only did it after I called you on it.

17 MR. SCHIFF: No, because I -- I would admit to it.

18 THE COURT: The record shows you said "you wrote" it to  
19 her.

20 MR. SCHIFF: No, no. But she adopted it as her belief.

21 THE COURT: That's what you said after I called your  
22 attention to it.

23 MR. SCHIFF: But, obviously, she signed it under  
24 penalty of perjury. She's not an idiot; she's not gonna swear  
25 to something that she doesn't believe in.

1 MR. NEIMAN: Your Honor --

2 MR. BOWERS: Could I address your analogy?

3 MR. NEIMAN: -- what's in issue here --

4 THE COURT: What?

5 MR. BOWERS: Can I address your analogy? Because I  
6 think it's appropriate.

7 THE CLERK: Do you want me to take the jury out  
8 because --

9 MR. BOWERS: Sorry, Jeff.

10 THE COURT: I think you're gonna have to take the jury  
11 out.

12 MR. SCHIFF: Let me address your Honor.  
13 I didn't pay her to file a zero return.

14 THE COURT: Yeah. That's not what I said.

15 MR. SCHIFF: And the fact is the earth isn't flat, but  
16 there's -- you said that Section 1 imposes a tax. Well, what  
17 section makes you liable for the tax imposed.

18 THE COURT: I'm not going to debate the Code with you.  
19 The courts have said and the courts are the law.

20 MR. SCHIFF: No, they are not.

21 THE COURT: Yes, they are.

22 MR. SCHIFF: It's the statutes that come before the law  
23 [sic]. The statutes --

24 THE COURT: The courts interpret the law. That's where  
25 you've made your mistake is you've said that --

1 MR. SCHIFF: Well, if they have to interpret, it's void  
2 for vagueness.

3 THE COURT: Court decisions don't make any difference.

4 MR. SCHIFF: Then how about all the five-to-four  
5 decisions? What's the law in those cases? How about dissension  
6 among the circuits? What is the law in those cases?

7 THE COURT: It's uniform. The tax is valid.

8 MR. SCHIFF: I never said it wasn't. You never heard  
9 me say the taxes are valid [sic]; it's voluntary. That's what I  
10 believe. I never said --

11 THE COURT: All right.

12 MR. SCHIFF: -- the laws aren't valid. I sell the law.

13 THE COURT: We'll do it out there.

14 (Sidebar conference concluded and the  
15 following is held in open court:)

16 THE COURT: The witness will be excused as well while  
17 we discuss this. You'll stand outside.

18 (Witness leaves the courtroom.)

19 THE COURT: Mr. Cristalli.

20 MR. CRISTALLI: Thank you, your Honor. I appreciate  
21 that.

22 Um, your Honor, during the course of Ms. Mitchell's  
23 testimony, there was a question asked of her in terms of her  
24 beliefs and what her beliefs are currently. There was an  
25 objection by the Government, and the Court sustained it.

1     Thereafter I asked for a sidebar and I indicated to the Court  
2     that it is essential to my defense, um, because Ms. Mitchell --  
3     Ms. Mitchell sits in a paralegal situation to my client that we  
4     be able to explore her beliefs, what they were at the time that  
5     she worked for -- worked at Freedom Books and at the time, uh,  
6     that she's currently sitting here as a witness today.

7             Um, when we went to sidebar and we explored that issue  
8     with your Honor, your Honor indicated to me that hypothetical  
9     that suppose the -- uh, there was somebody out there that's  
10    saying that the earth was flat and that because, um, individuals  
11    worked for the person who has -- who was espousing that the  
12    earth was flat they, therefore, have some interest in adopting  
13    the theory that the earth is flat no matter how unreasonable  
14    that -- that theory may be.

15            THE COURT:   That's not the only angle to that, though.

16            MR. CRISTALLI:   Okay.

17            THE COURT:   There's the avoidance of the tax as well,  
18    not just the income from working for someone but also the  
19    avoidance of paying tax when tax is due.

20            MR. CRISTALLI:   And I understand that.

21            My concern is this:   That pursuant to United -- that  
22    Cheeks [sic] v. United States -- uh, United States and United  
23    States v. Pomponio, which are, um -- Pomponio is 42 -- 429 U.S.  
24    10.   It's a 1976 decision; Cheeks v. United States, 498 U.S.  
25    192 -- uh, the central issue in a tax case is whether the

1 defendants willfully violated the law. Willfulness in a tax  
2 case has special meaning. The Supreme Court has defined  
3 willfulness as a "voluntary, intentional violation of a known  
4 legal duty." A defendant's good-faith belief that he is -- he  
5 or she is not violating the tax laws, however, no matter how  
6 objectively unreasonable that belief may be is a complete  
7 defense in a tax prosecution. The good-faith defense  
8 encompasses misunderstanding of the law, not necessarily  
9 disagreement of the law.

10 Your Honor, it doesn't matter how objectively  
11 unreasonable one's belief may be. If one truly believes based  
12 on information that person has been given that the earth is  
13 flat, whether or not that belief is objective is not an issue in  
14 this particular case. That belief can be completely subjective.  
15 And that's what the United States Supreme Court has specifically  
16 spoke to and that's the essence of our defense.

17 So my inability to cross-examine witnesses such as this  
18 on -- on the stand as it relates to their good-faith belief in  
19 this, uh -- in this, uh, ideology I think is allowable and  
20 mandatory under these United States Supreme Court decisions.

21 THE COURT: Thank you.

22 MR. NEIMAN: Your Honor, if the Government may respond?

23 THE COURT: You may.

24 MR. NEIMAN: The issue in this case is the defendants'  
25 beliefs. What Ms. Mitchell believes or any witness who takes

1 that stand is irrelevant to what the defendants believe.  
2 What's -- what -- what this case is about is what the defendants  
3 believed and what they did in order to encourage others to  
4 obstruct and impede the IRS. What Ms. Mitchell's beliefs or any  
5 other witness is not an issue in this case.

6 THE COURT: Well, what -- what -- what the defense is  
7 trying to do is to have the -- this witness bolster their claim  
8 that Mr. Schiff is believable.

9 Go ahead.

10 MR. NEIMAN: No. And they can elicit as much testimony  
11 from her as they want as to how convincing he is and -- and --  
12 the Government concedes that. But ultimately what she believes  
13 is irrelevant.

14 MR. CRISTALLI: And the only response -- response that  
15 I have with regard to that it is relevant because the source of  
16 the belief is Mr. Schiff and the source -- because he's the  
17 father of this movement. And my client sits in the same  
18 position as Ms. Mitchell in that she adopted those beliefs.

19 And, your Honor, I have to disagree with the Court in  
20 that there was some assessment made by the Court at sidebar that  
21 the motivation of my client to believe Mr. Schiff's ideology is  
22 money. And I don't -- and I don't think that there is going to  
23 be any evidence to support that theory. My client believed what  
24 she believed and she will testify to that.

25 THE COURT: That -- that is the claim of the

1 Government. And the Government in its opening argument said  
2 that they would produce that proof.

3 MR. CRISTALLI: Well, it concerns me that the Court has  
4 adopted that.

5 THE COURT: I haven't adopted it. I was discussing  
6 this witness, not your client --

7 MR. CRISTALLI: Okay.

8 THE COURT: -- at sidebar.

9 MR. CRISTALLI: Um, and -- okay.

10 THE COURT: And we are belaboring -- we are belaboring  
11 the point here. The problem is that this witness through --  
12 through Mr. Schiff is going over a document line by line reading  
13 it into evidence, in my opinion, to -- to string things out.  
14 And Mr. Schiff has asked some very misleading questions about  
15 who wrote that document and he only got on course when I  
16 reprimanded him that it was he who wrote the document, not she.

17 He several times referred to the document that she  
18 wrote and then later shifted to an adoption theory when I called  
19 him on it. A deliberate attempt to confuse the jury as to the  
20 authorship of this document.

21 Her -- her good-faith belief is irrelevant. The -- the  
22 Court reserves the -- the issue for -- for the testimony of the  
23 defendants if that comes.

24 MR. SCHIFF: Can I just clarify one thing, your Honor?  
25 If I said that, everybody knows -- the document is in my book.

1 I'm not denying I prepared the document.

2 THE COURT: It's not if you said it; you did. It is on  
3 the record.

4 MR. SCHIFF: Then it was just inadvertence. There's no  
5 question that I prepared -- because the person who buys this  
6 book, he doesn't know about any of these cases. But I tell 'em,  
7 "Go check 'em out." He wouldn't know anything about these  
8 cases.

9 But, also, I resent the fact that he adopted my views.  
10 They don't adopt my views. They check out and if the views  
11 coincide with what they believe the law is -- I have people who  
12 tell me they check -- I have a hundred Supreme Court cases  
13 mentioned in this -- in this book; I have over a hundred fifty  
14 or sixty, uh, statutes. They are not adopting my views. These  
15 aren't my views. I didn't write the Merchant's Loan & Trust Co.  
16 decision.

17 When the Supreme Court in Merchant's Loan & Trust Co.  
18 said the word "income" means the same thing as it meant in the  
19 Corporation Excise Tax --

20 THE COURT: Mr. Schiff, you wrote it. You excerpted  
21 it. You made the conclusions.

22 MR. SCHIFF: But they can check it out.

23 There's another thing I wanna say. It's the Government  
24 who put -- I went over the Grand Jury testimony -- and I can  
25 check this -- when they talked about my zero return, here's what

1 they say: You put zeroes. You put zeroes. And the Grand Jury  
2 got the assumption that we just wrote zeroes, that there was no  
3 basis for the zeros. There's no basis.

4 They did not go over my zero return and show that maybe  
5 there was a basis. They led the Grand Jury to believe that  
6 people just wrote zeroes. There's not -- there's nothing in the  
7 Grand Jury testimony to --

8 THE COURT: Mr. Schiff, I'm going --

9 MR. SCHIFF: -- say why did you write zeroes? They --

10 THE COURT: Mr. Schiff, your zero return is what we're  
11 here about. I have already made rulings of law on this case.  
12 Those rulings are based upon court cases that are part of the  
13 law of this country. You are not going to use this, this trial,  
14 as a forum to promote your business.

15 MR. SCHIFF: I -- I filed motions to dismiss. I don't  
16 wanna use this as a forum.

17 THE COURT: Let me -- let me read you the decision in  
18 the Ninth Circuit case of Becraft v. Nelson, four 0 -- and  
19 this -- this case is -- is a 1989 case.

20 MR. SCHIFF: I'm familiar with the case.

21 THE COURT: Well, listen. Why don't you listen.

22 MR. SCHIFF: I'm listening.

23 THE COURT: "For over 75 years, the Supreme Court" --  
24 that is, the U.S. Supreme Court -- "and the lower federal courts  
25 have both implicitly and explicitly recognized the Sixteenth

1 Amendment's authorization of a non-apportioned direct income tax  
2 on United States citizens residing in the United States and thus  
3 the validity of the federal income taxes laws as applied to such  
4 citizens." That is the law.

5 MR. SCHIFF: Well, let me tell you something. I have  
6 here, if I could dig it up -- the -- the Government refers to  
7 the -- the, um, Congressional Research Service. I have it here.  
8 The Congressional Research Service says that the -- that the  
9 Supreme Court in the eyes -- in -- in the -- in the Brushaber  
10 case held the income tax to be an excise tax. The Supreme Court  
11 in the Brushaber case of the Sixteenth Amendment didn't amend  
12 the Constitution.

13 What the -- I have -- as a matter of fact, I  
14 shepardized Pollack --

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: -- the Pollack -- I'll show the -- the  
17 Pollack --

18 THE COURT: Mr. Schiff --

19 MR. SCHIFF: -- decision. The Pollack is still law  
20 and --

21 THE COURT: Mr. Schiff --

22 MR. SCHIFF: That's not the law.

23 THE COURT: That --

24 MR. SCHIFF: That's not -- that's a Ninth Circuit case.  
25 The Ninth Circuit doesn't set up the law of the land.

1 THE COURT: The law for this case is the Ninth Circuit  
2 law.

3 MR. SCHIFF: How about -- how about the -- how about  
4 the will of Congress when -- when Congress --

5 THE COURT: And --

6 MR. SCHIFF: -- adopted the --

7 THE COURT: -- and --

8 MR. SCHIFF: -- the Congress adopted --

9 THE COURT: -- Ninth Circuit case, the Ninth Circuit  
10 case that I just cited, cites U.S. Supreme Court decisions; it  
11 cites other -- other Circuit court decisions.

12 MR. SCHIFF: I wasn't --

13 THE COURT: Now listen -- wait a minute. Just listen  
14 to me.

15 MR. SCHIFF: I wasn't prepared for this argument.

16 THE COURT: It doesn't matter that you're not prepared.  
17 I have already ruled that that is the law in this case.

18 MR. SCHIFF: You -- all right. Let me ask you a  
19 question, your Honor.

20 When they adopted the 1954 Code, the House and Senate  
21 said income is used in the constitutional sense.

22 THE COURT: Mr. Schiff --

23 MR. SCHIFF: That's the will of Congress. Is that the  
24 law?

25 THE COURT: Mr. Schiff, this is the law. This is the

1 law for this case.

2 MR. SCHIFF: In other words, if -- if the Ninth Circuit  
3 said the moon is made of green cheese, the moon is -- let me ask  
4 you a question.

5 Did Congress ever pass a law saying that I'm bound by  
6 court decisions? Did Congress ever pass --

7 THE COURT: That's the law of the land. You are bound  
8 by court decisions.

9 MR. SCHIFF: Where does it say that? I have --

10 THE COURT: That --

11 MR. SCHIFF: -- I have the Constitution right here and  
12 it says, "Congress shall make all laws." I can't find out in  
13 here where it says --

14 THE COURT: The courts --

15 MR. SCHIFF: -- all legislative power --

16 THE COURT: The courts interpret the laws.

17 MR. SCHIFF: -- shall be vested in the Congress.

18 THE COURT: Mr. -- Mr. Schiff, this is a very basic  
19 principal of our system of government. The Congress makes the  
20 laws and the courts interpret the laws. And case law is part of  
21 the law of this country whether you want to recognize it or not.

22 MR. SCHIFF: Let me ask you a question then. If --

23 THE COURT: You're not asking me any questions. I'm  
24 telling you what the law is. And the fact that you want to  
25 disregard it and take snippets from one case or another --

1 MR. SCHIFF: I'm not --

2 THE COURT: -- is like me going into the Encyclopedia  
3 Britannica and taking one section out of one topic and adding it  
4 to a section in another.

5 MR. SCHIFF: When you say that the law has to be  
6 interpreted, you're saying it's void for vagueness. That means  
7 I don't know what a law means I'm --

8 THE COURT: That is just gobbledygook.

9 MR. SCHIFF: It's not gobbledygook. I'm presumed to  
10 know what the law is.

11 THE COURT: That is also are governed by court  
12 decisions. The --

13 MR. SCHIFF: So I don't know what the law is until I  
14 read a court decision. I go to the law library and I do all  
15 kinds of research before I figure out what the law is.

16 THE COURT: I don't expect you to understand it, but  
17 that is the law.

18 MR. SCHIFF: All I can say is this: I can dig out -- I  
19 have in here -- hold it. Let me just get it here.

20 THE COURT: Mr. Schiff, I have looked at your cases.  
21 They are garbage. You have just --

22 MR. SCHIFF: You're saying the Supreme Court cases are  
23 garbage?

24 THE COURT: The stuff that you've taken out of them and  
25 put together is garbage.

1 MR. SCHIFF: I'll tell you what. I'll plead guilty  
2 right now. Here's the -- here's the Internal Revenue Code.  
3 Show me where income is defined in the Internal Revenue Code.

4 THE COURT: Section 61.

5 MR. SCHIFF: It is? Okay. Show me where they  
6 define --

7 THE COURT: I'm not going to show you anything.

8 MR. SCHIFF: Because it's not defined in --

9 THE COURT: The ruling of this court is that income tax  
10 is valid.

11 MR. SCHIFF: I never said it wasn't because it's  
12 voluntary. I never said it wasn't valid. I'm not -- I sell the  
13 law. Why would I sell the law if I didn't think it was valid?

14 All right.

15 THE COURT: Why? You don't want me to answer that.

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

17 THE COURT: Go ahead.

18 MR. BOWERS: Your Honor --

19 MR. SCHIFF: Let me go back to her cross-examination.

20 MR. LEVENTHAL: Come here.

21 MR. BOWERS: Just a moment, please, sir.

22 What I want to clarify, as I understand the Court's  
23 prior ruling regarding this witness's belief, the decision of  
24 the Court made on relevance applies only to Mr. Schiff's  
25 cross-examination.

1 THE COURT: Correct.

2 MR. BOWERS: I wanted to address your flat earth  
3 hypothesis or hypothetical later.

4 I -- I need to renew orally my motion to sever. I'll  
5 put it in writing.

6 Mr. Schiff does this every time he's in court. I -- I  
7 don't have transcripts back to the '70s and '80s, but I have  
8 transcripts of probation hearings in the early '90s. He's  
9 alienating -- and I'm not saying that you're being biased or  
10 unfair -- but it's clear he's frustrating you. I know he's  
11 alienating this jury. He does this every time. It's hurting my  
12 client. I told -- I submitted, respectfully, to the Court that  
13 I believed this was gonna happen ten months ago. I renewed it  
14 based on his performance last Wednesday. And it's clear that  
15 it's not speculation this is what's gonna happen. So I just  
16 wanna have that on the record and I'll handle it however the  
17 Court wants.

18 THE COURT: Well --

19 MR. CRISTALLI: Your Honor, I just -- I have to join in  
20 the motion. I have maybe some different -- different reasons  
21 why I have to join in the motion for severance. But, I mean,  
22 the biggest issue, obviously, is my client fundamentally, um,  
23 believed in the program that was originally set up at Freedom  
24 Books before she even got there.

25 THE COURT: She can certainly get up and testify to

1 that and she'll subject to cross-examination. But this  
2 witness's beliefs, the fact that several people -- other people  
3 believe it does not make your client's belief any more  
4 legitimate.

5 MR. SCHIFF: Your Honor --

6 MR. CRISTALLI: Your Honor, with all --

7 MR. SCHIFF: -- if I can --

8 MR. CRISTALLI: -- with all -- wait. Irwin.

9 MR. SCHIFF: Sorry. I'm sorry.

10 MR. CRISTALLI: With all due respect, I have to  
11 disagree with the Court. The more people that believe in this  
12 system, um, the more it validates my position, especially in  
13 light of the fact that your Honor said that there was some, um,  
14 motivation to believe because of monetary, um, rewards. And if  
15 there's individuals out there who really didn't get any monetary  
16 rewards, in fact, have suffered repercussions just like this  
17 woman has --

18 THE COURT: Well --

19 MR. CRISTALLI: -- and still believes in it -- and if I  
20 can just make -- and still believes in it, I think that's  
21 incredibly essential to the heart of my defense. Here's a woman  
22 who has been liened, who has been levied, and she'll sit up  
23 there on the stand today and still say that she believes in it.  
24 And that's incredibly essential to my good-faith defense.

25 THE COURT: Well, your point about, uh, people doing it

1 notwithstanding the cost, they didn't know the cost before  
2 they -- they engaged in the conduct.

3 MR. CRISTALLI: But now she'll say that she still  
4 believes in it even though the costs were enormous.

5 THE COURT: Well, she's already admitted that she's not  
6 an attorney and that she doesn't know the law and that she  
7 didn't research all of the --

8 MR. CRISTALLI: Right. And I --

9 THE COURT: -- all of the Code.

10 MR. CRISTALLI: And I don't wanna have a disagreement  
11 dialogue with the Court on this issue. But I have to make the  
12 record perfectly clear that she would testify today that despite  
13 being liened, despite being levied, despite being in a  
14 financial, you know, significant ruin she cannot -- she cannot  
15 continue to do this practice but she still believes in the  
16 practice. And I think that's important to me.

17 MR. NEIMAN: Your Honor, this -- she's also testified  
18 that she's relying solely on -- on the defendants and what she's  
19 getting from Freedom Books. They can attack the reliance and  
20 how he presents it and what he -- that's perfectly relevant the  
21 Government --

22 MR. SCHIFF: If I can --

23 THE COURT: It's obvious that she is still relying on  
24 that advice, that she has not read any relevant cases, that she  
25 has just read the snippets that have been fed to her. And I

1 sustain the objection on --

2 MR. SCHIFF: Okay.

3 THE COURT: -- relevance grounds. Is that --

4 MR. SCHIFF: Can I just say something, your Honor --

5 THE COURT: -- simple.

6 MR. SCHIFF: -- based upon what you just said a little  
7 while ago?

8 I have in front of me the Supreme Court -- here is  
9 the -- I shepardized the case --

10 THE COURT: Mr. Schiff, are you --

11 MR. SCHIFF: I want to --

12 THE COURT: -- are you arguing the law?

13 MR. SCHIFF: -- make this an exhibit.

14 THE COURT: Are you arguing what the law is right now?

15 MR. SCHIFF: No, no. I'm not arguing with the law.  
16 I'm agreeing. I just wanna give you. I wanna make this an  
17 exhibit then.

18 I shepardized Pollack v. Farmer's Loan and Trust Co.  
19 Here it is. Here's the shepardized --

20 THE COURT: Mr. Schiff, I'm gonna ask you again: Are  
21 you trying to argue what the law is --

22 MR. SCHIFF: No.

23 THE COURT: -- in this case?

24 MR. SCHIFF: I wanna make -- here is -- here is -- I  
25 wanna make this an exhibit. It's the Pollack v. Farmer's Loan

1 and Trust Co. Here's the shepardized case. It's still in  
2 force, your Honor. It hasn't been reversed or overturned.

3 THE COURT: What is it? What's the year on it?

4 MR. SCHIFF: The year -- the year was -- it was handed  
5 down in 18 -- 1895.

6 THE COURT: Okay.

7 MR. SCHIFF: But it hasn't been reversed or overturned.

8 THE COURT: Mr. Schiff --

9 MR. SCHIFF: I want to make it an exhibit.

10 THE COURT: -- you will not be allowed to make it an  
11 exhibit. It is irrelevant.

12 MR. SCHIFF: Exhibit. Okay. Also --

13 THE COURT: You're wasting time.

14 MR. SCHIFF: -- also I wanna make an exhibit --

15 THE COURT: That is ridiculous.

16 MR. SCHIFF: All right.

17 THE COURT: You're citing a case that was decided  
18 before the Sixteenth Amendment was adopted authorizing the  
19 imposition of income tax.

20 MR. SCHIFF: Yeah. But the Brushaber Court said that  
21 the Sixteenth Amendment did not challenge or change the Pollack  
22 decision.

23 THE COURT: Again --

24 MR. SCHIFF: But, in any case --

25 THE COURT: And again, Mr. Schiff, you are arguing

1 about what the law is. You choose to disregard the Becraft and  
2 all the other cases that have upheld the income tax and the  
3 imposition of income tax on individuals. You choose to  
4 disregard it. I'm not going to waste my time --

5 MR. SCHIFF: All right. All right.

6 THE COURT: -- arguing with you about it. I've already  
7 ruled.

8 MR. SCHIFF: Here is --

9 THE COURT: Mr. Schiff --

10 MR. SCHIFF: One more comment.

11 THE COURT: -- Mr. Schiff, no.

12 MR. SCHIFF: Here --

13 THE COURT: You are not going to argue about the  
14 validity of the law. The law --

15 MR. SCHIFF: I'm not arguing the validity of the law.  
16 I'm saying the law is valid. I have to make that clear. I say  
17 the law is valid. I am not saying the law isn't valid.

18 Now, you said about the -- that the Pollack decision is  
19 a 1990, you know --

20 THE COURT: You're not going to argue this any --  
21 you're not gonna waste any more time, sir. The Becraft case is  
22 the controlling law along with the Supreme Court cases it cites.

23 MR. SCHIFF: Okay. Can I just make one comment? One  
24 comment.

25 I went to the United States Supreme Court Digest. Here

1 it is.

2 THE COURT: I thought you just told me a minute ago  
3 that -- that Supreme Court cases aren't part of the law.

4 MR. SCHIFF: Well, I -- well, they are actually if they  
5 change the law.

6 THE COURT: Well, then --

7 MR. SCHIFF: But here's what they say.

8 THE COURT: -- why do you cite them if they are not?

9 MR. SCHIFF: Let me just quote one thing. They cite  
10 four cases right here.

11 THE COURT: No.

12 MR. SCHIFF: Here's what they say --

13 THE COURT: Mr. Schiff --

14 MR. SCHIFF: -- the whole purpose --

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: -- of the Sixteenth --

17 THE COURT: -- if you continue on, I've already  
18 ordered --

19 MR. SCHIFF: All right.

20 THE COURT: -- that the --

21 MR. SCHIFF: All right.

22 THE COURT: -- the Becraft case and the other cases  
23 control. Your arguments about -- about the law have already  
24 been found frivolous by every court that's considered them.

25 MR. SCHIFF: No court has ruled --

1 THE COURT: Mr. Schiff, you're not arguing with me.

2 MR. SCHIFF: All right. All right.

3 THE COURT: That's the law.

4 MR. SCHIFF: Okay. That's the law.

5 Are they gonna bring Toni back in?

6 THE COURT: Bring the jury back in.

7 THE CLERK: Yes, sir.

8 Bring your witness up, please.

9 MR. SCHIFF: I'll take -- I'll take absolute  
10 responsibility for preparing this document. It's in my book.

11 (Witness resumes the stand at 10:05 a.m.)

12 (Jury enters the courtroom at 10:06 a.m.)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. NEIMAN: Yes, your Honor.

16 MR. CRISTALLI: Yes, your Honor.

17 MR. BOWERS: Absolutely, Judge.

18 THE COURT: Yes, sir.

19 BY MR. SCHIFF:

20 Q. Okay. Now -- now, Toni, we can agree that until you read my  
21 book you hadn't the vaguest idea of any of these statutes and  
22 court decisions; is that correct?

23 A. That's correct.

24 Q. So -- and a copy of this return, this zero return, was in my  
25 book; is that correct?

1 A. That's correct.

2 Q. So you got the form and the document from my book?

3 A. Yes.

4 Q. So, when you read my book and you saw these references, does  
5 this create an interest or a doubt in your mind as to maybe --  
6 before -- before you read my book, had you ever looked into the  
7 Internal Revenue Code to see if there were laws requiring you to  
8 pay income taxes?

9 A. No, I did not.

10 Q. Had you ever checked the meaning of "income" before you read  
11 my book?

12 A. No.

13 Q. So my book triggered your interest in this subject  
14 presumably?

15 A. That's correct.

16 Q. So, after you read my book and you saw the document that I  
17 prepared that you could use if you believed it, you checked out  
18 most of the references, or all the references?

19 A. That's true, yes.

20 Q. And only after you adopted and checked out these references  
21 did you come to the conclusion that the document was correct?

22 A. That's true.

23 Q. So, at the time you filed it, you adopted not my beliefs but  
24 the beliefs that you read in the law and the court -- I didn't  
25 write the Merchant's Loan & Trust Co. decision, did I?

1 MR. NEIMAN: Objection, your Honor. Asked and  
2 answered.

3 MR. SCHIFF: All right.

4 MR. NEIMAN: Relevance.

5 THE COURT: Sustained.

6 MR. SCHIFF: All right.

7 THE COURT: Irrelevant.

8 BY MR. SCHIFF:

9 Q. Okay. So -- so -- okay. So let's go to the note that you  
10 have, the last thing -- so far we've covered everything. Now,  
11 let's read the note.

12 A. The note says, "The word 'income' is not defined in the  
13 Internal Revenue Code."

14 Q. Stop right -- oh, okay. Go ahead.

15 A. "U.S. v. Ballard."

16 Q. Now stop right there.

17 Did you -- did you check that statute, U.S. v. Ballard?

18 A. The court case?

19 THE COURT: That's not a statute. That's a court case.

20 MR. SCHIFF: No, no. It's a court decision, yeah. It  
21 was in my --

22 THE WITNESS: Yes, I did read the portions of all the  
23 court cases outlined in here.

24 BY MR. SCHIFF:

25 Q. But did you read the U.S. v. Ballard?

1 A. Not the whole case.

2 Q. Well, you -- did you read the portion of that case where it  
3 says income is not defined in the Internal Revenue Code?

4 MR. NEIMAN: Objection. Misleading.

5 THE COURT: Sustained.

6 MR. SCHIFF: Asking her if she --

7 THE COURT: Sustained.

8 BY MR. SCHIFF:

9 Q. Did you read --

10 THE COURT: Next question.

11 BY MR. SCHIFF:

12 Q. Did you find that line in that court decision?

13 A. Yes.

14 Q. Okay. So you found a line in a court decision that said the  
15 word "income" is not defined. Did you go -- did you --

16 THE COURT: Wait a minute. Wait a minute.

17 MR. SCHIFF: I'm sorry.

18 THE COURT: There was not an answer.

19 THE WITNESS: That was the same question. Yes, I saw  
20 the portion of that court case.

21 BY MR. SCHIFF:

22 Q. Did you ever find in the code on your own where the word  
23 "income" was defined?

24 A. No, I didn't.

25 Q. Okay. So, in your view, the tax was imposing a tax on

1 something that the law itself didn't define. Is that a  
2 conclusion you came to?

3 A. Could you repeat that question? I'm sorry.

4 Q. You said that you came to a seminar that I -- how many  
5 seminars of mine did you come to?

6 A. Probably three or four live seminars.

7 Q. At my seminar, don't I make -- I spend a lot of time on the  
8 meaning of income and the fact that income is not defined in the  
9 Internal Revenue Code?

10 A. Yes.

11 Q. Don't you hear that in my seminar?

12 A. Yes.

13 Q. As a matter of fact, I pass out documents, which we're gonna  
14 get to, showing what the word "income" means?

15 A. Yes.

16 Q. So, on the basis of my seminars which you attended and your  
17 own -- verifying what I said, you came to the conclusion that  
18 income is not defined in the Internal Revenue Code?

19 A. Yes.

20 Q. Okay. So let's continue with that.

21 You said it can only -- so you said U.S. v. Ballard --  
22 oh. You cited U.S. v. Ballard and you cited it as 400 comma  
23 404. What -- what does that mean?

24 A. Those would be the actual sections/pages where those  
25 specific words were stated.

1 Q. So that quote would be found on page 404. Is that...

2 A. That's correct.

3 Q. All right. So you would not necessarily have read the  
4 entire case. If you read page 404, that's where that statement  
5 would have been.

6 A. That's true.

7 Q. Okay. Let's continue reading.

8 Again -- again --

9 THE COURT: Are you reading it or --

10 MR. SCHIFF: No. I wanna tell her where she is.  
11 That's all.

12 BY MR. SCHIFF:

13 Q. We're on the second line, Toni.

14 A. "The Supreme Court has held this numerous times. 'Whatever  
15 difficulty there may be about a precise and scientific  
16 definition of 'income' it imports, as used here .... the idea of  
17 gain or increase arising from corporate activities, 'Doyle v.  
18 Mitchell ...' Certainly the term 'income' has no" --

19 Q. You wanna stop right there.

20 So you cite -- oh, I'm sorry. Continue. You didn't  
21 finish that quote.

22 A. "Certainly the term 'income' has no broader meaning in the  
23 1913 Act" --

24 Q. Okay.

25 A. -- "than in that of 1909."

1 Q. Can I stop you?

2 We went by the whole quote. One more time.

3 "The idea of gain ... arising from corporate  
4 activities." Okay? And then you cited before that Doyle v.  
5 Mitchell.

6 Did you check that case?

7 A. Yes.

8 Q. Yes.

9 A. That portion of the case where it says that.

10 Q. So you read that in the case that -- do you wanna read that  
11 again, Toni?

12 A. "Whatever difficulty there may be about a precise and  
13 scientific definition of 'income' it imports, as used here ....  
14 the idea of gain or increase arising from corporate activities."

15 Q. So what did you conclude from that?

16 A. That income meant -- that income was a corporate profit.

17 Q. And since you were not a corporation...

18 A. I didn't have a profit.

19 Q. You didn't have any --

20 A. I didn't --

21 Q. -- income for tax purposes.

22 A. -- have any income. Right.

23 Q. Okay. Let's continue with that. Continue reading.

24 A. "Certainly the term 'income' has no broader meaning in the  
25 1913 Act than in that of 1909 (See Stratton's Independence v.

1 Howbert ...) [uh] and we assume that there is no difference in  
2 its meaning as used in the two acts."

3 Q. All right. Now, were you familiar with the Corporation  
4 Excise Tax Act of 1909?

5 A. Yes.

6 Q. I devote a whole chapter to that act in The Great Income Tax  
7 Hoax; right?

8 A. Yes.

9 Q. Which you read?

10 A. Yes.

11 Q. What was the Corporation Excise Tax Act of --

12 MR. NEIMAN: Objection. Relevance.

13 THE COURT: Sustained.

14 MR. SCHIFF: She mentions it right here.

15 THE COURT: Sustained.

16 MR. SCHIFF: But -- but it goes to her state of mind  
17 and what she knew.

18 THE COURT: Sustained.

19 MR. SCHIFF: How -- how is it not relevant? She  
20 mentioned it in her return.

21 THE COURT: We've already gone through this, the  
22 relevance.

23 MR. SCHIFF: All right.

24 THE COURT: Objection is sustained.

25

1 BY MR. SCHIFF:

2 Q. Now, what did you conclude --

3 MR. NEIMAN: Objection as to Ms. Mitchell's  
4 conclusions.

5 THE COURT: Sustained.

6 MR. SCHIFF: Wait a minute.

7 (Pause in the proceedings.)

8 MR. SCHIFF: According to Rule 701, opinion testimony  
9 by laywitnesses --

10 MR. NEIMAN: Objection.

11 MR. SCHIFF: -- it says -- I'm -- I'm --

12 MR. NEIMAN: He's reading --

13 MR. SCHIFF: I'm reading --

14 MR. NEIMAN: -- rules of evidence.

15 MR. SCHIFF: -- from the statute. It says that a  
16 irrationally based perception of the witness is -- as long as  
17 it's helpful for a clear understanding of what -- of the  
18 witness's testimony. I'm asking her for her perception.

19 THE COURT: I sustained the objection.

20 MR. SCHIFF: And according to --

21 THE COURT: Her perception is irrelevant.

22 MR. SCHIFF: Her perception is irrelevant.

23 THE COURT: It is.

24 MR. SCHIFF: Even though the statute says I can ask for  
25 her perceptions. All right.

1 THE COURT: It's not a statute; it's a rule of  
2 evidence. And it's -- all rules of evidence are subject to  
3 relevance.

4 MR. SCHIFF: Well, this is Rule 701 from the --

5 THE COURT: That's correct.

6 MR. SCHIFF: -- Federal Rules of Civil Procedure.

7 THE COURT: It's not a statute; it's a Rule of  
8 Evidence. And all evidence is subject to relevance.

9 MR. SCHIFF: Well, I think -- I don't wanna argue with  
10 you. But I think her state of mind when she sent this -- the  
11 Government introduced this document. I didn't. And the  
12 document -- the Government introduced a document on the basis  
13 that I misled the witness and she was like a little robot  
14 filling in zeroes. And I'm trying to get her state of mind when  
15 she sent the --

16 BY MR. SCHIFF:

17 Q. All right. Now -- now, let's continue with this.

18 Now, you cited "(See Stratton's Independence" --  
19 incidentally, in my office I had -- I had decisions and I had  
20 books showing these court decisions. Is that correct?

21 THE COURT: Objection is sustained.

22 MR. SCHIFF: All right.

23 THE COURT: What you had in your office, you're  
24 testifying.

25 MR. SCHIFF: All right.

1 BY MR. SCHIFF:

2 Q. Toni, did you -- did I have in my office available to you  
3 books and statutes that I thought was relevant?

4 A. Yes.

5 Q. Yes. And these statutes and books were available to you to  
6 check if you wanted to?

7 A. Yes.

8 Q. I didn't stand over you and -- and see whether you did all  
9 of these things, did I? Or did I?

10 A. No.

11 Q. Okay. But you were capable right in the office of checking  
12 all this stuff out. Okay.

13 Also, you could have checked them out on the Internet.

14 A. That's true.

15 Q. Okay. Let's continue.

16 So "(See Stratton's Ind-" has no broader meaning --  
17 um, excuse me.

18 Did you read my book The Great Income Tax Hoax?

19 A. Yes, I did.

20 Q. Chapter 10 of this book is entitled, "The Corporation Excise  
21 Tax Act of" --

22 MR. NEIMAN: Objection. The book's not in evidence.

23 MR. SCHIFF: Well, I wanna put it in evidence then,  
24 your Honor. It's relevant. She read it.

25 MR. NEIMAN: Relevance.

1 THE COURT: It is irrelevant. And the objection is  
2 sustained. And, furthermore, you are testifying again.

3 MR. SCHIFF: All right.

4 BY MR. SCHIFF:

5 Q. Did you read this book?

6 A. Yes.

7 Q. Did this book include a chapter to the corporation excise  
8 tax --

9 MR. NEIMAN: Objection. He's testifying.

10 MR. SCHIFF: I'm just asking her a question, if she  
11 read this --

12 THE COURT: I'll allow that one. If she remembers.

13 THE WITNESS: Yes, it did contain a chapter.

14 BY MR. SCHIFF:

15 Q. I devote a whole chapter; is that correct?

16 A. Yes.

17 Q. And, based on your understanding, what was taxable as income  
18 in the Corporation Excise Tax Act of 1909?

19 MR. NEIMAN: Objection. Relevance.

20 THE COURT: It is irrelevant.

21 MR. SCHIFF: I don't know why it's irrelevant when it's  
22 mentioned right here in the document that the Government  
23 submitted. I'm submitting, your --

24 THE COURT: The Court has ruled. It is irrelevant.

25 MR. SCHIFF: All right. Well, it's irrelevant.

1 BY MR. SCHIFF:

2 Q. Okay. Now, see -- and what did you write there? I think  
3 we're at "See Stratton's Independence." Do you want to continue  
4 reading right after Corporation Excise Tax Act?

