

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THE HON. KENT J. DAWSON, JUDGE PRESIDING

4
5 UNITED STATES OF AMERICA,)

)

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

)

7 vs.)

)

8 IRWIN SCHIFF, CYNTHIA NEUN,)

and LAWRENCE COHEN,)

9)

Defendants.)

10)

11
12
13
14
15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 6)

16 Tuesday, September 20, 2005

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20 APPEARANCES: (See Page 2)

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

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

I N D E X

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

William C. Thomas	1343I	1387C	1472I	1478B	--
		1394B		1482S	
		1401S			
Douglas McEwen	1485N	1517C	--	--	--
Kristy Morgan	1533I	--	--	--	--

EXHIBITS

EXHIBIT NO.:	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
Government's:		
22, 26 through 33, 35, 36, 37, 39 through 51, 58 through 65 and 65A	--	1533
107	1492	--
104, 105, 106	1492	1502
109 and 109A	1492	1499
110 and 110A	--	1505
111	1492	1497

1 LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 20, 2005; 10:05 A.M.

2 --oOo--

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

4 THE COURT: Ready to bring the jury in?

5 MR. IGNALL: Yes, your Honor. We had one stipulation.

6 THE COURT: Okay.

7 MR. IGNALL: We've spoken to defense counsel. It's
8 about Exhibit 92; it's a disk that Mr. Thomas put all the data
9 on.

10 THE COURT: Yes.

11 MR. IGNALL: And I believe Mr. Cristalli raised a
12 concern about the dates. I think we reached a stipulation that
13 the dates contained on that database are from January '96
14 through October 18th, 2001.

15 THE COURT: Okay.

16 Is that right?

17 MR. CRISTALLI: Yes, your Honor.

18 MR. BOWERS: No objection --

19 THE COURT: Mr. Bowers?

20 MR. BOWERS: -- your Honor.

21 MR. SCHIFF: No objection.

22 THE COURT: Thank you.

23 Bring them in.

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

25 THE COURT: Please be seated.

1 Will counsel stipulate to the presence of the jury?

2 MR. IGNALL: Yes, your Honor.

3 MR. CRISTALLI: Yes, your Honor.

4 MR. BOWERS: Yes, Judge.

5 THE COURT: Thank you.

6 MR. LEVENTHAL: Yes, your Honor.

7 THE COURT: Thank you.

8 MR. IGNALL: Does the Court want to me to read that
9 stipulation before we...

10 THE COURT: Go ahead.

11 MR. IGNALL: Okay.

12 Ladies and gentlemen, the parties have agreed that with
13 respect to Exhibit 92, a disk containing a database that
14 Mr. Thomas maintained that the dates of the data in there run
15 from January 1996 through October 18th, 2001.

16 THE COURT: Thank you.

17 You may resume your direct examination of the witness.

18 MR. IGNALL: Thank you, your Honor.

19

20 WILLIAM C. THOMAS,

21 called as a witness on behalf of the Government, having been
22 previously duly sworn, was examined and testified further as
23 follows:

24

25

1 DIRECT EXAMINATION (Continued)

2 BY MR. IGNALL:

3 Q. Mr. Thomas, good morning.

4 A. Good morning.

5 Q. Yesterday we were talking about, I believe, P.I.L.L. Do you
6 remember us talking about that?

7 A. Right, yes, sir.

8 Q. Okay. If I could turn your attention to what we've marked
9 as Exhibit 87A -- and I'm not sure in that's in front of you
10 or... I'm try to pull it up on the screen in a minute. But, if
11 you could look at the hard copy there, it's a number of pages?

12 A. Okay.

13 Q. Do you recognize the page contained in Exhibit 87A?

14 A. Yes, I do.

15 Q. What are those?

16 A. Those are checks from Freedom Books, our personal --

17 MR. SCHIFF: Your Honor, can I -- I must apologize.
18 I -- I thought I left my hearing aids. Is there a place I can
19 sit where I would be -- apologize. I took them out. I -- I
20 rarely wear them, except here. So I thought I -- is there a
21 place that I can sit? I'm really sorry.

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

23 MR. SCHIFF: I must apologize.

24 THE COURT: -- there's any place you can sit where
25 you'll hear any better --

1 MR. SCHIFF: Just to take notes, your Honor.

2 THE COURT: Pardon?

3 MR. SCHIFF: Yes. Is there a place that I might sit
4 that -- where -- I must apologize profusely.

5 THE COURT: Well, I'm not -- I guess the question is:
6 Will you be able to hear any better anywhere else?

7 MR. SCHIFF: I don't know. I'm just asking. Is there
8 a place where I might hear better? I took them out -- see, I
9 hardly wear them except when I come to court.

10 THE COURT: Yeah.

11 MR. SCHIFF: All right.

12 THE COURT: Well, how far away are they?

13 MR. SCHIFF: Is there a place that I might --

14 THE COURT: How far away are your --

15 MR. SCHIFF: I can hear you now.

16 THE COURT: You can. Well --

17 MR. SCHIFF: I just want to be sure I hear, Bill. I --
18 I must apologize for this.

19 THE COURT: Well, I could -- I could seat you back --
20 back there -- there's a chair -- to see if you can hear from --

21 MR. SCHIFF: Again, I must apologize for this.

22 MR. MODAFFERI: Do you want to sit here?

23 MR. SCHIFF: All right. Can I sit here with you then?
24 Okay. Thank you, your Honor.

25 THE COURT: You're welcome.

1 (Pause in the proceedings.)

2 MR. SCHIFF: I'll get them. I know where they are.

3 THE COURT: Okay.

4 MR. IGNALL: All right. Thank you.

5 BY MR. IGNALL:

6 Q. All right. Mr. Thomas, we were looking at Exhibit 87A?

7 A. Yes, sir.

8 Q. Could you tell me what those exhibits are in Exhibit 87A?

9 A. Those are checks from our personal Freedom Books's account

10 in Evansville, Indiana, that I wrote -- that I typed up and

11 signed to send funds to, uh, Prosper -- P.I.L.L., Prosper

12 International League Limited.

13 (Document displayed in open court.)

14 MR. IGNALL: Ms. Vannozzi, is the screen on?

15 THE CLERK: It is.

16 MR. IGNALL: Thank you.

17 THE CLERK: Well, the screen was on.

18 THE WITNESS: I'm havin' trouble makin' out the dollar

19 amount on some of them.

20 MR. IGNALL: I understand some of those are less clear

21 than others, so we'll try and...

22 All right. If we could go to the next -- that's not a

23 very clear one. But stay on that first page. I'm sorry. Go

24 back to that first page, Mr. Steiner. Thank you.

25 MR. SCHIFF: Your Honor, are those the checks made out

1 to P.I.L.L.?

2 THE COURT: Yes.

3 MR. SCHIFF: Those are checks made out to P.I.L.L.; is
4 that right?

5 THE COURT: Yes.

6 MR. SCHIFF: All right.

7 BY MR. IGNALL:

8 Q. And can you tell what bank account these are written from?

9 A. These are written on our bank, Citizens.

10 Q. Okay. And who signed that check?

11 A. I did.

12 Q. Okay. Can you make out the amount of that check?

13 A. Can I make out what?

14 Q. How much that is?

15 A. What date?

16 Q. No. The amount. Maybe you can read --

17 A. Oh. It's either 15,000 or 5,000.

18 Q. Okay.

19 A. Oh, it's -- it's 15. It's written out fifteen --

20 Q. Okay.

21 A. -- thousand.

22 Q. Great.

23 MR. SCHIFF: He said it's 15,000?

24 THE COURT: Yes.

25 MR. SCHIFF: Okay.

1 MR. IGNALL: If we could skip two ahead to the next
2 check.

3 (Document displayed in open court.)