5 A. "We assume" -- "we assume ... there is no difference in its  
6 meaning as used in the two acts. I read that line.

7 Q. "See Stratton's Ind-" -- yeah, keep going.

8 A. And then it's, uh, "See also Southern Pacific Company" --

9 Q. Wait. Hold it. But we didn't finish. "See Stratton's  
10 Independence."

11 A. Yeah, I read that.

12 Q. Did you read the citing?

13 A. Um-hum.

14 Q. I didn't hear it. Can you --

15 A. Oh. 231 U.S. 399, 416 and 417.

16 Q. Again, what is -- what would 416 and 417 mean?

17 A. Those are the pages, pages where those quotes would be  
18 found.

19 Q. Okay. Now, and you read -- and you read those pages, I take  
20 it?

21 A. Yes. I read portions of most all of the cases on this page.

22 Q. So, when you read those portions, what did you -- I didn't  
23 write those portions, did I?

24 A. No.

25 Q. No.

1           The Supreme Court wrote 'em?

2    A.   Yes.

3    Q.   And you believe what the Supreme Court said?

4           MR. NEIMAN:  Objection.  Relevance.

5           THE COURT:  Sustained.

6    BY MR. SCHIFF:

7    Q.   What did you conclude from those pages that you read?

8           MR. NEIMAN:  Objection to Ms. Mitchell's conclusions as  
9    well.

10           THE COURT:  Sustained.

11           MR. LEVENTHAL:  Court's indulgence.

12           MR. SCHIFF:  Okay.  Let's --

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

15    BY MR. SCHIFF:

16    Q.   I just want to complete -- I want to complete what you  
17    wrote.  And then you --

18           THE COURT:  Wait a minute.  She didn't write it; you  
19    wrote it.  You've gone over this.

20           MR. SCHIFF:  Look it.  That's inadvertence on my part.  
21    Let me just say this so the jury -- so that everybody  
22    understands.  I wrote it.  Because when people bought my book,  
23    they don't know anything about these cases.

24           THE COURT:  Mr. Schiff, I don't need -- I don't need an  
25    explanation.

1 MR. SCHIFF: I wrote it. I'm admitting I wrote it.

2 THE COURT: Then quit asking her --

3 MR. SCHIFF: All right.

4 THE COURT: -- questions that imply she wrote it.

5 MR. SCHIFF: Well, that -- that was inadvertence. I  
6 admit that I wrote it. She signed it, she adopted it as her  
7 belief.

8 BY MR. SCHIFF:

9 Q. Just continue reading, and we'll finish with this. "See  
10 also"...

11 A. "See also Southern Pacific Company v. John Z. Lowe Jr., 247  
12 U.S. 330, 335. Bowers v. Kerbaugh-Empire Company, 271 U.S.  
13 887 ... page 174; Goodrich v. Edwards, 255 U.S. 527; United  
14 States v. Supplee-Biddle Hardware Co., 256 U.S. 189; United  
15 States v. Phellis, 257 U.S. 156; Miles v. Safe Deposit & T. Co.,  
16 259 U.S. 247; Irwin v. Gavit, 286 U.S. 161; Edwards v. Cuba R.  
17 Co., 268 U.S. 628; [and] Burnett v. Harmel, 287 U.S. 103, 108,  
18 ...; Lucas v. Earl, 281 U.S. 111."

19 Q. Okay. With the exception of U.S./Ballard, all of the other  
20 cases are Supreme Court cases; is that correct?

21 A. Yes, that's correct.

22 Q. Did you check those cases to see if they said that income in  
23 the Internal Revenue Code means a corporate profit? Did you  
24 check that?

25 A. Not specifically. I can say I didn't check every single one

1 of these, but some of them yes.

2 Q. So you checked some of them and you found that that's what  
3 they said?

4 A. Yes.

5 Q. Okay. So, when you sent in your zero return which you found  
6 in my book after you checked out all of the citings, when you  
7 sent this return in you had adopted these beliefs as being your  
8 beliefs?

9 MR. NEIMAN: Objection, your Honor. Form of the  
10 question. Relevance.

11 THE COURT: Sustained.

12 BY MR. SCHIFF:

13 Q. You didn't send in this tax return because I told you to do  
14 it?

15 A. That's correct.

16 Q. Basically my book said check it out. If you agree with it,  
17 you can file a return based on this material.

18 A. Yes, that's correct.

19 Q. And you found before you sent in every statute and every  
20 reference to the Privacy Act -- in other words, you found that  
21 every reference in the zero return, um, corresponded with a  
22 statute or references in the Privacy Act or court decisions and  
23 you made a determination that all that information was  
24 supported --

25 THE COURT: She already answered that she didn't look

1 at all of the references, sir.

2 MR. SCHIFF: All right.

3 BY MR. SCHIFF:

4 Q. You looked at most -- did you look at most of them?

5 A. Yes, I did.

6 Q. You looked at -- maybe you didn't check out the 10 Supreme  
7 Court cases. But -- but, as I take it, your testimony is you  
8 checked out enough of them to verify that they said income is a  
9 corporate profit?

10 MR. NEIMAN: Objection. Misleading.

11 THE COURT: Sustained. Misleading.

12 BY MR. SCHIFF:

13 Q. Well, do you want to summarize in your own words why you  
14 filed a zero return?

15 A. Um, at that time after checking the information, as I've  
16 testified before, I believed that I did not have income and I  
17 did report zero on my tax return.

18 Q. You came to that conclusion on your own?

19 A. After -- after reading your material and researching it,  
20 that's true.

21 Q. Okay. But it wasn't my book that -- that got you to file  
22 it. It was the references in my book to the statutes and the  
23 court decisions which ultimately convinced you that you could  
24 file that document under penalty of perjury.

25 A. That's true.

1 Q. Okay. And, when you filed that document, even though I  
2 prepared the outlines you adopted mentally -- all these  
3 references became your beliefs?

4 MR. NEIMAN: Objection. Relevance.

5 THE COURT: Sustained.

6 MR. SCHIFF: Well, it on goes to her state of mind.

7 THE COURT: Sustained.

8 MR. SCHIFF: The Government adopt --

9 THE COURT: Sustained.

10 MR. SCHIFF: Look, your Honor. Let me just make a  
11 reference --

12 THE COURT: Sustained.

13 MR. SCHIFF: -- here. The Government introduced  
14 this --

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: Can I --

17 THE COURT: -- the objection is sustained.

18 MR. SCHIFF: Okay. All right.

19 BY MR. SCHIFF:

20 Q. Now, the Government -- if I can check my notes -- now, what  
21 happened after you filed a -- if I get my notes -- the  
22 Government sent you a notice that your zero return was --  
23 where's my notes?

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

1 (Pause in the proceedings.)

2 BY MR. SCHIFF:

3 Q. The Government asked you so many questions. They -- they  
4 referred to the fact that the Government sent you a notice  
5 saying that -- that your return was frivolous?

6 A. Yes.

7 MR. SCHIFF: Can I -- can I see a copy -- the  
8 Government put -- I think the Government put that letter that  
9 you received into evidence. Did I see a copy of that document?

10 MR. NEIMAN: Your Honor, the United States presented a  
11 sample frivolous letter. We didn't actually put in  
12 Ms. Mitchell's actual frivolous letter.

13 MR. SCHIFF: Well --

14 MR. NEIMAN: It's a part of Government's Exhibit 1.

15 MR. SCHIFF: Do we have a copy of a sample frivolous  
16 letter? If I could just -- if someone could find it.

17 (Pause in the proceedings.)

18 BY MR. SCHIFF:

19 Q. Okay. So the Government sent you a letter saying that your  
20 return was frivolous?

21 A. Yes.

22 Q. In the return -- and, when they responded, did they say  
23 where any statement was false? Let me -- let me --

24 A. Yeah, I don't remember the letter, sir.

25 Q. Here is -- this was -- it's a standard...

1 (Document handed to the witness by  
2 Mr. Schiff.)

3 BY MR. SCHIFF:

4 Q. Incidentally, I think that's a standard letter.

5 A. There is the 30-day letter. This is not the frivolous  
6 letter.

7 Q. Oh, is that a 30-day letter or the frivolous letter?

8 A. This is the 30-day letter.

9 Q. That's the wrong letter. Well, hold on. We may want to get  
10 to that. I wish I could -- I wish I could give you a copy at  
11 the same time.

12 Okay. But this is the copy that you got I take it. It  
13 says: "Dear Taxpayer, we have determined that the information  
14 you sent us is frivolous and your position has no basis in law."

15 Did they say "we," who determined it?

16 A. They said "we." So that must have meant the Internal  
17 Revenue Service.

18 Q. Now, it has no basis in law.

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

21 THE COURT: Do you wish to approach?

22 MR. SCHIFF: Yes. Approach the witness.

23 THE COURT: You may.

24 (Document handed to the witness by  
25 Mr. Schiff.)

1 BY MR. SCHIFF:

2 Q. This is the letter?

3 A. This is the 90-day letter.

4 Q. That's a 90-day letter? I can't see. Oh, this is a  
5 deficiency notice. This is the deficiency notice.

6 (Discussion between Mr. Schiff and  
7 Mr. Modafferi.)

8 BY MR. SCHIFF:

9 Q. Okay. I'll give you this. You can read it.

10 MR. SCHIFF: May I approach the witness?

11 THE COURT: You may.

12 (Document handed to the witness by  
13 Mr. Schiff.)

14 BY MR. SCHIFF:

15 Q. Okay. Toni, I don't have a copy. So I'll rely on you just  
16 reading it.

17 THE COURT: Wait a minute. Wait a minute.

18 BY MR. SCHIFF:

19 Q. Can you please read --

20 THE COURT: What --

21 BY MR. SCHIFF:

22 Q. Is that similar to --

23 THE COURT: You can ask her to look at it. I'm not  
24 going to allow her to read the entire document. It'll take a  
25 half hour.

1 MR. SCHIFF: Okay. We won't. But it's the  
2 Government's -- it's the Government's exhibit. I don't...

3 BY MR. SCHIFF:

4 Q. Do you want to read the first line?

5 A. "We have determined that the information you sent is  
6 frivolous and your position has no basis in law."

7 Q. Now, you cited in your -- at least 10 statutes; is that  
8 correct?

9 A. In my attachment to the --

10 Q. Yeah.

11 A. -- tax return, there is --

12 Q. So --

13 A. -- 10 cases --

14 Q. Ten cases --

15 A. -- cited.

16 Q. No. Forget the cases.

17 How many statutes did you cite in your -- do you want  
18 to look at --

19 A. I believe it was two or three.

20 Q. Just the first two paragraphs you cited.

21 A. Yes.

22 Q. So they are telling you that your return has no basis in law  
23 even though you cited at least 10 statutes?

24 A. That's true.

25 Q. Incidentally, Toni, do you know what the word "frivolous"

1 means?

2 A. It means silly, without --

3 Q. Pardon me?

4 A. It means silly, without merit.

5 Q. Silly; right? Your zero return -- why do you think -- did  
6 you think your zero return was frivolous?

7 MR. NEIMAN: Objection.

8 THE COURT: Sustained.

9 MR. NEIMAN: Relevance.

10 THE COURT: Sustained.

11 BY MR. SCHIFF:

12 Q. Let's continue with this, continue with what they told you.

13 A. "Claims, such as yours, have been considered and rejected  
14 repeatedly as without merit by the federal courts - including  
15 the ... Supreme Court [of the United States]."

16 Q. Now, you want to -- so you cited at least 10 Supreme Court  
17 decisions in your --

18 THE COURT: Let's -- let's -- let's get accurate again.

19 MR. SCHIFF: All right.

20 THE COURT: She used your --

21 MR. SCHIFF: But she --

22 THE COURT: -- document to send in.

23 MR. SCHIFF: Let me make one thing clear again. When  
24 people bought this book, they didn't know the first thing about  
25 income tax. I'll agree to that. And I brought to their

1 attention things that they never knew existed. And I told them  
2 check it out. I take full responsibility for the outline of  
3 that document. But -- but she said she checked out the  
4 information and she adopted --

5 THE COURT: She's saying she read portions of the  
6 documents that you had cited. She didn't read the whole  
7 document.

8 MR. SCHIFF: Well, she -- she said she checked out  
9 every statute that I cited. She didn't read every court  
10 decision, but she read most of them.

11 THE COURT: She read parts --

12 BY MR. SCHIFF:

13 Q. In any case --

14 THE COURT: -- of the court --

15 BY MR. SCHIFF:

16 Q. -- did they say --

17 THE COURT: -- decisions.

18 BY MR. SCHIFF:

19 Q. -- when they --

20 THE COURT: That's her testimony.

21 BY MR. SCHIFF:

22 Q. -- when they -- when they sent you that letter, did they  
23 tell you where anything in your return was incorrect?

24 A. No, they didn't. They just said it was frivolous.

25 Q. They didn't say it was fraudulent?

1 A. Frivolous doesn't mean fraudulent.

2 Q. Pardon me?

3 A. I don't believe that frivolous means fraudulent.

4 Q. It means silly.

5 A. It means silly and without merit.

6 Q. Without merit. Silly. No basis.

7 Do you think a document citing some 30 legal references  
8 is silly?

9 MR. NEIMAN: Objection as to what --

10 THE COURT: Sustained.

11 MR. NEIMAN: -- she thinks.

12 MR. SCHIFF: All right.

13 BY MR. SCHIFF:

14 Q. In any case, when you got that, what did you do with it?

15 A. I --

16 Q. Did you respond to that?

17 A. Yes, I did.

18 Q. And you responded to that letter. I think the Government  
19 put in that response. There was an answer. Didn't the  
20 Government put in a response letter? I thought I...

21 THE CLERK: This is the Government's.

22 MR. SCHIFF: Is that where it is? Oh, it's in...

23 THE WITNESS: I don't believe the response letter is  
24 contained in that exhibit, only the reference of where to get  
25 the response letter.

1 BY MR. SCHIFF:

2 Q. I think -- let me -- let me -- let me understand something.

3 Did you respond to that frivolous letter?

4 A. Yes, I did.

5 MR. SCHIFF: I -- I -- I was under the assumption that  
6 the Government put her response in. If not, I -- I can -- will  
7 you give me two -- I think I could find it in my copy.

8 (Pause in the proceedings.)

9 MR. CRISTALLI: Your Honor, I have a matter that I'd  
10 like to discuss with the Court, um, at sidebar if we may.

11 THE COURT: Well, we'll take a break in a minute. Is  
12 it urgent?

13 MR. CRISTALLI: Well, I just don't want to proceed too  
14 much further before I have an opportunity to discuss it with the  
15 Court.

16 THE COURT: Well, we won't go much further. We're --  
17 we're just about time for a break.

18 (Pause in the proceedings.)

19 THE COURT: I think we'll --

20 MR. SCHIFF: Okay.

21 THE COURT: -- as a courtesy to the jury, we'll take a  
22 break.

23 Are you through?

24 MR. SCHIFF: Well, I'd like to find the response  
25 letter. I won't -- I won't take time to look for it. If you

1 want to take a break, it might be a good time. I thought -- I  
2 just thought the Government put in her response letter. So I...  
3 I have an idea what the response letter said if you want to take  
4 my word for it or you can give me --

5 THE COURT: You're not testifying.

6 MR. SCHIFF: Pardon me?

7 THE COURT: You're not under oath. You're not  
8 testifying. So --

9 MR. SCHIFF: No.

10 THE COURT: -- you can't do that.

11 BY MR. SCHIFF:

12 Q. Do you recall it? Toni, do you recall the substance of your  
13 response letter?

14 A. Yes. I believe it, um, stated the same things that were  
15 stated, actually, in the attached two pages to the return. It  
16 recited specific court cases and statutes that we've already  
17 discussed as to why I shouldn't be charged with the frivolous  
18 penalty.

19 Q. And did you try to explain why your return wasn't frivolous?

20 A. Yes, I did.

21 Q. So -- well, how many pages was your response? Do you  
22 recall?

23 A. I believe it was six pages.

24 Q. Six pages?

25 A. Yes.

1 Q. So you sent the -- the Government a six-page letter designed  
2 by me initially, right --

3 A. Yes.

4 Q. -- because -- all right.

5 Could you have written that six-page letter on your  
6 own?

7 A. I probably wouldn't have taken six pages. But, at this  
8 point, I woulda had some of the information I could have put  
9 down on my own. But I didn't. I adopted your letter.

10 Q. It was easier to adopt my letter; is that --

11 A. Yes.

12 Q. But you believed everything in that letter?

13 MR. NEIMAN: Objection as to what she believes.

14 THE COURT: Sustained.

15 MR. SCHIFF: All right. All right.

16 BY MR. SCHIFF:

17 Q. If you -- so you adopted my letter as our own?

18 A. Yes, I did.

19 Q. And you told the Government why you didn't believe your  
20 return was frivolous.

21 MR. NEIMAN: Objection. Form of question and  
22 relevance.

23 THE COURT: Sustained.

24 BY MR. SCHIFF:

25 Q. Did you notify the Government why you didn't believe your

1 return was frivolous?

2 A. Yes, I did.

3 Q. Did you ever get a response --

4 A. No.

5 Q. -- to that letter?

6 A. No, I didn't.

7 Q. They didn't answer your letter. Okay.

8 I'll -- uh, I'll try to find -- I don't know if I can  
9 recall her later. But I'll try to find that letter, Toni,  
10 before I go. Okay.

11 So, based upon your correspondence and everything, you  
12 did your best to notify the Government why you believed your  
13 zero return was correct?

14 MR. NEIMAN: Objection. Relevance.

15 THE COURT: Sustained.

16 MR. SCHIFF: I think it's relevant. I mean --

17 THE COURT: I sustained the objection.

18 MR. SCHIFF: All right.

19 BY MR. SCHIFF:

20 Q. Okay. Now, what happened after that, Toni?

21 A. After --

22 Q. What was the next thing you heard from the IRS?

23 A. I don't know if it was before or after, but I did receive  
24 the 30-day letter.

25 Q. Oh, okay. You got a 30-day letter.

1           What is a 30-day letter, Toni?

2   A.   The 30-day letter is where the IRS has informed the taxpayer  
3   that they are changing their return.

4   Q.   Did -- the IRS tells you that they are gonna change your  
5   return?

6   A.   Yes.

7   Q.   Did you respond to that letter?

8   A.   Yes, I did.

9           MR. SCHIFF:   Do we have her response?

10          MR. NEIMAN:   It's not been admitted.

11   BY MR. SCHIFF:

12   Q.   We don't have your response.

13          Do you -- I'm sorry -- did you respond to that letter?

14   A.   Yes.

15   Q.   What did you tell -- tell the government?   What was your  
16   response to their -- their notification to you that they were  
17   changing your return?

18          MR. NEIMAN:   Objection.   Misleading.   Mr. Schiff  
19   prepared the response, not Ms. Mitchell.

20          THE COURT:   Correct.   Sustained.

21   BY MR. SCHIFF:

22   Q.   Well, did you -- all right.   I prepared a response.   It was  
23   in my --

24   A.   Schiff Report.

25   Q.   -- Series 5, 6, and 7 because it was simpler than -- but did

1 you adopt the -- the -- the material in my letter as being your  
2 own when you sent it in?

3 A. Yes, I did.

4 Q. Did you agree with what I put in that sample letter?

5 A. Yes, I did.

6 Q. So you agreed with it.

7 What did your sample letter -- what did your -- what  
8 did your response to the change of letter -- that -- that they  
9 changed your return, what did you say?

10 A. It -- it cited several different Code sections and court  
11 cases that -- to -- to attempt to the explain to the government  
12 that they had no right to change my return.

13 Q. So you told them that they had no right to change your  
14 return. What was your basis for adopting -- for saying that?

15 MR. NEIMAN: Objection. Again, it's Mr. Schiff's  
16 basis, not Ms. Mitchell's.

17 THE COURT: Sustained.

18 BY MR. SCHIFF:

19 Q. Toni, before you sent that letter in, you read my suggested  
20 letter?

21 A. Yes.

22 Q. Did you verify what it said to your satisfaction?

23 A. Yes.

24 Q. And -- and -- and you checked out everything that is in that  
25 suggested letter?

1 A. Yes.

2 Q. And if I can -- and you found it was easier to adopt my  
3 letter than start writing one on your own.

4 A. Yes. Actually, I retyped it.

5 Q. And, uh, how did you conclude -- even though I wrote -- how  
6 did you verify my statements that the IRS had no authority to  
7 change your return?

8 A. How did I establish?

9 Q. Yeah. How -- how did you -- what was with the basis of your  
10 belief that the IRS had no authority to change your return?

11 A. I read the laws and the Code sections that corresponded --  
12 that were mentioned in the letter and researched it and I  
13 believed it to be true.

14 Q. Did -- did you look through the Code to see if there was any  
15 provision that gave the IRS the right to change your return?

16 A. Of course. Yes.

17 Q. Did you -- did you find any law that allowed them to change  
18 your return?

19 A. No, I didn't.

20 Q. Incidentally, did you ever find in the Code book a reference  
21 to the Internal Revenue Service?

22 A. No.

23 Q. No.

24 So you concluded based upon a letter that -- that they  
25 had no right to change your return.

1 MR. NEIMAN: Objection as to Ms. Mitchell's  
2 conclusions.

3 THE COURT: Sustained.

4 BY MR. SCHIFF:

5 Q. Is that what you concluded?

6 THE COURT: Sustained.

7 BY MR. SCHIFF:

8 Q. All right. You looked through the Code book and you  
9 couldn't find any law that allowed them to change your return.

10 MR. NEIMAN: Asked and answered.

11 THE COURT: Sustained.

12 MR. SCHIFF: Okay.

13 BY MR. SCHIFF:

14 Q. So you sent that letter in.

15 A. Yes.

16 Q. Did you ask them in that letter what law authorized them to  
17 change your return?

18 A. Yes.

19 Q. Did they ever write back and identify a law for you that  
20 authorized them to change your return?

21 A. No.

22 Q. No.

23 So they went along as if you didn't do anything. They  
24 didn't pay any attention to your zero return and they didn't pay  
25 any attention to your request that they identify a law to change

1 your return.

2 MR. NEIMAN: Objection to the mischaracterization of --

3 BY MR. SCHIFF:

4 Q. How would you char- -- I'm sorry.

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. Well, up to this point, Toni, how would you characterize the  
8 treatment you were getting from the IRS with respect to what you  
9 were sending in?

10 MR. NEIMAN: Objection. Foundation and --

11 MR. SCHIFF: All right.

12 MR. NEIMAN: -- relevance.

13 THE COURT: Sustained.

14 MR. SCHIFF: Okay.

15 BY MR. SCHIFF:

16 Q. All right. Let me try to make it relevant.

17 You sent in a zero return citing no less than 30 legal  
18 references. They write you back. They don't tell you why any  
19 of these references are erroneous. They tell you they are gonna  
20 change your return. You write them a letter asking them what  
21 law gives them the right to change your return. They don't tell  
22 you.

23 So, in your own words, how did you feel at that point?

24 MR. NEIMAN: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MR. SCHIFF:

2 Q. Then what happened, Toni?

3 A. After the 30-day letter, then eventually I received a  
4 deficiency notice.

5 Q. Wait. Wait a minute. No, no. We only got up to -- oh,  
6 they -- they were gonna change -- when they tell you that,  
7 that's a -- that's a 30-day letter, you have a right to ask for  
8 a audit --

9 A. Yes.

10 Q. -- two -- two things: They say they are gonna change your  
11 return, but you also have a right.

12 A. In --

13 Q. Do you recall that?

14 A. In 1997, I did not request an appeals review hearing.

15 Q. So you never had an audit?

16 A. No.

17 Q. Even though you asked for one if they didn't disagree?

18 A. Initially in the two-page attachment, yes.

19 Q. So you never got the audit you asked for?

20 A. No.

21 Q. So what's the next thing that happened?

22 A. I received a deficiency notice.

23 Q. Okay. You received a deficiency notice.

24 MR. SCHIFF: Now, did that go in? Did you get a copy  
25 of the deficiency notice? Do I have a copy of the deficiency

1 notice? Do we have a copy of her deficiency notice? Did that  
2 go in?

3 MR. NEIMAN: It's within Government's Exhibit 1.

4 MR. SCHIFF: Oh. It is -- hold on. Let me just get...

5 MR. NEIMAN: There's a sample tabbed "Notice of  
6 Deficiency."

7 MR. SCHIFF: You -- you have a copy of that deficiency  
8 notice? Is it Government Exhibit 1?

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

10 BY MR. SCHIFF:

11 Q. Do I -- is that it?

12 A. This is a sample of -- yeah, of -- of what the deficiency  
13 notice looked like. It wasn't mine, but it was similar.

14 Q. Okay. So we don't have her actual deficiency notice. Okay.

15 THE COURT: It's not in evidence.

16 MR. SCHIFF: Okay.

17 BY MR. SCHIFF:

18 Q. Now, do you know where -- if you still recall, Toni, where a  
19 deficiency is defined in the Code? Do you know what a  
20 deficiency is?

21 A. A def- --

22 Q. What's your understanding of a deficiency?

23 MR. NEIMAN: Objection as to her understanding.  
24 Relevance.

25 THE COURT: Sustained.

1 MR. SCHIFF: Well, she -- she gets a deficiency notice.

2 THE COURT: Sustained.

3 MR. SCHIFF: What is it supposed to mean?

4 THE COURT: Sustained.

5 BY MR. SCHIFF:

6 Q. Do you know where in the Code, Toni, they define what a  
7 deficiency is? Do you recall that?

8 MR. NEIMAN: Objection. Relevance, misleading.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. Well -- all right. You as a taxpayer would have -- suppose  
12 a taxpayer had no legal understanding of the law -- a waitress,  
13 truck driver -- gets a deficiency notice --

14 MR. NEIMAN: Objection. Speculation. Hypothetical.  
15 It's not in evidence.

16 THE COURT: Sustained.

17 MR. SCHIFF: May I approach the witness?

18 THE COURT: You may.

19 BY MR. SCHIFF:

20 Q. Incidentally...

21 (Document handed to the witness by  
22 Mr. Schiff.)

23 BY MR. SCHIFF:

24 Q. Toni, you had purchased an Internal Revenue Code from  
25 Freedom Books -- or you had use of our Codes; is that correct?

1 A. Yes.

2 Q. If you had gotten a deficiency notice and based upon that  
3 you were our legal researcher at the time, you would have  
4 checked --

5 A. I have --

6 Q. -- what a deficiency was?

7 A. I have to clarify that. At the time I got a deficiency  
8 notice for 1997, I was not employed in your office.

9 Q. Okay. You weren't employed.

10 A. No.

11 Q. But you had a Code book?

12 A. Yes, I did.

13 Q. Would you have looked up the definition of a deficiency?

14 A. I may have, but I don't believe in this instance I did.

15 Q. But you could have?

16 A. I could have.

17 Q. Do you want to read the definition of deficiency --

18 MR. NEIMAN: Objection. She testified she didn't do  
19 it. She doesn't have knowledge of it.

20 MR. SCHIFF: She doesn't --

21 THE COURT: Sustained.

22 MR. SCHIFF: -- she doesn't recollect it, but chances  
23 are she had the Code book.

24 THE COURT: Sustained.

25

1 BY MR. SCHIFF:

2 Q. So you don't know what a -- all right. Incidentally, I  
3 don't have her deficiency notice.

4 Now, when you get a deficiency notice, Toni, what --  
5 what are you supposed to do when you get a deficiency notice?

6 A. Well, the government says you have 90 days to petition the  
7 Tax Court. But that's not what I did.

8 Q. Um, supposed to petition to Tax Court. A person has 90  
9 days.

10 Now, with your knowledge of what -- you know what a  
11 petition to Tax Court involves?

12 A. Yes.

13 Q. It amounts to civil -- well, what does it involve?

14 A. At that time, I did not want to go to Tax Court to argue the  
15 amounts of the --

16 Q. Well --

17 A. -- deficiency.

18 Q. -- forget that.

19 If you wanted to go, what would that have involved?

20 A. Writing a petition to Tax Court.

21 Q. Writing a petition to Tax Court as to why.

22 MR. NEIMAN: I'm gonna object to relevance. She said  
23 she didn't do this.

24 MR. SCHIFF: But she -- but there's a reason why she  
25 didn't do it.

1 THE COURT: You haven't --

2 MR. NEIMAN: That the Government --

3 THE COURT: -- asked that question.

4 MR. NEIMAN: -- that the Government would not object  
5 to.

6 BY MR. SCHIFF:

7 Q. Why didn't you petition Tax Court?

8 A. I didn't petition Tax Court because I did not wanna go to  
9 Tax Court to argue the amount of the deficiency.

10 Q. During your testimony, I think the prosecutor said that you  
11 said something to the effect that the Tax Court is not a court  
12 of law and he characterized that as some silly idea you had.

13 A. No.

14 Q. If I can recall your testimony, you wrote --

15 MR. NEIMAN: Objection. Mischaracterizing the  
16 testimony.

17 THE COURT: Sustained.

18 MR. SCHIFF: Well -- well, I wrote it down here.

19 BY MR. SCHIFF:

20 Q. In -- in your view, is a Tax Court a court of law?

21 MR. NEIMAN: Objection --

22 THE WITNESS: I test- --

23 MR. NEIMAN: -- to her view.

24 THE COURT: Sustained.

25

1 BY MR. SCHIFF:

2 Q. Okay. Were you familiar with Schiff Report 6-3?

3 A. Yes.

4 Q. Were you familiar with -- if I could give you -- because --  
5 because Schiff Reports came up -- incidentally, I'm glad you  
6 remember them. What were Schiff Reports? The Government  
7 brought up the fact, Schiff Reports and how much were they?  
8 What was the Schiff Reports?

9 A. The Schiff Reports included documents and cassette tapes  
10 produced by you to give people answers to any responses they --  
11 you know, any letters they received from the IRS and any future  
12 research that you did that was not included in the book.

13 Q. And the Government asked you how much the Schiff Reports  
14 were. Do you recall what they were? How much did I charge?

15 A. Uh, I believe Schiff Report Series 6 was like \$90.

16 Q. Well, 75 to 80.

17 And what do they --

18 MR. NEIMAN: Objection. The witness [sic] is  
19 testifying.

20 MR. SCHIFF: All right.

21 MR. NEIMAN: I'm sorry. The --

22 THE COURT: Sustained.

23 MR. NEIMAN: The questioner's testifying.

24 BY MR. SCHIFF:

25 Q. Do you recall -- all right. \$90.

1           And what did they get for 90 bucks? Do you recall?

2     A.    It was a series of six cassette tapes --

3     Q.    Six cassette tapes.

4     A.    -- and a packet of documents that belonged with each tape.

5     Q.    With each tape?

6     A.    Yes.

7     Q.    Okay. So six hours of instruction and a bunch of documents.

8           Now --

9           MR. NEIMAN: Objection. He's still testifying, your  
10   Honor.

11          THE COURT: Sustained.

12          MR. SCHIFF: Okay.

13          THE COURT: Don't waive the --

14          MR. SCHIFF: May I approach?

15          THE COURT: -- don't waive the prosecutor off when he  
16   makes an objection.

17          MR. SCHIFF: I'm not.

18          THE COURT: That's what you did just now. You waived  
19   him off with that exhibit.

20          MR. SCHIFF: I didn't mean to.

21                 (Document handed to the witness by

22                 Mr. Schiff. )

23   BY MR. SCHIFF:

24   Q.    Uh, do you recall that exhibit being in 6-3? I think -- I  
25   think you even -- do you recall that case?

1 THE COURT: Have you -- have you been shown this  
2 proposed exhibit?

3 MR. NEIMAN: I have not been shown the exhibit. And we  
4 would -- knowing -- I do know what is it by his just reference.  
5 And we would object to its introduction.

6 THE COURT: Let me see it.

7 MR. SCHIFF: I'll give it to him.

8 MR. NEIMAN: Is it numbered, Mr. Schiff, in your  
9 exhibits?

10 MR. SCHIFF: Yeah, I think so. 6-3.

11 MR. NEIMAN: Is it numbered in your exhibits?

12 MR. SCHIFF: Well, I don't know what -- no, because I  
13 didn't know what your witnesses were gonna testify to. It's  
14 6-3.

15 (Pause in the proceedings.)

16 MR. SCHIFF: I have the whole case here. That's just  
17 an excerpt.

18 THE COURT: Well, this is -- this has things --  
19 underlined -- portions of paragraphs underlined. It is the head  
20 notes and exclamation points to the side.

21 What -- what is the relevance of this?

22 MR. SCHIFF: Well, because he said -- because the  
23 prosecutor indicated something about the fact that she said why  
24 should -- that -- that that I said that the Tax Court was not a  
25 court of law. And the implication is that I --

1 MR. NEIMAN: Objection as to what the implication is.

2 THE COURT: Sustained. The -- the whole --

3 MR. SCHIFF: But --

4 THE COURT: -- line of inquiry is irrelevant.

5 MR. SCHIFF: But the Supreme Court says they are not a  
6 court of law.

7 THE COURT: Mr. Schiff --

8 MR. SCHIFF: Here's the -- I got the whole case here.

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

10 The remarks of --

11 MR. SCHIFF: Okay.

12 THE COURT: -- Mr. Schiff will be stricken.

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. One of the reasons why you might not have gone to Tax Court  
16 was the fact -- well, tell us in your own words -- I guess I was  
17 writing -- why you didn't go to Tax Court.

18 A. Again, I didn't go to Tax Court because I didn't want to  
19 challenge the amount of the deficiency. I wanted to challenge  
20 the liability --

21 Q. And --

22 A. -- for the tax.

23 Q. -- and you said -- does the Tax Court have jurisdiction, in  
24 your view, to address whether or not you're liable for the tax?

25 THE COURT: Sustained.

1 MR. NEIMAN: Objection as --

2 MR. SCHIFF: All right.

3 THE COURT: I've already sustained that several times  
4 now.

5 MR. SCHIFF: Okay. I'm trying to figure out why she  
6 didn't go to Tax Court.

7 THE COURT: Please honor the rulings of the Court.

8 MR. SCHIFF: All right.

9 THE COURT: Do not attempt to go back into things --

10 MR. SCHIFF: Okay.

11 THE COURT: -- that I've already ruled on.

12 MR. SCHIFF: Okay.

13 MR. CRISTALLI: Judge, I apologize again. I --

14 THE COURT: It's time for a break now. We'll take the  
15 break.

16 We'll be in recess for 15 minutes. Please do not  
17 discuss the case among yourselves.

18 (Jury leaves the courtroom at 10:57 a.m.)

19 THE COURT: Okay.

20 Do you need to do this at sidebar?

21 MR. CRISTALLI: No. We can do it in open court, your  
22 Honor.

23 THE COURT: Okay. Go ahead.

24 MR. CRISTALLI: Outside the presence of the witness.

25 (The witness leaves the courtroom. )

1 MR. CRISTALLI: Your Honor --

2 THE COURT: Go ahead.

3 MR. CRISTALLI: Thank you. May I proceed?

4 THE COURT: You may.

5 MR. CRISTALLI: Your Honor, I, um, am sitting here and  
6 I -- I'm very concerned on a number of levels. First of all,  
7 uh, the progress we're making here, um, you know, it appears  
8 that we're going to be here for six months. I, uh -- there's no  
9 way that we can continue at this pace. Um, there's no way that  
10 I could -- I could remain in this case at this pace.

11 And -- and here's my biggest concern. I think  
12 Mr. Schiff -- well, here's -- here's -- the spillover that is  
13 resulting to me and my client as a result of Mr. Schiff and  
14 his -- and his inability to focus and his inability to conduct  
15 himself within the parameters of the court rules is destroying  
16 my client's ability to have a fair trial. Um, there's no  
17 question in my mind.

18 First of all, he's unable to focus. He's -- he's  
19 unable to give up the stage. If you don't stop him, he will  
20 stay up there for three weeks on this one witness. Um, he's  
21 unable to process the Court's admonitions. Um, he doesn't  
22 understand the proceedings.

23 And, with all due respect to Mr. Leventhal, he -- he  
24 can't -- he can't control this situation. There's nothin' he  
25 could do to guide Mr. Schiff through this process. It's -- it's

1 inherently impossible.

2           And I'll just go back to the psychological evaluation  
3 that was conducted by Mr. Hayes wherein he says that, uh,  
4 Mr. Schiff's stream of thought reflected an overabundance of  
5 flight ideas, rapid and pressured thinking, often not answering  
6 specific questions due to difficulty maintaining focus rather  
7 than an unwillingness to be direct.

8           And I think, you know, maybe Mr. Schiff a few years ago  
9 could have conducted himself in a better manner in terms of  
10 complying with court rules and regulation. He's 76 years old.  
11 In my opinion, based on what I'm seeing here today, he just  
12 doesn't have the mental capacity to get through this.

13           It further states that it should be noted that his, um,  
14 cognitive functioning appeared to be impacted by what appeared  
15 to be a mood disorder affecting his ability to attend and  
16 sustain concentration and focus outside of his area of  
17 preoccupation. He seems to be unaware of the overall tone and  
18 impact of what appears to be ongoing mood disorder functioning  
19 in a chronically hyp- -- hypomanic state. Um --

20           THE COURT: Hold on, Mr. Cristalli.

21           MR. CRISTALLI: Yeah.

22           THE COURT: Is there a reason you're standing?

23           MR. SCHIFF: I wanted to speak.

24           THE COURT: Please be seated.

25           Go ahead. I'm sorry for the interruption,

1 Mr. Cristalli.

2 MR. CRISTALLI: Thank you, your Honor. Appreciate  
3 that.

4 His hypomanic episodes are characterized by grandiose  
5 expansive self-inflated confidence, hyperintensive preoccupation  
6 and focus, hypervocal and at times pressured speech, rapid  
7 thought processes. He has an abundance of ideas, levels of  
8 energy. And it goes over and on and on and on.

9 But the point being -- and I believe the Court has  
10 already received this document and it's part of the record --  
11 um, the important thing, though, that I need to get to is that  
12 it says here, Mr. -- Mr. Schiff appears to have a good  
13 understanding of court proceedings and a appreciation for the  
14 charges against him as well as the range and nature of possible  
15 penalties and outcomes.

16 I gotta tell ya after my sitting here and observing  
17 Mr. Schiff I didn't know how this was gonna go prior to us  
18 getting involved. When we were in front of Magistrate Leavitt,  
19 I did everything but, you know, jump up there and say you must  
20 give this guy a lawyer 'cuz I had somewhat of an idea as to what  
21 was going on. But, um, he does not understand the Court  
22 proceedings. He is not going to be able to comply with these  
23 Court's rules. Um, and he is not going to be able to get  
24 through this trial. I'm convinced of that.

25 "He has the capacity to disclose information including

1 pertinent facts surrounding his alleged offenses, including his  
2 thoughts and justifications for his behaviors and actions."

3 Um, there's just a couple things I need to get to here.

4 "He has the capabili-" -- "he has the capacity to  
5 challenge the prosecution witnesses and testify based on his  
6 perceptions and plan his legal strategy."

7 There's no way he can do that based on my perceptions  
8 here today.

9 "There is some concern regarding his ability to  
10 organize himself in a goal-directed manner and to present  
11 himself in a concise and timely way. I believe that there will  
12 be some difficulty in terms of communication based on the  
13 definitions that he will use and his means of approaching issues  
14 that may not be well received by others. There is no immediate  
15 concern that his behaviors will be disruptive. However, the  
16 court may need to assert structure and limits at times in order  
17 to contain this individual."

18 That's the understate of the day. That is not gonna  
19 happen.

20 "My concern is that if things do not go well for him in  
21 court, for example, if he is interrupted by objections and  
22 repeatedly stifled from stating his views or line of  
23 questioning, he may become frustrated, perceiving that he is  
24 being railroaded through the court system, strengthening his  
25 contention that the courts are unjust and his behaviors may

1 escalate, possibly becoming disruptive or difficult to manage at  
2 times."

3 We have seen that already up to this particular point  
4 in the court proceedings and it's affecting me tremendously,  
5 your Honor.

6 "Mr. Schiff strongly believes that he could not be the  
7 represented properly by an attorney."

8 I disagree with his assessment -- Mr. Schiff's  
9 assessment with regard to that obviously.

10 Uh, um, and then "Based on this" -- "Based on this  
11 information gathered thus far, Mr. Schiff appears to meet the  
12 diag-" -- "diagnostic criteria for Bipolar II Disorder with  
13 reoccurrent major depressive episodes and hypomanic episodes  
14 without full interepisode recovery."

15 "He appears to" -- "He appears to be competent to stand  
16 trial and fit to proceed with stipulations stated above  
17 regarding his intentions to represent himself despite not being  
18 particularly savvy with the court proceedings."

19 There's no way that this Court can impose stipulations  
20 upon this individual, your Honor. It's my -- it's my, um,  
21 belief here as -- as -- in terms of what I've seen.

22 "He may be quite" -- "quite challenging because of his  
23 determinations to prove his innocence and to make his points.  
24 And he may become argumentative with behaviors that may be  
25 difficult to manage."

1           This is absolutely, um, 100 percent accurate because  
2 I'm witnessing it myself.

3           "This is likely to be particularly the case if things  
4 do not go well for him. I believe that he will" -- "he will not  
5 accept the fact of someone else representing him at this point  
6 and he understands and is waiving the right to counsel."

7           Um, your Honor, uh, this -- as far as I'm concerned,  
8 the fact of Mr. Schiff's performance and behavior in this court;  
9 the argumentative nature that has been displayed before the jury  
10 between Mr. Schiff and your Honor; um, the length for which  
11 Mr. Schiff is taking with witnesses is creating a adverse  
12 situation between the -- with -- with the jury and is infecting  
13 me to my prejudice, um, to no fault of my client. And I have to  
14 ask this Court, um, to do something to prevent this from  
15 continuing to happen.

16           Um, I, once again, will renew my motion for severance.  
17 But I -- I don't perceive us ever gettin' through this case and  
18 I -- I can't be here for six months.

19           THE COURT: Thank you.

20           Mr. Bowers.

21           MR. BOWERS: Judge, I -- I've made some of these points  
22 already. And I -- I'm also in agreement with everything that  
23 Mr. Cristalli said. You know, and I, likewise, am a sole  
24 practitioner. I can't be here for what appears to be a trial  
25 that may never end with Mr. Schiff alive.

1           The remedy proposed by Magistrate Leavitt was advisory  
2 counsel, which -- which is a tall order for anyone. And  
3 Mr. Leventhal is certainly doing his job. I think -- the Court  
4 can tell that Mr. Schiff -- and this isn't a defense or anything  
5 else; it's just an observation -- is cognitively incapable of  
6 being able to direct anything he is doing here, um, with respect  
7 to the Court's procedures.

8           And -- and, like everybody else, this is spilling over.  
9 This is causing problems. It reflects poorly on my client.  
10 But -- but, again, as a practical matter there is no end in  
11 sight to this trial if this keeps up. And yet I don't know what  
12 the remedy is, but something has to be done. And -- and  
13 Mr. Schiff is not doing himself a service here with this  
14 strategy.

15           MR. SCHIFF: Can I --

16           MR. BOWERS: Just -- I'm almost done.

17           I don't say this because I -- I'm upset with  
18 Mr. Schiff. I just say this because we have a tremendous  
19 problem against us all. So I guess it's made up the auspices of  
20 a motion to sever. But whatever gets done I'm open to anything  
21 because this can't continue.

22           MR. SCHIFF: Okay. Let me just make some comments.

23           First of all, I apologize to -- to -- but I -- I  
24 mentioned to you -- the attorneys, I said you're forcing me to  
25 put on a seminar. They covered so much ground when they -- let

1 me just say this, your Honor -- maybe I don't know what's goin'  
2 on here -- but they covered liens and liens on houses, notices.

3 I was just taking notes on all the things that they  
4 examined Toni on. And I thought it was my job -- here, look  
5 at -- these are my notes -- now, I thought on cross-examination  
6 I'm supposed to go through this and try to prove and -- and the  
7 impression that they were giving to the jury is that she was  
8 doing this -- she did this because I told her to do it.

9 Now, I won't cross-examine her any further except on a  
10 few things. But this is what they examined her on. Am I  
11 supposed to just forget what they extracted from her on direct?  
12 I said, boy, you covered a lot of ground. I -- I said, you're  
13 forcing me to put on a seminar.

14 They talk about the Tax Court Tool Kit. I'll tell you  
15 what I'll do, your Honor. I'll cut down the trial substantially  
16 because I have -- where is it? Okay. I promise not to  
17 cross-examine anybody again.

18 Your Honor, here's the Tax Court Tool Kit. Okay.  
19 They -- they asked her how much it was -- how much the Tax Court  
20 Tool Kit was. A hundred and fifty bucks. It was two videos.  
21 They talked about the Backyard Role Play, your Honor. If you  
22 wanna play for one hour one of the tapes that was in the Tax  
23 Court Tool Kit, I won't say another word.

24 But, when they examined her, your Honor, on so many  
25 different items which I knew were incorrect, I -- I don't

1 understand. What am I supposed to do? They are the ones who  
2 put her on. They are the ones who cross-examined [sic] her.

3 They -- they asked her things like do I monitor the  
4 phone calls. The desk book. The reason we have a desk book,  
5 your Honor -- I'll tell you -- we hire new people. They don't  
6 know how to answer the phone. So Cindy prepared -- so they'll  
7 know what documents. So they talked about the desk book. They  
8 talked about do I monitor conversations. They talked about so  
9 many different items. They talked about her appeal, what she  
10 did. I don't understand.

11 And I -- I really apologize if this is interfering.  
12 But they don't know what she did at my office. But I did  
13 comment to the U.S. attorneys and they'll verify it, I said,  
14 "For cryin' out loud," I said, "you people are forcing me to put  
15 on a seminar."

16 Now, again, I apologize and, again, I don't want to  
17 interfere. But, if you will play this tape, I promise not to  
18 say another word. It's only one hour.

19 And the Government talked about the Tax Court Tool Kit.  
20 Here it is. This is the first tape of two tapes. Put on this  
21 and I'll go home. You can conduct the trial without me. I'll  
22 get a stand-in.

23 Would you play this one-hour tape?

24 THE COURT: You know --

25 MR. SCHIFF: They referred to it.

1 THE COURT: -- Mr. Schiff --

2 MR. SCHIFF: I don't know what to do, your Honor.

3 THE COURT: -- you don't -- this is not a bazaar where  
4 you bargain with the Court. The -- and were you to walk out of  
5 the trial and I to conduct it based on such a procedure as you  
6 have explained, there would be considerable issues on review.

7 The issue here is your competency to represent  
8 yourself. And so far in the -- in your response to the concerns  
9 expressed by Mr. Cristalli and Bower [sic], who I think are  
10 perceptive in their -- in their comments, you have not stayed on  
11 focus even to respond to that other than to hold up documents  
12 and try to negotiate.

13 I respect the -- and recognize the concerns that  
14 counsel has. The issue is how to get Mr. Schiff to respect the  
15 rulings of the Court, to not argue with the Court as to the law  
16 which is -- is quite clear. Um, there are some cases where  
17 there is doubt. But, in this case, the law is very clear as to  
18 the -- the matters that have been addressed.

19 So I will -- I will take your comments under  
20 submission. And, as you know, Counsel, it is -- there is a very  
21 strong presumption that a person is entitled to represent  
22 themselves unless they can be shown to be mentally incompetent  
23 to the extent that they wouldn't be required to stand trial.  
24 You're aware of that.

25 Mr. Bower [sic].

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

2 THE COURT: Yes.

3 MR. BOWERS: And I'm sorry.

4 MR. IGNALL: Your Honor, if I might --

5 THE COURT: You may.

6 MR. IGNALL: -- briefly.

7 I think there are two issues here and I think the  
8 Court's addressed the first of those, which is, is Mr. Schiff  
9 competent to represent himself. I'm not sure, uh, how  
10 Defendants Neun and Cohen -- I understand their concern as to  
11 the second issue. But it's the first issue, I think, that's an  
12 issue between Mr. Schiff, perhaps Mr. Leventhal, and the Court  
13 as to whether he's competent. And, also, there may be some  
14 other way that might help Mr. Schiff stay on focus.

15 I don't -- and maybe that's something worth taking  
16 under advisement whether perhaps giving Mr. Schiff a little bit  
17 of time to confer with Mr. Leventhal about particular pieces of  
18 evidence he wants to get in and whether he could get it through  
19 the cross-examination of the Government witness or whether he'd  
20 have to testify himself. Those may be things that  
21 Mr. Leventhal, even though he's only been associated with this  
22 case for a week, could provide Mr. Schiff with some guidance on  
23 because I've noticed that Mr. Leventhal has been able to help  
24 Mr. Schiff formulate questions that do conform with the rules of  
25 evidence when he's come up and whispered in his ear. And I

1 don't know if that's something that the Court's amenable to, but  
2 that may help move things along.

3 THE COURT: I think Mr. Leventhal has been doing that.  
4 He has been helping out where he could. And I must say that his  
5 efforts are certainly appreciated. I don't -- I don't think  
6 that -- that Mr. Leventhal is ready to -- and I can certainly  
7 understand why he wouldn't be ready to represent Mr. Schiff as  
8 counsel because --

9 MR. IGNALL: And --

10 THE COURT: -- he hasn't had the time to prepare.

11 MR. IGNALL: And we're not suggesting that, your Honor.  
12 But, for example, I don't know that much about the tape that  
13 Mr. Schiff has. But that's something he could perhaps discuss  
14 with Mr. Leventhal who even though he may not know all the facts  
15 of the case might be able to come up with a suggestion as to  
16 how, if at all, such a tape might be admissible. I'm not saying  
17 it is.

18 But -- but I think the second issue, which, I think,  
19 seems to be the one that's on the table right now, is the motion  
20 of the two defendants to sever, Defendant Cohen and Defendant  
21 Neun to sever. I think the issue there is -- you know, it's  
22 certainly within the Court's discretion -- but when they are  
23 talking about spillover effect, the question is: Can the jury  
24 follow the Court's instructions and hold each defendant  
25 accountable for his or her own conduct?

1           And it seems to me given that, just from opening  
2 statements, both Defendant Cohen and Defendant Neun have  
3 suggested that they were acting in good faith based on what they  
4 knew and how persuasive Mr. Schiff was it seems like a situation  
5 in which the spillover effect is not necessarily negative in the  
6 way that it might be if they had remained aligned with him. But  
7 I do think that's the issue that's before the Court. And if  
8 that's -- if the Court wants to address that --

9           THE COURT: Well, as far --

10          MR. IGNALL: -- we'd also --

11          THE COURT: -- as motion to sever --

12          MR. IGNALL: -- want to brief that.

13          THE COURT: -- the motion to sever is denied because  
14 his conduct can cut both ways. Certainly they -- they -- the  
15 jury could -- could view that either way.

16                 So we're going to take a recess.

17                 Mr. Cristalli, do you wish to add anything to what  
18 you've already said?

19                 MR. CRISTALLI: Your Honor, just very briefly.

20                 In terms of the severance issue and whether or not it  
21 can -- and I appreciate the Government's position with regard to  
22 what they perceive. What I perceive is it works badly in both  
23 ways. I mean, because then if it goes so bad that it creates an  
24 antagonistic situation, that is another, um, ground for  
25 severance.

1           And so my position right now at this particular stage  
2     in the case pursuant to Oregon v. Kennedy, 456 U.S. 667,  
3     specifically at 672 (1982); also Richardson v. U.S., 468 U.S.  
4     317, 324 (1984), where there is a manifest necessity -- in our  
5     opinion, there is a manifest necessity here -- for terminating a  
6     trial prior to verdict the defendant may not invoke double  
7     jeopardy to ward off a retrial.

8           Our position is we would move at this particular time  
9     for a mistrial. The Government can certainly pursue the case  
10    against us at a -- at a later date. In fact, you know, who  
11    knows. If Mr. Schiff -- if they get done with Mr. Schiff in  
12    this particular case, uh, we may not have any more trials in the  
13    future. I don't know that to be certain, but it's a  
14    possibility.

15           At this particular time, I'm moving for a mistrial  
16    because of the situation that has been created.

17           MR. BOWERS: I'll join in that. But I want to --  
18    that's the end of that. I wanna -- I wanna go back to the first  
19    issue raised by the Government that the Court seems to be taking  
20    under advisement and just say, you know, I represented Mr. Cohen  
21    here for now almost 24 months. In one form or another, I  
22    reviewed this -- and I don't -- 10,000, 14,000, some ridiculous  
23    number of documents. I have some grasp of what it is that  
24    Mr. Schiff's theories are.

25           And, in the four hours that Ms. Mitchell has been under

1 cross-examination, I don't have a clue what it is Mr. Schiff is  
2 trying to elicit from her. Uh, he is not effectively  
3 communicating anything here. And I don't say this to disparage  
4 him; I say this to help him. But who ever evaluated Mr. Schiff  
5 and whatever happened at that Faretta hearing is radically  
6 inconsistent with the behavior we've seen from him since  
7 yesterday afternoon.

8 THE COURT: Thank you.

9 MR. SCHIFF: Um, can I make a statement?

10 THE COURT: You may.

11 MR. SCHIFF: What I try to elicit is that when Toni  
12 filed that she filed it because she believed what was on that  
13 document. Your Honor, I will tell you when I read all of the  
14 documents, all of the testimony before the Grand Jury, not one  
15 Grand Jury witness said, well, why did he put zeroes on there?

16 All I was trying to do is point out -- and, if you  
17 didn't understand that, then I don't understand. She -- she  
18 mentioned all of the statutes she relied on. She mentioned the  
19 court cases she relied on. And I was trying to just convey that  
20 she believed the document when she filed it.

21 Now, I had to go through that document. The Government  
22 never went through the document. There was a doc- -- they put  
23 in that document. They said that document is fraud. Schiff  
24 just told people to put on zeroes. I'll show you the  
25 transcripts before the Grand Jury. The impression of the Grand

1 Jury, your Honor, was I had just told them put down zeroes and  
2 they wrote zeroes.

3 Now, what am I supposed to do here, assume that they  
4 just wrote zeroes? There was a basis as to why she -- I took  
5 full responsibility to create that document. People who bought  
6 my book didn't know the first thing about income tax. After  
7 they read my book, they checked it.

8 Now, I also --

9 THE COURT: After they read your book what?

10 MR. SCHIFF: They checked -- I have people who told me  
11 that they checked out every citing in that book before they  
12 filed their return.

13 THE COURT: Well --

14 MR. SCHIFF: I didn't -- I didn't put a gun to  
15 anybody's head.

16 THE COURT: We've already addressed it, sir. The --  
17 the -- what you did was you -- you cherry-picked comments out of  
18 cases that would help you and -- sell your product. And the  
19 case is not about, you know, what these people believed, at  
20 least the witness believed; it's more about what -- what they  
21 relied on in submitting their returns. And what they relied on  
22 were the documents that you had cobbled together by  
23 cherry-picking citations out of cases and not informing others  
24 of the law that was against your position.

25 MR. SCHIFF: My book --

1 THE COURT: Now, listen, Mr. Schiff.

2 MR. SCHIFF: Yes.

3 THE COURT: We're -- we're having a lot of problems  
4 here because you want to -- you have something else in mind for  
5 this trial. You want to -- you want to put on a show. You want  
6 to try to and get things in that are not admissible and then  
7 have people believe that you're somehow being railroaded.

8 And that's what this is about for you, I believe. And  
9 that's why we're having so much trouble. I think you can stay  
10 on point if you wanted to. I think you could take some advice  
11 from Mr. Leventhal, uh, that would help you stay out of areas  
12 that are objectionable.

13 But, as the psychologist pointed out, this -- uh, this  
14 trial is for you an opportunity to -- to present your case not  
15 to the jury but to your followers.

16 MR. SCHIFF: Your Honor, could I -- how many motions to  
17 dismiss did I file? I didn't want this trial. I filed motions  
18 to dismiss this trial. How could you claim that I wanted this  
19 trial to -- to do anything?

20 THE COURT: Well --

21 MR. SCHIFF: I asked --

22 THE COURT: -- Mr. -- Mr. Schiff, your motions were  
23 denied because they were not meritorious; they were not  
24 supported by law. And that's why they were denied.

25 MR. SCHIFF: But I -- but I tried to get my trial

1 dismissed. I mean, how could you say I wanted this trial, your  
2 Honor?

3 THE COURT: Well, perhaps it would be the same thing as  
4 the refunds that -- that were received. You used those to,  
5 according to the Government, at least this is the allegation,  
6 to --

7 MR. SCHIFF: Look. I apologize.

8 THE COURT: -- to promote yourself.

9 So you go into areas where, you know, six-page letter  
10 is sent and because a response wasn't received you want to make  
11 it look like the IRS has a duty to hire enough people to respond  
12 to -- to this kind of stuff all day and all night. And you want  
13 to somehow bring -- you know, throw goo in the wheels of the  
14 Government to the point where they can't respond to everything.

15 I don't expect them to respond. That's why the  
16 objection was sustained. Whether they responded to a six-page  
17 letter of that kind of stuff is -- is not relevant.

18 MR. SCHIFF: The Government makes it sound, your Honor,  
19 and you're making it sound, too, that these people were robots.  
20 I mean, I have businessmen; we had accountants; we had doctors.

21 My book -- one-third of my book was written while I was  
22 still in jail. My book explains how Simon & Shuster turned over  
23 a hundred and fifty thousand, how I --

24 THE COURT: Mr. Schiff, you are, again, playing to your  
25 followers. You're not focused on your court case.

1 MR. SCHIFF: Well, I'll -- I'll -- all right. I'll  
2 make you this promise. The Government brought out the Tax Court  
3 Tool Kit. All right? How much did I charge for it? I have the  
4 videotape, one of the tapes --

5 THE COURT: Mr. Schiff, the issue is whether you are  
6 competent to represent yourself and that's what I have to deal  
7 with. And, based on what I have seen, I am still in doubt as to  
8 whether you are. However, another judge has -- has conducted a  
9 hearing into this at length and determined that you are  
10 competent to represent yourself.

11 MR. CRISTALLI: Your Honor, may I just make one point  
12 with regard to that?

13 THE COURT: Yes.

14 MR. CRISTALLI: Um, I was at the hearing with Judge  
15 Leavitt and Judge Leavitt didn't see any of this. And, at that  
16 particular time, I was almost convinced that he could represent  
17 himself. But I'm of a completely different position as I sit  
18 here today.

19 And just -- after we just had the dialogue with regard  
20 to what was goin' on, Irwin got back up and started doin' the  
21 same thing he was just doin' a little while ago. He -- he's  
22 not -- he's not capable of stayin' on point. It's not gonna  
23 happen. It's just not.

24 THE COURT: I think he's capable; I think he doesn't  
25 want to.

1 MR. CRISTALLI: Well, whatever it is, it's not gonna  
2 change.

3 MR. BOWERS: Just --

4 THE COURT: Mr. Bowers.

5 MR. BOWERS: -- we were all at that hearing. This  
6 person here today has nothing to do with what happened last  
7 Wednesday. That was my initial point. The behavior out of  
8 him -- and I think it's a more controlled environment. I think  
9 without a jury present Magistrate Leavitt is able to exercise a  
10 degree of control that maybe this Court is not able to exercise  
11 under the same circumstances. But, you know, I had some  
12 concerns after last Wednesday, but nothing like what we're  
13 seeing here.

14 And, again, it's not disparaging Mr. Schiff. But he  
15 just doesn't get it. He doesn't -- he doesn't understand that  
16 he's not able to communicate his points. He knows what they  
17 are, but he's not eliciting it from anyone and he can't grasp  
18 that.

19 MR. IGNALL: Briefly, your Honor.

20 THE COURT: Yes.

21 MR. IGNALL: The issue is whether Mr. Schiff is  
22 mentally competent, does he appreciate what's going on, is he  
23 capable of representing himself. Certainly he's not gonna do as  
24 good a job as a lawyer would do. Indeed, that was the point of  
25 both Faretta hearings is to make sure that Mr. Schiff is aware

1 of the dangers of representing himself, that in any pro-se  
2 situation the -- the defendant representing himself is gonna  
3 have difficulty adhering to the rules of evidence and  
4 understanding the law in the way that a lawyer would.

5 But the question here before the Court is whether  
6 Mr. Schiff is mentally competent to understand the proceedings  
7 and competent to represent himself and he may choose not to  
8 follow the Court's rulings or have difficulty in getting himself  
9 to do what he needs to do, but that's, I think, an inherent  
10 problem with a pro-se situation. And simply because Mr. Schiff,  
11 as Dr. Hayes found, is inflexible doesn't mean that he's  
12 incompetent or unable to represent himself.

13 MR. CRISTALLI: Your Honor, and I'm not quite sure --  
14 I'm trying to pull the, um -- the decision on point with regard  
15 to that -- I'm not quite sure that's a complete and accurate  
16 statement of -- of an individual, whether or not an -- whether  
17 or not an individual can represent himself or not. I don't know  
18 if all of those factors are the only factors or there are other  
19 factors or it's an absolute right. I -- I have to look at it  
20 again, but I'm not quite sure it's that limited.

21 THE COURT: Well, the Court is going to take a look at  
22 that issue. It -- it is my impression that he is not  
23 incompetent; it's that he is choosing, for reasons that he  
24 knows, not to -- not to accept the rulings of the Court but  
25 to -- to engage in other tactics for -- that are -- are delaying

1 the trial.

2 So we'll take a recess and resume shortly. We -- we  
3 need to make it short because the jury's been out a half an hour  
4 now. So I want to make it a short recess.

5 THE CLERK: All rise.

6 THE COURT: Five minutes.

7 MR. NEIMAN: Thank you, your Honor.

8 (Recess from 11:31 a.m. to 11:48 a.m.)

9 THE CLERK: All rise.

10 THE COURT: Please be seated.

11 Are we ready to bring the jury in?

12 MR. NEIMAN: Ready as we'll ever be, your Honor.

13 THE COURT: All right.

14 Ms. Clerk.

15 THE CLERK: Yes, sir.

16 THE COURT: Do we have everyone here? Yes.

17 (Pause in the proceedings.)

18 THE CLERK: Are we ready? Go on in.

19 (Jury enters the courtroom at 11:49 a.m.)

20 THE COURT: Please be seated.

21 Will counsel stipulate to the presence of the jury?

22 MR. NEIMAN: Yes, your Honor.

23 MR. CRISTALLI: Yes, your Honor.

24 THE COURT: Thank you.

25 MR. BOWERS: Yes, your Honor.

1 MR. SCHIFF: Yes.

2 THE COURT: Thank you.

3 Mr. Schiff, you may -- where is our witness? -- you may  
4 resume the cross-examination of the witness.

5 (Ms. Mitchell resumes the witness stand.)

6 BY MR. SCHIFF:

7 Q. Toni, what -- what was your main job at Freedom Books? Your  
8 main job.

9 A. That would be preparing documents, letters, responses.

10 Q. Primarily, because the U.S. Attorney mentioned this,  
11 collection due process hearings --

12 A. Yes.

13 Q. -- now, that was a new statute. You -- you recall --  
14 what -- what was the collection due process hearing?

15 A. The collection due process hearing was a hearing that a  
16 taxpayer could request once they received a Notice of Intent to  
17 Levy or a Notice of Intent to Lien.

18 Q. Do you -- and that -- do you recall why that statute was  
19 passed?

20 MR. NEIMAN: Objection. Speculation.

21 THE COURT: Sustained.

22 MR. SCHIFF: Pardon me? Okay.

23 MR. NEIMAN: And relevance.

24 BY MR. SCHIFF:

25 Q. So we started -- so what happened at a collection due

1 process hearing?

2 A. Uh, we would go in and ask for the law that required us to  
3 pay the income tax and we would pay it.

4 Q. Under the law, they could ask for -- did you read the law  
5 that allowed for a collection due process hearing?

6 A. The specific law?

7 Q. Yeah.

8 A. No, I don't believe I did.

9 Q. You -- you never read 6330?

10 A. It could be that I did -- oh, yeah, 6330. Yes, I read it.

11 Q. You read it?

12 A. Yes.

13 Q. And that allowed people to go to a hearing and ask for what?

14 A. They could go to the hearing and -- and discuss their  
15 particular issue.

16 Q. And did they have the right to ask for a number of  
17 documents?

18 A. They could ask for documents. They could ask for, um, where  
19 their liability is.

20 MR. SCHIFF: Where is my -- all right.

21 BY MR. SCHIFF:

22 Q. Okay. Now, what happened as a result? Why did you prepare  
23 these appeals? Then they -- they would -- the Government would  
24 issue what as a result of these hearings?

25 A. A determination letter.

1 Q. And that was a determination letter.

2 And -- and -- and what did that determination letter  
3 do?

4 A. It instructed the taxpayer that they had the right to appeal  
5 the decision in the Tax Court or the District Court.

6 Q. And how much time did they have to get their appeals in?

7 A. I believe it was 30 days.

8 Q. 30 days from the date the determination was dated?

9 A. Yes.

10 Q. So if they got the determination six or seven days later...  
11 all right. Now, and they came in to see you. And what did you  
12 do for them?

13 A. If they wanted help preparing their appeal to the court,  
14 then we would prepare the document.

15 Q. Okay. Do you recall what a lot of your appeals were based  
16 on?

17 MR. NEIMAN: Objection. Again, they are not her  
18 appeals. They are appeals --

19 MR. SCHIFF: The appeals of these -- all right.

20 BY MR. SCHIFF:

21 Q. You prepared --

22 THE COURT: Sustained.

23 BY MR. SCHIFF:

24 Q. -- these appeals for certain people. Was there a recurrent  
25 theme in these appeals that you prepared?

1 A. Yes.

2 Q. And what was that theme?

3 A. It was that, um, the people did not receive any documents  
4 that they had requested in the hearing and they didn't receive  
5 any information that they'd asked for.

6 Q. What was some of the documents that they might have asked  
7 for that they didn't get?

8 A. Um, maybe a Record of Assessment or, um, any documentation  
9 showing them the law required them to pay the tax in the first  
10 place.

11 Q. Well, you -- did you get an adverse determination yourself?

12 A. Yes.

13 Q. And did you appeal your adverse determination?

14 A. Yes.

15 Q. And, in your appeal of your adverse determination, what was  
16 some of the issues that you raised?

17 A. Those were the issues that I raised, that I had asked for  
18 certain documents, I had asked to for the law that required me  
19 to pay my tax, and I didn't receive those in the hearing.

20 Q. So you didn't get the documentation as you believed the law  
21 required you to get.

22 A. Yes.

23 Q. And, therefore, you thought your determination was  
24 erroneous?

25 A. That's correct.

1 Q. And, therefore, you thought you could appeal it?

2 A. That's true.

3 Q. And did you appeal it?

4 A. I did.

5 Q. What was the result of your appeal?

6 A. Uh, the case was dismissed.

7 Q. Pardon me?

8 A. The judge dismissed the case.

9 Q. Didn't even hear -- give you a hearing?

10 A. No.

11 Q. Is this -- was this the basis of a lot of the appeals you  
12 prepared?

13 A. Yes.

14 Q. Now the Government has accused us -- or me of preparing a  
15 lot of erroneous appeals or -- I don't know how they  
16 characterize it. You did a number of these appeals.

17 When -- when you did these appeals, do you recall where  
18 they didn't allow people to tape, that they didn't allow --

19 A. Yes.

20 Q. -- to make recordings?

21 A. Yes.

22 Q. And did there come a time when there was a District Court  
23 case that you were aware of?

24 MR. NEIMAN: Objection. Relevance.

25 MR. SCHIFF: All right.

1 THE COURT: It is irrelevant.

2 BY MR. SCHIFF:

3 Q. Where a lot of the appeals based upon the fact that -- well,  
4 tell us what these -- these appeals were based on.

5 A. That might be the same question. They are based on the fact  
6 that they --

7 THE COURT: Again, the objection is sustained.

8 BY MR. SCHIFF:

9 Q. Did you try --

10 THE COURT: It is the same question.

11 BY MR. SCHIFF:

12 Q. Did you try to keep yourself current on the law and what  
13 they were entitled to receive?

14 A. Yes.

15 Q. And then these people would come in to see you and tell you  
16 what happened at their collection due process hearing?

17 A. Yes. We had tape recordings on some of them of their  
18 hearings and then we didn't have them on the others.

19 Q. And they wanted you to prepare the appeal for them.

20 A. What did I prepare?

21 Q. Yeah. They wanted you to prepare the appeal?

22 A. Yes.

23 Q. And you did?

24 A. Yes.

25 Q. Did you ever regard any of the appeals that you prepared

1 unwarranted --

2 MR. NEIMAN: Objection.

3 BY MR. SCHIFF:

4 Q. -- by the facts?

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. You prepared these appeals.

8 THE COURT: The objection is sustained.

9 BY MR. SCHIFF:

10 Q. Did you feel that your appeal that you prepared on your own  
11 behalf -- did you believe it was unwarranted?

12 MR. NEIMAN: Objection as to what she believed.

13 THE COURT: Sustained.

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

16 BY MR. SCHIFF:

17 Q. Okay. Okay. Okay. Okay. So -- okay. The Government  
18 asked you a lot of questions about whether you got paid in cash.

19 A. Yes.

20 Q. Did I pay you any different than anybody else?

21 A. In cash?

22 Q. Yes. In other words, everybody got cash.

23 A. That's -- that's true.

24 Q. Okay. The Government asked you, as far as you know, did I  
25 withhold any taxes.

1 A. Yes, they did.

2 Q. Did you ever see a statute that required me to withhold --

3 MR. NEIMAN: Objection.

4 BY MR. SCHIFF:

5 Q. -- taxes?

6 MR. NEIMAN: Relevance and invading upon --

7 THE COURT: Sustained.

8 MR. SCHIFF: Okay.

9 MR. NEIMAN: -- the province of the Court.

10 BY MR. SCHIFF:

11 Q. The Government spent a lot of time asking you about this day  
12 book, this book, that we have. Do you recall what the purpose  
13 of that book was for?

14 A. The Desk Book?

15 Q. Yeah.

16 A. The purpose of the Desk Book was to make sure that the  
17 telephone calls were being answered in the manner with your  
18 material and not -- that the phone conversations didn't get  
19 directed off into a different direction.

20 Q. In other words, we would hire new -- employees came and --  
21 came and went; right?

22 MR. NEIMAN: Objection. Mischaracterizing the answer  
23 to the --

24 THE COURT: Sustained.

25 MR. NEIMAN: -- question.

1 BY MR. SCHIFF:

2 Q. Well, what was the purpose, the fundamental purpose as you  
3 understood it, of that day book?

4 MR. NEIMAN: Objection. Asked and answered.

5 THE COURT: It was. You just asked that and she told  
6 you it was --

7 MR. SCHIFF: Okay. Maybe I didn't hear it right.

8 THE COURT: -- make sure the calls were being answered  
9 in accordance with your material.

10 BY MR. SCHIFF:

11 Q. Okay. While you were an employee of Freedom Books -- and  
12 you had discussions with me; is that correct?

13 A. Yes.

14 Q. -- did I give you any indication at all that I didn't -- I  
15 thought that we were depriving the government of money that was  
16 legally owed to them?

17 A. No, you did not.

18 Q. Did you ever hear anybody in the office make any such  
19 suggestion that we were doing something to deprive the  
20 government of revenue legally owed?

21 A. No.

22 Q. Was it your understanding that everybody who worked for me  
23 selling these products believed that they were selling products  
24 that were lawful?

25 MR. NEIMAN: Objection.

1 THE COURT: Sustained.

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

4 MR. SCHIFF: Thank you, Toni.

5 MR. CRISTALLI: Your Honor, may I address the witness?

6 THE COURT: You may.

7 MR. CRISTALLI: Thank you.

8

9 CROSS-EXAMINATION

10 BY MR. CRISTALLI:

11 Q. Good afternoon, Ms. Mitchell.

12 A. Good afternoon.

13 Q. Um, I want to talk to you a little bit about, um, when you  
14 first heard Irwin on the radio. I think your testimony was that  
15 you heard Irwin or was it that your husband heard Irwin on the  
16 radio?

17 A. Initially it was -- my husband was not my husband at the  
18 time, but we were dating. And he heard him initially and then I  
19 tuned in.

20 Q. Okay. And, um, did this occur over, um -- a one-time  
21 occurrence, was it multiple times that you heard him on the  
22 radio? Um, how many times did you listen to him before you  
23 actually went to Freedom Books?

24 A. Probably two or three times I heard the radio show before I  
25 actually went in.

1 Q. And, um, when you were listening to the radio, it was  
2 basically Mr. Schiff, um, talking about his beliefs, his  
3 ideology as it relates to income tax; correct?

4 A. Yes, that's true.

5 Q. Okay. And so, based on what you heard from Mr. Schiff as  
6 related to the, um, government not having to -- um, any legal  
7 right to impose a income tax or to collect an income tax, um,  
8 you went to Freedom Books. True?

9 A. That's correct.

10 Q. Okay. When you went to Freedom Books, did you immediately  
11 have direct communication with Mr. Schiff?

12 A. No, I did not.

13 Q. Okay. Who did you speak to at Freedom Books initially?

14 A. I spoke with Linda, who was the secretary there.

15 Q. Okay. And, when you spoke to Linda, did -- um, in terms of  
16 the dialogue, did she refute [sic] -- refer you to certain  
17 material that you either could purchase or look at?

18 A. Um, no. Actually, I went in and specifically requested the  
19 book The Federal Mafia because that was advertised on the radio  
20 show.

21 Q. Okay. And, when you went in there you, um -- did you  
22 purchase a copy of The Federal Mafia?

23 A. Yes, I did.

24 Q. Okay. And was that basically the end of, um -- your initial  
25 meeting -- end of your -- the first time you went to Freedom

1 Books you got The Federal Mafia and you left?

2 A. That's true.

3 Q. And you read The Federal Mafia?

4 A. Yes.

5 Q. Okay. And then, based on the readings that you, um -- you  
6 did, um, you then had an occasion to go back to Freedom Books?

7 A. That's correct.

8 Q. And, at that particular time, your knowledge as it related  
9 to the, uh, Freedom Books's teaching was specific to what was in  
10 Federal Mafia; correct?

11 A. That's true.

12 Q. And what you heard Irwin talking about on the radio station?

13 A. Yes.

14 Q. Okay. And so up to this particular time you've never had  
15 any interaction with Cindy. True?

16 A. That's true.

17 Q. Okay. Um, so you go back to Freedom Books, correct --

18 A. Yes.

19 Q. -- after you read The Federal Mafia --

20 A. Yes.

21 Q. -- right?

22 A. Yes.

23 Q. And what did you do, um, when -- when you went in the second  
24 time?

25 A. I believe the second time I purchased, um, the current

1 Schiff Reports, which were only maybe 3 and 4, and, um, I don't  
2 know whether or not for sure if I bought a Code book at that  
3 time.

4 Q. Okay. So, correct me if I'm wrong, you went back in a  
5 second time; you purchased, um, the -- the second reading; and  
6 then there was a possibility you may have gotten the, um -- the  
7 IRS Code; correct?