4 BY MR. IGNALL:

5 Q. On whose direction did you make out these checks?

6 A. Um, Freedom Books in Las Vegas.

7 Q. Who in particular?

8 A. Uh, a number of people, different people.

9 Q. Who -- who give you instructions to send money to P.I.L.L.
10 like that?

11 A. Office manager --

12 Q. Who --

13 A. -- and Mr. Schiff.

14 Q. All right. Who was the office manager?

15 A. At this -- this particular date, I believe it would have to
16 be Ms. Linda Hicks.

17 Q. Okay.

18 MR. SCHIFF: What was the date on that?

19 BY MR. IGNALL:

20 Q. What's the date on the check that we're looking at right
21 now?

22 A. 09 May 1997.

23 Q. Okay. And how much was this check for?

24 A. This is -- this is for 5,000.

25 Q. Okay. How long before writing this check around May '97,

1 for example -- let me rephrase that.

2 The check here is dated May '97. When did you get the
3 instructions to send this check to P.I.L.L.?

4 A. Either the day before or the same day.

5 Q. All right. Is that true with every check you wrote to
6 P.I.L.L.?

7 A. Yes, sir.

8 Q. Let's look at the next check.

9 (Document displayed in open court.)

10 BY MR. IGNALL:

11 Q. And -- let's see. Can we tell how much this one's for?

12 A. This check is for 8,000.

13 Q. All right. And what's the date of this check?

14 A. It looks like 23 June or 03 June. I wrote it -- mine are
15 all military --

16 Q. Okay.

17 A. -- dates. 03 June 1997.

18 Q. And who -- who signed this check?

19 A. Myself. I did.

20 Q. When you wrote these checks out to P.I.L.L., where did you
21 send them?

22 A. I sent them to Freedom Books in Las Vegas.

23 Q. Thank you.

24 MR. IGNALL: We can take that down now.

25

1 BY MR. IGNALL:

2 Q. Did we have -- I'm sorry. Did you have any discussions with
3 Mr. Schiff about payroll for employees in Las Vegas?

4 MR. CRISTALLI: Objection. Foundation, time.

5 THE COURT: Sustained.

6 MR. IGNALL: I'm sorry. The question was did he have
7 any discussions, your Honor.

8 THE COURT: Well, okay. Next question will be
9 foundational and I'll allow that, did you have any discussions.

10 BY MR. IGNALL:

11 Q. I'm sorry. Did you ever have any discussions with
12 Mr. Schiff about payroll for employees in Las Vegas?

13 A. Uh, no. I was instructed to send their -- their pay to
14 them.

15 Q. Did you ever have a discussion with Mr. Schiff about that?

16 A. Yes.

17 Q. When did you have these discussions with --

18 MR. SCHIFF: Can I just verify the last -- can you just
19 verify the question and answer?

20 THE COURT: What do you want?

21 MR. SCHIFF: Just --

22 THE COURT: Oh, you didn't hear the question?

23 MR. SCHIFF: I didn't hear the question and answer.

24 THE COURT: The question was did he have a discussion
25 with you about payroll.

1 MR. SCHIFF: About my payroll.

2 THE COURT: The answer was yes.

3 MR. SCHIFF: Did --

4 THE COURT: And the question was when.

5 MR. SCHIFF: -- I have a discussion. Okay.

6 THE COURT: When.

7 BY MR. IGNALL:

8 Q. When did you first have a discussion with Mr. Schiff about
9 payroll for employees in Las Vegas?

10 A. After -- during my employ -- employment, uh, I was
11 sending -- I sent some cash for payroll.

12 Q. My question is: When -- when did you have a discussion with
13 Mr. Schiff about sending this cash?

14 A. I -- the date, I have no idea.

15 Q. Was it more than once during your employment?

16 A. Yes, sir.

17 Q. And when were you employed at Freedom Books?

18 A. From '95 to 2001.

19 Q. And, specifically, what discussions did you have --

20 MR. CRISTALLI: Your Honor, I'm gonna object on
21 foundational grounds. I don't know even know if it's within the
22 timeline in the Indictment. I'd have to request that that be
23 stricken from the record.

24 THE COURT: '95 to 2001 is his -- is his time frame
25 during his employment. And I'm gonna allow the question if he

1 can remember.

2 Go ahead.

3 BY MR. IGNALL:

4 Q. When -- when during your employment -- beginning, middle,
5 end -- did you first have a discussion with Mr. Schiff about
6 payroll?

7 A. Prob- -- probably -- probably toward the, uh -- we -- we
8 could find out if we looked in the -- the exhibit with the UPS.

9 Q. All right. Would you like to look at that? We can bring
10 that to you if that would refresh your recollection.

11 A. It would be towards the middle or the end, not at first.

12 Q. All right.

13 MR. IGNALL: I believe that's Exhibit 89. May I
14 approach the witness, your Honor?

15 THE COURT: You may.

16 We went over this yesterday. There were, um, '98,
17 1998/1999 he was sending cash; 12-10-98 and 7-6-99.

18 THE WITNESS: Okay. To -- to answer your question, as
19 close as I can give you is a year would be --

20 BY MR. IGNALL:

21 Q. All right. What's the year?

22 A. -- it looks like it was around 1998.

23 Q. All right. And what discussion did you have with Mr. Schiff
24 starting in 1998 about payroll in Las Vegas?

25 A. Well, I'm not so sure the first discussion was with

1 Mr. Schiff. It would have been with the office manager.

2 Q. Who was that?

3 A. Ms. Linda Hicks.

4 Q. All right. What did Ms. Hicks tell you about payroll in
5 Las Vegas in '98?

6 A. She said that they needed funds to pay the employees.

7 Q. Did she instruct you on how to send those funds, in what
8 format?

9 A. Well, at times it was cashier's check, at times it was cash.

10 Q. Who instructed you whether to send cash?

11 A. Ms. Linda Hicks.

12 Q. Did you ever have a discussion with Mr. Schiff about sending
13 cash for payroll?

14 A. I believe I -- I discussed with him at one time or another
15 that it wasn't -- it wasn't a good idea.

16 Q. And what did he say to that?

17 A. Uh, I don't -- I don't recall. It -- it didn't stop, so...

18 Q. All right. Thank you.

19 MR. IGNALL: All right may I approach the witness --

20 THE COURT: You may.

21 MR. IGNALL: -- and get that?

22 Thank you.

23 THE WITNESS: Um-hum.

24

25

1 BY MR. IGNALL:

2 Q. Mr. Thomas, have you ever heard of something called the
3 "Freedom Foundation"?

4 A. Yes, sir.

5 Q. What is the Freedom Foundation?

6 A. Freedom Foundation was a -- I guess a membership. It was
7 a -- a membership in somethin' that Freedom Books designed to
8 help people with -- people were having problems with their --
9 with their taxes and problems with the IRS and problems with
10 banks and just general -- it was a -- it was a membership that
11 they could join to receive help.

12 Q. Did it cost money to join?

13 A. It -- it did.

14 Q. Did you have any responsibility for collecting money for
15 Freedom Foundation?

16 A. I collected funds for Freedom Foundation when people
17 authorized me to take their funds out of their credit card, uh,
18 accounts.