8 A. That's true.

9 Q. And you took those home and you read those, you digested  
10 those as well. True?

11 A. Not the whole entire Code book, but --

12 Q. Right.

13 A. -- the other material, yes.

14 Q. Yeah. So you read -- the second book that you read was  
15 what?

16 A. The second book I read?

17 Q. Yeah. What was it -- you went in the second time and you  
18 acquired what -- what reading material?

19 A. Oh, the Schiff Reports --

20 Q. The Schiff Reports.

21 A. -- the tapes with the documents that were currently  
22 available up to that point. It was 1997, 1996. So the Schiff  
23 Reports were only maybe through Series 4 at that time.

24 Q. Okay. And so the Schiff Reports are -- consist of tape  
25 recordings; correct?

1 A. Tape recordings and documents, yes.

2 Q. Okay. And the tape recordings were they of Irwin speaking?

3 A. Yes.

4 Q. Okay. And, um, so now you've read The Federal Mafia which  
5 was written by, uh, Irwin. True?

6 A. True.

7 Q. Okay. And would it be safe to say, based on what you've  
8 read and what you've heard on the radio up to this particular  
9 point, you knew that Irwin was basically the, uh, father of this  
10 ideology and these beliefs; correct?

11 A. That's true.

12 Q. Okay. So you continued to digest as much information as you  
13 possibly could as it related to, um, this belief system;  
14 correct?

15 A. Correct.

16 Q. Okay. And there came a point in time where it developed  
17 into a little bit -- a little bit more than actually reading.  
18 You actually began to implement some of these, um -- some of  
19 these teachings. Correct?

20 A. Yes, that's true.

21 Q. Okay. Did you do -- did you start implementing the -- the  
22 procedures prior to being -- working in some capacity or  
23 actually volunteering in some capacity at Freedom Books?

24 A. Yes, I did.

25 Q. Okay. So, um, after -- would it be safe to say, then, the

1 material that you digested was The Federal Mafia, um, the -- the  
2 Schiff Reports; correct?

3 A. That's correct.

4 Q. And, um, you purchased the IRS Code. True?

5 A. Yes.

6 Q. Okay. And was that the extent of the documentation that you  
7 received prior to implementing these procedures yourself?

8 A. Yes. As -- as -- after The Federal Mafia, I went and filed  
9 the W-4.

10 Q. A W --

11 A. Just with The Federal -- just with The Federal Mafia.

12 Q. Just with The Federal Mafia you filed a W-4. That's what  
13 your -- that was with your employer --

14 A. Employer.

15 Q. -- who was the Monte Carlo --

16 A. Um-hum.

17 Q. -- correct?

18 A. Yes.

19 Q. And they -- the Monte Carlo, um, adhered to your request?

20 A. They did.

21 Q. Okay. Um, so, at that particular time, you, um -- when you  
22 filed a W-4 when you were digesting the material, you didn't --  
23 the W-4 in and of itself -- the filing of the W-4 in and of  
24 itself -- or -- or I'm sorry. Strike that.

25 Your directive to your employer not to withhold -- take

1 withholding from your paycheck in and of itself did not get you  
2 the attention of the -- the attention of the IRS?

3 A. No, it did not.

4 Q. Okay. So, after you did that, did you implement any other  
5 procedures, um, at that particular time?

6 A. Yes, I --

7 Q. Go ahead.

8 A. -- it was -- it was time to file a tax return for 1996. So  
9 I did -- that's when I filed my first zero return.

10 Q. Okay. So, um, that was prior to you volunteering as -- at  
11 Freedom Books; correct?

12 A. Yes.

13 Q. Okay. So you filed your, uh, 1040. True?

14 A. Yes.

15 Q. Okay. And then you basically zeroed out the 1040 --

16 A. Yes.

17 Q. -- correct?

18 A. Um-hum.

19 Q. And basically the philosophy that was taught at Freedom  
20 Books is that there -- there is no law requiring you to pay  
21 income tax and, therefore, what you put on your 1040 return are  
22 zeroes all the way down the right-hand column.

23 A. That's true.

24 Q. Okay. And did you, uh, ask for returns back from previous,  
25 uh, 1040 filings from previous years?

1 A. No, I didn't.

2 Q. Okay. So it was just from the current year that you began,  
3 um, up through however many years from there. I think you  
4 indicated it from was '96 to 2000?

5 A. Yes.

6 Q. Okay. So, um, during that period of time -- okay. You  
7 file -- you file your first 1040 zero return with the  
8 attachments on it; correct?

9 A. Yes.

10 Q. And the Government had gone over the attachments, and I  
11 think Mr. Schiff had done that as well. Basically, um, the  
12 attachments to the 1040 zero return were provided to you in the  
13 Schiff Reports?

14 A. They were provided to me in -- with The Federal Mafia.

15 Q. With The Federal Mafia. Okay.

16 A. Yes.

17 Q. And, basically, it explains to the IRS why you had filed a  
18 zero return?

19 A. That's correct.

20 Q. And it has in there case law and statutory citations that  
21 are in that package; correct?

22 A. That's true.

23 Q. And basically explains to the IRS that you're filing a zero  
24 return because under the laws, um, of the United States and the  
25 statutes and the Constitution you are not required to, uh, pay

1 income tax; correct?

2 A. That's correct.

3 Q. Okay. So you did that, uh, for the first time. And, um,  
4 were there any, uh, negative repercussions as a result of you  
5 filing that first 1040 return with that attachment on it? Did  
6 the IRS respond to you?

7 A. Yes, they did.

8 Q. And this is the first document; correct -- I mean, the first  
9 1040 return; right?

10 A. The first one, yes.

11 Q. Okay. And what did they -- what did they do? What did they  
12 send you? What did they tell you?

13 A. They informed me that they were changing my return, that  
14 they were applying my W-2 wages as income.

15 Q. Okay. So, in fact, did they do that?

16 A. Yes, they did.

17 Q. So, basically, they took the money that they said, um, you  
18 were required to pay on your W-4, your employment withholdings?

19 A. I did have money withheld for '96.

20 Q. You did.

21 A. So they applied what was withheld to the tax.

22 Q. Okay. Now, let me just get this straight.

23 Okay. So the Monte Carlo ceased at some particular  
24 time from taking money out of your check; correct?

25 A. That began in '97.

1 Q. Okay. And so the 1040 that you filed initially was for '96?

2 A. Right.

3 Q. Okay. And you filed, um -- okay. So you filed your zero  
4 return. They respond to you. And they say that -- what to you?  
5 They say that it was a frivolous filing?

6 A. They didn't charge me with a frivolous filing at that time.  
7 They just told me that they were changing it and applying the  
8 W-2 wages and the money that was, um, you know, withheld toward  
9 the income tax --

10 Q. Okay.

11 A. -- and that they would not be giving me a refund.

12 Q. Okay. So, during that period of time if you had filed, uh,  
13 according to what the IRS had said that you had to file, you  
14 would have received a return that particular year; correct?

15 A. I probably would have based on the fact that I could have  
16 taken some deductions.

17 Q. Okay. So the fact that you -- you prescribed into this  
18 theory from Freedom Books and from The Federal Mafia and you  
19 filed your 1040, um, you didn't necessarily benefit financially  
20 from that because if you had filed straight, um, according to  
21 what the IRS said that you needed to file, you may have received  
22 a return; correct?

23 A. That's correct initially at that point in time. Um-hum.

24 Q. So you didn't benefit financially from filing the zero  
25 return 1040; correct?

1 A. Not the -- not the first one.

2 Q. Okay. Did you do anything in response to the IRS saying  
3 that they were going to impose the tax on your 1040?

4 A. I did at that time responded to the 30-day letter, the we --  
5 "we changed your return" letter --

6 Q. Uh-huh.

7 A. -- with the appropriate response from Irwin Schiff's  
8 material.

9 Q. And you did this all, um, in -- in the -- you did this based  
10 on what The Federal Mafia had told you to do; correct?

11 A. And the Schiff Reports that I had bought.

12 Q. So the Schiff Reports and The Federal Mafia had a specific  
13 procedure as to how to respond to the Government saying, well,  
14 we're going to with -- we're going to correct your 1040?

15 A. That's correct.

16 Q. Okay. And so subsequent to you file -- you sending them  
17 that, what did they do in response?

18 A. They just went ahead and changed it, and I never heard  
19 anything after that.

20 Q. Okay. So, now, in terms of the time frame chronologically,  
21 where -- where are we? Are you now interacting with Freedom  
22 Books on a more regular basis after the initial 1040 filing in  
23 1996?

24 A. Yes.

25 Q. Okay. Would -- um, are you going there on a daily basis?

1 Are you going there on a weekly basis? Are you buying more  
2 material?

3 A. I had -- I had by the time, um, I filed my 1997 return for  
4 the year during 1997 pretty much had gotten all of the material  
5 available.

6 Q. Okay. Now, when you talk about all the material available,  
7 can you tell the jury what that consists of?

8 A. That would have been the Schiff Reports that were available  
9 through that time. I think, in '97, Series 5 may have arose.  
10 And, um, of course I had the Code book and a couple of the other  
11 books that Irwin wrote.

12 Q. Okay. Now, um, the -- all of the material that was given to  
13 you -- the books, obviously, and the Series 7 -- or the -- the  
14 Schiff Reports, they were all generated by Mr. Irwin Schiff;  
15 correct?

16 A. That's true.

17 Q. Okay. Um, you never received any material that was created  
18 by Ms. -- Ms. Neun?

19 A. No, hum-um.

20 Q. Okay. And up to this particular time you've never met  
21 Ms. -- up to this particular time that we're talking about you  
22 have not yet met Cindy -- Cindy; correct?

23 A. That's correct.

24 Q. Okay. All right. So you've digested out the information  
25 that was given to you and that was The Federal Mafia; the, uh,

1 Schiff Reports; the second book which was what again? I'm  
2 sorry. Was it...

3 A. The second book? I -- well, I purchased The Great Income  
4 Tax Hoax eventually.

5 Q. Okay. So tell me all the material that you had in your  
6 possession at -- at this time.

7 A. Um, in '97?

8 Q. Yeah, it would be subsequent to your 1996 1040 --

9 A. I had the current Schiff Report. I had -- I had the  
10 cassette seminar. I had the, uh, Federal Mafia, Great Income  
11 Tax Hoax, um, and I believe the two cartoon books: How an  
12 Economy Grows and Why It Doesn't, The Kingdom of Moltz. And I  
13 believe that was all that was available at that time. I'm not  
14 positive.

15 Q. Okay. And, um, now, 1997 comes around in terms of the  
16 filing requirements. You file your 1040 return again?

17 A. Right. Which would have been '98 for '97.

18 Q. Okay. And are you, um, involved as a volunteer at Freedom  
19 Books at that time?

20 A. No.

21 Q. Okay. So you're still -- so we're dealing with, you know,  
22 getting the material sometime in 1996. Now, we're in 1998. So  
23 it's safe to say that's two years that you're digesting as much  
24 information as you can that you received from, uh, Freedom Books  
25 that are specific to Mr. Schiff's writings; correct?

1 A. That's correct.

2 Q. Okay. And you haven't began your, um -- your volunteering  
3 work there yet?

4 A. That's correct.

5 Q. Okay. So you file your '97 1040 returns the same way you  
6 did in 1996; correct?

7 A. True.

8 Q. And you file zero returns; right?

9 A. Yes.

10 Q. And you attached the same attachment that you attached in  
11 '96 explaining why, to the IRS, that you're filing zero returns?

12 A. Yes.

13 Q. Okay. And what did you get in response to that?

14 A. In '97, I did not have -- I had very little money withheld  
15 from the Monte Carlo. So initially I received -- I don't know  
16 what order -- the frivolous penalty and then the 30-day letter.

17 Q. And the 30- -- 30-day letter said what?

18 A. That they were changing my return.

19 Q. Okay. And then what happened as a result of that?

20 A. Um, then, um, after that, because there was no money  
21 withheld like there was in '96, they couldn't just go ahead and  
22 apply the tax and never hear from 'em again, I received the  
23 series of letters after that, the deficiency notice.

24 Q. And it wasn't withheld -- I mean, it wasn't withheld because  
25 you instructed the Monte Carlo not to withhold any longer;

1 correct?

2 A. That's correct.

3 Q. Okay. So, now, you would have been responsible for all  
4 the -- all of the withholdings that would have occurred during  
5 that year of your employ with the Monte Carlo?

6 A. True.

7 Q. Okay. And so they -- so in terms of procedures that the IRS  
8 was taking to -- to -- I would -- I would assume to collect that  
9 money, what -- what was happening and how much -- how much money  
10 are we talking about?

11 A. Um...

12 MR. NEIMAN: Objection. Compound.

13 MR. CRISTALLI: It is.

14 THE COURT: Yeah. Could you --

15 MR. CRISTALLI: It is.

16 THE COURT: -- rephrase?

17 MR. CRISTALLI: Yes, sir.

18 BY MR. CRISTALLI:

19 Q. The procedures that were taken by the IRS to collect the --  
20 the tax, what -- what was being done?

21 A. I received, like I said, the 30-day letter and then the  
22 deficiency notice which both I responded to without a response  
23 back and -- and eventually received a Notice of Lien for that  
24 year. And at that time the penalties and interest had  
25 compounded on top of the money that would have been withheld.

1 Q. And do you know about how much money we're talkin' about at  
2 that time between the actual amount of tax that was owed  
3 compared to the, um -- on top -- plus the interest and  
4 penalties?

5 A. I believe that would have been -- the penalties and interest  
6 would have been in excess of \$10,000.

7 Q. Okay.

8 A. And the actual money, if it had been withheld, would have  
9 been more like 5,000.

10 Q. Okay. So, actually, interest and --

11 A. It came up to about 17,000 ultimately on the lien filed.

12 Q. So interest and penalties, um, exceeded the actual amount  
13 owed?

14 A. That's correct.

15 Q. Okay. And what did you do in response to the lien or the  
16 levy?

17 A. That's when I had asked for the collection due process  
18 hearing.

19 Q. And you asked for that in response -- as a result of  
20 reading/digesting the material that you received from Freedom  
21 Books?

22 A. Yes.

23 Q. And they told you what you were supposed to do in response  
24 to the lien or a levy; correct?

25 A. Right, right.

1 Q. And that was to ask for a due process hearing?

2 A. Yes.

3 Q. And you went to a due process hearing?

4 A. Yes, I did.

5 Q. Did you go with anybody?

6 A. Yes, a court reporter and I believe I took a witness.

7 Q. Okay. Um, and is that what was instructed that you do in  
8 the material that was created by Mr. Schiff?

9 A. Yes.

10 Q. Okay. Um, what happened at the due process hearing?

11 A. Uh, basically I had asked for the law that required me to  
12 pay the tax and I would pay it and, um, asked for several  
13 different documents that I hadn't received. And that was really  
14 the end of the meeting. The agents ended it.

15 Q. Um, what did -- the agents basically said to you we don't  
16 have that material to give you?

17 A. Right. They basically said we're here to discuss collection  
18 alternatives only and that we don't have to provide you with  
19 that information.

20 Q. Okay. So you left the hearing. What resulted after that?

21 A. Then I received a determination letter and then appealed the  
22 decision to -- I bas- -- that meeting actually I believe was  
23 only over the penalty and I petitioned to District Court for an  
24 appeal --

25 Q. Okay.

1 A. -- of the determination.

2 Q. Now, your appeal -- as a result of receiving the  
3 determination letter, your appeal to the District Court  
4 procedurally you knew how to do that as a result of reading the  
5 material that was provided to you by Freedom Books and that was  
6 created by Mr. Schiff; correct?

7 A. Yes.

8 Q. Okay. And that explained to you how to file in District  
9 Court the appeal?

10 A. Yes.

11 Q. What happened, uh, subsequent to your filing of the appeal?

12 A. The -- the case was ultimately dismissed.

13 Q. Okay. And basically your appeal stated that there is no law  
14 requiring you to pay income tax; correct?

15 A. That's true.

16 Q. And there was material that was given to you in The Federal  
17 Mafia, in the Schiff Reports, in the other material that you  
18 received from Freedom Books that explained to you how to  
19 procedurally go about that process; correct?

20 A. That's correct.

21 Q. And the District Court told you that, um, the -- when you  
22 went to the -- the hearing, they -- they dismissed the case;  
23 correct?

24 A. I didn't have a hearing. It was all done on paper.

25 Q. Okay. So you never were afforded an opportunity to be in

1 front of a judge and discuss your case with them?

2 A. That's correct.

3 Q. Okay. Um, what actions were taken by the IRS subsequent to  
4 the dismissal of your appeal?

5 A. Well, when I had requested the hearing, it was based on the  
6 a Notice of Lien that had already been filed. So the IRS didn't  
7 do anything after that. The lien has already been filed.

8 Q. Where -- okay. So, in terms of the lien being filed, did  
9 they -- did they get any money or property from anywhere?

10 A. Aside from the lien being placed on my home, which is still  
11 there, no.

12 Q. And the amount of the lien on your home was for how much  
13 money?

14 A. Approximately \$17,000, I believe.

15 Q. And you had stated that the interest and penalties exceeded  
16 your actual tax exposure for that particular year; correct?

17 A. That's true.

18 Q. So out of the \$17,000, what was your actual tax liability?

19 A. Um, I -- I don't believe it was more than 5,000.

20 Q. Okay. So there was more than \$10,000 in penalties and  
21 interest assessed?

22 A. That's correct.

23 Q. Okay. And is the interest on that still accruing today and  
24 the penalties still accruing today or did you work somethin' out  
25 with the IRS?

1 A. I worked it out through Chapter 13 bankruptcy. So it's --  
2 it's a five-year payment plan based on -- and I believe 1997  
3 will have -- would have at that point been abolished altogether  
4 and I would be liable for the three -- the three priority years  
5 prior to the filing of the bankruptcy.

6 Q. Okay. Well, bankruptcy doesn't wash out your tax liability.  
7 True?

8 A. It doesn't totally wash it out, no.

9 Q. I mean, the IR- -- I mean, you still are going to be  
10 responsible for your tax liabilities; correct?

11 A. For the three priority years prior to the filing of the --  
12 of the bankruptcy.

13 Q. Okay.

14 A. So, um, by the end of the five-year term, the lien will be  
15 released.

16 Q. Okay. So am I correct in saying that you, um -- you were in  
17 1990- -- were in the 1997 filing; correct? And this is all  
18 happening as a result of the 19- -- the 1040 -- the 1997 -- '7  
19 1040 filing. Correct?

20 A. Yes.

21 Q. Okay. Because 1996 was already taken care of because it was  
22 already withheld from your paycheck.

23 A. By the time -- by the time that -- that I had filed the  
24 court case and, you know, had the hearing and all that, we're  
25 gettin' into 2000/2001 --

1 Q. Okay.

2 A. -- from a '97 filing.

3 Q. Okay.

4 A. So...

5 Q. I'm -- I understand now.

6 So now you're -- so, before you actually are in  
7 District Court, you're in District Court not only on the 1990,  
8 um -- 1997 filing, but you're on -- you're in -- are you in  
9 District Court for the -- what about the other filings, the  
10 1998, 1999, and 2000?

11 A. I didn't file in '98 and I didn't file in '99.

12 Q. And what --

13 A. And I filed in 2000. But the issue in District Court was  
14 solely over '97.

15 Q. Okay. You didn't file any 1040 returns?

16 A. For two years, '98 and '99, I did not.

17 Q. Why?

18 A. I just didn't. I really don't have a reason.

19 Q. Okay. Um, so it would be safe to say that you didn't -- as  
20 a result of digesting the material, implementing the material  
21 from Freedom Books, you never really profited financially from  
22 the, um, ideology, philosophy, implementing the procedures?

23 A. No, I did not. By the end of the five-year term, I will  
24 have paid back in excess of \$55,000 through the bankruptcy and  
25 that would have been more than if I had actually --

1 Q. Paid the taxes.

2 A. -- you know, had paid the taxes.

3 Q. And out of the \$55,000 that the IRS is saying that you're  
4 liable for, how much do you think that is in actual tax  
5 liability?

6 A. I couldn't say exactly, but there is probably more in  
7 penalties and interest than the actual tax itself.

8 Q. Okay. Then there came a time that you volunteered at  
9 Freedom Books; correct?

10 A. Yes.

11 Q. And there came a time that you be able -- well, could you  
12 tell us when that was?

13 A. I believe it was around 2000, April or May. Somewhere in  
14 there.

15 Q. Okay. So April of 2000 you began volunteering at Freedom  
16 Books; correct?

17 A. That's correct.

18 Q. So you're already knee deep in the, um -- in the practices  
19 that have been -- that -- that are espoused by Mr. Schiff;  
20 correct?

21 A. Yes.

22 Q. In fact, I think you had testified that you're -- that the  
23 IRS has already levied your property at that particular time.  
24 True?

25 A. Actually, it was right around that time when the -- when the

1 notice of lien was filed.

2 Q. Okay. So you got Notice of Lien while you were volunteering  
3 at Freedom Books?

4 A. Yes.

5 Q. And despite receiving the Notice of Lien and not being  
6 successful in your due process hearing, you continued to  
7 volunteer at Freedom Books?

8 A. Yes.

9 Q. Okay. And, during the course of your time at Freedom  
10 Books -- I mean, well, let's talk about that a little bit.  
11 Initially you volunteered your services; correct?

12 A. That's true.

13 Q. Okay. And you -- you continued to maintain employment at  
14 Monte Carlo?

15 A. Yes.

16 Q. Okay. And eventually what -- you began to, um, take some  
17 money from Irwin for your services?

18 A. Yes.

19 Q. How long of a period of time did you volunteer before you  
20 started to take money from Mr. Schiff?

21 A. It was probably a couple of months.

22 Q. Okay. What --

23 A. Two or three months.

24 Q. Two, three months?

25 A. I -- I would say off and on, yeah. I would be in and out

1 for two or three months there.

2 Q. Okay. Would you be vol- -- in terms of the two or three  
3 months that you were volunteering, would you be volunteering on  
4 a daily basis? on a weekly basis? How many times a week?

5 A. It would maybe be once or twice a week at that time.

6 Q. Okay. And, um, your -- your duties as a volunteer would  
7 consist of what?

8 A. Basically answering the phone, taking the orders.

9 Q. Okay. Orders for material, Federal Mafias, the Schiff  
10 Reports --

11 A. Yes.

12 Q. -- additional books that have been written by, um,  
13 Mr. Schiff; correct?

14 A. That's correct. And some filing duties.

15 Q. Okay. So now that's in -- subsequent to April of 2000;  
16 correct?

17 A. Yes.

18 Q. Okay. Now, um -- and then, um, it -- it -- after a few  
19 months, you began to take some type of wage from Mr. Schiff;  
20 correct?

21 A. Yes.

22 Q. And it would be safe -- safe to say that, um, that wage was  
23 what, about a couple hundred dollars a week?

24 A. Max, yes.

25 Q. So it was a maximum of a couple hundred a week; correct?

1 A. Yes.

2 Q. So you weren't -- weren't, you know, profiting greatly as a  
3 result of your, um, work at Freedom Books. True?

4 A. No.

5 Q. Okay. And so, during that period of time, you were still  
6 dealing with your own battle with, uh, the IRS; correct?

7 A. That's correct.

8 Q. Okay. And you weren't havin' that much success at that  
9 time?

10 A. No.

11 Q. Okay. You also, um, had an opportunity -- and would --  
12 would it be safe to say that you would -- you would have been  
13 one of the first, if not the first, to actually file an appeal  
14 in District Court?

15 A. One of the first, yes, that I'm aware of.

16 Q. Um, now, when you were at Freedom Books, you worked with  
17 a -- you were -- you were working with a number -- number of  
18 individuals. One of the individuals was an ex-IRS employee.  
19 Correct?

20 A. Um, I did not work directly with an ex-IRS employee.

21 Q. Did -- did you recall, um, working at Freedom Books with  
22 somebody who was an ex-IRS employee?

23 MR. NEIMAN: Objection. Asked and answered.

24 MR. CRISTALLI: I think it's a little different.

25 THE COURT: She said she --

1 THE WITNESS: No.

2 THE COURT: -- did not work directly with an ex-IRS  
3 employee.

4 MR. CRISTALLI: But I wanna know if she just knows if  
5 there was one working there.

6 THE WITNESS: There was one working there that was a  
7 couple of years prior to that.

8 BY MR. CRISTALLI:

9 Q. Was he there when you were there?

10 A. No.

11 Q. Okay. Um, the, uh -- okay. And during that period of time  
12 that -- okay. Let's talk about how long you were there.

13 How long were you, um, working in some capacity at  
14 Freedom Books?

15 A. I believe it was a little over a year.

16 Q. Okay. And, um, basically your -- your work stopped at  
17 Freedom Books when there was a search warrant conducted at the  
18 premises; correct?

19 A. Yes.

20 Q. Okay. But up until that time you were still -- you were  
21 still working on a regular basis at -- at Mr. Schiff's, um,  
22 business?

23 A. Yes. My job at the Monte Carlo was seasonal. So, during  
24 the summer months, I -- I put in more hours at Freedom Books  
25 than I did during the fall and winter months because that's when

1 my job would pick up.

2 Q. Okay. And, during that period of time, you're still having  
3 your independent, uh, interaction with the IRS; correct?

4 A. That's correct.

5 Q. Okay. And you're helping other individuals file zero  
6 returns with the necessary attachments --

7 A. Yes.

8 Q. -- as well?

9 A. Yes.

10 Q. And you actually attended a few due process hearings; is  
11 that correct?

12 A. I have only attended maybe three.

13 Q. Okay. Were you a representative of a client at those  
14 hearings?

15 A. No. I only went a couple times as a witness capacity.

16 Q. Okay. Um, now, during that period of time, there came --  
17 there was -- during that time period, you learned that, um,  
18 Cindy was, uh -- was basically Irwin's boyfriend [sic];  
19 correct -- girlfriend; correct?

20 A. Girlfriend, yes.

21 Q. Yeah.

22 And you had occasion to see Cindy in the office. True?

23 A. Yes.

24 Q. Okay. And she would come in and out of the office during  
25 the periods of time that you were there; right?

1 A. Yes.

2 Q. And would it be safe to say, Ms. Mitchell, that, um, Cindy's  
3 presence at Freedom Books was more scarce at the end because of  
4 her health problems?

5 A. That's true.

6 Q. And you knew that she was disabled?

7 A. Yes.

8 Q. Okay. And you knew that was as a result of a car accident  
9 that occurred prior to -- well, I -- I -- in the early '90s?

10 A. Yes.

11 MR. NEIMAN: Objection. Relevance.

12 THE COURT: Well, I think it's relevant. I'll allow  
13 it. I don't think it's a problem.

14 Go ahead and answer.

15 THE WITNESS: Yes --

16 BY MR. CRISTALLI:

17 Q. You knew --

18 A. -- I was aware.

19 Q. -- of her disability?

20 THE COURT: Let me interrupt you, though,  
21 Mr. Cristalli, for just a moment.

22 MR. CRISTALLI: Yes, sir.

23 THE COURT: We're at 12:30. How much more time do you  
24 anticipate?

25 MR. CRISTALLI: I think I could be done in less than 10

1 minutes, your Honor.

2 THE COURT: I think we need to take the break now  
3 unless -- unless you feel you need to finish.

4 MR. CRISTALLI: I don't want to say five minutes and  
5 then I go six or seven minutes.

6 THE COURT: If you're at five, we'd do it.

7 MR. CRISTALLI: I -- I --

8 THE COURT: Do you think you could it in five?

9 MR. CRISTALLI: I think I can do it in five.

10 THE COURT: Okay.

11 MR. CRISTALLI: All right.

12 BY MR. CRISTALLI:

13 Q. Um, so you had an opportunity to see Cindy in the office.  
14 Now, Cindy did, um, contribute in some capacity, uh, at Freedom  
15 Books. Correct?

16 A. Yes.

17 Q. She would field calls at Freedom Books?

18 A. Yes.

19 Q. Okay. She would attend due process hearings with  
20 individuals?

21 A. Yes.

22 Q. In fact, I think you testified that clients would pay Irwin,  
23 uh, a certain amount of money for Cindy to make appearances for  
24 them in the due process hearings; correct?

25 A. That's correct.

1 Q. Okay. And that money went directly to Irwin; correct?

2 A. Yes, it did.

3 Q. Okay. Um, and she would also work on research, um, in the  
4 office?

5 A. Yes.

6 Q. Okay. Um, and you were aware that there was a relationship  
7 between, um, Cindy and Irwin --

8 A. Yes.

9 Q. -- correct?

10 A. Yes.

11 Q. And you, um -- you didn't know in what capacity, if any,  
12 that -- how Cindy was compensated for the time that she offered  
13 to Freedom Books; correct?

14 A. Not specifically, no.

15 Q. Okay. Now, Ms. Mitchell, it would be safe to say that you  
16 did not, uh, prescribe to the teachings of Mr. Schiff because  
17 you were making lots of money at Freedom Books; correct?

18 A. That's correct.

19 Q. In fact, you prescribed to the teachings of Mr. Schiff  
20 before you even began volunteering at Freedom Books. True?

21 A. That's true.

22 Q. Okay. And it wasn't until you were knee deep in a -- in a  
23 action with the IRS that you actually began being compensated to  
24 a certain extent for your work at Freedom Books?

25 A. Yes.

1 Q. Okay. And the fact that you were not being successful in  
2 the -- in -- in your -- in your endeavors with the IRS did not  
3 cause you to abandon Freedom Books and that -- and the teachings  
4 that were being espoused by Freedom Books. True?

5 A. That's true.

6 Q. Okay. In fact, um, if you were not -- if you were not  
7 placed in the situation that you are today in terms of the  
8 penalties and the assessments and other proceedings against you,  
9 you would be continuing to prescribe to that, um, ideology or  
10 that teaching; correct?

11 A. If -- specifically referring to if -- if the procedures had  
12 worked?

13 Q. Well, no. You sit here today. Okay? You're testifying.  
14 You've been granted -- you were granted immunity in this case;  
15 correct?

16 A. Yes.

17 Q. Basically, the grant of immunity means that the Government  
18 will not prosecute you for what you did with regard to your 1040  
19 returns/your W-4's in the years that we discussed; correct?

20 A. Yes.

21 Q. Okay. So you're -- you're free from criminal prosecution.  
22 True?

23 A. Yes.

24 Q. Okay. Um, if you were not put in a situation where you were  
25 facing criminal prosecution, um, if you, um -- well, strike

1 that.

2 The -- the -- the program wasn't working with you  
3 independently; correct?

4 A. That's correct.

5 Q. Yet you continued to try to work the process that was  
6 recommended by Mr. Schiff in his writings. True?

7 A. That's true.

8 Q. And you did not abandon those procedures; correct?

9 A. That's correct.

10 Q. In fact, your abandonment of those procedures came only when  
11 you were faced with criminal prosecution. True?

12 A. Um, did -- my reason for -- for abandoning them was not  
13 because I was worried about criminal prosecution, no.

14 Q. Okay. It was -- was it because they weren't working?

15 A. It was because they weren't working, yes.

16 Q. Okay. Was it because you were being, you know, maxed out  
17 financially as a result of what the IRS was doing to you?

18 A. Yes.

19 Q. Okay. It's not because you disbelieve that what was being  
20 espoused is either true or not true. Correct?

21 MR. NEIMAN: Objection. Relevance.

22 THE COURT: Sustained.

23 MR. CRISTALLI: Court's indulgence?

24 THE COURT: Yes.

25

1 (Discussion between Mr. Cristalli and  
2 Mr. Modafferi.)

3 BY MR. CRISTALLI:

4 Q. Uh, Ms. Mitchell, just -- were you providing services to  
5 Freedom Books when, um, Cindy's daughter was working as office  
6 manager there?

7 A. I -- I had come in contact with Cindy's daughter only one  
8 time.

9 Q. Okay. Do -- do you have any knowledge, direct knowledge,  
10 of, um, the fact that her daughter had taken in excess of  
11 \$50,000 from Freedom Books, if you know?

12 MR. NEIMAN: Objection. Relevance. She said she saw  
13 her once.

14 THE COURT: What is the relevance?

15 MR. NEIMAN: Hearsay.

16 MR. CRISTALLI: Well, I'd like -- I mean, ultimately --  
17 ultimately it's going -- it's gonna be relevant when, um -- when  
18 Cindy's daughter takes the stand and testifies. I'd like to  
19 know whether or not there was any other people at Freedom Books  
20 that had any independent knowledge of, um, these allegations.

21 MR. NEIMAN: Can't be proven extrinsic --  
22 extrinsically, your Honor.

23 THE COURT: It can't. So the objection is sustained.

24 MR. CRISTALLI: Very good.

25 I have no further questions, your Honor.

1 THE COURT: Thank you.

2 MR. CRISTALLI: Thank you, Ms. Mitchell.

3 THE COURT: We'll now take a recess for lunch. We'll  
4 take one hour for a break, which means 20 to 2:00 we will  
5 resume.

6 (Jury leaves the courtroom at 12:38 p.m.)

7 THE COURT: You can step down now.

8 Any other matters? business?

9 MR. BOWERS: Your Honor, maybe after the witness  
10 leaves --

11 THE COURT: Okay.

12 MR. BOWERS: -- I have a brief matter.

13 THE COURT: You have one? All right.

14 The courtroom will be seated.

15 Mr. Bowers.

16 MR. BOWERS: Yes, your Honor. I've identified about  
17 five questions I anticipate asking Ms. Mitchell on  
18 cross-examination that based on what's happened I'm sure the  
19 Government will object to on the grounds of relevance.

20 We started a discussion this morning regarding why I  
21 thought those might be relevant and you told me I'd get an  
22 opportunity to create a record. We can do that later; we can do  
23 it now. I just would like to be able to do that outside the  
24 presence of the jury when it's done. So however the Court would  
25 like to handle it that would be fine.

1 THE COURT: We'll address it when we come back from  
2 lunch.

3 MR. BOWERS: Thank you, your Honor.

4 THE COURT: Thank you.

5 (Lunch break, 12:40 p.m. to 1:46 p.m.)

6 THE CLERK: All rise.

7 THE COURT: Okay. Do we need to -- go ahead and be  
8 seated -- do we need to have any discussion before we bring the  
9 jury in?

10 MR. BOWERS: Uh, your Honor, the matters that I've  
11 discussed with you earlier I think have been maybe temporarily  
12 resolved but --

13 THE COURT: Okay.

14 MR. BOWERS: -- at least for this afternoon.

15 THE COURT: Do you wish to cross-examine the witness?

16 MR. BOWERS: I would like to briefly, your Honor.

17 THE COURT: Okay.

18 Bring in the jury.

19 THE CLERK: Um-hum.

20 (Pause in the proceedings.)

21 THE CLERK: Ready?

22 THE COURT: Ready.

23 (Jury enters the courtroom at 1:47 p.m.)

24 THE COURT: Please be seated.

25 Will counsel stipulate to the presence of the jury?

1 MR. NEIMAN: Yes, your Honor.

2 MR. CRISTALLI: Yes, your Honor.

3 THE COURT: Thank you.

4 MR. LEVENTHAL: Yes, your Honor.

5 THE COURT: Thank you.

6 MR. SCHIFF: Yes, your Honor.

7 THE COURT: Mr. Bowers.

8 MR. BOWERS: May I proceed, your Honor?

9 THE COURT: You may.

10

11

CROSS-EXAMINATION

12 BY MR. BOWERS:

13 Q. Hi, Ms. Mitchell.

14 A. Hello.

15 Q. I'm Chad Bowers. I'm Larry's attorney. I'll be as brief as  
16 possible.

17 If I understand it correctly from the timeline you  
18 gave, you would have worked approximately one year with  
19 Mr. Cohen at Freedom Books during the time that he's there. Is  
20 that correct to the best of your recollection and understanding?

21 A. Yes, that's correct.

22 Q. Okay. And, when you worked there, did you have the  
23 opportunity to observe what Larry's job duties consisted of  
24 during the day?

25 A. Yes, I did.

1 Q. And it's my understanding that you've represented in the  
2 past that those job duties included, um, answering phones,  
3 taking orders, those sorts of items?

4 A. Yes.

5 Q. Now, it's also my understanding that there was a gentleman  
6 named "Charles White," nickname of "Woody" --

7 A. Yes.

8 Q. -- who worked there at or about the same time; is that  
9 correct?

10 A. Yes.

11 Q. Would you describe his job duties as being essentially those  
12 of Larry's?

13 A. That is correct.

14 Q. And, again, it's a fair characterization to say that those  
15 duties involved essentially answering phones and taking orders;  
16 is that right?

17 A. Yes.

18 Q. Um, is it fair to say, or would you agree with the  
19 characterization, that your duties involved a higher level of  
20 responsibility than Larry or Woody?

21 A. In my opinion, yes.

22 Q. Okay. Um, for example, you -- it's not your understanding  
23 that, uh, Larry and Woody were responsible for actually  
24 preparing returns at the time you were there; is that correct?

25 A. That's correct.

1 Q. Nor were they, uh, people who attended due process hearings  
2 at the time; is that correct?

3 A. That is correct.

4 Q. They were also not people who participated or were  
5 authorized to participate in the process of -- of appealing  
6 decisions, either to the District Court or anywhere else; is  
7 that correct?

8 A. That's correct.

9 Q. And, if I understand your prior testimony correctly, that  
10 was something that you did; is that correct?

11 A. That is correct.

12 Q. All of those items. I'm sorry. I should be more specific.

13 A. Yes.

14 Q. Um, now, if I understand your testimony correctly, you were  
15 paid a salary of about \$200 a week?

16 A. Uh, yeah, anywhere up to.

17 Q. So that was the most you would have been paid while you were  
18 working there; is that right?

19 A. Right. I worked a max of 20 hours in -- in a week.

20 Q. Okay. So you're saying up to \$10 an hour was your salary  
21 there; is that correct?

22 A. Yes.

23 Q. Um, now, if I understand correctly, you -- other than that  
24 compensation, you -- you never shared in any of the profits of  
25 the business, uh, that Mr. Schiff ran known as Freedom Books; is

1 that correct?

2 A. That's correct.

3 Q. Okay. Um, was that amount of money that you received for  
4 working there would you consider that a -- a strong financial  
5 incentive for where you were at in life at the time?

6 A. No.

7 Q. Okay. Did you -- do you feel you could have made more money  
8 at another job?

9 A. Yes.

10 Q. Or the same amount of money at least?

11 A. Yes.

12 Q. Okay. Um, now, I also understand that you never saw  
13 anything that would leave you to believe that Larry Cohen, my  
14 client, had the opportunity to share in the profits of Freedom  
15 Books at any point in time that you were associated with the  
16 organization?

17 A. That's correct.

18 Q. Nor have you ever heard anything that would lead you to  
19 believe that as well; is that correct?

20 A. That's correct.

21 Q. Um, Mr. Cristalli walked you through the timeline of how  
22 your involvement with Mr. Schiff's organization developed, that  
23 would be the radio show and so forth. I don't want to get back  
24 into that.

25 I do want to ask you, though: Did you find your

1 contact with Mr. Schiff to be persuasive, uh, along that  
2 process?

3 A. Persuasive in regards to being pushed into accepting that  
4 or...

5 Q. Well, I don't want to put words into your mouth. Let me ask  
6 it a different way.

7 Um, do you attribute your involvement with Freedom  
8 Books in any way to, uh -- your -- your personal contact with  
9 Mr. Schiff or Mr. Schiff's teachings or, as you read them, books  
10 or Mr. Schiff's broadcasts as you heard them on the radio?

11 A. I take --

12 THE COURT: Excuse me.

13 THE WITNESS: I take full responsibility for -- for  
14 following the procedures outlined in his -- in his material.

15 BY MR. BOWERS:

16 Q. Okay. That's fair.

17 I guess the question I'm asking you, though, is: Did  
18 you find the way that Irwin presented that material to be  
19 persuasive to you?

20 A. I'm not sure I'm -- I'm -- not persuasive in the -- in the  
21 fact that I believed that, you know, it was pushing me that way.  
22 I -- I researched the material myself and I actually believed  
23 it.

24 Q. Okay. And I'm gonna ask you about some more of that here in  
25 follow-up. But I guess what I'm asking is, um -- let me -- let

1 me establish a little foundation and ask it a different way.

2           During your time, uh, that you were personally involved  
3 with Freedom Books -- and I wanna limit this to when you're  
4 actually there, okay, not -- not you heard him on the radio, not  
5 you went in bought a book but you're actually either  
6 volunteering or working there. Okay? Um, do you understand  
7 what I'm -- what I'm asking?

8 A. Yes.

9 Q. During that period of time, uh, do you have any  
10 characterization of Mr. Schiff's personality at the office?

11 A. Oh, he's very direct. Um, very outspoken, very direct, very  
12 set in his way --

13 Q. Is it --

14 A. -- as a person.

15 Q. I'm sorry.

16 A. As a person.

17 Q. I didn't mean...

18 A. Nice person.

19 Q. Nice person?

20 A. Yeah.

21 Q. Is it fair to say that he impressed you as being someone who  
22 had a thorough understanding of, uh, the tax law, as you  
23 understood it?

24 A. Yes.

25 Q. Okay. Is it fair to say that he was somebody who could be

1 either assertive or aggressive if confronted --

2 A. Yes.

3 Q. -- with questions about the tax law?

4 A. Yes, definitely.

5 Q. Is it fair to say that as a result of -- well, let me ask --  
6 let me lay the foundation.

7 Did you ever see or hear Mr. Schiff deal with people  
8 who challenged him on his views during your time that you were  
9 personally involved with Freedom Books?

10 A. Yes.

11 Q. Did the manner in which he dealt with those people lead you  
12 to believe that his -- he was effective in communicating his  
13 ideas to his opponents?

14 A. Yes.

15 Q. Okay. So, if I take those last three questions and I  
16 combine them into a definition of persuasive, would you agree  
17 with me that you felt Mr. Schiff was persuasive based on your  
18 dealings with him?

19 A. Yes. He was -- he was persuasive in regards to the tax  
20 laws, yes.

21 Q. Okay. That's -- that's my question. And I appreciate you  
22 making me clarify it.

23 Now, one of the things you testified to was that one of  
24 the consistent themes in Mr. Schiff's writings and the office  
25 and policy procedures was this idea of -- of show me the law;

1 contacting the IRS either through a letter or on a form and  
2 saying, you know, if you show me the law, I'll pay it or I can't  
3 find it. Will you show me the law?

4 Is that a fair statement of -- of your understanding of  
5 the situation at the time?

6 A. Yes.

7 Q. Okay. And I -- I -- as I understand it, you -- well, let me  
8 ask it this way. Did you ever see in the office, uh, either in  
9 response to something that you did or in response to something  
10 that somebody else did, an answer to that question?

11 A. No, I did not.

12 Q. Did the fact that the IRS never provided you with an answer  
13 to that question affect how you felt about Irwin's teachings in  
14 any way?

15 A. Yes, it did.

16 Q. So was that silence on that issue something that you relied  
17 on in formulating your beliefs when you were associated with  
18 Mr. Schiff?

19 A. Yes.

20 Q. Now, as I understand it, the closest you ever got -- and  
21 when I say "you," I'm gonna mean any experience you had with  
22 anybody in the office that you had personal knowledge of at the  
23 time you were associated. So it's not the best question -- but,  
24 as I understand it when you were there, the closest you ever got  
25 to an answer to that line of thought was this is a frivolous

1 argument. Is that correct?

2 A. Yes.

3 Q. At any time, did anybody from the IRS provide you with a  
4 more -- and, again, when I say "you," I guess I should say were  
5 you provided access to materials through your association with  
6 Freedom Books that provided you with a -- a definition of what  
7 "frivolous" meant?

8 A. No. Aside from the dictionary?

9 Q. Right.

10 A. No.

11 Q. Or a list of criteria used to determine whether something's  
12 frivolous?

13 A. No, I didn't -- didn't receive anything.

14 Q. Was it your understand -- based on your knowledge of office  
15 policy at Freedom Books at the time that you were there, was it  
16 your understanding that the fact that people would be assessed  
17 frivolous fines was that hidden from people or was that  
18 something that was out in the open?

19 A. The fact that frivolous fines were --

20 Q. A potential --

21 A. -- a potential --

22 Q. -- consequence.

23 A. Yes.

24 Q. That wasn't a secret, was it?

25 A. That was known.

1 Q. Okay. Now, you talked at some length about your reliance on  
2 materials prepared by, uh, Mr. Schiff through the auspices of  
3 Freedom -- Freedom Books in coming up with whatever you thought  
4 at the time; is that correct?

5 A. Yes.

6 Q. We just talked about some of that to some extent and your  
7 reliance on silence from the IRS.

8 Are there any other things that as we sit here today  
9 that you can reference that you relied on in forming your  
10 opinions, whatever they were -- and I'm not asking for them --  
11 that were unconnected with Irwin Schiff? Do you understand my  
12 question?

13 A. I believe I do.

14 MR. NEIMAN: Objection. Relevance, I guess.

15 MR. BOWERS: Well --

16 THE COURT: What is the relevance?

17 MR. BOWERS: The relevance is that this goes to the  
18 state of mind of Ms. Mitchell at the time she was associated  
19 with Freedom Books and formed whatever her beliefs were.

20 MR. NEIMAN: And the Government would object that  
21 that's irrelevant as well.

22 THE COURT: It is irrelevant. We're into the same  
23 area.

24 MR. BOWERS: I'm sorry, your Honor?

25 THE COURT: We are into the same area we dealt with

1 before the break.

2 MR. BOWERS: If I understand the Court's ruling, any  
3 question regarding any belief apart from Freedom Books the Court  
4 is gonna deem irrelevant?

5 THE COURT: With -- with this witness the -- her  
6 beliefs are not relevant to prove the beliefs of your clients.

7 MR. BOWERS: And I guess I'm not asking about her  
8 beliefs. But her reliance on materials aside from Freedom Books  
9 are also irrelevant?

10 THE COURT: Your -- your question was did she rely on  
11 anything in forming her beliefs about --

12 MR. BOWERS: Anything aside from Freedom Books.

13 THE COURT: Aside from Freedom Books. And her beliefs  
14 are irrelevant.

15 Okay. I've been expecting an objection for -- you've  
16 actually got quite far without getting one from the Government.

17 MR. BOWERS: Um, can I request a sidebar to discuss  
18 this issue further with the Court then?

19 THE COURT: No.

20 MR. BOWERS: I apologize. I thought we had resolved  
21 this issue.

22 THE COURT: I don't think we need to.

23 MR. BOWERS: No? Okay.

24 BY MR. BOWERS:

25 Q. Were you ever presented with -- well, let me ask you this:

1 Did you when you worked at Freedom Books engage in conversations  
2 with other employees that weren't strictly about office  
3 procedure or policies?

4 A. Yes.

5 Q. Uh, did any of those conversations discuss how -- and I'm  
6 not asking for the content of -- of this answer [sic]. I'm just  
7 asking if these occurred -- were there any discussions about  
8 theories of taxation that -- that would be termed  
9 "nontraditional" in the use at Freedom Books?

10 A. Yes.

11 Q. Um, is it fair to say that that would be a relatively common  
12 topic of conversation at Freedom Books?

13 A. Yes.

14 Q. In other words, people talked about what they thought about  
15 the Tax Code?

16 A. Yes.

17 Q. Was there an exchange of ideas about that process?

18 A. Yes.

19 Q. Did people report that they had studied this and came to  
20 conclusion "X"?

21 MR. NEIMAN: I'm gonna object to relevance.

22 THE COURT: What is the relevance?

23 MR. BOWERS: Your Honor, my -- my position is that  
24 Freedom Books is -- is a place where people had the opportunity  
25 to explore different theories of taxation with all sorts of

1 other people who shared those beliefs. It's not a place where  
2 people were confronted by a lot of people who didn't believe  
3 this information. And, as a result of that, some of the people  
4 that worked there or all of the people that worked there formed  
5 beliefs similar to why we're here now.

6 And I -- and I have to point out, since I'm having to  
7 do this on the record, that, you know, Ms. Mitchell would --  
8 would qualify based on her testimony as an -- as an unindicted  
9 immunized coconspirator. And, you know, certainly what her  
10 thoughts and conduct were at the time that's salient to the  
11 alleged conspiracy charge have to be relevant.

12 MR. NEIMAN: Your Honor, it would be the position of  
13 the Government that it needs to be tied in somehow to the  
14 conduct of these defendants. If they can't -- otherwise, it is  
15 irrelevant to the case before us.

16 MR. BOWERS: Well, I think it's tied into the conduct  
17 of his defendants as each and every one of these defendants is  
18 linked in the Government's indictment to a conspiracy that is  
19 directly related to what the beliefs were at the time.

20 THE COURT: Well, the idea that this is a -- is a place  
21 of higher learning, as you imply, where various theories are  
22 discussed is a little bit of a stretch in my mind.

23 MR. BOWERS: Well, your Honor, please let me be clear.  
24 I -- I wouldn't use the phrase "higher learning." I would  
25 simply argue that this is a community or a place where these

1 ideas were not challenged. It was encouraged to develop  
2 nontraditional ideas. And that -- that's the basis of how some  
3 of this came about.

4 THE COURT: Well, I think -- I think it's far from --  
5 from relevant and I think it's a stretch. But I'll allow you to  
6 elicit questions on whether their discussions were challenged.

7 MR. BOWERS: Thank you, your Honor.

8 I forgot what my last question was. I don't know if it  
9 was answered or I need to re-ask something different.

10 THE COURT: You need to ask a different question  
11 anyway.

12 MR. BOWERS: Thank you, Judge.

13 BY MR. BOWERS:

14 Q. So, when you were at Freedom Books and you or other people  
15 engaged in these discussions about what we're going to call  
16 "nontraditional taxation theories," were those ideas challenged?

17 A. They were discussed. Were they challenged by who?

18 Q. By -- by nonbelievers.

19 MR. NEIMAN: Objection to the -- the phrase --

20 MR. BOWERS: By -- let me rephrase, please. I'm sorry.

21 BY MR. BOWERS:

22 Q. By people not associated with Freedom Books.

23 A. Yes.

24 Q. Okay. What I'm getting at is: Did you feel that you were  
25 part of a community that was different from other people?

1 A. I believed I was part of a cause.

2 Q. Thank you.

3 Um, just briefly in conclusion, I -- I wanna make sure  
4 that the following is true which is: You -- you never saw Larry  
5 Cohen do anything to -- to lead you to believe that he wasn't  
6 sincere about his -- his thoughts on nontraditional taxation?

7 A. No, I did not.

8 Q. You never heard Larry say anything that led you to believe  
9 that he wasn't sincere in his beliefs on nontraditional  
10 taxation?

11 A. No, I did not.

12 Q. And you have no reason to believe that Larry shared in the  
13 profits of Freedom Books?

14 A. I -- I don't.

15 Q. Thank you, Ms. Mitchell. Have a nice day.

16 MR. NEIMAN: Your Honor, if I may redirect.

17 THE COURT: Redirect, yes.

18 MR. NEIMAN: I'll try and be brief.

19

20 REDIRECT EXAMINATION

21 BY MR. NEIMAN:

22 Q. Ms. Mitchell, when did you stop working at Freedom Books?  
23 Approximately what year?

24 A. Oh, it was the year that the raid happened. Was that '03?

25 Q. 2002 or 2003?

1 A. Whenever -- whenever the raid was. I'm not --

2 Q. All right.

3 A. -- positive of the year.

4 Q. Have you ever heard of a business run by the name of  
5 "Consults By Five"?

6 A. Doesn't sound --

7 MR. CRISTALLI: Objection. Beyond the scope of direct  
8 examination and cross-examination.

9 THE COURT: What is the relationship to direct or  
10 cross?

11 MR. NEIMAN: Consults By Five was activities of  
12 Mr. Cohen while working at Freedom Books where he engaged in  
13 a -- prepared returns out -- similar to the zero returns, in  
14 essence.

15 THE COURT: Okay. I'll allow it because there was  
16 cross-examination about his activity and her knowledge of  
17 activity at the office.

18 BY MR. NEIMAN:

19 Q. Do you know what Consults By Five is?

20 A. I do not.

21 Q. Do you know what Larry Cohen did when you were not at the  
22 Freedom Books bookstore?

23 A. I don't.

24 Q. Have you ever heard of the name Jason Cardiff?

25 A. No, I don't believe.

1 Q. How about Virginia Olen?

2 A. No.

3 Q. You also said something about, uh -- talked about the  
4 frivolous letter. Was the frivolous letter that we were  
5 referring to was that mentioned from The Federal Mafia?

6 A. In The Federal Mafia it was not.

7 Q. Do you know whether or not there were updated or revisions  
8 or new editions of The Federal Mafia produced while you were  
9 working at Freedom Books?

10 A. No. Other than --

11 MR. BOWERS: I'm gonna object to relevance, your Honor.

12 THE COURT: The relevance of whether Federal Mafia was  
13 updated?

14 MR. BOWERS: Well, the relevance of whether -- whether  
15 that was included in The Federal Mafia or if it was updated.  
16 She didn't say that the disclosure at Freedom Books or the  
17 possible frivolous penalty was tied to The Federal Mafia.

18 THE COURT: Well, I thought -- I'm pretty sure we  
19 discussed the frivolous letter at great length and where she got  
20 it from, so -- she said she copied it --

21 MR. BOWERS: Thank you, your Honor.

22 THE COURT: -- word for word out of the -- out of the  
23 book. So it's --

24 MR. NEIMAN: The attachment was copied word for word  
25 from the book. The frivolous letter, I believe, wasn't in --

1 THE COURT: Oh. The IRS frivolous letter?

2 MR. NEIMAN: The IRS frivolous letter.

3 THE COURT: Yeah. I'll allow it. There's considerable  
4 questioning, particularly by Mr. Schiff, about the frivolous  
5 letter. Allowed.

6 BY MR. NEIMAN:

7 Q. Do you know whether or not additional -- or new additions or  
8 new versions of The Federal Mafia were ever created or up- --  
9 updated, I guess, so to speak?

10 A. It was updated one time.

11 Q. And do you know whether or not that new updated -- update  
12 include any mention of the frivolous letter?

13 A. Not in The Federal Mafia itself, no.

14 Q. Not in the new editions either?

15 A. No. Only in the Schiff Reports.

16 Q. Ms. Mitchell, Mr. Schiff, uh, in his two-page attachment  
17 cites a bunch of cases, does he not?

18 A. Yes, he does.

19 Q. And, correct me if I'm wrong, but is it not your testimony  
20 that you only read portions of those --

21 A. That's correct.

22 Q. -- those cases?

23 And did he cite you to any cases at which he -- his  
24 position was being rejected?

25 MR. CRISTALLI: Objection. This is leading.

1 THE COURT: The question was: Did he cite you to any  
2 citations at which his position was being rejected? That is not  
3 leading. Overruled.

4 BY MR. NEIMAN:

5 Q. Did he?

6 A. No, he didn't.

7 MR. NEIMAN: If I may have a moment, your Honor.

8 THE COURT: You may.

9 BY MR. NEIMAN:

10 Q. If I could -- one of the cases cited in The Federal Mafia  
11 two-page attachment, I believe, is United States v. -- is United  
12 States v. Long --

13 A. Yes.

14 Q. -- cited on the two-page attachment?

15 Did Mr. Schiff ever refer you to the portion of the  
16 case of United States v. Long which said that we --

17 MR. CRISTALLI: Objection. Leading.

18 BY MR. NEIMAN:

19 Q. -- do not wish to encourage the type --

20 MR. CRISTALLI: Objection. Leading.

21 THE COURT: Well, why -- it's a question whether he  
22 referred her to part of the Long case. What is leading about  
23 that?

24 MR. CRISTALLI: I'm sorry, your Honor?

25 THE COURT: He hasn't even finished the question. How

1 can you object to leading when he hasn't finished the question?

2 MR. CRISTALLI: I think it's a leading question.

3 THE COURT: I'm gonna allow the question.

4 Go ahead.

5 MR. SCHIFF: I object to the question. I was not able  
6 to get into the Long case with her; I don't understand why the  
7 Government can.

8 THE COURT: The question was whether he referred you to  
9 part of the Long case.

10 MR. SCHIFF: I wanted to get into the Long case and you  
11 wouldn't let me.

12 THE COURT: What is the relevance of the question?

13 MR. NEIMAN: Your Honor, Mr. Schiff failed to cite in  
14 his book or in any other attachments the complete law --

15 MR. CRISTALLI: Your Honor --

16 MR. NEIMAN: -- the complete case.

17 MR. CRISTALLI: In all due respect, in terms of the  
18 speaking objections, um, I would like the Court to limit them to  
19 a certain extent in front of the jury as it becomes  
20 argumentative -- or argument.

21 THE COURT: I think -- I think the -- the question is  
22 adequate. He did not cite her to the Long case. Was that --  
23 was that your question?

24 MR. NEIMAN: I -- I would just wanna inquire whether or  
25 not Ms. Mitchell was ever referred to by Mr. Schiff a portion of

1 the Long case.

2 THE COURT: And that's -- that's as far as I'm gonna  
3 allow you to go with that question.

4 MR. NEIMAN: Not referring to -- you don't want her to  
5 refer -- okay.

6 THE COURT: You don't need to refer to it. The  
7 question is: Was she aware of it? Did she read it?

8 BY MR. NEIMAN:

9 Q. Did you read the entire -- the entire case?

10 A. I did not read the entire case.

11 Q. Did Mr. Schiff show you any -- did Mr. Schiff ever direct  
12 your attention to the entire case?

13 A. No, he did not.

14 Q. How about the second case mentioned in the two-page  
15 attachment, I believe, is United States v. Kimball, did you read  
16 that entire case?

17 A. I did not.

18 Q. Did Mr. Schiff ever refer you to the entire case?

19 A. No, he did not.

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

22 BY MR. NEIMAN:

23 Q. Ms. Mitchell, on cross-examination Mr. Schiff asked you, uh,  
24 if you're aware whether or not he publicly offered to pay anyone  
25 who can cite Code sections requiring an individual to file a tax

1 return. Do you recall that question?

2 A. I do.

3 Q. Did Mr. Schiff ever tell you about a lawyer who sued him to  
4 try and collect on that promise?

5 MR. CRISTALLI: Objection. This is leading. The  
6 question should have stopped about whether or not she heard  
7 about the lawyer. I mean, now we're going to get into a leading  
8 about what the issue is about.

9 MR. BOWERS: Well, I'm gonna just gonna object as well  
10 on the grounds of relevance, your Honor.

11 THE COURT: Well, it's not leading. The question is  
12 did he ever tell her about a lawyer that sued him on that  
13 promise. It was brought up. He used -- he brought it out.

14 MR. CRISTALLI: Yeah.

15 THE COURT: He brought it out several times. And so  
16 it's relevant --

17 MR. CRISTALLI: I don't --

18 THE COURT: -- ripe for cross-examination.

19 MR. CRISTALLI: I don't -- I don't disagree that that  
20 portion of the question is not leading. I agree. But I think  
21 the continuation of that question will be leading.

22 MR. SCHIFF: Your Honor, if I can -- she doesn't know  
23 all the facts. I'm gonna take the stand. Why doesn't he  
24 cross-examine me about that case?

25 THE COURT: Well, you may or may not take the stand.

1 He's not going to bank his -- his case on you taking the stand.

2 He doesn't have to. He has a right to ask her because --

3 MR. SCHIFF: Okay.

4 THE COURT: -- you raised it.

5 MR. SCHIFF: I raised it?

6 THE COURT: You raised the \$5,000 offer.

7 MR. SCHIFF: Okay.

8 THE COURT: That's been discussed many times. It's  
9 ripe for cross-examination.

10 MR. SCHIFF: Oh, okay.

11 THE COURT: And I don't think she's answered the  
12 question --

13 MR. SCHIFF: Okay.

14 THE COURT: -- yet.

15 BY MR. NEIMAN:

16 Q. Did he ever tell you -- do you need me to repeat the  
17 question now, Ms. Mitchell?

18 A. No, I don't.

19 I -- I was aware that there was somebody. He did -- he  
20 did mention it, but not the details of it.

21 Q. Did he ever tell you that the -- that he -- did he ever tell  
22 you -- excuse me -- that the Court found his argument --

23 MR. CRISTALLI: Objection. This is leading.

24 BY MR. NEIMAN:

25 Q. -- in that case to be --

1 MR. CRISTALLI: I have --

2 MR. NEIMAN: May I finish the question --

3 THE COURT: Let him --

4 MR. NEIMAN: -- before we know --

5 THE COURT: -- finish the question.

6 MR. NEIMAN: -- whether or not it's leading or not?

7 THE COURT: Let counsel finish the question.

8 BY MR. NEIMAN:

9 Q. Did Mr. Schiff ever tell you that the Court found in that  
10 case his argument to be blatant nonsense --

11 MR. CRISTALLI: Your Honor, with all due --

12 BY MR. NEIMAN:

13 Q. -- but that Schiff's offer had expired before the lawyer had  
14 accepted it?

15 THE COURT: It's not leading. It calls for a yes-or-no  
16 answer.

17 MR. CRISTALLI: It's -- it's argument. He's arguing a  
18 point to this particular witness.

19 THE COURT: Well --

20 MR. BOWERS: Or at least --

21 THE COURT: -- she --

22 MR. BOWERS: -- testifying about it.

23 THE COURT: -- she has spent the better part of six  
24 hours talking about her good faith beliefs and that she never  
25 saw anything to contradict that. At least that's -- that's what

1 has been elicited. And now it's open. You opened the door.

2 BY MR. NEIMAN:

3 Q. Did he ever tell you that?

4 A. No.

5 Q. You also cite in that two-page attachment to a case -- I  
6 believe it's called Doyle v. Mitchell Bros. Co.

7 A. Yes.

8 Q. And do you know what year that case is from?

9 A. I don't.

10 Q. If you -- do you have your attachment in front of you up  
11 there, Government's Exhibit 5?

12 A. (Looking through documents.)

13 Which one was that? Page 2 of the attachment?

14 Q. Doyle v. Mitchell Bros. Co.?

15 A. Yes, Doyle v. --

16 Q. Do you know what year that case -- excuse me? I don't mean  
17 to talk over the witness.

18 A. Doyle v. Mitchell.

19 Q. Yes. Do you know what year that case was from?

20 A. No.

21 Q. Did Mr. Schiff ever tell you that that case was from 1918  
22 and interpreting --

23 MR. CRISTALLI: Objection.

24 BY MR. NEIMAN:

25 Q. -- the Corporate Excise Tax of 1909?

1 A. I believe I --

2 THE COURT: Objection is noted and overruled.

3 THE WITNESS: I believe when I would look it up I would  
4 see the year. I knew some of them were very old.

5 BY MR. NEIMAN:

6 Q. But did he ever tell you that it dealt with the Corporate  
7 Excise Tax of 1909?

8 A. I -- I believe so. I'm not positive.

9 Q. Do you happen to know --

10 MR. CRISTALLI: Objection. Leading and testifying.

11 THE COURT: Overruled.

12 BY MR. NEIMAN:

13 Q. Do you know what year the amendment to the Constitution  
14 which allowed the income tax to the United States to be  
15 instituted was?

16 MR. CRISTALLI: Objection. Argumentative.

17 THE COURT: Overruled.

18 THE WITNESS: Significantly later. That much I know.

19 THE COURT: What? What was your --

20 THE WITNESS: It was later. It was later than that  
21 actual case.

22 BY MR. NEIMAN:

23 Q. Do you know if the portions of the Long case or the Kimball  
24 case or the Doyle case, which we just talked about, that were  
25 cited in the two-page attachment supported or rejected the

1 positions of Mr. Schiff?

2 A. Only by the portions that are indicated in the attachment.

3 That's all --

4 Q. So you don't --

5 A. -- I read.

6 Q. -- know whether the portions not indicated whether or not  
7 they support or --

8 A. I don't know --

9 Q. -- reject?

10 A. -- that.

11 Q. Ms. Mitchell, did you read the entire Code of the United --  
12 Internal Revenue Code?

13 A. No, I did not.

14 MR. CRISTALLI: Objection. Relevancy. I'm not quite  
15 sure anybody in this courtroom has ever read the entire IRS  
16 Code.

17 THE COURT: Well, it's relevant because she has  
18 purported to have done her own research and he is entitled to  
19 test the amount of research and her knowledge that supposedly  
20 supports the beliefs.

21 MR. CRISTALLI: The entire --

22 MR. BOWERS: I'm sorry --

23 MR. CRISTALLI: -- code?

24 MR. BOWERS: -- though, your Honor. I was -- we were  
25 limited at being able to explore where that -- how much research

1 she had --

2 THE COURT: You were --

3 MR. BOWERS: -- done on her own.

4 THE COURT: -- you were limited insofar as the  
5 Government made objections. But you got in a lot that wasn't  
6 objected to and you opened the door.

7 MR. BOWERS: Thank you, your Honor.

8 BY MR. NEIMAN:

9 Q. Ms. Mitchell, you said -- did you not testify that you have  
10 abandoned -- I think your word was "abandoned" -- the followings  
11 or the advice of Mr. Schiff? Is that not what you said?

12 A. Yes.

13 Q. Uh, Ms. Mitchell, are you aware of whether or not the IRS  
14 disagrees with your positions? Did you receive -- let me, I  
15 guess, stop right there and let you answer that question.

16 A. The positions that I had previously taken?

17 Q. Yes.

18 A. They had sent me letters saying that the -- the arguments  
19 and the issues that I was raising were meritless.

20 Q. And how about the courts? Were you aware of whether or not  
21 the Court's had disagreed with your positions?

22 A. Not based on the responses from --

23 THE COURT: I'm sorry.

24 THE WITNESS: Well, they said that the courts have  
25 deemed them meritless. That was the only thing they said.

1 BY MR. NEIMAN:

2 Q. How about by your own personal dealings? Did you sue --

3 A. Yes.

4 Q. -- the United States?

5 And was your position --

6 A. Dismissed.

7 Q. -- did the United States court disagree with your  
8 position --

9 A. Dismissed.

10 MR. CRISTALLI: Objection. Leading.

11 THE COURT: Overruled.

12 THE WITNESS: It was -- it was dismissed as meritless,  
13 yes.

14 MR. NEIMAN: I have nothing further, your Honor.

15 MR. SCHIFF: I....

16

17 RE-CROSS-EXAMINATION

18 BY MR. SCHIFF:

19 Q. In connection with that lawsuit against me, were you aware  
20 that I had made an offer on CBS Overnight that that offer  
21 resulted in my being on television, CBS Overnight, and I offered  
22 to pay a hundred thousand to anybody who would call the show and  
23 produce any statute that stated persons were required to file a  
24 tax return? You were aware that that was my offer?

25 A. Yes.

1 Q. You were aware? Okay.

2 Incidentally, that's in a lot of -- were you aware that  
3 that case is now in a lot of law books?

4 A. No. I'm --

5 MR. NEIMAN: Objection. Relevance.

6 THE COURT: What -- what case is in --

7 MR. SCHIFF: It's in a lot of law books.

8 THE COURT: -- law books?

9 MR. SCHIFF: It's a unilateral contract. It's in  
10 Robertson Jail, as a matter of fact. They got a big kick. The  
11 textbook that they were using they were using showing that a  
12 uni- -- unilateral offer has to be accepted as given. Before  
13 that they used some nine -- 1850 case. They now use that case.  
14 Okay.

15 BY MR. SCHIFF:

16 Q. Were you aware --

17 THE COURT: I'm gonna give you, you know, a limit on  
18 how much time you spend, so --

19 MR. SCHIFF: I'm gonna go two minutes on this.

20 THE COURT: -- so don't waste it on --

21 MR. SCHIFF: The point is -- here's what happened.

22 BY MR. SCHIFF:

23 Q. Were you aware that --

24 THE COURT: Ten minutes you have.

25

1 BY MR. SCHIFF:

2 Q. Were you aware that when he responded he called CBS the next  
3 day and they told him that he had to call while I was on the  
4 air?

5 A. I was not aware of that.

6 Q. Were you aware that the sections he cited -- if I can recall  
7 this. I'll get the case -- Sections 1 -- Sections -- I asked  
8 for the section that required the filing of a tax return. He  
9 said Section 1, Section 61, 62 -- he cited five different  
10 sections, including 6012. Were you aware of that?

11 MR. NEIMAN: I'm gonna object on hearsay and --

12 MR. SCHIFF: I'll bring the case in.

13 BY MR. SCHIFF:

14 Q. Were you aware --

15 THE COURT: Just answer whether you were aware or not.

16 MR. SCHIFF: Okay.

17 THE WITNESS: I was not -- I'm not aware of the details  
18 of that --

19 BY MR. SCHIFF:

20 Q. Okay.

21 A. -- conversation.

22 Q. Were you aware that none of those sections said you had  
23 to -- you were required to file a tax return?

24 A. I was aware of that, yes.

25 Q. The closest section would have been 6012 which said "who

1 shall file."

2 MR. NEIMAN: Objection, your Honor.

3 BY MR. SCHIFF:

4 Q. So, were you aware that none of the sections --

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. -- that none of the sections he put in that letter said  
8 anybody's required to file?

9 MR. NEIMAN: Objection. She's already said she wasn't  
10 aware of the details of this -- of this --

11 THE COURT: Sustained.

12 MR. NEIMAN: -- letter.

13 MR. SCHIFF: Yeah. But you questioned her on it.  
14 Okay. I'll bring --

15 THE COURT: She already --

16 MR. SCHIFF: -- I'll bring the case in --

17 THE COURT: -- answered --

18 MR. SCHIFF: -- tomorrow.

19 THE COURT: -- she's not aware.

20 BY MR. SCHIFF:

21 Q. The fact of the matter is I won the case.

22 THE COURT: No, no. You're testifying now.

23 MR. SCHIFF: I'm sorry.

24 BY MR. SCHIFF:

25 Q. Were you aware that I won the case at the trial level?

1 A. I was not really aware of the details of the case only. I  
2 only --

3 Q. Okay.

4 A. -- heard about it.

5 Q. On appeal, were you aware I won the appeal?

6 A. Again, I was --

7 Q. Were you aware that that cause cost me about --

8 THE COURT: Let --

9 BY MR. SCHIFF:

10 Q. -- 17 --

11 THE COURT: -- let her answer. Let her answer.

12 BY MR. SCHIFF:

13 Q. Were you aware that two other lawyers have sued me in  
14 connection with my hundred-thousand-dollar offer?

15 A. No, I was not aware of that.

16 Q. Yeah. I won every one of those cases.

17 MR. NEIMAN: Objection.

18 THE COURT: Sustained.

19 MR. NEIMAN: And ask to strike --

20 THE COURT: Strike.

21 MR. NEIMAN: -- it as well.

22 MR. SCHIFF: Okay.

23 BY MR. SCHIFF:

24 Q. The point is: Were you --

25 THE COURT: Don't make a --

1 BY MR. SCHIFF:

2 Q. -- aware --

3 THE COURT: -- point.

4 BY MR. SCHIFF:

5 Q. -- that everything --

6 THE COURT: You ask questions.

7 BY MR. SCHIFF:

8 Q. Okay. Next question is: Were you aware that there's  
9 absolutely nothing in the Kimball and Long case [sic] that  
10 contradicts what I told you?

11 A. Sorry?

12 Q. Absolutely nothing. I mean, you --

13 A. What's the question?

14 Q. The U.S. Attorney was trying to suggest to you --

15 THE COURT: Let her answer the question.

16 BY MR. SCHIFF:

17 Q. -- that there was something contrary to what I told you in  
18 either of those two cases. Were you aware that there is nothing  
19 in those cases that are contrary to what I said?

20 A. I was not aware that there was anything contrary. I've  
21 already testified that I only read portions of the case. So I  
22 can't testify to the portions that --

23 Q. Were you aware --

24 A. -- I didn't read.

25 Q. -- if you read the whole case --

1 THE COURT: Will you let her finish her answer --

2 MR. SCHIFF: I'm sorry.

3 THE COURT: -- please.

4 THE WITNESS: I'm sorry. I can't testify to the  
5 portions of the case that I didn't read; I can only testify to  
6 the portions that I did. There wasn't anything in the portions  
7 that I did read that were contrary to the -- to the beliefs that  
8 you had.

9 BY MR. SCHIFF:

10 Q. Also, the Government asked you if I -- if I changed my -- if  
11 I edited the book to take into consideration certain changes in  
12 the law.

13 A. Yes.

14 Q. How did I try to amend what was in my book? I --

15 MR. NEIMAN: Objection. Speculation.

16 MR. SCHIFF: All right.

17 BY MR. SCHIFF:

18 Q. Were you aware that it's very costly to change a book?

19 MR. NEIMAN: Objection. Relevance and...

20 BY MR. SCHIFF:

21 Q. How did I attempt, as far as you know, to change or to  
22 improve what was in my book?

23 A. I testified previously that you -- you made the Schiff  
24 Reports, the audiotapes to extend the information contained in  
25 The Federal Mafia.

1 Q. Also, were you aware that when I wrote the book I didn't  
2 even know about these frivolous letters?

3 A. Yes.

4 Q. Were you aware that I was filing myself zero returns? It  
5 was common knowledge in the office that I was filing zero  
6 returns.

7 A. Yes.

8 Q. Did I ever get a frivolous letter to your knowledge?

9 A. I don't believe so.

10 Q. I got one.

11 Did the Government ever send me a deficiency notice?

12 A. I -- I don't know.

13 Q. But it was common knowledge --

14 THE COURT: Mr. Schiff --

15 BY MR. SCHIFF:

16 Q. -- the office.

17 THE COURT: Mr. Schiff, you're really hurting yourself.

18 MR. SCHIFF: I'm sorry. All right. No --

19 THE COURT: You're hurting yourself. You know, if --

20 if --

21 MR. SCHIFF: Sometimes I can't hear. My --

22 THE COURT: You know, you're volunteering. You're  
23 testifying and volunteering information that is harmful to -- to  
24 your case.

25

1 BY MR. SCHIFF:

2 Q. Let me ask --

3 THE COURT: I -- I have to --

4 BY MR. SCHIFF:

5 Q. -- one more question.

6 THE COURT: -- I have to -- you know, it adds weight to  
7 what counsel has said about your ability to handle your own  
8 case. You just made an admission.

9 MR. SCHIFF: That what?

10 THE COURT: That you had received information from the  
11 IRS that your return was frivolous.

12 MR. SCHIFF: But -- but I didn't believe it was  
13 frivolous.

14 THE COURT: Well --

15 MR. SCHIFF: That's --

16 THE COURT: You just --

17 MR. SCHIFF: I got one letter --

18 THE COURT: You admitted --

19 MR. SCHIFF: -- saying it was frivolous.

20 THE COURT: -- you received notice. Now, you know,  
21 that's -- that's what we're talking about here.

22 MR. SCHIFF: It didn't say it was illegal. It said  
23 frivolous.

24 BY MR. SCHIFF:

25 Q. Okay. Let me ask --

1 THE COURT: Let's move on. I'm --

2 MR. SCHIFF: All right. I'll --

3 THE COURT: -- just warning --

4 MR. SCHIFF: -- take two more questions.

5 THE COURT: -- you to watch your questions.

6 MR. SCHIFF: All right.

7 BY MR. SCHIFF:

8 Q. You said you claimed exempt on the W-4. Did you stop the  
9 withhold --

10 MR. NEIMAN: Beyond the scope of --

11 MR. SCHIFF: I --

12 MR. NEIMAN: -- redirect.

13 MR. SCHIFF: -- I withdraw. I withdraw the question.

14 BY MR. SCHIFF:

15 Q. Toni, did I ever question you as to what you were doing with  
16 your own taxes?

17 A. Did --

18 Q. Do you recall?

19 A. -- did you ever question me?

20 Q. Yeah.

21 A. In regards to how I was answering --

22 Q. Yeah. How --

23 A. -- or...

24 Q. -- whether you were paying, not paying.

25 A. No, not specifically. I usually came to you with questions.

1 Q. Did -- did you ever see me in the office question any of my  
2 employees as to what they were doing, if they were reporting or  
3 not reporting what I was paying them?