19 Q. What did you do with the funds for the Freedom Foundation
20 that you took from these credit card payments?

21 A. I -- I sent it to Las Vegas.

22 Q. In what format did you send it to Las Vegas?

23 A. Uh, cashier's checks. It went into our -- it went into our
24 open account.

25 Q. And then?

1 A. And I transferred those funds to Las Vegas.

2 Q. Who instructed you to send those funds to Las Vegas?

3 A. Initially it was the office manager. Every -- everybody.

4 It was a known -- the Freedom Foundation account was -- was
5 their baby to take care of. And it was just a known fact. At
6 first I was instructed to send it, and I just wanted throughout
7 my --

8 Q. Did Mr. Schiff ever instruct you to send --

9 A. Oh, yes. Yes, sir.

10 Q. -- money to the Freedom Foundation to Las Vegas?

11 A. Right.

12 Q. Did Ms. Neun ever instruct you to send money --

13 A. Yes.

14 Q. -- to Las Vegas for the --

15 MR. CRISTALLI: Objection.

16 BY MR. IGNALL:

17 Q. -- Freedom Foundation?

18 MR. CRISTALLI: Foundation.

19 MR. SCHIFF: I didn't hear --

20 MR. CRISTALLI: Foundation.

21 MR. SCHIFF: -- that.

22 THE REPORTER: One at a time, please.

23 MR. CRISTALLI: Objection. Foundation, time.

24 THE COURT: Foundation.

25 MR. IGNALL: The question was did she, your Honor.

1 THE COURT: Right. I understand and --

2 MR. IGNALL: Okay.

3 THE COURT: -- so to let the --

4 BY MR. IGNALL:

5 Q. Did Cindy Neun --

6 THE COURT: -- let the answer stand, you have to have
7 foundation.

8 Go ahead.

9 BY MR. IGNALL:

10 Q. I'm sorry. Did Cynthia Neun ever instruct you to send
11 Freedom Foundation funds to Las Vegas?

12 A. Yes.

13 Q. When did she do that?

14 A. I don't remember when she came -- when she came on board.
15 It would have been toward the end of my -- probably the last
16 couple years of my employment.

17 Q. Thank you.

18 Did you maintain any records for Freedom Foundation in
19 Indiana?

20 A. I -- I kept what records that I had access to. I didn't
21 have access to all the Freedom Foundation -- a hundred percent
22 of the records. I was not notified -- I kept track of the ones
23 that was marked "FF," Freedom Foundation, and I debited -- I
24 took the money from the credit card. I kept those records in my
25 database.

1 Q. Did you ever ask for access to other records for the Freedom
2 Foundation?

3 A. I asked for records of -- of everything that transpired in
4 that office so I could keep it for Irwin's benefit.

5 Q. Did you ever ask Cynthia Neun for records and access to the
6 records for the Freedom Foundation?

7 A. Um, I don't -- I don't remember if I specifically asked
8 Cindy for those records.

9 Q. Did you ever have a discussion with Cynthia Neun about
10 whether you should have access to those records?

11 A. I've had discussion with everybody in that office about the
12 Freedom Foundation account, that I needed that information. And
13 I was told that I didn't need that information in Indiana.

14 Q. All right. And who told you that? Let's -- let's --

15 A. Uh...

16 Q. Did Cynthia Neun ever tell you that?

17 A. Yes.

18 Q. When did she tell you that?

19 A. I don't know.

20 Q. During -- was it while -- while she was working at Freedom
21 Books?

22 A. I was --

23 MR. CRISTALLI: Objection. Move to strike.

24 THE COURT: On what basis?

25 MR. CRISTALLI: When she was working at Freedom Books,

1 where's the foundation for that?

2 THE COURT: Sustained on that basis.

3 BY MR. IGNALL:

4 Q. All right. We'll come back to that in a second.

5 Have you ever met Cynthia Neun?

6 A. Yes, sir.

7 Q. When did you first meet her?

8 A. I met her -- the first time I met her I believe it was at a
9 seminar out of state.

10 Q. When was that?

11 MR. SCHIFF: Could I just ask that that question be
12 asked and answered? What was the question?

13 THE COURT: The question was: When did you first meet
14 Cynthia Neun? And he is starting to say he believes that it was
15 at his seminar --

16 MR. SCHIFF: Seminar.

17 THE COURT: -- out of state.

18 MR. SCHIFF: Pardon me?

19 THE COURT: A seminar out of state.

20 MR. SCHIFF: A seminar out of state. Thank you.

21 THE WITNESS: I believe it was in Indianapolis.

22 BY MR. IGNALL:

23 Q. When was that as best you can recall?

24 A. I -- I -- I would have to guess. I would guess it would be

25 19- --

1 MR. CRISTALLI: Objection.

2 THE WITNESS: -- 98.

3 MR. BOWERS: It calls for speculation.

4 BY MR. IGNALL:

5 Q. We don't want you to guess.

6 Was it near the beginning, middle, or end of your
7 employment at Freedom Books?

8 A. Probably toward the middle.

9 THE COURT: Overruled.

10 BY MR. IGNALL:

11 Q. Did you have any other dealings with Cynthia Neun after you
12 met her at a seminar?

13 A. Well, I -- I spoke to her on the -- on the telephone
14 frequently.

15 Q. What did you talk to her about on the telephone?

16 A. Business -- regular business at Freedom Books.

17 Q. Did -- did she ever tell you what her role was at Freedom
18 Books?

19 MR. CRISTALLI: Objection. Leading.

20 THE COURT: Overruled.

21 THE WITNESS: At first she was -- at first she was
22 identified as the office manager.

23 BY MR. IGNALL:

24 Q. Did she identify --

25 MR. CRISTALLI: Objection. Foundation.

1 BY MR. IGNALL:

2 Q. -- herself that way?

3 THE COURT: Overruled.

4 BY MR. IGNALL:

5 Q. Did she identify herself that way?

6 A. She did not. Uh, Linda Hicks told me that she -- excuse me.

7 Q. Okay. That's --

8 MR. CRISTALLI: Objection. Hearsay.

9 BY MR. IGNALL:

10 Q. That's okay. We can...

11 When you had discussions with Ms. Neun, did she ever
12 give you instructions on what to do as part of your employment?

13 A. Sometimes.

14 MR. CRISTALLI: Objection. Leading.

15 THE COURT: Overruled.

16 BY MR. IGNALL:

17 Q. Was Ms. Neun working at Freedom Books --

18 MR. CRISTALLI: Objection.

19 BY MR. IGNALL:

20 Q. -- when you left your employ at Freedom Books?

21 MR. CRISTALLI: Objection. Foundation. Working?

22 THE COURT: Well, what -- what word do you think should
23 be used? He's testified that she gave instructions to him, that
24 she was identified as the office manager. So what --

25 MR. CRISTALLI: Your Honor, first of all, in terms of

1 the identification of her being --

2 THE COURT: We're not talking about -- not talking
3 about the legal term "employee." We're talking about working.

4 MR. CRISTALLI: Okay. If the jury can be instructed to
5 that effect, I would certainly appreciate it.

6 THE COURT: All right. The jury is so instructed that
7 the term "working" is not to be interpreted as an employee.

8 MR. CRISTALLI: Thank you, your Honor.

9 BY MR. IGNALL:

10 Q. Was -- I'll phrase it differently, your Honor -- was
11 Ms. Neun performing duties at Freedom Books at the time you left
12 your employ at Freedom Books?

13 A. Yes.

14 Q. Let's go back to the question about the Freedom Foundation.

15 Did you have a discussion with Cynthia Neun about
16 whether you should be keeping any Freedom Foundation records in
17 Indiana?

18 A. I -- I would have to say yes. I discussed it with -- with
19 everyone.

20 Q. What did Ms. Neun tell you --

21 MR. CRISTALLI: Objection. Calls for speculation. And
22 I believe it's already --

23 THE COURT: Let him finish the question.

24 MR. CRISTALLI: I believe it's already been asked and
25 answered. I believe he said he didn't remember. He spoke to,

1 um, a number of individuals at Freedom Books. You can ask him
2 again.

3 BY MR. IGNALL:

4 Q. Do you remember speaking to Cynthia Neun about whether you
5 should be keeping records about Freedom Foundation in Indiana?