4 A. No.

5 Q. In other words, what they were -- in other words, did you --  
6 you never heard me discuss what they were doing with their own  
7 personal returns?

8 A. Not unless they approached you with questions.

9 Q. In other words, it was none of my business, as far as I was  
10 concerned, what they were doing with the money I was paying  
11 them?

12 A. I don't know why specifically you wouldn't have asked them,  
13 but that's your opinion.

14 Q. Yeah. But you never heard me ask anybody, including  
15 yourself?

16 A. No, not directly.

17 Q. Let me just get one more question here.

18 'Cuz I heard you said you claimed exempt. You stopped  
19 the withholding of taxes from your pay. Did you -- did you do  
20 that?

21 A. Yes.

22 Q. Did it ever come a time where the IRS wrote to your employer  
23 telling them not to honor your W-4?

24 A. Yes.

25 Q. Okay. Based upon -- when you claimed exempt, why did you

1 claim exempt?

2 A. Because I believed I didn't have a liability for the income  
3 tax so I didn't want the withholding tax to come out which  
4 ultimately got...

5 Q. Was there a section of the law that you believed authorized  
6 you to claim exempt?

7 MR. NEIMAN: Your Honor, objection. Beyond of scope of  
8 redirect.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. Did you believe you were entitled to claim exempt?

12 THE COURT: Mr. Schiff --

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

14 THE COURT: -- the objection --

15 MR. SCHIFF: I didn't hear.

16 THE COURT: -- has been sustained. It wasn't gone into  
17 on redirect. You're not allowed to go into it.

18 MR. SCHIFF: I didn't know. Okay.

19 THE COURT: Now, Mr. Schiff, I've mentioned to you  
20 already that you had 10 minutes.

21 MR. SCHIFF: Okay.

22 BY MR. SCHIFF:

23 Q. Let me --

24 THE COURT: And you're well beyond that.

25 MR. SCHIFF: All right.

1 BY MR. SCHIFF:

2 Q. I think there was a question asked of you that the  
3 information didn't seem to work.

4 A. Yes.

5 Q. Was that correct?

6 A. Yes.

7 Q. In your opinion, was that because you were violating the  
8 law --

9 MR. NEIMAN: Objection.

10 BY MR. SCHIFF:

11 Q. -- and it didn't work?

12 MR. NEIMAN: Relevance.

13 THE COURT: Sustained.

14 MR. NEIMAN: Amongst others.

15 MR. SCHIFF: Was that objection sustained?

16 THE COURT: It was.

17 MR. SCHIFF: Thank you.

18 I'll bring that case in from the lawyers.

19 THE COURT: Mr. Cristalli, do you wish to recross?

20

21 RE-CROSS-EXAMINATION

22 BY MR. CRISTALLI:

23 Q. Ms. Mitchell, the activities that you were doing, do you --  
24 did you think that they were meritless?

25 A. No.

1 MR. CRISTALLI: No further questions.

2 THE COURT: Thank you.

3 Mr. Bowers.

4 MR. BOWERS: I have nothing more for this witness, your  
5 Honor. Thank you.

6 THE COURT: Thank you.

7 You may step down.

8 MR. NEIMAN: Your Honor, if Ms. Mitchell may also be  
9 excused as well as a witness.

10 THE COURT: Any objection to --

11 MR. BOWERS: Your Honor --

12 THE COURT: -- excusing the witness?

13 MR. BOWERS: -- I was gonna request that the Court  
14 leave her under subpoena in the event that I elect to call her  
15 in my case in chief. I -- I don't want to have a fight over  
16 that. You know, I have some difficulties with subpoena issues  
17 because of --

18 THE COURT: Right.

19 MR. BOWERS: -- the length here. So I'd appreciate  
20 that --

21 THE COURT: All right.

22 MR. BOWERS: -- indulgence of the Court.

23 THE COURT: You are still under subpoena. You will  
24 await further notice from the attorneys as to whether you'll be  
25 needed --

1 THE WITNESS: Yes, your Honor.

2 THE COURT: -- again.

3 Government's next witness.

4 MR. IGNALL: United States calls Ann Kennedy.

5 (Pause in the proceedings.)

6 MR. IGNALL: Your Honor, as Ms. Kennedy's coming in,  
7 the Government intends to introduce Exhibits 67 through 72 with  
8 Ms. Kennedy. Is there any objection? We can move those in now  
9 or --

10 THE COURT: Let's find out. 67 through 72,  
11 Mr. Cristalli.

12 MR. CRISTALLI: Court's indulgence.

13 MR. BOWERS: Your Honor, I need a moment to look at  
14 those exhibits, please.

15 THE COURT: Okay.

16 (Pause in the proceedings.)

17 MR. BOWERS: Your Honor, for clarification from the  
18 Government, it's my understanding you're seeking to introduce  
19 Exhibits 67 through 72; is that correct?

20 THE COURT: Correct.

21 MR. BOWERS: I have no objection to any of those  
22 exhibits, your Honor.

23 THE COURT: Cristalli?

24 MR. CRISTALLI: We don't have an objection, your Honor.

25 THE COURT: Mr. Schiff, any objection to Proposed 67

1 through 72?

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

4 MR. SCHIFF: No, I have no objection.

5 THE COURT: That's all right. Are you okay?

6 (Pause in the proceedings.)

7 (Ann Kennedy takes the witness stand.)

8 THE COURT: Will you take the oath?

9 THE WITNESS: Yes.

10 THE CLERK: Please raise your right hand.

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

14 THE WITNESS: Yes.

15 THE CLERK: Please be seated.

16 THE COURT: For the record, 67 through 72 are admitted  
17 without objection.

18 MR. IGNALL: Thank you, your Honor.

19 (Government's Exhibit Nos. 67 through 72,  
20 received into evidence.)

21 THE CLERK: Please state for the record your full name  
22 and spell your last name.

23 THE WITNESS: Ann Kennedy, K-e-n-n-e-d-y.

24 Oh, am I supposed to do it here?

25 MR. IGNALL: You may want to speak into the microphone

1 a little closer.

2 THE CLERK: Just speak closer to it. That would be  
3 good.

4 THE WITNESS: Okay.

5 Do you want me to spell it again?

6 THE CLERK: Do you need her to spell it again?

7 THE REPORTER: No.

8

9 ANN KENNEDY,

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

12

13 DIRECT EXAMINATION

14 BY MR. IGNALL:

15 Q. Good afternoon, Ms. Kennedy.

16 A. Hi.

17 Q. Ms. Kennedy, where do you live currently? What -- what  
18 area?

19 A. Henderson, Nevada.

20 Q. How long have you lived in Henderson?

21 A. 13 years.

22 Q. Where did you move to be Henderson from?

23 A. Rhode Island.

24 Q. I'm sorry. I couldn't hear.

25 A. Rhode Island.

1 Q. And have you ever met Irwin Schiff?

2 A. Yes.

3 Q. Do you see Mr. Schiff here in the courtroom?

4 A. Yes.

5 Q. Could you identify him by what he's wearing?

6 A. He's...

7 Q. Is he the gentleman waving his hand?

8 A. Yes, that's him.

9 MR. IGNALL: Will the record reflect that the witness  
10 has identified --

11 THE COURT: Record will --

12 MR. IGNALL: -- Mr. Schiff?

13 THE COURT: -- reflect identification.

14 BY MR. IGNALL:

15 Q. Now, when did you first meet Mr. Schiff?

16 A. Uh, I -- I don't remember the year, but I think early  
17 '80s --

18 Q. Where were you --

19 A. -- in Rhode Island.

20 Q. -- living at the time?

21 A. In Rhode Island.

22 Q. How did you first meet Mr. Schiff?

23 A. He was a guest speaker at a -- I guess, a seminar that  
24 was --

25 Q. Ms. Kennedy, maybe you could speak up or speak a little

1 closer to the microphone.

2 THE COURT: Could you put that right over close to you?  
3 Give it a hard pull.

4 THE WITNESS: (Complies.)

5 THE COURT: There you go.

6 THE WITNESS: Okay. Oh, okay.

7 BY MR. IGNALL:

8 Q. It's a big courtroom, so it helps --

9 A. Um-hum.

10 Q. -- if you speak into the microphone --

11 A. Okay.

12 Q. -- and everyone can hear what you're saying.

13 A. Okay.

14 Q. I think the question was: When did you first have any  
15 contact with Mr. Schiff?

16 A. Uh, we went to a seminar back in Rhode Island and he was --  
17 there was a surprise speaker.

18 Q. Who is "we"?

19 A. I'm sorry. My husband and I.

20 Q. Okay. And what was this seminar about?

21 A. To learn how to not pay income tax -- or how to stop paying  
22 income tax.

23 Q. And who was the surprise speaker at this seminar?

24 A. Irwin Schiff.

25 Q. And what did Mr. Schiff talk about at that seminar?

1 A. How to stop paying income taxes. There was a book that, I  
2 guess, he was promoting at the time.

3 Q. Was the -- was the book available for sale?

4 A. Yes.

5 Q. Did you buy the book?

6 A. My husband bought the book.

7 Q. Okay.

8 A. So yes.

9 Q. All right. How did you file tax returns before you went to  
10 the seminar? What -- what status, marital status, did you use  
11 before going to the seminar in Rhode Island?

12 A. It would have been married.

13 Q. Filing jointly?

14 A. No.

15 Q. Did you and your husband file one return together?

16 A. Yes.

17 Q. Okay. All right. After you went to the seminar, did you or  
18 your husband change your tax filing status?

19 A. My husband did.

20 Q. To what?

21 A. Exempt.

22 Q. Okay. For whom did he work?

23 A. I don't remember the name of the company because he was a  
24 subcontractor --

25 Q. All right. Did you --

1 A. -- but...

2 Q. -- did you continue to file joint tax returns after going to  
3 this seminar?

4 A. No. It would be married filed separately.

5 Q. So you filed your own tax return?

6 A. Yes.

7 Q. Okay. Who were you working for at that time?

8 A. Uh, the State of Rhode Island.

9 Q. And were you having taxes withheld --

10 A. Yes.

11 Q. -- from your paycheck?

12 A. Yes.

13 Q. Did that change at any point?

14 A. Yes.

15 Q. When -- when was that?

16 A. Probably a couple of years later.

17 Q. After you went to the seminar?

18 A. Um-hum.

19 Q. What did you do to change that?

20 A. I changed my status to exempt.

21 Q. Why did you do that?

22 A. Because my husband -- um, it became a topic of conversation  
23 that if he were doing it and I was filing separately how would  
24 this look and on and on and on. So I gave in. Yes.

25 Q. And what were you and your husband relying on to file -- to

1 write down "exempt" on this Form W-4?

2 A. The -- I believe the information that was provided by  
3 Irwin's material.

4 Q. Okay. And, after you filed this exempt Form W-4 with the  
5 State of Rhode Island, what happened to your paycheck? Did it  
6 get bigger? smaller?

7 A. Oh, yes. It would be bigger, yes.

8 Q. Uh, did you file a tax return after -- after you filed --  
9 filled out this exempt Form W-4?

10 A. No.

11 Q. You did not file tax returns?

12 A. No, I did not.

13 Q. At some point, did the IRS ever catch up with you for this?

14 A. Yes.

15 Q. When was that?

16 A. I don't remember the year, but I remember the -- the form  
17 that they sent.

18 Q. Was this while you were still living in Rhode Island?

19 A. Um-hum. Yes.

20 Q. And what was the form that the IRS sent to you?

21 A. That your W-4 would -- was being examined, um, for the  
22 exempt status.

23 Q. Did the IRS ever try to collect any taxes that you and your  
24 husband owed while you lived in Rhode Island?

25 A. In Rhode Island they did.

1 Q. What did the IRS --

2 A. They placed --

3 Q. -- do?

4 A. -- a lien on our home.

5 Q. Did you ever have that -- that lien released from your home?

6 A. The lien was released when we sold the home because they  
7 collected on the lien.

8 Q. When you sold your home, where did you move to?

9 A. Las Vegas.

10 Q. Okay. Once you moved to Las Vegas -- you said you've been  
11 here about -- when did you first move to Las Vegas?

12 A. 1990.

13 Q. Since you've been in the Las Vegas area since 1990, have you  
14 had any contact with Mr. Schiff?

15 A. Yes.

16 Q. When was the first contact you had with Mr. Schiff here in  
17 the Las Vegas area?

18 A. I don't remember the year. But, um, I'm going to guess it  
19 was sometime in either '93 or '94.

20 Q. And what -- how did you first come into contact again with  
21 Mr. Schiff here in Las Vegas?

22 A. After I received a letter that, uh -- let me think -- again,  
23 my status was being examined.

24 Q. Were you -- were you -- where were you working when you  
25 moved to -- to the Las Vegas area?

1 A. When I moved here, I wasn't working anywhere.

2 Q. Did you start working at some point?

3 A. In 1993, I started working at the Hilton.

4 Q. Okay. What were you doing at the Hilton back in 1993?

5 A. I was a box office clerk.

6 Q. And were you having taxes withheld from your paycheck when  
7 you started working at the Hilton?

8 A. Yes.

9 Q. At some point, did you change that status?

10 A. Yes.

11 Q. When was that?

12 A. You want a date? I don't --

13 Q. Roughly.

14 A. -- I don't remember. I don't remember a date. I -- I  
15 remembered...

16 Q. How long after you had been working at the Hilton?

17 A. Not long --

18 Q. Within a year?

19 A. -- not very long. No, I don't think it was even a year.

20 Q. Okay. Had you had any contact with Mr. Schiff or heard from  
21 Mr. Schiff before changing your withholding status?

22 A. No.

23 Q. When did you first have contact with Mr. Schiff here in  
24 Las Vegas?

25 A. Oh, gosh. I -- I don't remember a year. I...

1 Q. Roughly. Were you already working at the Hilton at that  
2 point?

3 A. I would have been working at the Hilton. It was after I  
4 received the letter saying your exempt status is being looked  
5 into and we've ordered your employer to change my status.

6 Q. What did you do with that letter once you got it?

7 A. Well, I showed it to my husband --

8 Q. Okay.

9 A. -- and he said we will take it to Irwin.

10 Q. All right. How did you know that Irwin was in the Las Vegas  
11 area?

12 A. I don't know. But my husband somehow found out he was here.

13 Q. Did you take that letter down to Mr. Schiff?

14 A. Yes.

15 Q. And what did Mr. Schiff tell you when you brought that  
16 letter down there?

17 A. They can't do that.

18 Q. Where -- where exactly did you bring the letter? Do you  
19 know where the location was?

20 A. Street address? No.

21 Q. Was -- what city was it in?

22 A. Oh, Las Vegas.

23 Q. What was the name -- was -- was it a business?

24 A. It was -- yeah.

25 Q. What was the name of the business?

1 A. I don't know. Tax No More.

2 Q. Okay.

3 A. I -- I don't know. I don't remember the name.

4 Q. So you brought in this letter saying that -- that the IRS  
5 was telling your employer to start withholding taxes; correct?

6 A. Start withholding. I am now single with zero exemptions.

7 Q. Okay. And what did Mr. Schiff tell you when you brought  
8 that letter in?

9 A. They said they can't do that. But, of course, they did do  
10 that.

11 Q. All right. Did the IRS take any other action against you --

12 A. Eventually --

13 Q. -- after you --

14 A. Yes.

15 Q. -- got this first letter?

16 A. Yes. Eventually, yes, they did.

17 Q. What was the next thing the IRS did?

18 A. They attached my paycheck.

19 Q. Okay. Did you get a letter saying they were doing that?

20 A. Yes.

21 Q. Did you at any point speak to Mr. Schiff about this?

22 A. Yes.

23 Q. And what did Mr. Schiff say?

24 A. Oh, God. They can't do that.

25 Q. What did you say to him?

1 A. They did.

2 Q. When you went in with, uh, this letter, what did -- what, if  
3 anything, did Mr. Schiff offer to do?

4 A. Well, there -- there were, um -- there were pamphlets and  
5 tapes that my husband would -- articles he would be told to  
6 read, listen to. This is what you need to do. This is what you  
7 need to send.

8 Q. Were these products available for free or were they there  
9 for purchase?

10 A. Oh, no, no, no. Purchase.

11 Q. So Mr. Schiff offered to sell you things when you went in  
12 with these IRS letters? Did...

13 A. Well, by asking if you had it, that meant if you didn't have  
14 it you would have to buy it too. It wasn't free.

15 Q. All right. Did Mr. Schiff ask you if you had a particular  
16 product when you went in?

17 A. Yes. If it would pertain to what the article -- the --  
18 the -- this -- this particular -- my paycheck being attached,  
19 yes.

20 Q. And then what --

21 A. -- would you read this --

22 Q. -- did you tell him?

23 A. -- whatever --

24 MR. SCHIFF: Objection. Unless I can testify, this is  
25 all hearsay. Is it? She's testifying what I said.

1 THE COURT: No. She's being asked what -- what you  
2 told her to do. You are here in court.

3 MR. SCHIFF: But then I have to test- -- then I have to  
4 testify.

5 THE COURT: You can cross-examine her about the  
6 conversation.

7 MR. SCHIFF: Okay. So I can take the stand and  
8 cross-examine --

9 THE COURT: No, you can't take the stand.

10 MR. SCHIFF: Okay.

11 THE COURT: You can cross-examine her when it's your  
12 turn.

13 MR. SCHIFF: Okay.

14 BY MR. IGNALL:

15 Q. How many times did you go back to meet with Mr. Schiff after  
16 getting correspondence or some sort of notice from the IRS?

17 A. I -- I don't have a number. But it seemed every time we got  
18 something, whether it was that letter, um, your -- you're going  
19 to be levied, then you are levied, um, several times. I don't  
20 have a number. I don't --

21 Q. And what --

22 A. -- know.

23 Q. -- what happened each time you went in with the latest  
24 letter or notice?

25 A. Well, he would always ask if you had read or listened to

1 this series whatever, Series 3 and 4. Did you listen to this?  
2 Do you have this? This is what you need to do and...

3 Q. Were these series available for purchase?

4 A. Yes.

5 Q. All right. Did he recommend that you buy these series if  
6 you didn't have them?

7 A. Well, yes, because you needed to listen to the tape or have  
8 the material to send.

9 Q. Did you ever, uh -- I'd like to show you...

10 (Discussion between Mr. Ignall and  
11 Mr. Neiman.)

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

13 THE COURT: You may.

14 BY MR. IGNALL:

15 Q. I'd like to show you what we've marked as Government's  
16 Exhibit 67.

17 MR. IGNALL: And I believe this has been admitted, so  
18 can we --

19 THE COURT: It has.

20 MR. IGNALL: -- put this on the screen?

21 Your Honor, may I approach the witness with the rest of  
22 the exhibits --

23 THE COURT: You may.

24 MR. IGNALL: -- just to speed things up a little bit?

25 THE COURT: You may.

1 MR. IGNALL: Hum.

2 MR. NEIMAN: Is that somebody else's computer?

3 THE CLERK: No. That's the start-up screen because I  
4 had the projector turned off. But we've got a problem.

5 (Pause in the proceedings.)

6 (Document displayed in open court.)

7 MR. IGNALL: There we go.

8 BY MR. IGNALL:

9 Q. All right. Ms. Kennedy, would you look at what for you is  
10 the second page of Exhibit 67 --

11 A. Second after --

12 Q. -- which --

13 A. -- the blue page?

14 Q. -- may or may not be on the screen? Yeah, you can look at  
15 that. It hopefully is also on your screen there. But either  
16 one is fine.

17 Do you recognize this document?

18 A. Yes.

19 Q. What is this document?

20 A. This is a 1997 1040 --

21 Q. Okay.

22 A. -- return.

23 Q. And, uh, who filed that return? Is that your return?

24 A. That is mine.

25 Q. And, if you look at the second page, is that your signature?

1 A. Yes, it is.

2 Q. Okay. And if you look at the third and then the fourth  
3 page --

4 A. Wait a minute. Oh, God.

5 Q. -- is that an attachment that you included with your tax  
6 return?

7 A. Yes.

8 Q. Okay. If we go back to the first page of this tax return  
9 and we blow up the income area --

10 A. Oh, God. What did you do to me, Jimmy?

11 Q. -- if you look at line 7, did you write down zero there?

12 A. Oh, wait. Yes.

13 Q. Okay. It says, "Wages, salaries, tips." In 1997, did you  
14 have wages, salaries, and tips?

15 A. Yes.

16 Q. Did you have more than zero dollars in wages salaries, and  
17 tips?

18 A. Yes.

19 Q. Why did you write down zero on your 1997 tax return?

20 A. Because those were the instructions in the book.

21 Q. What book was that?

22 A. Give me a minute. The -- the, um -- I don't remember the  
23 name of the book, but it had the word "Mafia" on it.

24 Q. Okay. Does Federal Mafia sound familiar?

25 A. Thank you. Yes, that's it.

1 Q. Who wrote that book?

2 A. Irwin.

3 Q. Where did you buy that book?

4 A. My husband bought it from Irwin's store --

5 Q. Okay.

6 A. -- place of business.

7 (Document displayed in open court.)

8 BY MR. IGNALL:

9 Q. If I could turn your attention to Exhibit 68 --

10 A. Okay.

11 Q. -- and then go to the second page after that blue page --

12 A. Okay.

13 Q. -- do you recognize this document?

14 A. Yes.

15 Q. And, if I could blow up the income section on that first

16 page. Again, line 7, "Wages, salaries, tips, etc.," what --

17 what number did you put down there?

18 A. Zero.

19 Q. Were you working in the year 2000?

20 A. Yes.

21 Q. Did you have wages, salaries, and tips in 2000?

22 A. Yes.

23 Q. Did the amount of those wages, salaries, and tips exceed

24 zero?

25 A. Yes.

1 Q. Why did you write down zero on this year 2000 tax return?

2 A. Again, because the --

3 Q. I'm sorry. You have to speak to the microphone.

4 A. -- the sample in --

5 Q. Pardon me?

6 A. -- the sample that was in the book --

7 Q. Okay.

8 A. -- showed you this is what you needed to do.

9 Q. After filing these zero returns -- and let me back up.

10 Let's go ahead to the third page of this document.

11 (Document displayed in open court.)

12 THE WITNESS: Oh, third page.

13 BY MR. IGNALL:

14 Q. The third and fourth pages, a letter.

15 A. Okay, yes.

16 Q. Where did you get this two-page attachment?

17 A. There's a sample in the book and you just make a copy and...

18 Q. You put your name on it?

19 A. Right. Correct.

20 Q. All right. After you filed these zero returns, did you ever  
21 get any correspondence from the IRS about this?

22 A. Yes.

23 Q. What did you get from the IRS?

24 A. It was a penalty for filing a frivolous return.

25 Q. I'd like to turn your attention to what we've marked as

1 Exhibit 69.

2 (Document displayed in open court.)

3 BY MR. IGNALL:

4 Q. Do you recognize Exhibit 69?

5 A. That's it.

6 Q. That's what? I'm sorry.

7 A. That's -- that's the penalty for the frivolous return.

8 Q. All right. What's the date on this, uh, letter from the  
9 IRS? I believe it's...

10 A. "Tax period ending date" or the --

11 Q. No.

12 A. Oh, oh, oh. I see it. May 25th, 2001.

13 Q. And for what tax period is this? You jumped one ahead of  
14 me.

15 A. 12-31-2000.

16 Q. So this had to do with the 2000 return we looked at?

17 A. Correct.

18 Q. All right. When you got this letter, what did you do?

19 A. Well, I got mad. But my husband said, "Let's go and see  
20 Irwin."

21 Q. Did you go and see Irwin?

22 A. Yes.

23 Q. What happened when you went to see Irwin?

24 A. Well, Irwin says you can't -- they -- they can't do that.

25 Q. Who is "they"?

1 A. They, the IRS. They can't do that.

2 Q. What did you say when he told you that the IRS can't do  
3 that?

4 A. Apparently they did. I have a letter and they did. They  
5 are; they did.

6 Q. The IRS -- did Mr. Schiff say anything about what the IRS  
7 could or couldn't do?

8 A. Well, he said they can't do that.

9 Q. Yeah. Did he say anything else about other things that the  
10 IRS could or could not do?

11 A. I think there was something that we could send to them. Um,  
12 I don't remember exactly.

13 Q. Did you buy any products from Mr. Schiff in response to this  
14 letter?

15 A. I don't remember if at that time we did, but...

16 Q. At some time did you?

17 A. Sure. Yes.

18 Q. If I could turn your attention --

19 MR. CRISTALLI: Objection. Foundation. When did she  
20 buy it --

21 THE COURT: Further --

22 MR. CRISTALLI: -- related to this --

23 THE COURT: -- foundation.

24 BY MR. IGNALL:

25 Q. When did you buy products from Mr. Schiff?

1 THE COURT: She said it was not -- maybe not then but  
2 sometime later. That was the answer.

3 BY MR. IGNALL:

4 Q. Did you buy products from Mr. Schiff on more than one  
5 occasion?

6 A. Yes. My husband would buy something he thought was relevant  
7 to what Irwin told him to send.

8 Q. Did you ever buy products in response to correspondence or  
9 letters you got from the IRS?

10 A. Well, apparently when you subscribe to, say, there was a  
11 first-time that you did something, that dollar amount included  
12 constantly getting -- like, if you bought Series 1 or Series --  
13 Series 1 and 2, 3 and 4, then 5 and 6, and 7 and 8 were coming.  
14 And they -- they would correspond to whatever was happening. So  
15 the dollar amount was paid and then all the tapes weren't done  
16 at that time.

17 Q. I'd like to turn your attention to Exhibit 70, please.

18 (Document displayed in open court.)

19 BY MR. IGNALL:

20 Q. Do you recognize Exhibit 70?

21 A. Yes.

22 Q. What's the date on Exhibit 70?

23 A. 9-3-1999.

24 Q. And what is Exhibit 70?

25 A. It's a "FINAL NOTICE [OF] INTENT TO LEVY AND NOTICE OF YOUR

1 RIGHT TO A HEARING. PLEASE RESPOND IMMEDIATELY."

2 Q. Did you -- what did you do with this letter, if anything,  
3 once you got it?

4 A. Took it down to Irwin.

5 Q. And what did --

6 A. And there were --

7 Q. -- Mr. Schiff --

8 A. -- instructions on how to file that -- to respond to this,  
9 uh...

10 Q. When you brought this letter to Mr. Schiff, did he say  
11 anything about it?

12 A. Well, yes.

13 Q. What did he say?

14 A. They can't do that.

15 Q. Did you say anything to him when he said that?

16 A. It really didn't matter. But yes.

17 Q. What did you say?

18 A. They did.

19 Q. Okay.

20 A. They did do it.

21 Q. All right. After getting this Final Notice of Intent to  
22 Levy, did you take any action with the IRS?

23 A. Yes.

24 Q. What action did you take?

25 A. There was another form in there that allowed you to respond,

1 so that's Irwin's instructions. He has stuff that will tell you  
2 how to appeal for a due process -- is that what it's called? --  
3 due process something.

4 Q. These are instructions from something you purchased from  
5 Freedom Books?

6 A. They -- they probably were with one of the series tapes --

7 Q. Okay.

8 A. -- on how to fill out the due process form.

9 Q. And I'm gonna turn your attention to what we've marked as  
10 Exhibit 71.

11 (Document displayed in open court.)

12 THE WITNESS: Oh, God.

13 BY MR. IGNALL:

14 Q. Maybe we can highlight the top third of that in a moment.

15 Do you recognize this document?

16 A. Yes.

17 Q. What is this?

18 A. This is the form, the request for collection due process  
19 hearing. Oh...

20 Q. Okay. Did you fill this form out?

21 A. Yes.

22 Q. And about what time -- do you remember when, roughly, you  
23 filled this form out?

24 A. I guess the day it's dated.

25 Q. Okay. Was it shortly after getting the Notice of Intent to

1 Levy?

2 A. Yes.

3 Q. There's some tissues right there if you need.

4 THE COURT: Ma'am, would you like to take a moment to  
5 compose yourself?

6 THE CLERK: Do you need some water?

7 (Pause in the proceedings.)

8 THE WITNESS: Thanks. Okay. I'm sorry.

9 What was the question?

10 BY MR. IGNALL:

11 Q. I don't think there was a question till I ask the next one.

12 A. Oh.

13 Q. If I turn your attention about halfway down the page,  
14 there's some answers written in there. Do you recognize the  
15 handwriting there?

16 A. Yes.

17 Q. Whose handwriting is that?

18 A. Mine.

19 Q. And the first handwritten answer what -- what does that say?

20 A. "I do not believe I owe the tax."

21 Q. And what does the second handwritten answer say?

22 A. "I do not believe I owe the tax."

23 Q. And in whose handwriting is that?

24 A. Mine.

25 Q. And why did you write that in there?

1 A. Because I didn't know what to write and...

2 Q. Did anyone suggest you write that?

3 A. Well, my husband told me that's what I should write and...

4 Q. Okay. Did you at some point have a collection due  
5 process -- let me -- let me ask you a different question.

6 Did anyone recommend that you fill out this form to  
7 request a collection due process hearing?

8 A. Well, yes.

9 Q. Who recommended that?

10 A. If you go back to what you were asking me on this exhibit  
11 before --

12 Q. Which exhibit number is that?

13 A. 70.

14 Q. Okay.

15 A. When we took it to Irwin, that's when you file -- he tells  
16 you to file for the due process hearing.

17 Q. All right. Did -- so did you actually have a collection due  
18 process hearing?

19 A. Yes. Yes.

20 Q. Who went to it with you?

21 A. My husband.

22 Q. Where was this hearing held?

23 A. Um, at the IRS building, I believe.

24 Q. Did anyone go with you?

25 A. No.

1 Q. Did you ever inquire about having someone from Mr. Schiff's  
2 office go with you?

3 A. That would cost a fee. So we couldn't afford that. So we  
4 went alone.

5 Q. Do you know what the fee was?

6 A. I believe it was \$200 an hour.

7 Q. What happened when you went to this collection due process  
8 hearing?

9 A. Well, they ask you a lot of questions and I didn't have the  
10 answers. But my husband was there to tell me what answers to  
11 give, which is not an excuse. But, um...

12 Q. Did anyone --

13 A. It -- sorry.

14 Q. -- other than your husband give you suggestions on how to  
15 answer questions at the collection due process hearing?

16 A. Well, Irwin's material.

17 Q. And what did that material tell you to do at that collection  
18 due process hearing?

19 A. To claim that you don't owe the tax.

20 Q. Did you do that at your collection due process hearing?

21 A. Yes.

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

23 A. It was dismissed. They try to work with you, but I...

24 Q. The IRS tried to work with you?

25 A. Yeah. They ask you financial statement; they ask you, do

1 you want to resolve this.

2 Q. Did you provide any of that information to them?

3 A. No.

4 Q. Why not?

5 A. Because that's not what the advice was.

6 Q. Whose advice?

7 A. Irwin's advice is not to give them a financial statement.

8 Q. So what did the IRS do after this hearing?

9 A. Meaning in sending me a letter? What --

10 Q. Yeah. Did they --

11 A. I guess I don't understand.

12 Q. Did they pursue any action against you after this hearing?

13 A. Well, like -- I think the conclusion was that we didn't  
14 get -- we lost, if you want to use win or lose.

15 Q. At the hearing?

16 A. Um-hum.

17 Q. Did you ever talk to Mr. Schiff about this?

18 A. Excuse me?

19 Q. Did you talk to Mr. Schiff about the result of your  
20 collection due process hearing?

21 A. Of the results, yes.

22 Q. And you told him that -- what did you tell him?

23 A. Well, I believe we problem went down there with the, um, um,  
24 letter that says that you're -- these are the results of --

25

1 MR. CRISTALLI: Objection. Speculation. Foundation.

2 BY MR. IGNALL:

3 Q. As best you recall, what did you tell Mr. Schiff?

4 THE COURT: The question is withdrawn.

5 THE WITNESS: I'm sorry.

6 BY MR. IGNALL:

7 Q. As best you recall, what did you tell Mr. Schiff about the  
8 collection due process hearing?

9 A. Question would have been: Now what do we do?

10 THE COURT: I'm sorry?

11 THE WITNESS: The question back to Irwin would have  
12 been: Now what do we do?

13 THE COURT: Okay.

14 BY MR. IGNALL:

15 Q. And did you tell him about the results of your collection  
16 due process hearing?

17 A. Well, we brought him the letter.

18 Q. Okay. And, uh, when you asked him what do we do now, what  
19 did he tell you?

20 A. I know there was something you do next. But...

21 Q. Something you had to buy?

22 A. Well, you always have to have, um -- you have to have either  
23 the forms or the tapes. You would have to have something you  
24 would either need to listen to or read in order to follow the  
25 instructions to go to the next step.

1 Q. Did the IRS take any collection actions against you after  
2 this collection due process hearing?

3 A. Oh, they levied my home.

4 Q. They put a lien on your home?

5 A. Yes.

6 Q. Speak into the microphone. Sorry about that.

7 A. Sorry.

8 Q. Did you discuss that lien with Mr. Schiff?

9 A. Yes.

10 Q. Just tell us about that discussion. What -- what did you  
11 tell Mr. Schiff?

12 A. Irwin would tell you they can't do that.

13 Q. And what did you say?

14 A. But they did.

15 Q. They --

16 A. They did. The lien's on my home. How do we get it off?

17 Q. And what did he say?

18 A. I can't remember what he said. But I know there was always  
19 instructions on what to you, this is what you needed to do. Do  
20 you have this, did you listen to this tape, did you listen to  
21 that, did you read this? Did you -- I -- I don't remember.

22 Q. Did you ever have any court proceedings with the IRS?

23 A. None that I ever went to. But, yes, some --

24 Q. Did you ever initiate any court proceedings with the IRS,  
25 you and/or your husband?

1 A. Yes. I -- I believe something eventually led to where we  
2 were going to have to go to Tax Court.

3 Q. All right. You said you didn't -- where did you get the --  
4 the materials to -- to go to the Tax Court?

5 A. Irwin Schiff's office, his material.

6 Q. Is that something else you had to purchase?

7 A. Well, I would believe so because that's where the --

8 MR. CRISTALLI: Objection.

9 THE WITNESS: -- instructions were.

10 MR. CRISTALLI: Calls for speculation. Foundation.

11 BY MR. IGNALL:

12 Q. Why do you believe so?

13 A. Because my husband wasn't that knowledgeable.

14 Q. But why -- why do you believe it was available for purchase?

15 A. Because nothing was free.

16 Q. All right. Was there ever a hearing?

17 MR. SCHIFF: Pardon me. Pardon me. Can she speak a  
18 little louder? I can't hear her.

19 THE COURT: Pull it right up close.

20 THE WITNESS: Okay.

21 THE COURT: Just give it a hard yank and it will come  
22 right up there to you. There you go.

23 THE WITNESS: Okay.

24 BY MR. IGNALL:

25 Q. Did you ever have a hearing in the Tax Court case?

1 A. Uh, well, I know a hearing date was assigned. But, um, we  
2 didn't go.

3 Q. Why didn't you go?

4 A. Um, because we couldn't.

5 Q. All right. Did you have anyone else go for you?

6 A. Yes.

7 Q. Who was that?

8 A. Um, Irwin and his -- his staff.

9 Q. Anyone in particular?

10 A. Irwin and Cindy and...

11 Q. Do you know Cindy's last name?

12 A. Neuns, Neun --

13 Q. Do you --

14 A. -- Neuns.

15 Q. Do you see her in the court?

16 A. Yes.

17 Q. Can you identify her by what she's wearing?

18 A. Uh, she has on a peach sweater and a black top.

19 Q. All right.

20 MR. IGNALL: Record reflect that the witness has  
21 identified Defendant Neun?

22 THE COURT: It will.

23 BY MR. IGNALL:

24 Q. Did you fill out any paperwork to have Mr. Schiff and  
25 Ms. Neun represent you in the Tax Court?

1 A. Yes.

2 Q. What paperwork was that?

3 A. Um...

4 Q. If you remember.

5 A. I do remember. Just give me a second.

6 Q. That's okay.

7 A. It was, um -- we had to give them power of attorney.

8 Q. Do you know if there ever was a Tax Court hearing at which  
9 Mr. Schiff and Ms. Neun appeared?

10 A. Yes.

11 Q. How do you know that?

12 A. Because I got the results in the mail.

13 Q. Would you like a moment?

14 THE COURT: I think we'll take a recess at this time.

15 MR. IGNALL: All right. Thank you, your Honor.

16 THE COURT: It's a good time. We've been going for a  
17 while.

18 (Jury leaves the courtroom at 3:04 p.m.)

19 THE COURT: We'll be in recess for 15 minutes.

20 MR. IGNALL: Okay. Thank you, your Honor.

21 (Recess from 3:05 p.m. to 3:28 p.m.)

22 THE CLERK: All rise.

23 THE COURT: Ready to bring the jury?

24 MR. CRISTALLI: Yes.

25 MR. IGNALL: Yes, your Honor.

1 THE COURT: Ms. Clerk.

2 THE CLERK: Let's go.

3 (Jury enters the courtroom at 3:28 p.m.)

4 THE COURT: Please be seated.

5 Will counsel stipulate to the presence of the jury?

6 MR. IGNALL: Yes, your Honor.

7 MR. NEIMAN: Yes, your Honor.

8 MR. CRISTALLI: Yes, your Honor.

9 MR. BOWERS: Yes, your Honor.

10 THE COURT: Thank you.

11 You may resume your direct of the witness.

12 MR. IGNALL: Thank you, your Honor.

13 BY MR. IGNALL:

14 Q. Ms. Kennedy, before we took our break, we were discussing  
15 you petitioning the Tax Court. You said you couldn't go to Tax  
16 Court. Why was that, to the hearing?

17 A. My husband was ill.

18 Q. Did you have -- did you tell Mr. Schiff why you couldn't go  
19 to Tax Court?

20 A. Oh, they knew. There -- therefore, that was the suggestion  
21 of getting power of attorney.

22 Q. Who suggested getting the power of attorney?

23 A. Irwin, Cindy.

24 Q. Irwin and Cindy suggested --

25 A. Um-hum.

1 Q. I'm sorry.

2 A. Yes.

3 Q. And your husband was so ill that he couldn't travel?

4 A. Correct.

5 Q. Okay. Did you discuss what your husband's illness was with  
6 Mr. Schiff and Ms. Neun?

7 A. At that point, they knew he had pancreatic cancer and was  
8 going through chemotherapy.

9 Q. Now, turning your attention back to the hearing, do you know  
10 what the result -- you didn't go to the hearing, am I correct?

11 A. Correct. No.

12 Q. Do you know what the result of that hearing was?

13 A. The Tax Court hearing?

14 Q. Yes.

15 A. Um, the result would have been we lost.

16 Q. I'm sorry?

17 A. We lost.

18 Q. And how did you find out about that?

19 A. We received something in the mail.

20 Q. All right. If I could turn your attention to Exhibit 72?

21 A. Ooh.

22 (Document displayed in open court.)

23 MR. IGNALL: You may wanna dim the lights, Madam Clerk.

24 BY MR. IGNALL:

25 Q. And turn to the next page, the second page of Exhibit 72?

1 A. Second page. Okay.

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is this document?

5 A. It's an Order of Dismissal and Decision.

6 Q. Okay. And can you read the caption of the case?

7 A. Excuse me? I'm sorry. What...

8 Q. Can you read the caption of the case, the heading at the  
9 top, who the parties are?

10 A. Ann Kennedy, Petitioner, versus Commissioner of Internal  
11 Revenue, Respondent.

12 Q. All right. And what was -- is this the document you got in  
13 the mail?

14 A. Yes.

15 Q. All right. Turn to the next page of that document for me.

16 A. Second page? Yes.

17 (Document displayed in open court.)

18 BY MR. IGNALL:

19 Q. Actually, I think it's the following page.

20 A. Third page?

21 Q. Well, I'm sorry. Stay on page 2.

22 If we could look in the middle of the page, it's the  
23 second full paragraph. And you could blow that up. No. The  
24 next paragraph. I'm sorry.

25 Do you -- do you see that paragraph?

1 A. The one that starts, "On July 24th, 2000"? That one?

2 Q. No, no. The next paragraph.

3 A. Oh. "Petitioner friv-" -- "frivolously asserts" --

4 Q. Yeah. If you could read that first sentence.

5 A. "That the statutory notices of deficiencies are invalid."

6 Q. Did you make that argument for the Tax Court?

7 A. Excuse me. Say that again.

8 Q. Did you make that argument before the Tax Court?

9 A. No, I didn't.

10 Q. Did someone make that on your behalf?

11 A. Yes.

12 Q. Who made that argument on your behalf?

13 A. Irwin and Cindy.

14 MR. CRISTALLI: Objection. Calls for speculation.

15 Foundation.

16 BY MR. IGNALL:

17 Q. Do you know who made the recommendation on your behalf?

18 A. Irwin and Cindy.

19 MR. CRISTALLI: Foundation.

20 BY MR. IGNALL:

21 Q. Why do you say that?

22 A. There's -- there's something else you don't have here.

23 There's a very thick document.

24 Q. And what was that?

25 A. I guess everything that went on in Tax Court. What -- it

1 might have been the transcript.

2 Q. And you got --

3 A. That was the word.

4 Q. -- a copy of that?

5 A. I don't anymore, but...

6 Q. Did you ever discuss that transcript with Mr. Schiff or  
7 Ms. Neun?

8 A. I recall being in their office -- or place of business.

9 Q. With that transcript?

10 A. With this document. Um-hum.

11 Q. Okay. If I could turn your attention to the next page of  
12 Exhibit 72.

13 A. What did you say, third page?

14 Q. If you flip one more page.

15 A. Okay.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. And I could highlight the second paragraph.

19 A. "ORDERED and DECIDED," that one?

20 Q. Yes. Can you read that?

21 A. "... that there is a penalty due from petitioner Ann  
22 Kennedy, which is hereby awarded to the United States in the  
23 amount of 2500 pursuant to section 6673."

24 Q. Did you ever discuss that penalty with Mr. Schiff?

25 A. Yes.

1 Q. What -- what did you tell him about that penalty?

2 A. Well, why were we penalized.

3 Q. What did -- what did he say when you said that you'd gotten  
4 this --

5 A. Well, they said -- he said they can't do that. But  
6 that's...

7 Q. Did he -- did he ever tell you whether anyone else had  
8 gotten a penalty from Tax Court?

9 A. I -- I don't recall that. I don't know.

10 Q. Did you ever make any requests of Mr. Schiff about what to  
11 do about this penalty?

12 A. Give me a second here. Yes. This probably would have been  
13 the last time we would have been speaking to Irwin. But yes.

14 Q. Now, when was the last time you spoke -- let me back up.

15 Did you ever have any discussion about this penalty  
16 with anyone else who worked with Mr. Schiff?

17 A. Well, I know Cindy was there that day when we were there  
18 discussing it.

19 Q. So she heard you talking about the penalty?

20 A. Well, yes.

21 Q. She was physically present when you were talking about this  
22 Tax Court penalty?

23 A. Yes.

24 Q. Okay. All right. Tell me about the last time you had any  
25 contact with Mr. Schiff. Do you remember when that was?

1 A. Yes.

2 Q. When was that?

3 A. Irwin called my home somewhere around 10 days after my  
4 husband passed away looking for my husband. He asked for him.  
5 My son answered the phone and then I said, "Give it to me." And  
6 Irwin wanted Jimmy.

7 Q. I'm sorry. Can you repeat that?

8 A. Irwin wanted to talk to Jimmy.

9 Q. And what did you say?

10 A. I told him Jimmy had passed away. He said he was sorry. I  
11 asked him what it is that he wanted. And he wanted to ask Jimmy  
12 about...

13 Q. Was it anything -- anything to do with your Tax Court  
14 case --

15 A. No.

16 Q. -- or anything about your taxes?

17 A. No.

18 Q. Did you have any -- did you talk to him at all about your  
19 tax situation during that phone call?

20 A. After the end of the conversation, I asked him, "What are we  
21 going to do about the liens on my home?"

22 Q. And what did Mr. Schiff say?

23 A. He said, "We'll take care of that."

24 Q. And --

25 A. I've never heard from him since.

1 Q. All right. Do you still have liens on your home?

2 A. Yes.

3 Q. Do you currently file tax returns reporting your wages?

4 A. Yes.

5 Q. Do you have taxes withheld?

6 A. Yes.

7 Q. Okay. But do you still have any outstanding liabilities to  
8 the IRS as a result of --

9 A. Yes.

10 Q. -- following the advice of Mr. Schiff --

11 A. Yes, hence --

12 Q. -- and purchasing --

13 A. -- the liens --

14 Q. -- his products?

15 A. -- on my home. Yes.

16 MR. IGNALL: No further questions.

17 THE COURT: Cross-examination.

18 MR. CRISTALLI: Your Honor, if I may, I'm gonna go  
19 first on --

20 THE COURT: You may.

21 MR. CRISTALLI: -- cross-examination.

22 Thank you.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. CRISTALLI:

3 Q. Good afternoon, Ms. Kennedy.

4 A. Hello.

5 Q. Ms. Kennedy, I wanna go back to when your husband -- I think  
6 it would be safe to say that your husband first, um, began to --  
7 or was the first one to meet Irwin; correct?

8 A. Correct -- well, no.

9 Q. No?

10 A. No, because we went to the seminar together.

11 Q. Okay. You went to the seminar together. That was back in  
12 1982 or 1983?

13 A. Yeah. I don't remember the year exact. But yes, it's  
14 close --

15 Q. Back in --

16 A. -- that's close.

17 Q. -- Rhode Island?

18 A. Early '80s.

19 Q. Thank you.

20 Back in Rhode Island; correct?

21 A. Yes.

22 Q. And, um, subsequent to the seminar, um, would it be safe to  
23 say that your husband began to implement some of the, um,  
24 procedures that were taught by Irwin in the seminar?

25 A. Yes.

1 Q. Would it also be safe to say that, um, your husband was the  
2 one principally that promoted, um, implementing these procedures  
3 in your household?

4 A. Yes.

5 Q. So it wasn't you out in front wanting to implement these  
6 procedures, but rather you deferred to your husband, your  
7 confidant, with regard to that?

8 A. Correct. Yes.

9 Q. Okay. And, during the time that you were back in Rhode  
10 Island, the, um, procedures that you were implementing as it  
11 related to, um, Irwin's teachings had to do with the W -- filing  
12 exempt on the W-4's; correct?

13 A. Correct.

14 Q. Um, in terms of the 1040's during that period of time, were  
15 you just not filing 1040's pursuant to --

16 A. Correct.

17 Q. Okay. So, basically during that period of time, Irwin's  
18 seminars basically consisted of that you don't have a legal --  
19 there's -- the law does not require you to pay income tax;  
20 correct?

21 A. That's correct.

22 Q. And so, therefore, um, you know, based on the seminar and  
23 your husband's -- let me correct -- the seminar -- back in '82  
24 and '83 when you began to implement Irwin's teachings, in  
25 addition to the seminar was there any other, um, documentation

1 that was provided to your husband in reliance on these teachings  
2 that were sent by Irwin or was it just the seminar that you  
3 relied on?

4 A. No. There -- there were -- there were other -- there was a,  
5 um -- you subscribe to something called "the Schiff Report" that  
6 kept you updated. There would be other seminars.

7 Q. So, in addition to the one seminar that you went to --

8 A. That was the first one.

9 Q. -- with your husband --

10 A. Then there was others.

11 Q. And there were other seminar -- actual sem- -- physical  
12 seminars that you attended?

13 A. Oh, yes.

14 Q. Um, and you always attended those with your husband. True?

15 A. Yes.

16 Q. Were those all in Rhode Island or were they in different  
17 locations?

18 A. I don't think we ever went to Connecticut. I -- but I don't  
19 remember. But I do remember going into Massachusetts.

20 Q. Okay. Um, about how many do you think -- before -- before  
21 you came out to Las Vegas in 1990, um, how many seminars do you  
22 believe yourself -- you and your husband have attended?

23 A. I have no idea.

24 Q. More than five?

25 A. Probably because that sounds low.

1 Q. So maybe around ten?

2 A. At least. Yeah.

3 Q. Okay. And, in addition to that, um, your husband probably  
4 primarily would be the one that was corresponding with Irwin?

5 A. Correct.

6 Q. Would he correspond with him telephonically?

7 A. I don't think so.

8 Q. So everything would be in writing?

9 A. I guess so. I -- I can't remember that far back. That's  
10 hard.

11 Q. Okay. I can appreciate that.

12 But it would be safe to say that there was  
13 communication between your husband and Irwin during that period  
14 of time?

15 A. If he needed assistance on something, yes.

16 Q. Okay. And, um, was Irwin out -- he would be corresponding  
17 with Irwin out here in Las Vegas. Is that where Irwin was  
18 located at that time back in the --

19 A. Say it again. I'm sorry.

20 Q. Back in the '80s, when you were back in Rhode Island, was he  
21 communicating with Irwin in Las Vegas?

22 A. No, no. Irwin was in Connecticut.

23 Q. Irwin was in Connecticut. Okay.

24 Um, so you for a period of time, um, would not file  
25 your 1040 returns and would file exempt on your W-4's; correct?

1 A. Well, yes. But you only need to do that once.

2 Q. I'm sorry?

3 A. You only needed to file a W-4 once.

4 Q. Okay. And then how many years was it that you and your  
5 husband, um, did not file any returns before you started filing  
6 the zero returns?

7 A. I'd have to look to see what the year was for that first  
8 zero return. But it would be from whatever that point was to  
9 that time.

10 Q. Okay. Well, would it be safe to say that, um, there was a  
11 period of time where, um, there were no returns filed up until  
12 the time that you started to get some correspondence with --  
13 from the IRS? Let me -- let me --

14 A. Say it again.

15 Q. That was a badly worded question. I'm sorry.

16 Did there come a point in time when the IRS  
17 communicated with you while you were in Rhode Island with regard  
18 to, um, your tax liabilities?

19 A. Well, sure. They -- I said they had a lien on my home in  
20 Rhode Island.

21 Q. Okay. Before they --

22 A. But --

23 Q. Yeah, that's correct.

24 A. Okay.

25 Q. Before they actually liened your property --

1 A. Yeah.

2 Q. -- in Rhode Island, did they communicate with you in writing  
3 in any way? Did they notice you?

4 A. I'm sure. Yes.

5 Q. Okay. Um, so there came a point in time when the IRS put a  
6 lien on your property in Rhode Island --

7 A. Yes.

8 Q. -- in response to your failure to pay the tax; correct?

9 A. That's correct.

10 Q. Okay. Um, do you know how much that tax liability was for?

11 A. No, I don't remember.

12 Q. Do you know whether or not there were any penalties and  
13 interest, um, that accumulated, um, for that liability?

14 A. I'm sure there were.

15 Q. Okay. And --

16 A. If you're gonna ask me for a number, I don't have it.

17 Q. I understand.

18 A. Okay.

19 Q. Would it be safe to say that the penalties and interests as  
20 related to that liability was significantly stiff?

21 A. Yes.

22 Q. Did it -- did it -- uh, was the penalties and interest more  
23 than the actual tax liability, to the best of your recollection?

24 A. I don't remember.

25 Q. Okay. Uh, was that lien ever satisfied? Was it paid?

1 A. Yes.

2 Q. When you sold the house?

3 A. Correct.

4 Q. Okay. So, when you sold the house, um, the lien was  
5 satisfied out of escrow I would assume; correct?

6 A. Yes.

7 Q. Okay. So the IRS took their money, you took whatever money  
8 that you had coming out of the house?

9 MR. IGNALL: Objection. Asked and answered.

10 MR. CRISTALLI: No, I don't think I asked that  
11 question.

12 THE COURT: It's the same question. She --

13 MR. CRISTALLI: I didn't ask if she was able to receive  
14 any proceeds out of the sale of the house, your Honor. She  
15 never answered that question.

16 THE COURT: Okay. You're correct.

17 BY MR. CRISTALLI:

18 Q. Did you personally, yourself and your husband, receive any  
19 proceeds out of the sale of that house?

20 A. Yes.

21 Q. Um, do you remember who got more, you or the IRS?

22 A. I don't remember.

23 Q. Okay. Um, despite, um, your -- the lack of success on  
24 the -- on -- despite the lack of success in not filing your 1040  
25 returns and the W-4 exemption, um, when you came out to

1 Las Vegas in 1990 your husband, um, again prescribed to the  
2 teachings of Irwin Schiff; correct?

3 A. Correct.

4 Q. Okay. And would it be safe to say that he -- your husband  
5 influenced you in terms of your participation in the philosophy?

6 A. Yes.

7 Q. Okay. And so, during that period of time, from 1990 -- it  
8 would -- you moved to Las Vegas in 1990 and your husband, uh,  
9 interacted/engaged Irwin probably sometime around that period?

10 A. No.

11 Q. Okay. Could you tell me when about that was when he, um,  
12 began to --

13 A. I -- I don't remember when he began to. I just remember --  
14 I wasn't working in '90 or --

15 Q. Okay.

16 A. -- so it would have been after I started working. I knew he  
17 knew he was here.

18 Q. I'm sorry? You knew he was here?

19 A. My husband knew that he was here.

20 Q. Okay. And there came a point in time when your husband made  
21 contact with Irwin?

22 A. Yes.

23 Q. But did he directly make contact with him? Did he go down  
24 to Freedom Books?

25 A. That is direct contact, yes.

1 Q. I'm -- okay. That's fine.

2 A. I guess I don't understand.

3 Q. No. I'm just asking --

4 A. Okay.

5 Q. -- whether or not --

6 A. All right.

7 Q. -- how the --

8 A. Yes.

9 Q. -- how the contact was, um, was made again. You know, did  
10 they talk on the telephone? Did they correspond in writing?  
11 Did he actually --

12 A. No.

13 Q. -- did your husband actually go down there?

14 A. He went down there.

15 Q. Okay. Do you remember about what -- what year that was in?

16 A. No.

17 Q. Not quite sure?

18 A. No.

19 Q. Okay. There was a time, then, that, um, you began through  
20 the -- you know, I wouldn't say directive but the recommendation  
21 of your husband to file these zero returns based on the  
22 teachings of Mr. Schiff and Freedom Books; correct?

23 A. Correct.

24 Q. So would it be also safe to say, then, that your husband  
25 once again prescribed to that philosophy?

1 A. Yes.

2 Q. Okay. Probably over your objection?

3 A. Oh, yes.

4 Q. Okay. And so we did that for a period of time and you began  
5 to get some responses from the Internal Revenue -- Revenue  
6 Service; correct?

7 A. Yes.

8 Q. And, uh, you received some, uh, frivolous pen- -- penalties;  
9 correct?

10 A. Yes.

11 Q. Okay. Um, and then there came a point in time when there  
12 was a collection due process hearing. True?

13 A. Correct.

14 Q. Okay. Is the collection due process hearing the hearing  
15 we're talkin' about that Cindy and Irwin went on your behalf?  
16 Or was that a different proceeding?

17 A. That's the Tax Court.

18 Q. Okay. You went yourself to the collection due process  
19 hearing; correct?

20 A. Correct.

21 Q. Okay. Um, then there -- after the collection due process  
22 hearing, basically there was no, uh, positive results from that;  
23 correct?

24 A. Correct.

25 Q. All right. And then there was an appeal to Tax Court?

1 A. Yes.

2 Q. And your husband prepared that and you signed off on it as  
3 well; correct?

4 A. No.

5 Q. Somebody --

6 A. No.

7 Q. -- at Freedom Books -- okay.

8 A. Freedom Books people prepared that.

9 Q. Okay.

10 A. From that point, my husband was too ill.

11 Q. Okay. Okay. So, at that particular time when you were  
12 going through this, uh, process, not only were you having to  
13 deal with the IRS but you were also having to deal with your  
14 husband's illness?

15 A. That's correct.

16 Q. It's probably a pretty difficult time in your life,  
17 obviously?

18 A. Um-hum. Yes.

19 Q. Okay. And so when -- when you were unable to go to the  
20 hearing on the tax -- Tax Court, Cindy and Irwin went on your  
21 behalf; correct?

22 A. Correct.

23 Q. And you said that you knew that they had had went on your  
24 behalf and they had tried to represent you because you had an  
25 opportunity to read a transcript of the proceedings; correct?

1 A. Correct.

2 Q. Okay.

3 MR. CRISTALLI: Can you put up Exhibit 72 for me?

4 Thanks.

5 THE CLERK: I'll change it over.

6 (Pause in the proceedings.)

7 (Document displayed in open court.)

8 MR. CRISTALLI: Okay. I think it's the next page I  
9 hope. Yes. Could you highlight for me the first paragraph?

10 Okay.

11 BY MR. CRISTALLI:

12 Q. I'm going to direct your attention to that paragraph,  
13 Ms. Kennedy. I don't know if you can see that or not. It is an  
14 exhibit.

15 A. Which exhibit was it, 72?

16 Q. Yes. I think it's the second page.

17 A. Okay. Second page?

18 Q. Yes, first paragraph. Uh, the -- I want to direct your  
19 attention to the last sentence in parentheses.

20 Can you see that?

21 A. On the second paragraph there's nothing --

22 Q. No, no.

23 A. -- in parentheses.

24 Q. First paragraph, last sentence --

25 A. On August 29th?

1 Q. -- in parentheses. No.

2 A. No?

3 Q. It starts with "Because." Oops. Where is it?

4 A. What page are you on?

5 MR. CRISTALLI: Thank you.

6 Right there. Uh, let's see.

7 THE WITNESS: That's the last --

8 MR. CRISTALLI: May I approach, your Honor?

9 THE COURT: You may.

10 THE WITNESS: It's the first page. Oh.

11 MR. CRISTALLI: Oh, it is? I must have my pages  
12 screwed up. I apologize.

13 THE WITNESS: It's the first page.

14 MR. CRISTALLI: Okay.

15 THE WITNESS: Okay.

16 BY MR. CRISTALLI:

17 Q. Um, can you see where --

18 A. First page. I see it now.

19 Q. Okay. Last sentence --

20 A. "Because"?

21 Q. -- do you see that?

22 And you've had an opportunity to, at some particular  
23 time, review this, correct, since it was sent to you? I would  
24 assume; right? You've reviewed this document in the past?

25 A. When you say "review"...

1 Q. I don't know. Did you ever read it?

2 A. I probably went right to the last page.

3 Q. Okay. In any event, it -- it -- there is language in that,  
4 is it not, that says that "Because Mr. Schiff continued to argue  
5 on Petitioner's behalf after the court told him to stop,  
6 Mr. Schiff had to be" --

7 A. "Removed from" --

8 Q. -- "removed from the courtroom" --

9 A. "From the courtroom" --

10 Q. -- "by the marshals."

11 A. I see that, yes.

12 Q. So from that we know that Mr. Schiff went to the hearing and  
13 tried to argue on behalf of yourself and your husband; correct?

14 A. Correct.

15 Q. All right. Now, before you -- that's fine. Thank you --  
16 before you went to the due process hearing or had Irwin and  
17 Cindy go on your behalf to the tax hearing -- or Tax Court --

18 A. Um-hum.

19 Q. -- um, you had been -- you had been filing these, um --  
20 these zero returns based on the, uh, based on the information  
21 that you got from Irwin's material, correct, you and your  
22 husband?

23 A. Correct.

24 Q. All right. Um, prior to the tax hearing -- I mean, well,  
25 during that period of time when you're filing these returns,

1 there -- you didn't have any interaction with Cindy? There were  
2 periods of time when you were filing these zero returns before  
3 you even met Cindy; correct?

4 A. Yes, because I don't think I knew Cindy in 1997.

5 Q. So it wasn't until '97 that you met Cindy. True?

6 A. No. No. I said I don't think I knew Cindy in 1997.

7 Q. You knew Cindy in 1997?

8 A. I don't think I knew.

9 Q. I'm sorry.

10 A. Don't.

11 Q. Don't think --

12 A. Do not think --

13 Q. Okay.

14 A. No.

15 Q. Um, do you know when you think you met Cindy?

16 A. I don't know exactly, but I think we met Cindy just prior to  
17 my husband being sick.

18 Q. Just prior to your husband becoming sick?

19 A. Um-hum. Yes.

20 Q. Okay. I apologize.

21 So it would be safe to say, then, from 1982 up until  
22 after the time, uh, your husband began getting sick in '98 --  
23 1998 or something to that effect?

24 A. No.

25 Do you want to know when my husband got sick?

1 Q. I -- I mean, I don't really want to talk about that.

2 A. Okay.

3 Q. I'm just trying to figure out when -- when Cindy -- when you  
4 met Cindy for the --

5 A. Probably --

6 Q. -- first time.

7 A. -- sometime in 2001.

8 Q. Okay. That's all.

9 So, from '82 to 2001, you didn't have any interactions  
10 with Cynthia Neun; correct?

11 A. Unless she lived in Connecticut, no, I --

12 Q. Okay.

13 A. -- no.

14 Q. Okay. I have no further questions, ma'am. Thank you.

15 A. Okay.

16 THE COURT: Who is next? Mr. Bower [sic], are you  
17 going to go next?

18 MR. BOWERS: I have no questions of any kind for this  
19 witness, your Honor.

20 THE COURT: Okay.

21 MR. SCHIFF: Your Honor...

22 THE COURT: Mr. Schiff.

23

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## CROSS-EXAMINATION

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BY MR. SCHIFF:

Q. Ms. Kennedy, I wasn't prepared to have all the documents. I didn't think you were gonna be a witness today.

But, in any case, you indicated that the first time you met with me I supposedly by put on a seminar in Rhode Island.

A. You were a surprise guest.

Q. I was a guest.

A. You were --

Q. That's correct.

A. -- the surprise guest, yes.

Q. Um, I dimly recall it.

But wasn't there somebody there who used to bring speakers down and for that particular evening he brought me down? In other words, it wasn't a regular seminar of mine.

A. Okay.

Q. He said I was a surprise guest or something. I think I dimly recall it. And I really spoke, I don't know, an hour two, three. Whatever it was.

A. Okay.

Q. Was that --

A. Yes.

Q. -- what it was?

A. I don't remember how long, Irwin. It's a long time ago, but...

1 Q. But, in any case --

2 A. That was the first time we ever met you.

3 Q. It wasn't one of my seminars. In other words, it wasn't an  
4 all-day thing.

5 A. Not an all-day thing, no. It was in the evening.

6 Q. In the evening.

7 A. Um-hum.

8 Q. Maybe one or two hours or three.

9 A. Right.

10 Q. I don't know. How many people were there? Do you have any  
11 recollection?

12 A. No.

13 Q. Pardon me?

14 A. No.

15 Q. Do you recall -- I gave a talk. I probably had my books. I  
16 didn't have -- I don't know if I had the The Federal Mafia. It  
17 wasn't even written at that time.

18 A. No.

19 Q. No.

20 A. No.

21 Q. I probably had "How Anybody Can Stop Paying Income Taxes" --

22 A. Yes, that's --

23 Q. -- if that?

24 A. -- yes. Yes, you did.

25 Q. Okay. And every time I lecture I always leave a lot of time

1 for answers and questions. Do you recall that evening --

2 A. No.

3 Q. -- people answering and asking questions?

4 A. Not really.

5 Q. Did you or your husband have any friends at that meeting  
6 besides going yourself?

7 A. No.

8 Q. In other words, he didn't discuss -- okay. Now, what is the  
9 next -- but then eventually, as I understand, you went to a  
10 seminar of mine in Boston? Did you actually attend a one-day  
11 seminar?

12 A. I remember in Massachusetts. I don't remember which city it  
13 was.

14 Q. Pardon me?

15 A. I remember Massachusetts. I just don't remember which city.

16 Q. Okay. Well, so then you went to a full all-day seminar --

17 A. Okay.

18 Q. -- maybe --

19 A. Yes.

20 Q. -- a two-day seminar?

21 A. No.

22 Q. It was a one-day. Okay.

23 Do you -- do you recall, um, anything about that  
24 seminar, how I started the seminar?

25 A. No.

1 Q. Do you recall that when I put on my seminar I allowed people  
2 to bring free of charge any tax lawyer or accountant? Do you  
3 recall that?

4 A. Yes, yeah.

5 Q. That was my policy.

6 A. Yeah, I do -- I do --

7 Q. Okay.

8 A. -- that does ring a bell.

9 Q. Do you recall how I started my seminars?

10 A. No.

11 Q. You don't recall --

12 A. No.

13 Q. -- me talking about voluntary and... Okay.

14 A. That -- that rings a bell, the word. But I don't recall.

15 Q. And I asked the people to raise their hands if any -- do you  
16 recall that?

17 A. No.

18 Q. Okay. If you don't recall, you don't recall.

19 Do you happen to know how many people were at that  
20 seminar?

21 A. No.

22 Q. No.

23 But do you recall me having at the end of the seminar a  
24 question-and-answer period where people can answer any  
25 questions?

1 A. I don't recall it, but --

2 Q. Okay. You --

3 A. -- I'm sure you did.

4 Q. -- don't recall. Okay.

5 Now, I saw from reading the background material that it  
6 was your husband who apparently believed in this information and  
7 you never really believed in it.

8 Did you read The Federal Mafia by any chance?

9 A. Never.

10 Q. You never read it?

11 A. No.

12 Q. So you were not aware, for instance, of the disclaimer in  
13 the front of the book --

14 A. No.

15 Q. -- which said --

16 MR. IGNALL: Objection. She said she hadn't read the  
17 book.

18 MR. SCHIFF: Oh, she didn't read the book.

19 THE WITNESS: I did not read the book.

20 THE COURT: That answers the question. She didn't read  
21 it; she wouldn't be aware of anything. Asked and answered.

22 BY MR. SCHIFF:

23 Q. Okay. If you're not aware of it, you're not aware of it.

24 Um, now, you mentioned a number of times you came to my  
25 office with -- with problems of one kind or another and you

1 spoke to me.

2 A. Correct.

3 Q. Let me say this: I don't doubt you're correct except I  
4 don't have any specific recollections of this because I speak to  
5 so many people. But, in any case, you came to my office a  
6 number of times apparently spoke -- speaking to me.

7 A. Yes.

8 Q. Did I ever charge you for these consultations?

9 A. No.

10 Q. No.

11 So I took my time --

12 A. But we weren't there that long either, Irwin.

13 Q. Pardon me?

14 A. We weren't with you that long.

15 Q. But I never charged you for these consultations.

16 A. No.

17 Q. Okay. Now, you said -- now, when you said they put on  
18 liens, I said they can't do it?

19 A. That's what you said.

20 Q. Were you aware the reason I said it is that there's no  
21 provision in the law that allows the IRS to put on liens?  
22 Didn't I point that out to your husband?

23 A. Yes, I'm sure you pointed that out to Jimmy.

24 Q. And when I said -- then, when I said they can't do it, I  
25 meant they can't do it legally because the title of my book is

1 The Federal Mafia which implies that they don't obey the law.

2 MR. IGNALL: Objection, your Honor. The question can  
3 be what Mr. Schiff told her --

4 MR. SCHIFF: Okay.

5 MR. IGNALL: -- not what he meant by it.

6 BY MR. SCHIFF:

7 Q. Well, what I told you --

8 THE COURT: Sustained.

9 MR. SCHIFF: I'm sorry.

10 BY MR. SCHIFF:

11 Q. So, when I told you these things -- I mean, I don't recall  
12 the conversation exactly. But your husband would have said,  
13 well, what do you mean they can't do it? I would have had to  
14 give him some kind of an explanation. The explanation was there  
15 was no provision --

16 MR. IGNALL: Objection, your Honor. I'm not sure if  
17 there's a question here.

18 MR. SCHIFF: Okay.

19 THE COURT: Sustained. Testifying.

20 BY MR. SCHIFF:

21 Q. When -- when your husband asked me these questions and I  
22 said they can't do it, do you recall me attempting to explain  
23 why they can't do it?

24 A. No. You would tell us what to do. You didn't say why they  
25 couldn't do it. There would always be either forms or a tape

1 you had to listen to and this is what you needed to do to get  
2 rid of it.

3 Q. Well, the point is you -- you weren't aware that the largest  
4 chapter of my book is "How To Protect Yourself Against Illegal  
5 IRS Seizures." But you weren't aware of that.

6 Okay. Now, what I was aware of was is that at some  
7 point in time -- oh, incidentally, were you aware that when you  
8 got these documents, for instance, you got a document -- if I  
9 have it here -- yeah, you got a document when you filed the zero  
10 return. It says, "We have determined that the document referred  
11 to ... is frivolous and your position has no basis in law." And  
12 it goes on to say, "We encourage you to seek advice from  
13 competent tax counsel or an attorney qualified to practice in  
14 your state to assist in answering your ... questions."

15 Did you ever --

16 THE COURT: What are you reading from?

17 THE WITNESS: Does it say that? I...

18 THE COURT: What are you reading from, Mr. Schiff?

19 MR. SCHIFF: This is the Government's Exhibit 69.

20 THE COURT: All right.

21 BY MR. SCHIFF:

22 Q. Did you ever, to your knowledge --

23 THE COURT: Do you want to take a look at that?

24 THE WITNESS: Sure.

25 What did you say, 69?

1 THE COURT: 69.

2 MR. SCHIFF: Yeah.

3 THE WITNESS: Where are you reading, Irwin?

4 MR. SCHIFF: I'm reading the second paragraph.

5 THE WITNESS: Okay. I see that.

6 BY MR. SCHIFF:

7 Q. So you saw that --

8 A. Okay. So what's --

9 Q. -- in that letter.

10 A. -- your question?

11 Q. You never attempted to seek tax counsel or attorney  
12 qualified -- okay.

13 THE COURT: Do you want her to answer that question?  
14 Is that --

15 MR. SCHIFF: Yes.

16 THE COURT: -- a question?

17 MR. SCHIFF: Yes.

18 BY MR. SCHIFF:

19 Q. Did you --

20 A. No. We came to you.

21 Q. You came to me?

22 A. Yes.

23 Q. But you knew I wasn't an attorney.

24 A. I knew that. But Jimmy --

25 Q. Your husband --

1 A. -- believed you.

2 Q. -- knew it. Okay. I happen to have an accounting  
3 background, but that's beside the point.

4 Okay. Now, when -- when you filed these documents  
5 apparently -- I mean, your husband filed these documents, um, he  
6 used as a guide material with this book. But presumably he  
7 checked out the information before he sent it in.

8 Did you recall your husband doing any kind of research  
9 to verify the information in my book?

10 A. Explain what you mean by "research."

11 Q. Did he go to --

12 A. He read your book.

13 Q. -- to a law library? Did he check out -- did he buy an  
14 Internal Revenue Code from us?

15 A. Yes. From you --

16 Q. He did?

17 A. -- yes.

18 Q. So by an Internal Revenue Code. Was your testimony that he  
19 bought an Internal Revenue Code from us?

20 A. Yes.

21 Q. He did. Okay.

22 So all of these Code sections that are in my book he  
23 could verify from the law itself.

24 MR. IGNALL: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MR. SCHIFF:

2 Q. Okay. When you called -- what I recall, you called my  
3 office, I believe, at some point and said that you had a Tax  
4 Court hearing but that your husband was in the hospital and you  
5 couldn't make it.

6 A. No.

7 Q. Is that -- is that correct?

8 A. No. No.

9 Q. That wasn't correct?

10 A. No.

11 Q. Then --

12 A. Jimmy was not in the hospital for his cancer.

13 Q. Well, there was a reason why you couldn't -- that's the  
14 reason I gave to the judge.

15 A. It would have been he's too sick from the chemotherapy.

16 Q. He was too sick, whatever it was.

17 But I think -- didn't you give me a power of attorney  
18 so I could speak for you or something like that?

19 A. On your request.

20 Q. Yeah. Well, I wanted to be able to speak for you, yeah.

21 And I familiarized myself with -- with what your husband had  
22 done. And I went down to the Tax Court hearing. And the judge  
23 indicated --

24 THE COURT: Mr. Schiff, are you testifying?

25 MR. SCHIFF: Yeah, yeah. No, I'm not testifying.

1 BY MR. SCHIFF:

2 Q. Well, do you recall that I went down there but the judge  
3 wouldn't let me testify?

4 A. Not till after the fact.

5 Q. And the reason -- well, he wouldn't let me testify --

6 THE COURT: You're testifying.

7 BY MR. SCHIFF:

8 Q. -- even though --

9 MR. SCHIFF: Pardon me.

10 THE COURT: You're testifying now.

11 MR. SCHIFF: All right. But she didn't know that.

12 BY MR. SCHIFF:

13 Q. So he wouldn't let me testify even though I thought I -- all  
14 right. He wouldn't let me testify, but I tried. And, uh, I  
15 tried to give you as much help as I could. I can't press a  
16 button and make the government obey the law.

17 MR. IGNALL: Objection. Is there a question here?

18 THE COURT: Sustained.

19 BY MR. SCHIFF:

20 Q. All right. But when you came to my office --

21 THE COURT: Strike.

22 MR. SCHIFF: I'm sorry.

23 BY MR. SCHIFF:

24 Q. When you came to my office and sought my help, I gave it to  
25 you, to the best my ability?

1 THE COURT: Are you testifying now or are you asking a  
2 question?

3 BY MR. SCHIFF:

4 Q. Did you feel that I was trying to give you as much help as I  
5 could to the best of my ability?

6 A. No.

7 Q. You didn't feel that way?

8 A. No.

9 Q. Can I ask you why? What could I have done differently?

10 A. You could have told Jimmy that this isn't how it works, that  
11 you're just a salesman.

12 Q. Well, since you didn't read my book, I can't quote from it  
13 all the warnings I gave people that using this information could  
14 be dangerous. Maybe your husband was aware of it, but --

15 MR. IGNALL: Objection, your Honor.

16 MR. SCHIFF: Okay.

17 THE COURT: Sustained.

18 MR. SCHIFF: No further questions.

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

20 THE COURT: Thank you.

21 MR. IGNALL: May this witness be excused?

22 THE COURT: She may.

23 THE WITNESS: Thank you.

24 THE COURT: Watch your step going down.

25 THE WITNESS: Yes.

1 THE COURT: There's a lot of dangerous places in this  
2 courtroom.

3 (Pause in the proceedings.)

4 THE COURT: Is the Government ready with its next  
5 witness?

6 MR. NEIMAN: We are, your Honor.

7 THE COURT: Okay.

8 MR. NEIMAN: The United States will call Ted Wethje to  
9 the stand.

10 (Ted Wethje takes the witness stand.)