6 A. I -- yes.

7 Q. Did you?

8 A. Yes.

9 Q. Okay. What did Ms. Neun tell you about whether you should
10 be keeping records in Indiana?

11 A. That they would keep the records -- they would keep all the
12 information there.

13 THE COURT: "There" meaning where? Las Vegas?

14 THE WITNESS: I'm sorry. In Las Vegas. Right. At the
15 main headquarters, the shop.

16 BY MR. IGNALL:

17 Q. Did you ever speak with Ms. Neun about sending money from
18 Indiana to Las Vegas?

19 A. Money?

20 Q. Any kind of funds.

21 A. Check? Cash?

22 Q. Any kind of funds.

23 A. Funds, yes, I did.

24 Q. What discussion did you have with her about sending funds to
25 Las Vegas?

1 A. Well, they -- they were requested -- she requested funds on
2 behalf of the office.

3 Q. How often did she request funds on behalf of the office?

4 A. I -- I -- I would have no idea how many times.

5 Q. More than once or twice?

6 A. More than once. More than -- more than twice.

7 MR. SCHIFF: Objection. He said he had no idea. He's
8 leading him.

9 THE COURT: Well, no, he's not. He said, "more than
10 twice."

11 BY MR. IGNALL:

12 Q. More than five times?

13 A. Possibly.

14 MR. CRISTALLI: Your Honor, I would like some
15 foundation as to a time period on this.

16 THE COURT: Foundation.

17 BY MR. IGNALL:

18 Q. Was this while you were employed at Freedom Books?

19 A. While I was employed at Freedom Books. Toward -- toward --
20 it would be toward the end of my employment.

21 Q. And how -- how did you have these conversations with
22 Ms. Neun? In person?

23 A. Oh, on the phone.

24 Q. And was that phone call placed to -- where was that phone
25 call placed, to or from?

1 A. From -- from Las Vegas to Freedom Books in Evansville,
2 Indiana.

3 Q. Thank you.

4 Did you ever visit Freedom Books in Las Vegas while you
5 were working there?

6 A. Uh, three times.

7 Q. Do you remember when that was?

8 A. I -- I don't remember the -- I don't remember the dates.

9 Q. Was it near the beginning, middle, or end of your
10 employment?

11 A. The first time would be toward -- toward the beginning of my
12 employment. The second time would have been in the middle. The
13 third time was when I was terminated.

14 Q. So that would have been, obviously, the end of your
15 employment?

16 A. Right.

17 Q. Okay. What did you observe -- let me rephrase that.

18 When you went out to Freedom Books, how many people
19 were working there in the office?

20 A. The first time?

21 Q. The first time. And we'll go through each time.

22 A. Three.

23 Q. How about the second time?

24 A. Maybe -- maybe eight.

25 Q. And how about the last time you were out there?

1 A. Dozens.

2 MR. SCHIFF: What was the answer?

3 MR. CRISTALLI: Dozens.

4 MR. SCHIFF: Dozens?

5 MR. BOWERS: When was it?

6 MR. CRISTALLI: Dozens.

7 MR. SCHIFF: Dozens?

8 MR. CRISTALLI: Yes.

9 MR. BOWERS: I'm sorry, your Honor. Time of the last
10 visit.

11 THE COURT: Do we have an echo in here?

12 BY MR. IGNALL:

13 Q. Mr. Thomas, did you ever see Cynthia Neun at Freedom Books
14 when you came out to visit?

15 A. Yes.

16 Q. How many times -- out of your three visits, do you recall
17 how many times you saw her?

18 MR. CRISTALLI: Foundation. During which time periods?

19 MR. IGNALL: Your Honor, he's already testified about
20 the time periods for each visit.

21 MR. CRISTALLI: Actually, he didn't testify to what
22 time periods that he saw her there and that's very --

23 THE COURT: Well, that's what he's asking is did you
24 ever see Cynthia Neun --

25 MR. CRISTALLI: Right.

1 THE COURT: -- at Freedom Books when you came out to
2 visit.

3 MR. CRISTALLI: Right.

4 THE COURT: That's the question. He's identified the
5 times.

6 MR. IGNALL: Your Honor, if I may request the objection
7 come at the time that it might be appropriate.

8 THE COURT: Yes. It is premature.

9 Go ahead.

10 BY MR. IGNALL:

11 Q. Did you ever observe Cynthia Neun at Freedom Books when you
12 came out for a visit?

13 A. I did, yes.

14 Q. On which visits, if it was -- on which visit or visits?

15 A. The second and third.

16 Q. Thank you.

17 What did you observe Ms. Neun doing at Freedom Books on
18 those two visits?

19 A. Uh, office work.

20 Q. What does -- what does that mean more specifically?

21 A. Well, it would either have to be, uh -- I really don't know.
22 Consultations or --

23 Q. Did you see --

24 A. -- or taxes. I don't know.

25 Q. Did you see her meeting with people?

1 A. No.

2 Q. Did you see her meeting with people --

3 A. Meeting?

4 Q. -- talking to other people?

5 A. She talked -- she talked to customers.

6 Q. All right.

7 A. I don't know what they were meeting about.

8 Q. Did you see her talking to customers -- did you see her
9 having any involvement with tax returns while you there were?

10 A. I -- I didn't observe. I wasn't -- I didn't look over her
11 shoulder to see what was on her desk. I --

12 Q. You just saw --

13 A. -- I saw her.

14 Q. I'm sorry.

15 You saw her meeting with customers?

16 A. Right.

17 Q. How about Lawrence Cohen -- did you ever see him on a visit
18 to Las Vegas?

19 A. I believe I met him once.

20 MR. BOWERS: Objection. Foundation. The question just
21 asked for whether he did or not. So he started to answer with
22 an answer that would require foundation.

23 THE COURT: He can answer whether he saw him or not on
24 one of his visits and then he may need foundation to describe
25 the incident. But that one's premature as well. Overruled.

1 BY MR. IGNALL:

2 Q. Did -- did --

3 A. Yes. I met Larry at Freedom Books in Las Vegas.

4 Q. On which visit did you meet Mr. Cohen?

5 A. I believe -- I'm sure it was the last.

6 Q. All right. What did you observe Mr. Cohen doing at Freedom
7 Books when you were in there on that last visit?

8 A. Office work.

9 Q. Did you see him meeting with customers?

10 A. He did, uh, consultations.

11 Q. How do you know that?

12 A. They're -- when somebody did consultations, if they paid by
13 credit card, I took -- they did consultations in person and by
14 phone. And, if they paid by credit card, I took the money from
15 the customer's accounts and I put on there "consultation." And
16 the person who did the consultation, who was responsible for it.
17 This way if it came up later if they said they didn't get -- I
18 had a hard copy and the database to say they did a consultation
19 on a certain day at a certain time for "X" amount of money.

20 I -- I wanted to keep good records.

21 Q. So you maintained those records in Indiana?

22 A. I maintained -- if they gave it to me. If someone came in
23 and paid cash, they didn't have to tell me about it. I wouldn't
24 have any idea -- wouldn't know anything about it.

25 Q. So you aren't -- you maintained records of credit card

1 payments?

2 A. Right. Yes, sir.

3 Q. And what those payments were for?

4 A. I stipulated whether they were for product, book,
5 consultation, tax -- you know, income tax work or whatever. I
6 made a notation, a code, so we could sort of separate it.

7 Q. Did you get any records for credit card payments for
8 consultations by Cynthia Neun?

9 A. I believe -- yes, I did.

10 Q. And are those records maintained on the database that's
11 copied on that disk, Exhibit 92?

12 A. If someone -- if I -- if I took -- if they paid by credit
13 card and a consultation and a money amount, it will be on that
14 disk as coded as such.