11 MR. SCHIFF: Wait a minute. Wait a minute. I didn't  
12 know -- I didn't know you were -- he wasn't on the witness list.  
13 I have his testimony that he gave before the Grand Jury. I  
14 didn't bring it. There was no indication that you were gonna  
15 call Ted Wethje today. Can't you call -- I mean --

16 THE COURT: Well --

17 MR. SCHIFF: -- I wasn't prepared for this.

18 THE COURT: -- did you read his name off --

19 MR. NEIMAN: Yes, we --

20 THE COURT: -- when we read --

21 MR. NEIMAN: -- did, your Honor.

22 THE COURT: -- the witness list?

23 MR. NEIMAN: We complied with our obligations under the  
24 rules of --

25 MR. SCHIFF: No, no.

1 MR. NEIMAN: -- procedure and --

2 MR. SCHIFF: I cannot cross-examine him because I don't  
3 have it and I'm not prepared.

4 THE COURT: Well, we're only going another half hour.  
5 So you can get prepared tonight.

6 MR. BOWERS: Your Honor, the Government supplied a  
7 declaration which we can copy. That would certainly take steps  
8 towards that. If -- if the clerk could maybe make a copy for  
9 Mr. Schiff.

10 THE COURT: What is it you have, Mr. Bowers?

11 MR. BOWERS: The Government -- the Government supplied  
12 a declaration that, although unsigned, I believe is gonna be  
13 adopted by this witness setting forth the basis of his testimony  
14 here today I think.

15 MR. NEIMAN: The Government's complied with its Jencks  
16 obligations, your Honor. And that's the declaration he's  
17 referring to.

18 MR. BOWERS: I could call it that too.

19 THE COURT: Well, we're -- we're going to be a half  
20 hour with him before we get --

21 MR. NEIMAN: Your Honor, I'm gonna try and go as  
22 quickly as possible. I -- I am hoping we can do it in less than  
23 a half hour, but --

24 THE COURT: Well, we have -- it's actually 20 minutes  
25 before we break. We're gonna break when we finish the direct

1 and Mr. Schiff can have overnight. It sounds to me like the  
2 rules were complied with, though, for -- Mr. Bowers has the  
3 document and --

4 MR. BOWERS: Yeah. I -- I was just gonna maybe ask if  
5 I could get a copy quickly. Could we --

6 THE COURT: Do you want a copy now or --

7 MR. BOWERS: Well, just so Mr. Schiff has one.

8 THE COURT: All right. Well --

9 MR. BOWERS: We don't need to break. We can start  
10 without that.

11 THE COURT: Let's -- Mr. Fears, would you take that and  
12 get a copy?

13 MR. BOWERS: Situation's remedied, your Honor. We're  
14 all set.

15 THE COURT: Do you have an extra? Okay. Never mind.

16 THE CLERK: Sir, please stand. Raise your right hand.

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

20 THE WITNESS: I do.

21 THE CLERK: Please be seated.

22 Please state for the record your full name and spell  
23 your last name.

24 THE WITNESS: Ted Wethje, W-e-t-h-j-e.

25



1 Q. What business was Mr. Schiff in in the 1980's?

2 A. He had two businesses. He was Irwin A. Schiff, Inc., which  
3 was an insurance business that he operated, and he was basically  
4 the sole person operating that business, him and his sister,  
5 and, uh, he was also involved in, uh, what we called the "tax  
6 protest movement" at that time. And he traveled around the  
7 country and gave seminars and sold materials and speeches and  
8 earned income from those activities.

9 Q. Did your investigation result in any charges?

10 A. Yes. We charged him with three counts of income tax evasion  
11 and one count of failure to file a corporate tax return.

12 Q. And what was the you result of those charges?

13 A. He was convicted on all counts.

14 Q. Was he sentenced at some point?

15 A. Yes, he was.

16 Q. When did the sentencing take place to the best of your  
17 recollection?

18 A. I believe the sentencing -- let's see. The trial took place  
19 in October of 1985; I think the sentencing was December. I'm --  
20 I'm -- November or December.

21 Q. Of -- of 1985 as well?

22 A. Yes.

23 Q. Did Mr. Schiff speak to the Court at his sentencing?

24 A. Yes, he addressed the judge at his sentencing.

25 Q. And, to the best of your recollection, what did Mr. Schiff

1 say during his address to the Court?

2 A. Two things I recall: He asked the Court for compassion and  
3 he addressed the judge and told him that he had left the field  
4 of combat.

5 Q. Did he explain what field of combat he was talking about?

6 A. No, he did not.

7 Q. As part of Mr. Schiff's sentence, was he placed on  
8 probation?

9 A. Yes, he was, three years' probation, I believe.

10 Q. And were there terms to that probation?

11 A. Yes. There were five -- five conditions of probation.

12 Q. Do you remember what those terms of probation are?

13 A. Um, I believe they were -- he was not to associate with  
14 anyone convicted of a tax crime; he was not to associate with  
15 anyone who advocated noncompliance with a tax crime -- or with  
16 the tax laws; he was not to, himself, advocate noncompliance  
17 with the tax laws; he was to seek counseling; and he was to  
18 remain current insofar as filing all tax returns and making  
19 payments on all tax liabilities due.

20 Q. With regards to that last, uh, term, did Mr. Schiff -- or  
21 condition -- did Mr. Schiff comply?

22 A. No, he did not.

23 Q. What did Mr. Schiff do with regards to his tax liabilities  
24 or his tax returns for the years '80, '81, and '82 --

25 A. He --

1 Q. -- that was not in compliance with --

2 A. He didn't --

3 Q. -- the Court's order?

4 A. -- file valid tax returns. He filed tax returns --

5 MR. SCHIFF: I have an objection here. I was -- I have  
6 an objection here.

7 THE COURT: Okay. Go ahead.

8 MR. SCHIFF: I was under the supervision of a probation  
9 officer, and he never ruled I was not in compliance. I was  
10 in -- well, I do this under cross or -- that's -- that's a  
11 mistake?

12 THE COURT: It is. You need to -- you need to  
13 cross-examine the witness when it's your turn. It's not your  
14 turn --

15 MR. SCHIFF: My probation --

16 THE COURT: -- right now.

17 MR. SCHIFF: -- officer never held I was not in  
18 compliance with --

19 THE COURT: Well, you can ask him that --

20 MR. SCHIFF: Okay.

21 THE COURT: -- when it's your turn.

22 BY MR. NEIMAN:

23 Q. Well, with regard to these -- these terms of probation, was  
24 there a hearing before a judge in order to determine whether or  
25 not Mr. Schiff had complied with his terms of probation?

1 A. Yes. There was a probation revocation hearing that was  
2 held.

3 MR. SCHIFF: Objection. No.

4 MR. NEIMAN: Your Honor, Government's Exhibits 23  
5 through 25 in evidence, were those -- I think those were the  
6 couple that Mr. Schiff --

7 THE COURT: They were. 22 there 57 were objected to,  
8 so we'll do them one at a time.

9 MR. NEIMAN: If I may approach the witness, your Honor.

10 THE COURT: You may.

11 (Documents placed before the witness.)

12 BY MR. NEIMAN:

13 Q. Special Agent Wethje, handing you what's been marked as  
14 Government's Exhibits 23 through 25.

15 A. Yes.

16 Q. Do you recognize these documents?

17 A. Yes.

18 Q. How do you recognize these documents?

19 A. Well, these were copies of tax returns, uh, with the zeroes  
20 put on them by Mr. Schiff that were filed.

21 Q. And were you there when Mr. Schiff presented these zero  
22 returns or -- to the IRS or were they -- do you know whether or  
23 not these were filed with the IRS, I guess?

24 A. Uh, these were not handed to us. These were returns that he  
25 had -- I believe he had sent in. Ultimately I saw these, yes.

1 Q. Where did you see these zero returns?

2 A. Uh, they were provided to me by the revenue agent who was  
3 assigned to the civil closing of this case.

4 MR. SCHIFF: Can you...

5 MR. NEIMAN: Your Honor, if we could address something  
6 with --

7 MR. SCHIFF: Could you just slow down a moment?

8 MR. NEIMAN: Will do.

9 THE COURT: Please, a little quieter over there so you  
10 don't disrupt the examination.

11 MR. NEIMAN: Your Honor, at this time the Government  
12 would move into evidence Exhibits 23 and 24 and 25.

13 THE COURT: The -- Mr. Cristalli and Mr. Bowers already  
14 stated they have no objection to those.

15 Do you have any objections to 23 through 25?

16 MR. SCHIFF: Are those the zero returns I filed?

17 THE COURT: They are, at least that's what they are  
18 purported to be.

19 MR. SCHIFF: No, I have no objection.

20 THE COURT: 23 through --

21 MR. SCHIFF: Yeah. Wait a minute.

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

24 MR. SCHIFF: Yes, yes. I do have an objection.

25 The objection is I filed those returns believing I was

1 required to file them by the terms of my -- therefore, those  
2 were -- were not filed voluntarily. They were compelled. And I  
3 don't think you can compel me to file documents and then use the  
4 documents against you me.

5 Now, I have -- I -- I'm prepared -- the -- the Supreme  
6 Court has ruled -- as a matter of fact, not only has the Supreme  
7 Court ruled -- let me just get that material. I...

8 (Pause in the proceedings.)

9 MR. CRISTALLI: Your Honor, may we have a sidebar? I  
10 think --

11 THE COURT: Just a minute.

12 MR. CRISTALLI: -- I think it's important that we have  
13 sidebar.

14 THE COURT: Okay. We haven't had one this afternoon,  
15 so...

16 (Sidebar conference was held as follows:)

17 MR. NEIMAN? Your Honor, if I could make a quick --

18 THE COURT: Hold on.

19 MR. CRISTALLI: Irwin's not here.

20 (Pause in the proceedings.)

21 MR. CRISTALLI: Do you want to go first?

22 MR. NEIMAN: Sure.

23 Your Honor, I just want to ask the Court to give the  
24 jury an instruction soon that they are not to hold Mr. Schiff's  
25 prior conviction against him in assuming his guilt or innocence.

1 THE COURT: Okay.

2 MR. NEIMAN: I think it would be appropriate to give  
3 that now while --

4 MR. IGNALL: It's only for notice.

5 MR. NEIMAN: And it's only being done to show that he  
6 was put on notice, that he filed zero returns in 1991 and that  
7 the zero returns were rejected point blank by the Court right  
8 then and there.

9 MR. SCHIFF: But they can't be admitted.

10 MR. CRISTALLI: Well, I think we need --

11 THE COURT: That's a different issue.

12 MR. CRISTALLI: -- we need to go a little bit further I  
13 think --

14 MR. BOWERS: Yes.

15 MR. CRISTALLI: -- in that we need to give an  
16 instruction that it certainly has nothing to do and should not  
17 be, um, in any way held against our clients.

18 THE COURT: Um-hum. Okay.

19 MR. CRISTALLI: The only --

20 MR. BOWERS: Well, go ahead, Mike. I'm sorry.

21 MR. CRISTALLI: Okay.

22 The only other concern that I have is that, um, the  
23 individual who testified -- has testified that he was convicted  
24 on all counts. Those counts were tax evasion counts. I mean,  
25 obviously you got a jury now sitting here knowing that another

1 jury convicted this guy on all counts.

2 MR. SCHIFF: No, that's not true --

3 MR. BOWERS: Well, wait a minute.

4 MR. SCHIFF: -- only two or three counts.

5 MR. BOWERS: Right, right, right. Makes a big  
6 difference, your Honor. I'm sorry.

7 MR. CRISTALLI: So -- so I think -- and another issue  
8 is that was -- that was pre-Cheeks, which is considerably  
9 important in this case. Um, I would like to renew -- I know the  
10 answer -- but I would like to renew my motion for severance on  
11 those grounds.

12 Now, I don't know if the Court would go as far in the  
13 curative instruction about the fact that the -- and I don't know  
14 how logistically it could be done with regard to some Cheeks  
15 language and that the good faith offense did not apply at that  
16 particular time.

17 MR. BOWERS: Well, this -- this limiting instruction is  
18 gonna be rather substantial --

19 THE COURT: Um-hum.

20 MR. BOWERS: -- if that's the recourse. We have a  
21 number of issues.

22 MR. SCHIFF: Let me ask -- can I ask a question? You  
23 gonna -- are you gonna put in the zero returns.

24 MR. NEIMAN: Yes.

25 MR. CRISTALLI: Just stay on point here.

1 MR. SCHIFF: I mean, the -- the compelled returns --

2 MR. NEIMAN: Let's go --

3 MR. SCHIFF: -- that I filed?

4 MR. NEIMAN: -- let's deal with that in a minute.

5 MR. BOWERS: You can argue that in just a moment,  
6 Irwin.

7 THE COURT: Yeah. We're dealing with another issue  
8 right now.

9 MR. CRISTALLI: And then my -- my only other concern  
10 would be, um, we are having a lot of colloquy in front of the  
11 jury about legal issues. And I don't know logistically if we  
12 can handle it any other way it's just so often --

13 THE COURT: Um-hum.

14 MR. CRISTALLI: -- and it would cause us to come back  
15 here so often.

16 THE COURT: Yeah, yeah.

17 MR. CRISTALLI: But it is a concern of mine.

18 THE COURT: I understand and --

19 MR. BOWERS: It's fun here.

20 THE COURT: -- you know, there are a lot of things that  
21 are popping out that probably shouldn't. But, because of the  
22 situation and Mr. Schiff's lack of knowledge of legal procedure  
23 and rules, it's -- it's difficult not to have things come out.

24 MR. BOWERS: Your Honor, just briefly a request for you  
25 to consider. And I understand this is normally an issue that

1 would be addressed on cross. But the validity of those tax  
2 returns, um, being zero returns --

3 THE COURT: Um-hum.

4 MR. BOWERS: -- was not based on a -- a crime to a  
5 reason -- or to proof beyond a reasonable doubt with a jury.  
6 I'm -- I'm sure I'll be able to advance that on cross. Because  
7 that's incredibly prejudicial on our clients, I --

8 MR. CRISTALLI: I don't even wanna touch this guy on  
9 cross. That's another problem.

10 MR. BOWERS: -- I would request an instruction to that  
11 effect.

12 MR. NEIMAN: Your Honor, just so the record's clear,  
13 the United States is presenting this evidence to show  
14 specific -- we're gonna specifically highlight the zero return,  
15 that it was filed; the court rejected it. We're not gonna dwell  
16 on the convictions. In fact, I quickly -- I quickly glassed  
17 over it.

18 MR. BOWERS: But that's exactly --

19 MR. NEIMAN: But we do --

20 MR. BOWERS: -- my concern.

21 MR. NEIMAN: -- but we do need an instruction.

22 MR. SCHIFF: No, no. Wait a minute. Let me put this  
23 in.

24 The hearing -- no, no, no. First of all, there was no  
25 revocation hearing; it was only a probable cause hearing. And I

1 got the -- I got the -- I got the docket sheets to prove it.  
2 Okay? There was no -- there was no revocation hearing. Okay?  
3 It was a probable cause hearing. And I was not represented by  
4 an attorney.

5 MR. BOWERS: Well --

6 MR. SCHIFF: And the -- the regulation said that you  
7 cannot change the terms of your probation unless you're  
8 represented by an attorney.

9 MR. BOWERS: But --

10 MR. NEIMAN: We're not --

11 MR. SCHIFF: Let me --

12 MR. NEIMAN: -- entering it for that --

13 MR. SCHIFF: -- just ask one --

14 MR. NEIMAN: -- reason.

15 MR. SCHIFF: Are you gonna introduce the returns that I  
16 filed --

17 MR. BOWERS: Yes.

18 MR. SCHIFF: -- as a result of the probation hearing?

19 MR. BOWERS: Yes.

20 MR. NEIMAN: Yes.

21 MR. SCHIFF: Okay. I have no objection because I was  
22 compelled to file them. Those were compelled. No, those were  
23 compelled also.

24 THE COURT: Wait. Yeah. Well, but you say -- are  
25 those 23 through 25 or are those --

1 MR. NEIMAN: No, those --

2 MR. IGNALL: No.

3 MR. NEIMAN: -- those are additional.

4 THE COURT: Later. Okay.

5 MR. NEIMAN: Your Honor, just so you are aware of  
6 what's gonna happen, he had this probation revocation hearing,  
7 basis being the zero returns. In order to avoid -- and the  
8 Government's position is in order to avoid jail he filed tax  
9 returns with numbers on them. Judge still revoked probation.  
10 And that is actually the basis, those returns that were filed  
11 are the basis for the evasion of the payment counts for the  
12 self-assessed tax liability.

13 MR. SCHIFF: I -- I wrote on those returns; I didn't  
14 believe the figures. I just did it. My -- and were you aware  
15 that --

16 MR. BOWERS: What are you doing?

17 MR. SCHIFF: All right. Okay.

18 MR. BOWERS. You can't --

19 MR. SCHIFF: Okay. All right. I don't know which --

20 MR. BOWERS: -- can't do this. Just hold on one  
21 moment --

22 MR. SCHIFF: All right.

23 MR. BOWERS: -- please.

24 MR. SCHIFF: My probation officer did not violate me.

25 MR. BOWERS: Okay. Irwin, you're -- don't --

1 MR. SCHIFF: All right.

2 MR. BOWERS: -- see how the evidence --

3 MR. CRISTALLI: So do we have a curative instruction?  
4 Are we gonna get a curative instruction?

5 THE COURT: Well, yeah.

6 MR. IGNALL: Maybe we'll be able to stipulate to that.

7 THE COURT: I think what I'd like --

8 MR. BOWERS: Let's go down --

9 THE COURT: -- to do is stipulate --

10 MR. BOWERS: -- get together, yeah.

11 THE COURT: -- to a curative instruction.

12 MR. BOWERS: Yeah.

13 THE COURT: We've got another five minutes to go before  
14 the break.

15 MR. CRISTALLI: Okay.

16 THE COURT: And see if you can stipulate to somethin'.  
17 I understand your position. You're correct. There does need to  
18 be a curative instruction. The content and the breadth of it is  
19 what you guys are gonna try and work --

20 MR. BOWERS: This is -- this is --

21 THE COURT: -- agree on. If you can't agree, agree  
22 with what you can and then give me --

23 MR. BOWERS: What's --

24 THE COURT: -- what you want added.

25 MR. BOWERS: Okay. And this is the curative

1 instruction on the convictions and not --

2 THE COURT: The convictions.

3 MR. SCHIFF: I wanna just --

4 THE COURT: Well, and -- and -- yeah --

5 MR. SCHIFF: I wanna --

6 THE COURT: -- on the -- the -- the splatter effect --

7 MR. SCHIFF: I --

8 THE COURT: -- on your clients.

9 MR. SCHIFF: Can I just ask a question then?

10 THE COURT: Yeah.

11 MR. SCHIFF: As long as they are gonna bring up my  
12 so-called "conviction," I wanna be able to say -- because I was  
13 convicted only after Peter Dorsey instructed my jury that he  
14 could -- they could convict me even if the Government didn't  
15 prove the affirmative act of evasion. So --

16 MR. NEIMAN: Government doesn't object to him  
17 testifying about that as long as it's him testifying under oath.

18 THE COURT: As long as you're testifying under oath,  
19 you can do it. You're not gonna bring it up as part of this.  
20 But if you want --

21 MR. SCHIFF: No, with Wethje. I'm gonna test- --  
22 that's why I wanted --

23 THE COURT: When you testify, you can certainly  
24 testify.

25 MR. SCHIFF: That's why -- that's why that lawyer who

1 wrote the article pointed it out.

2 THE COURT: You're welcome to testify as to any facts  
3 that you have personal knowledge of when you were --

4 MR. SCHIFF: Take the stand. When I take the stand.

5 THE COURT: When you take the stand.

6 MR. SCHIFF: Well, can I ask -- can I ask him was he  
7 aware that Peter Dorsey -- he did something -- this guy did a  
8 few other things. All right.

9 MR. CRISTALLI: You gotta just --

10 MR. SCHIFF: All right. All right. See, I'm not --  
11 I'm not embarrassed about that conviction.

12 MR. LEVENTHAL: Have you decided how he's gonna  
13 testify? Is it --

14 THE COURT: Yes.

15 MR. LEVENTHAL: -- narrative or question and answer.

16 THE COURT: No, it's questions. I want you to, you  
17 know, get with him; have him write out the questions you want  
18 him to ask. I won't allow a narrative.

19 MR. LEVENTHAL: You won't. Okay.

20 Because I know in Coppola I think you did, but --

21 MR. SCHIFF: No, no. I --

22 THE COURT: Humm?

23 MR. LEVENTHAL: Coppola I think you did.

24 THE COURT: Yeah, but...

25 MR. LEVENTHAL: That was a mess. And so this hopefully

1 will be better; right? Great.

2 THE COURT: Thanks for reminding me of why I'm having  
3 it question and answer.

4 MR. LEVENTHAL: Yeah.

5 (Sidebar conference concluded and the  
6 following is held in open court:)

7 THE COURT: Go ahead, Counsel.

8 MR. NEIMAN: Thank you.

9 THE COURT: The -- the -- the defendant's objection --  
10 Defendant Schiff's objection to the Exhibits 23 through 25 is  
11 overruled and the same will be received.

12 MR. NEIMAN: Thank you, your Honor.

13 (Government's Exhibit Nos. 23 through 25,  
14 received into evidence.)

15 MR. NEIMAN: If we could display Government's  
16 Exhibits -- Exhibit 23, page 2.

17 (Document displayed in open court.)

18 MR. NEIMAN: If we could highlight just the name  
19 portion, please, and the year -- or I guess the name portion's  
20 fine.

21 BY MR. NEIMAN:

22 Q. Whose -- whose return is this for tax year 1980,  
23 Government's Exhibit 23?

24 A. Irwin Schiff's.

25 Q. If we could go to the second page -- or, I guess, the third

1 page, according to the scanned. Look at the date of this  
2 return.

3 A. Looks like October 13th, 1990.

4 Q. And are -- are these the returns that were the basis for  
5 the -- the hearing before the Court to determine whether or not  
6 Mr. Schiff was complying with his conditions of probation?

7 A. Yes, they are.

8 Q. All right. If we -- and if we can go back to the first page  
9 of the return.

10 What did Mr. Schiff write -- or what number or figure  
11 did Mr. Schiff write down the right-hand side?

12 A. Zero.

13 Q. Did he right anything besides zero?

14 A. Put a dollar sign.

15 Q. Okay. Looking at the second page of the return.

16 A. Same thing, zero with a dollar sign.

17 Q. In 1980, was that a year in which you had investigated?

18 A. Yes, it was.

19 Q. And what was the business that Mr. Schiff was in in 1980?

20 A. The two that I had spoke about, Irwin A. Schiff, Inc., and  
21 the business of promoting noncompliance with the Internal  
22 Revenue laws.

23 Q. Did the IRS process this return in 1990?

24 A. Not as a valid return, no.

25 Q. Was Mr. Schiff made aware that the IRS wasn't going to

1 process this return?

2 A. Yes.

3 Q. How was Mr. Schiff made aware? Or were you present when  
4 Mr. Schiff was made aware?

5 A. I was not present.

6 Q. Were you present when Mr. Schiff ever appeared before a  
7 court with regard to these returns?

8 A. Yes.

9 Q. And was Mr. Schiff there?

10 A. Yes, he was.

11 Q. Did Mr. Schiff have -- was Mr. Schiff represented at this  
12 hearing or was he representing himself?

13 A. The hearing took place on two different occasions. I  
14 believe the first hearing took place in May where he did not  
15 want to be represented and then ultimately, uh, the hearing  
16 where these returns were presented was in the end of July of  
17 1991, like two months later.

18 Q. And was he representing himself at that hearing in --

19 A. He -- he chose to represent himself, yes.

20 Q. All right.

21 MR. SCHIFF: Can I object to that? That's not true.  
22 Should I just say --

23 THE COURT: Well --

24 MR. SCHIFF: -- it's hearsay or what?

25 THE COURT: -- well, that's not an objection. That's

1 something that you can ask him on cross-examination.

2 MR. SCHIFF: Because I have the transcript of that  
3 hearing. All right.

4 THE COURT: You can ask him on cross-examination. It's  
5 not a proper objection.

6 MR. SCHIFF: Okay. All right. I'm sorry. I won't --  
7 okay.

8 BY MR. NEIMAN:

9 Q. Did the Court comment to Mr. Schiff in your presence about  
10 the validity of the zero return in year 1990- -- what, '91 we  
11 were in?

12 A. 1991, yes.

13 Q. What did the Court say to Mr. Schiff with regards to this  
14 zero return in 1991?

15 A. Judge Dorsey instructed him that it was not a valid return.

16 MR. SCHIFF: Objection. Hearsay.

17 THE COURT: Was it -- well, that --

18 MR. NEIMAN: Your Honor, it's being --

19 THE COURT: -- depends on whether he was present or  
20 not.

21 BY MR. NEIMAN:

22 Q. Was Defendant Schiff present when he -- when he made that  
23 comment?

24 A. Yes.

25 THE COURT: Overruled.

1 BY MR. NEIMAN:

2 Q. Did the judge make the determination whether or not  
3 Mr. Schiff violated the terms of his probation?

4 A. Yes, he did.

5 Q. Did he issue a order to that effect?

6 A. Yes, he did.

7 Q. Do you know whether or not Defendant Schiff received this  
8 order?

9 A. Well, I know that the order was sent and it's normally sent  
10 to the attorney who represents the client. And he represented  
11 himself, so yes.

12 Q. If I may hand you what's been marked as Government's  
13 Exhibit 66.

14 (Exhibit handed to the witness.)

15 BY MR. NEIMAN:

16 Q. Do you recognize Government's Exhibit 66?

17 A. Yes, that's the order.

18 Q. This is the order related to Mr. Schiff's zero returns for  
19 1991 --

20 A. Yes, it is.

21 Q. -- or in 1991?

22 A. It relates to the -- to the years that he was convicted on.  
23 And it's the order that pertains --

24 MR. NEIMAN: Your Honor, the Government would move  
25 Government's Exhibit 66 into evidence at this time.

1 THE COURT: Any objection from -- from any of the  
2 parties? 66 is moved for admission.

3 (Pause in the proceedings.)

4 THE COURT: Mr. Cristalli, do you have any objection to  
5 66?

6 MR. CRISTALLI: No, your Honor.

7 THE COURT: Mr. Bowers?

8 MR. BOWERS: Absolutely not, your Honor.

9 THE COURT: Mr. Schiff?

10 (Discussion between Mr. Leventhal and  
11 Mr. Schiff.)

12 MR. SCHIFF: Where is the returns that I filed?

13 THE COURT: We're looking at 66 right now --

14 MR. SCHIFF: Okay.

15 THE COURT: -- Exhibit 66. The question is do you have  
16 any --

17 MR. SCHIFF: No, no.

18 THE COURT: -- objection. None?

19 MR. SCHIFF: No problem with that.

20 THE COURT: All right. 66 is received.

21 MR. NEIMAN: Thank you very much, your Honor.

22 (Government's Exhibit No. 66, received into  
23 evidence.)

24 (Document displayed in open court.)

25

1 BY MR. NEIMAN:

2 Q. If I could direct your attention to the last page of  
3 Exhibit 66, page 8.

4 A. Yes.

5 Q. Who issued this order?

6 A. Peter C. Dorsey, United States District Judge.

7 Q. And what is the date this was entered?

8 A. Uh, the 26th day of November 1991.

9 Q. If we could go to the first page of the order.

10 If you could just read the -- the -- I guess let's do  
11 the caption. What caption -- what's the caption on this  
12 document?

13 A. It's an Order Re Petition for Probation Action. And I --

14 Q. In the matter of what?

15 A. United States of America versus Irwin A. Schiff, Criminal  
16 No. N-85-20 (PCD), stands for Judge Peter C. Dorsey.

17 Q. Okay. If I could direct your attention to page 5, I  
18 believe. I hope.

19 (Document displayed in open court.)

20 MR. NEIMAN: If we could blow up the top 15 or so lines  
21 under "Discussion."

22 BY MR. NEIMAN:

23 Q. If you could please read the language we have on the  
24 screen -- or before you.

25 A. "Discussion

1            "To reflect his income, defendant was obliged to file  
2 valid tax returns for 1980 [through 19]88. His filings, prior  
3 to his hearing, were but another gimmick by which to evade  
4 taxes. The 'zero' return is found not to have been filed in  
5 good faith. See United States v. Schiff, 876 F.2d 272 [and] 275  
6 (2d Cir. 1989); Schiff v. United States, 919 F.2d 830, 833 (2d  
7 Cir.), cert. denied, [um] 111 S. [Connecticut] 2871 (1991). A  
8 return without sufficient information from which the tax  
9 liability can reasonably be calculated is not a return. That is  
10 a question of law. United States v. Moore, 627 F.2d 830, 834,  
11 (7th Cir.), cert. denied, 450 U.S.[C.] 916 (1981). 'Zero'  
12 returns have been rejected as invalid. See United States v  
13 Smith, 618 F.2d 280, 281 (5th Cir) (per curiam), cert. denied,  
14 449 U.S. 868 (1980); United States v. Mosel, 738 F.2d 157 [and]  
15 158 (6th Cir. 1984)(per curiam); United States v. Rickman, 638  
16 F.2d 182, 184 (10th Cir. 1980), cited with approval in Moore,  
17 622nd [sic]" -- "627 F.2d at 835; contra United States v. Long,  
18 618 F.2d 74 [and] 75 (9th Cir. 1980)."

19 Q. Mr. Wethje, do you know whether or not any of these court  
20 cases are cited in The Federal Mafia or do you know what The  
21 Federal Mafia is first?

22 MR. SCHIFF: Objection. Foundation.

23 THE COURT: That's what he's trying to establish.

24 MR. NEIMAN: That's I'm trying to establish.

25 THE COURT: Overruled. He's asking him if he -- he

1 knows what it is. That is --

2 BY MR. NEIMAN:

3 Q. Mr. Wethje, do --

4 THE COURT: -- foundational.

5 MR. NEIMAN: I'm sorry, your Honor.

6 THE WITNESS: Yes, I do.

7 BY MR. NEIMAN:

8 Q. What is The Federal Mafia?

9 A. It's a book Mr. Schiff wrote after, um, the conviction --  
10 the case that I worked on in the conviction.

11 Q. Do you know whether or not any of these cases are cited in  
12 the Federal -- in the actual Federal Mafia?

13 A. I believe they are. Uh...

14 Q. The ones rejecting the zero return, were there any of them  
15 cited in the --

16 A. No, no --

17 Q. If you don't know --

18 A. -- not the --

19 Q. -- you don't know.

20 A. -- ones rejecting it.

21 Q. Do you know whether or not this probation order was ever put  
22 into an edition of The Federal Mafia?

23 A. No, I don't -- I don't know if it was or not.

24 Q. If we can go down to the next paragraph.

25 THE COURT: We need to wrap up pretty quick. We're at

1 25 to. I don't want to cut you off. But, by the same token, we  
2 need to get the jury out of here in the next five minutes or so.

3 MR. NEIMAN: I probably will be a little more than five  
4 minutes. If we want to break now, we can break now.

5 THE COURT: We'll break now.

6 Before we do, I want to give a timely instruction to  
7 the jury. We'll have a more detailed instruction tomorrow  
8 morning after counsel has an opportunity to -- to consult on it.

9 But you heard -- you heard evidence that Mr. Schiff had  
10 been convicted of -- of prior crimes and -- and evidence of  
11 other crimes, wrongs, or acts is not admissible under the rules  
12 of evidence to prove the character of a person in order to show  
13 action and conformity therewith. It may, however, be admissible  
14 for other purposes such as motive, opportunity, intent,  
15 preparation, plan, knowledge, identity, or absence of mistake or  
16 accident.

17 So, until you're better instructed, you are not to  
18 consider the convictions that were mentioned as evidence of --  
19 of any, uh, propensity on the part of Mr. Schiff to commit  
20 the -- the crimes that he's charged with now.

21 Is that a satisfied instruction?

22 MR. NEIMAN: Yes, it is, your Honor.

23 THE COURT: Mr. Cristalli, is that satisfactory to you  
24 until further instruction is developed?

25 MR. CRISTALLI: Yeah. We're -- and I believe we are

1 gonna get together and discuss that other issue that we had --  
2 that -- that would be my only reservation.

3 THE COURT: Yes.

4 MR. CRISTALLI: Yes.

5 THE COURT: Mr. Bowers.

6 MR. BOWERS: Well, for the time being, that's fine.

7 THE COURT: For the time being.

8 MR. BOWERS: As I understand it, we can add more later.  
9 Correct?

10 THE COURT: Mr. Schiff, is that adequate for the time  
11 being?

12 MR. SCHIFF: Yes.

13 THE COURT: Thank you. We are in recess.

14 The Court instructs you not to discuss the case among  
15 yourselves or with others, to read any newspaper or other media  
16 accounts or view or listen to such accounts or to form any  
17 conclusions until the matter's been submitted to you by my order  
18 for deliberation.

19 THE CLERK: 9:00 a.m. tomorrow morning, your Honor.

20 THE COURT: 9:00 a.m.

21 (Jury leaves the courtroom at 4:37 p.m.)

22 THE COURT: Thank you. We're in recess.

23 Do you have any further business --

24 MR. CRISTALLI: I do --

25 THE COURT: -- you want to take care of?

1 MR. CRISTALLI: -- have just a short matter, if I may,  
2 just for --

3 MR. NEIMAN: If we can just wait for the witness.

4 MR. CRISTALLI: Yes.

5 -- record purposes.

6 THE COURT: Yes.

7 (The witness leaves the courtroom.)

8 THE COURT: Go ahead.

9 MR. CRISTALLI: Thank you, your Honor.

10 Um, your Honor, I did stipulate to that exhibit coming  
11 into evidence. I do have some concern with regard to it, um, as  
12 we stand right now and how we're using it.

13 When we were at sidebar, I renewed my motion for  
14 severance. And -- and let me just expound on that a little bit.  
15 My concern here is the language we're taking from that previous  
16 court proceeding, um, is -- is basically trying -- is -- is in  
17 an effort by the Government to establish notice here.

18 The fact that it's stated in -- in the documentation  
19 that we saw on the screen that the zero -- by a judge a finding  
20 that the zero return is found not to, uh, have been filed in  
21 good faith and then cases after cases after cases after cases,  
22 um, I think certainly implicates this jury in believing that,  
23 you know, if it -- if at one particular time a court found that  
24 these practices were not held in good faith the spillover to us,  
25 I think, is enormous. And, um, I would, once again, move for

1 severance because I'm not quite sure a curative instruction is a  
2 possible remedy to the prejudice that is affecting me here.

3 THE COURT: Well, you know, we -- we can't just have  
4 Mr. Schiff's version of the law, uh, presented throughout the  
5 case. There is other law that -- that contradicts what he has  
6 slipped into the record. And -- and so, at the end of the case,  
7 I'm going to -- I'm going to instruct the jury on -- on some of  
8 these issues, these legal issues, that have already been  
9 determined and, uh, that are -- that are undisputable for any  
10 reputable judge or practitioner of the law.

11 MR. SCHIFF: May I interject?

12 THE COURT: No, you may not.

13 So they are gonna get instructed on it. Whether you  
14 like it or not, the case -- there are cases that do not agree  
15 with Mr. Schiff. Uh, as far as the spillover of this document,  
16 I -- I suppose what the Government would have to show is that  
17 your client was aware of it or Mr. Cohen was aware of it. And  
18 that's another issue.

19 MR. BOWERS: Your Honor --

20 THE COURT: If they can't show your client was aware of  
21 it, there is no spillover effect.

22 MR. CRISTALLI: Well, then here's the concern that I  
23 have in terms of spillover. You've got a jury hearing that  
24 there was prior hearing -- prior preceding -- prior trial where  
25 Mr. Schiff was convicted and then there's -- then there's --

1 then there's findings by a court saying that, you know, his --  
2 his -- his zero filings were not held in good faith. Whether or  
3 not my clients [sic] knew about it or didn't know about it, I  
4 think is prejudicial to me.

5 THE COURT: I -- I respectfully disagree with that.

6 MR. NEIMAN: Your Honor, the Government, I believe, is  
7 in a position to stipulate that Ms. Neun and Ms. -- Mr. Cohen  
8 never saw this probation revocation order, if that -- and we  
9 also would urge the defense to submit to us and the Court as  
10 stringent of a curative instruction as they see fit and we will  
11 work with it.

12 THE COURT: There -- there's your invitation to  
13 complete an instruction that I'll read in the morning.

14 MR. SCHIFF: Could I make a comment on this?

15 THE COURT: Any -- hold on -- anything further?

16 MR. CRISTALLI: That's fine, your Honor. Thank you.

17 THE COURT: Is that okay?

18 And Mr. Bowers?

19 MR. BOWERS: I'm gonna just make an objection and  
20 elaborate after I've had a chance to talk tomorrow morning  
21 because maybe we can cure it.

22 THE COURT: All right.

23 MR. BOWERS: I don't know. I have several, you know,  
24 requests that are denied regularly.

25 MR. SCHIFF: You notice in that -- in that statement

1 they mention three cases in which the zero return was held valid  
2 and those were -- two of them were Ninth Circuit cases. And I  
3 relied on the Ninth Circuit case. Certainly the Ninth Circuit  
4 believes --

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

7 MR. SCHIFF: All right. All right.

8 THE COURT: All right. We are in recess until 9:00  
9 a.m.

10 MR. BOWERS: I'm sorry. Is it 9:00, your Honor?

11 THE CLERK: Yes.

12 THE COURT: 9:00, yes.

13 (Proceedings adjourned at 4:43 p.m.)

14 --oOo--

15 I hereby certify that pursuant to Section 753, Title 28, United  
16 States Code, the foregoing is a true and correct transcript of  
17 the stenographically reported proceedings held in the  
18 above-entitled matter.

19  
20 DATED:

FELICIA REID, CLERK OF COURT, RPR, CCR NO. 478



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