15 Q. And how is it coded for a consultation?

16 A. I would right "consult," c-o-n-s-u-l-t.

17 Q. And how would you denominate who was doing the consulting?

18 A. I would mark their name --

19 Q. Name or --

20 A. -- or -- or initials depending on how much -- if I was lazy,
21 I just put their initials.

22 Q. And what -- what initials would you use for Lawrence Cohen?

23 MR. SCHIFF: What was that? Would you repeat that
24 question?

25 THE COURT: What would you use for Lawrence Cohen.

1 THE WITNESS: I -- I would just put "Larry."

2 BY MR. IGNALL:

3 Q. How about for Cynthia Neun?

4 A. "CN."

5 Q. All right. Thank you.

6 Did you ever get any phone calls from customers?

7 A. Yes.

8 Q. Did you ever get any phone calls from customers complaining
9 about anything?

10 A. Sometimes.

11 Q. Did you ever discuss these customer complaints with
12 Mr. Schiff?

13 A. Yes.

14 Q. When -- when did you discuss these customer complaints with
15 Mr. Schiff?

16 A. When he was -- when he was available to talk to me.

17 Q. Did people ever ask for their money back?

18 A. Sometimes, yes.

19 Q. Did you ever have a discussion about people asking for their
20 money back with Mr. Schiff?

21 A. Yes.

22 Q. Now, what did Mr. Schiff tell you about whether or not to
23 refund money?

24 A. He -- he -- he authorized me to -- to refund their money.

25 If he -- if it was a large amount, he was -- he wanted to be the

1 one to check their complaint to see if it was legitimate or not.

2 Q. Did you ever refund any money without getting Mr. Schiff's
3 prior approval?

4 A. Yes.

5 Q. Did you ever talk to Mr. Schiff about that after the fact?

6 A. Yes.

7 Q. What did he say?

8 A. If it was a small amount, he was agreeable. If it was a
9 large amount, uh, it wasn't satisfactory.

10 Q. How did he tell you it wasn't satisfactory?

11 A. Oh, he just said that, uh, I shouldn't have done it without
12 check -- without checkin' with him. He was -- he was the boss.

13 Q. I'd like to direct your attention now to around the time
14 that you were leaving Freedom Books.

15 A. Um-hum.

16 Q. Did you have a discussion with Mr. Schiff about your role in
17 the business in Indiana?

18 MR. SCHIFF: What was the question? Can I have that
19 repeated?

20 THE COURT: Did you have a discussion with Mr. Schiff
21 about your role in the business in Indiana?

22 MR. SCHIFF: What? Again, I didn't hear that, your
23 Honor.

24 THE COURT: Did you have a discussion with Mr. Schiff
25 about your role, meaning the witness's role --

1 MR. SCHIFF: Role.

2 THE COURT: -- in the business in Indiana.

3 MR. SCHIFF: In the business -- I didn't hear the
4 last --

5 THE COURT: In Indiana.

6 MR. SCHIFF: Oh, the business in Indiana. Okay.

7 THE WITNESS: I don't -- I don't really understand the
8 question either.

9 BY MR. IGNALL:

10 Q. All right. Let me try it again.

11 Did you have a discussion with Mr. Schiff near the end
12 of your employment about what your role should be in Indiana
13 versus how people were operating the business in Las Vegas?

14 A. When I was leaving?

15 Q. Around the time that you ended your employment.

16 A. Well, everything was -- we were -- everything was bein'
17 moved, transferred from Indiana to Las Vegas.

18 Q. Did you have a discussion with Mr. Schiff about that?

19 A. Yes.

20 Q. All right.

21 MR. IGNALL: Your Honor, at this point I think we need
22 a sidebar that Mr. Cristalli had requested at some point
23 yesterday before the next question.

24 THE COURT: Okay.

25 (Sidebar conference was held as follows:)

1 THE COURT: Okay.

2 MR. BOWERS: Judge, can I take advantage of this just
3 real quickly?

4 We haven't requested this and so I wanna be very clear
5 on the record. I'm requesting the Exclusionary Rule apply
6 towards the Government's agents. I understand they are allowed
7 certain representatives and Mr. Lowder's an expert and able to
8 hear the testimony to make his decision. But there are a slew
9 of Government agents in here all the time. And I'm gonna ask
10 that the Exclusionary Rule apply.

11 MR. IGNALL: On what basis?

12 THE COURT: Which side of the room --

13 MR. BOWERS: Then they are --

14 THE COURT: -- are they on?

15 MR. BOWERS: Potential witnesses.

16 Yeah, what do you think? They are in the jurors' line
17 of sight. They are gonna testify as being undercover agents in
18 this case.

19 MR. IGNALL: None of our witnesses are in the
20 courtroom.

21 THE COURT: Okay.

22 MR. BOWERS: Well, okay. Just so we agree it's in
23 effect.

24 MR. IGNALL: We agree to exclude witnesses.

25 THE COURT: I'll put the Exclusionary Rule in effect

1 when we go back up on the bench.

2 MR. BOWERS: Okay. Thank you --

3 MR. SCHIFF: Wait a minute.

4 MR. BOWERS: -- Mr. Ignall.

5 MR. SCHIFF: Can I just -- I'm assuming that the
6 witnesses are excluded.

7 MR. BOWERS: That's why I asked for --

8 MR. SCHIFF: Right.

9 THE COURT: They haven't been in. I'm gonna order it
10 in a minute. Don't assume. It hasn't happened yet because no
11 one asked for it.

12 MR. SCHIFF: Okay. Yeah. I --

13 THE COURT: But I'll do it.

14 MR. SCHIFF: Yeah, I want the witnesses excluded.

15 MR. IGNALL: We'd like -- we want to make sure there's
16 an exception for --

17 THE COURT: Yeah.

18 MR. IGNALL: -- Mr. Lowder and for --

19 MR. BOWERS: That's fine.

20 MR. IGNALL: -- Agents Steiner and Holland.

21 THE COURT: Yeah.

22 MR. BOWERS: Those three are fine.

23 THE COURT: Counsel table. That's fine.

24 MR. IGNALL: I do not believe there are any other
25 witnesses --

1 THE COURT: Okay.

2 MR. IGNALL: -- in the courtroom.

3 THE COURT: Well, I'll announce it.

4 MR. IGNALL: Okay. Thank you, your Honor.

5 Your Honor, at this point I think we want to request

6 a -- and I never pronounce it right -- Bourjaily finding that

7 there is some evidence of the existence of a conspiracy and that

8 the defendants were participants in that --

9 MR. MODAFFERI: Your hearing aids, do you want to get

10 them?

11 MR. SCHIFF: Yeah.

12 MR. CRISTALLI: You guys gotta listen.

13 MR. LEVENTHAL: Listen to this.

14 MR. CRISTALLI: Irwin?

15 THE COURT: Where are you going?

16 MR. SCHIFF: They said my hearing aids are back.

17 THE COURT: Oh. Well --

18 MR. SCHIFF: All right. I'll get 'em.

19 THE COURT: Can you hear right now?

20 MR. SCHIFF: Yes. I can hear you fine.

21 MR. IGNALL: -- because the next question I intend to

22 go into is something that Mr. Thomas went into in the Grand

23 Jury.

24 MR. CRISTALLI: Yeah.

25 MR. IGNALL: So the defendants are aware of this --

1 MR. CRISTALLI: Right.

2 MR. IGNALL: -- that Mr. Schiff told Mr. Thomas that
3 Cynthia Neun said that Bill Thomas had too much money in Indiana
4 and too much authority over the knowledge and the records.

5 MR. CRISTALLI: This is --

6 MR. IGNALL: We want to introduce that as a statement
7 in furtherance of the conspiracy under 801(d)(2)(E).

8 THE COURT: Okay.

9 MR. IGNALL: We believe that the evidence that has
10 already been presented in court is more than enough to prove by
11 a preponderance of the evidence an existence of the conspiracy
12 and the defendants' participation therein.

13 We've have learned from Toni Mitchell that all three of
14 the defendants worked there. We've learned what business
15 they're in, that they were consulting with clients. We've gone
16 through the Desk Book written by Ms. Neun on how to handle
17 various things at the IRS; letters and processes and things --
18 that we've already heard from Ann Kennedy and from Melvin Lewis
19 that Freedom Books engaged in.

20 We've heard that Cynthia Neun and Lawrence Cohen
21 prepared returns, documents, answered phones. We understand
22 that Ms. Neun has a power of attorney for at least Ms. Kennedy
23 and there are other witnesses that we'll hear about where he
24 heard that Cynthia Neun and Irwin Schiff hosted a radio show.
25 We know that Cynthia Neun and Irwin Schiff went to Tax Court for

1 Ms. Kennedy. And we know that Lawrence Cohen gave Melvin Lewis
2 advice with regard to his returns that are filed with the IRS.

3 MR. SCHIFF: Well, wait a minute. What's the point of
4 this? You can prove nothing. I haven't testified yet. What
5 does -- what does all this mean?

6 THE COURT: That means that he's arguing those are
7 evidences that a conspiracy existed sufficient to allow the
8 statements of --

9 MR. CRISTALLI: I need --

10 THE COURT: -- coconspirators in.

11 MR. CRISTALLI: -- I need -- obviously --

12 MR. SCHIFF: That's --

13 MR. CRISTALLI: Irwin, I need to respond.

14 MR. SCHIFF: Absolutely not. He -- a lot of this is
15 hearsay. He's made it up and I'm gonna -- and now I'm gonna
16 expose it when I cross-examine him. I mean, it's all -- he's
17 just makin' it up. I don't know why.

18 THE COURT: Okay.

19 MR. SCHIFF: It doesn't mean anything.

20 MR. BOWERS: Okay. Irwin, let me talk.

21 I have an objection, obviously, to any -- to,
22 obviously, the question that the Government is gonna propose.
23 It's rank hearsay. I don't have an opportunity to cross-examine
24 that person in terms of, um, the validity of the, um -- the
25 statement in terms of whether or not sufficient evidence has

1 been established as far as a conspiracy is concerned with regard
2 to my client.

3 I mean, I have heard, um, uh, testimony of, uh,
4 Ms. Kennedy, um, wherein I think minimal, if any, evidence as it
5 relates to my client has come in. I think she may have, uh,
6 assisted in some capacity with regard to, uh, some of the
7 filings. But a lot of employees, a lot of people that, uh,
8 weren't indicted in this particular case did the same thing that
9 Ms. Neun did, um, similar, um, to the, uh, the -- the
10 consultations. And there was numerous people doing
11 consultations, um, that weren't indicted, that weren't brought
12 into a conspiracy of this particular case. I don't think that
13 establishes a conspiracy.

14 She -- uh, it could easily be interpreted that she was
15 volunteering her services; that she participated, um, in, uh,
16 functions and tasks -- tasks at Freedom Books. But it doesn't
17 establish that she was involved in a conspiracy. They have
18 established nothing to suggest that she profited as a result of
19 her participation in this organization.

20 Um, uh, in terms of her preparing a desk manual
21 certainly does not establish that she has conspired with
22 Mr. Schiff, uh, in, um -- in -- in this organization.

23 I just don't think, um, that they've established that
24 in order to get rank hearsay in. Um --

25 THE COURT: Well, that's --

1 MR. CRISTALLI: -- if they want --

2 THE COURT: -- that's the purpose of 801 --

3 MR. CRISTALLI: I understand.

4 THE COURT: -- is to --

5 MR. CRISTALLI: I understand.

6 THE COURT: -- get around the hearsay rule.

7 MR. CRISTALLI: I understand.

8 But that's why I said I don't think they've made their
9 801 case in order to get around the hearsay.

10 THE COURT: Okay.

11 MR. SCHIFF: Okay. Let me make a comment then.

12 THE COURT: You've already made yours.

13 MR. SCHIFF: No, no.

14 THE COURT: We're going to listen to --

15 MR. BOWERS: Can I put a legal objection on the record
16 and then you're free?

17 MR. SCHIFF: Yeah.

18 MR. BOWERS: Yeah. Okay. Thank you.

19 In addition to that, I -- I believe that, if anything,
20 they've established evidence, if any conspiracy regarding Larry,
21 of something totally unrelated to what Cindy and Irwin were
22 allegedly involved in prior. Most of this testimony has
23 concerned dates before Larry's ever even worked there.

24 They've acknowledged that the evidence that they have
25 demonstrated showing Larry was involved in preparing any tax

1 returns was with respect to Melvin Lewis, who acknowledged an
2 entirely different theory for which Irwin said he would have
3 fired Larry. It's completely unrelated to the alleged
4 conspiracy as charged by the Government. So, if anything,
5 they've established multiple conspiracies, uh, Larry being part
6 of a separate one for which they intend to offer this evidence.
7 So I think it shouldn't be admitted --

8 THE COURT: Okay.

9 MR. BOWERS: -- against Larry Cohen.

10 MR. SCHIFF: Let me make a comment.

11 First of all, as far as Mrs. Kennedy's testimony is
12 concerned, she admitted she never read my book; it was her
13 husband who accepted belief -- my beliefs. And she -- she even
14 said --

15 THE COURT: Yeah.

16 MR. SCHIFF: -- she didn't like it.

17 THE COURT: Your book's in evidence.

18 MR. SCHIFF: I know. But --

19 THE COURT: Your -- your -- there's -- you know --

20 MR. SCHIFF: But her testimony, as far as I'm
21 concerned, is worthless. She didn't -- it was based upon her
22 husband and she --

23 THE COURT: Your -- your book is evidence --

24 MR. SCHIFF: I know that, but --

25 THE COURT: -- of tax evasion.

1 MR. SCHIFF: All right. Secondly, secondly, this idea
2 of the conspiracy --

3 THE COURT: Standin' alone.

4 MR. SCHIFF: Yeah. But this idea of a conspiracy -- as
5 I said, both Larry and Cindy did nothing that other employees of
6 mine didn't do. I mean, there's no conspiracy. I -- but I -- I
7 think it'll be evident when I cross-examine Mr. Thomas. I mean,
8 a lot of the statements he made are just off the wall.

9 THE COURT: Okay. Well, a lot of the statements he
10 made are supported by documentation.

11 MR. SCHIFF: Well, you'll hear -- I didn't see the
12 documents.

13 MR. CRISTALLI: There's gonna be another question
14 that's gonna be coming I think. Right, Dave, or no? Are you
15 gonna get into the statement that was made during the course of
16 the Grand Jury about, um, Irwin telling somebody else about what
17 Cindy was making? Are you gonna get into that?

18 MR. IGNALL: No, we're not gonna get into that.

19 MR. CRISTALLI: Okay. Fair enough.

20 THE COURT: The Court finds that there's adequate
21 evidence that a conspiracy exists. It's been established by the
22 activities that are going on. It -- there's an ongoing
23 conspiracy that even predates the one alleged in the Indictment
24 which, uh, is intertwined and that is a continuing course of --
25 of conspiring to evade taxes at your business.

1 MR. SCHIFF: Can I ask --

2 THE COURT: So no --

3 MR. SCHIFF: So far --

4 THE COURT: -- no, don't interrupt me.

5 MR. SCHIFF: I'm sorry.

6 THE COURT: Okay.

7 MR. SCHIFF? I thought you were --

8 THE COURT: The court finds that adequate evidence of a
9 conspiracy has been presented for the statements to come in.

10 MR. CRISTALLI: And just --

11 MR. SCHIFF: Let me just say --

12 MR. CRISTALLI: -- one thing --

13 MR. SCHIFF: -- could I just say --

14 MR. CRISTALLI: -- for the record.

15 MR. SCHIFF: Nobody -- let me just make this point.

16 THE COURT: Don't argue with me.

17 MR. SCHIFF: I'm not arguing.

18 THE COURT: You're arguing with me. Don't say you're
19 not arguing and then argue. Okay? That's why we keep buttin'
20 heads is because you want to argue with my rulings. You got to
21 stop it. That is the ruling.

22 MR. SCHIFF: Can I just ask you one question? Just a
23 simple question.

24 THE COURT: No, you can't ask me --

25 MR. SCHIFF: Okay.

1 THE COURT: -- questions.

2 MR. CRISTALLI: Um, would the Government stipulate to
3 the fact that Cindy did not begin, um, participating in Freedom
4 Books until 1999? Because that's the case.

5 MR. IGNALL: I don't believe that's actually right.

6 MR. NEIMAN: I think we have the testimony.

7 MR. CRISTALLI: You have the testimony to support
8 something else?

9 MR. IGNALL: Well, we may. We'll have to confirm.

10 MR. CRISTALLI: No way.

11 MR. IGNALL: We'll talk about that.

12 MR. CRISTALLI: Okay. That's fine.

13 MR. BOWERS: Your Honor, just very briefly. Does that
14 ruling contemplate Larry's involvement from either one or
15 they're just saying --

16 THE COURT: Well, it depends on what the evidence
17 shows. There's evidence of a conspiracy --

18 MR. BOWERS: Okay.

19 THE COURT: -- even separate conspiracies that are
20 intertwined. Under Ninth Circuit law, even if the person is not
21 indicted, like Linda Hicks, you can still bring it in if there's
22 a relationship and there is an ongoing thread that ties --

23 MR. BOWERS: Okay.

24 THE COURT: -- all this together --

25 MR. BOWERS: And you're --

1 THE COURT: -- and that is the activities at Freedom
2 Books were directed toward tax evasion.

3 MR. BOWERS: Okay.

4 And you're finding anything more beyond that?

5 THE COURT: Not beyond that.

6 MR. BOWERS: Okay. Thank you.

7 MR. IGNALL: Thank you, your Honor.

8 (Sidebar conference concluded and the
9 following is held in open court:)

10 MR. IGNALL: Your Honor, may we --

11 THE COURT: You may.

12 MR. IGNALL: -- continue.

13 BY MR. IGNALL:

14 Q. I think we were talking about a discussion that you had
15 right on the end of your employment with Mr. Schiff. Did
16 Mr. Schiff talk to you -- say anything to you about what Cynthia
17 Neun's opinion was of your role?

18 A. Yes, he did.

19 Q. What did he tell you?

20 A. He told me that -- that, uh -- that I had done a good job
21 for him, professional, but he was getting pressure toward the
22 end here for -- for -- for me to be terminated; that, uh, it was
23 a personal -- she didn't want me in that position; that --

24 Q. Who is "she"?

25 A. I'm sorry?

1 Q. Who is "she"?

2 A. Cindy.

3 Q. Thank you. I'm sorry. You can continue.

4 A. -- uh, that he would have to give in to pressure from her --

5 Q. Did he say --

6 A. -- to eventually get rid of me. He -- he, you know, gave me

7 a warning that she wanted more of a role to take over things at

8 Freedom Books.

9 Q. Was there any discussion about records and money?

10 A. Well, they -- that they wanted -- they wanted control over

11 all the records --

12 Q. Who is "they"?

13 A. -- and the -- and the funds.

14 Q. Who is "they"?

15 A. The -- Irwin and Cindy and the office manager. It was to

16 centralize it, to keep it all in one -- under one roof.

17 Q. And is what was the result of that discussion?

18 A. I didn't hear you.

19 Q. What was the result of that discussion you had with

20 Mr. Schiff?

21 A. I told him that would -- that's fine. I wanted to remain --

22 I wanted to remain friends with him. And if he wanted, that was

23 his right, to move everything out there we'll do it in a --

24 uh -- a -- you know, a workable solution we'll do that. We'll

25 just...

1 Q. Did you have move everything out to Las Vegas?

2 A. Yes, yes, we did. I did.

3 MR. IGNALL: Could I have a moment, your Honor?

4 THE COURT: You may.

5 (Discussion between Mr. Ignall and
6 Mr. Neiman.)

7 BY MR. IGNALL:

8 Q. When you were out in Las Vegas those last two times, did you
9 see Cynthia Neun's work space?

10 A. Her work space?

11 Q. Yeah. Did she have a desk? an office?

12 A. She had her own desk in the office, yes.

13 Q. How about Mr. Cohen, did he have a desk --

14 A. Yes.

15 Q. -- in the office?

16 A. Yes.

17 MR. IGNALL: One more moment, your Honor.

18 THE COURT: You may.

19 MR. BOWERS: I'm sorry. Was that for both visits --

20 MR. IGNALL: Yes.

21 MR. BOWERS: -- or just the one?

22 BY MR. IGNALL:

23 Q. I'm sorry. On which visit did you --

24 THE COURT: Oh, I'm sorry. Both had desks, I that's --
25 that's the question you were asking.

1 BY MR. IGNALL:

2 Q. And you observed Mr. Cohen only on your last visit. Am I
3 correct, Mr. Thomas?

4 A. One time.

5 Q. Thank you.

6 MR. IGNALL: One moment, your Honor.

7 (Discussion between Mr. Ignall and
8 Mr. Neiman.)

9 MR. IGNALL: No further questions, your Honor. Thank
10 you.

11 THE COURT: I think we'll -- let me ask the jury: Do
12 any of you need a short break to use the restroom? Is there
13 anyone who can't go on for another 45 minutes to an hour?

14 MR. CRISTALLI: Your Honor, I will be -- I will be less
15 than, um, 10 minutes.

16 THE COURT: Okay. We'll go ahead. And if --

17 MR. CRISTALLI: Thank you.

18 THE COURT: -- if any of you need a break, raise your
19 hand at -- when you -- when you feel you do and I'll take a
20 recess.

21 MR. CRISTALLI: Thank you, your Honor.

22 THE COURT: Go ahead.

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CROSS-EXAMINATION

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BY MR. CRISTALLI:

Q. Good morning, Mr. Thomas.

A. Good morning.

Q. Uh, Mr. Thomas, I want to talk to you, um, specifically about the time frame when you began to interact with, uh, Cindy. Okay? Would you disagree with me, sir, if I told you that, uh, Cindy did not begin participating in the operations of Freedom Books until, uh, 1999?

A. I -- I don't think that's correct. But there will be -- there's records on my database that would -- that would solve --

Q. Well --

A. -- if I'm wrong...

Q. All right. Let me just ask: I'm not saying that you're -- you're wrong. I think your testimony was that it was towards the end of your stay that you began to interact with Cindy. Is that correct? Would that be accurate?

A. A matter of into three years. That's not toward the end; that's toward the middle.

Q. Well, you began at Freedom Books in 1995; correct?

A. Correct.

Q. And you ended in what year?

A. '01.

Q. Okay. '01.

So if it's a three-year -- if it's the last three-year

1 period, then it would be accurate that it would be around 1999.

2 True?

3 A. Okay.

4 Q. But it was -- at the end of your tenure; correct? Would
5 that be safe to say?

6 A. Three years is not the end. Three years is the middle.

7 Q. Well, you were there from '95 -- okay. From '95 to 2001,
8 the last three years would it be safe to say would be from 1999
9 to 2001; correct?

10 A. Okay. If you say so.

11 Q. So I'm sayin' that the time frame -- I'm asking you if the
12 time frame around 1999 when you began your interactions with
13 Cindy would be accurate.

14 A. It would be accurate.

15 Q. Okay. Thank you.

16 Um, now, you talked a little bit about Linda Hicks. So
17 it's safe to say, then, um, you were dealing with Freedom Books
18 for a significant period of time, specifically 1995 up until
19 around 1999, uh, before you had any interactions with Cindy --
20 Cynthia Neun. True?

21 A. Correct.

22 Q. Okay. And, during that period of time, you were dealing
23 with, um, Ms. Linda Hicks; correct?

24 A. She was the second office manager.

25 Q. Okay. And then the third office manager was a person by the

1 name of Michelle, uh, De- -- Desgrosellier; correct?

2 A. I believe that's correct.

3 Q. And Michelle Degrosellier began her tenure with Freedom
4 Books around 1998. Would that be accurate?

5 A. Uh, I believe so, yes.

6 Q. And Michelle Degrosellier was Cynthia Neun's daughter;
7 correct?

8 A. Right.

9 Q. Okay. Now, the Government, um, asked you about your
10 interactions with Cindy from the periods of time that you were,
11 uh, engaged with her, um, about, um, what she was doing at
12 Freedom Books. Um, sir, you don't know whether or not, uh,
13 Ms. Cynthia Neun ever received any, uh, payment in exchange for
14 the work that she did at Freedom Books, do you?

15 A. Physically? I -- I never saw her bein' paid --

16 Q. Correct.

17 A. -- right. I was in a different state.

18 Q. Correct.

19 And you never -- being the person that was dealing with
20 the books for a period of time, you never specifically wrote a
21 check directly to Ms. Cynthia Neun and sent it to Las Vegas, did
22 you?

23 A. No.

24 Q. Okay. Um, I want to talk to you a little bit about, um, a
25 period of time where you were sending -- you were sending, um,

1 money orders or cashier's checks to Las Vegas. And I believe it
2 was at the end of your tenure you began to find out that, um,
3 that individuals were signing off on those UPS, uh, receipts
4 that were of strange names; correct?

5 A. Right.

6 Q. In fact, I think some -- some of the names were like, uh,
7 uh, Super Hero characters; isn't that true?

8 A. Strange names.

9 Q. Okay. And then, um -- and Irwin would have -- he -- he
10 requested certain moneys be sent. And then he -- he called you
11 back because he said that he never received the moneys. Would
12 that be true?

13 A. There was missing funds. Right.

14 Q. Right.

15 So he calls you and says: Bill, um, I asked you for
16 this money. Where is it at?

17 And you said: Irwin, I sent it. I have the -- the
18 invoice right here. Correct?

19 A. Correct.

20 Q. And so there began -- began a period of time when, um, there
21 was a belief that somebody internal in Freedom Books in
22 Las Vegas may have been taking money from Freedom Books;
23 correct?

24 A. It had to be the UPS driver or an employee.

25 Q. And that employee who was handling that money at that

1 particular time was Michelle Degrosellier; isn't that true?

2 MR. IGNALL: Objection, your Honor.

3 THE COURT: What's the basis?

4 MR. IGNALL: Objection to relevance and I believe he's
5 trying to prove something extrinsically that cannot be proved
6 extrinsically.

7 MR. CRISTALLI: Your Honor, I'm asking whether or not
8 the person that dealt with -- handled that type of transaction
9 on a daily basis was the office manager. The person that was
10 the office manager at that particular time was Michelle
11 Desgrosellier.

12 THE COURT: If he knows --

13 MR. CRISTALLI: Right.

14 THE COURT: -- who was signing.

15 MR. CRISTALLI: If he knows.

16 THE COURT: If he knows, I'll allow it.

17 THE WITNESS: I -- I don't know who accepted it. It
18 could -- I don't know who the UPS -- what desk he went to.

19 BY MR. CRISTALLI:

20 Q. Okay. Can I ask you this question --

21 A. Uh-huh.

22 Q. -- who would -- would it not be the office manager who would
23 accept those type of -- of packages on a daily basis?

24 MR. IGNALL: Objection. Calls for speculation.

25 THE COURT: It does.

1 MR. CRISTALLI: If he knows.

2 THE COURT: If he knows, he can answer. But it is
3 speculative.

4 BY MR. CRISTALLI:

5 Q. Do you know, sir, who gets those packages in Las Vegas?

6 A. I don't know their operation, no.

7 Q. You do know, sir, however, that there was -- there was a
8 concern that Michelle Desgrosellier was --

9 MR. IGNALL: Objection --

10 BY MR. CRISTALLI:

11 Q. -- was taking money?

12 MR. IGNALL: Objection, your Honor.

13 THE COURT: Sustained.

14 MR. IGNALL: This is irrelevant and he's trying to
15 prove something extrinsically.

16 MR. CRISTALLI: It's not irrelevant.

17 MR. IGNALL: That's inappropriate.

18 THE COURT: Well, it's -- he's sustained because he
19 doesn't know and it is speculative based on his answers.

20 BY MR. CRISTALLI:

21 Q. Um, in -- in reference -- if you know, sir, in reference to
22 that issue, uh, about moneys be taken from Freedom Books, do you
23 know whether or not there was a police report --

24 MR. IGNALL: Objection, your Honor. This is not
25 relevant to any issue in the case right now.

1 THE COURT: All right.

2 Response?

3 MR. CRISTALLI: It's absolutely relevant, your Honor.

4 THE COURT: Well, based on his previous answers, the
5 objection is sustained.

6 BY MR. CRISTALLI:

7 Q. Sir, you had made some, uh, statements with regard to, um,
8 credit card, um -- credit card receipts coming in with regard to
9 consultations; correct?

10 A. Yes.

11 Q. And consultations, um, had the name on [sic] the person that
12 did the consultation at Freedom Books; correct?

13 A. Right.

14 Q. The fact that you got a credit card receipt and it was
15 identified -- the person, um, that did the consultation was --
16 was there, it doesn't suggest in any way that that person
17 received money for that particular consultation; it just says
18 that that person did the consultation. True?

19 A. As far as I'm -- I have no idea.

20 Q. Okay. And you know, sir, that, um, Ms., uh, Cynthia Neun
21 was Irwin Schiff's girlfriend? You know that; correct?

22 A. I do know that.

23 Q. Okay. Um, there was some discussions during your direct
24 examination about your interaction with Mr. Irwin Schiff
25 regarding an offshore trust.

1 Q. And Larry was one of those dozens of people that you saw?

2 A. Right.

3 Q. Okay. Um, now, just so we're absolutely clear and I can
4 move on, you've had discussions in your testimony -- you've
5 referenced discussions regarding P.I.L.L. and offshore trusts
6 and requests for cash and UPS stuff sent to Super Heros
7 involving cash or certified checks. All of these things; is
8 that right?

9 A. That's true.

10 Q. Okay. Larry Cohen never spoke to you about any of those
11 things at any point in time; is that correct?

12 A. He did not.

13 Q. Okay. He -- he's never been involved in any transfer of
14 funds, cash, money, anything of that effect. Is that right?

15 A. Not to my knowledge --

16 Q. Okay.

17 A. -- no.

18 Q. Thank you, Mr. Thomas.

19 Now, I gotta talk to you again also. You -- you've
20 stated that -- well, let me first clear this up.

21 When you were here and you actually saw in October of
22 2000 what Larry Cohen was doing in the office, you said he was
23 doing office work; is that correct?

24 A. Yes.

25 Q. Okay. And then you said he did consultations. Do you

1 recall that?

2 A. I did.

3 Q. Okay. But, when the Government asked you why you knew he
4 was doing consultations, you didn't reference the fact that you
5 saw him doing a consultation in Las Vegas; you started talking
6 about the consultation forms. Did you recall that testimony?

7 A. Yes.

8 Q. Okay. So let me ask you one question and then we'll get
9 into the other.

10 Did you ever see Larry while you were here during a
11 visit doing a consultation with anyone?

12 A. You mean physically?

13 Q. Physically doing it, yeah; actually performing a
14 consultation for which the slip you were to receive.

15 A. No.

16 Q. Okay. So you've never seen him do a consultation, just so
17 we're clear.

18 Um, now, as I understand it, you've concluded that
19 Larry, uh, gave consultations because you had received a credit
20 card slip indicating that a consultation was performed in
21 Las Vegas, back in Evansville, right --

22 A. Right.

23 Q. -- where you would run the credit card and do your thing and
24 keep the record and that slip would somewhere on it reference
25 the name "Larry." Correct?

1 A. That's correct.

2 Q. Okay. And you saw those slips for a number of other
3 employees as well; correct?

4 A. Yes.

5 Q. Cynthia Neun maybe?

6 A. Yes.

7 Q. Who else? Charles -- I'm sorry -- Woody, Charles White, did
8 you see any for him?

9 A. Probably everyone who was employed there.

10 Q. Everybody who was employed there you saw a slip that
11 referenced --

12 MR. CRISTALLI: Chad --

13 BY MR. BOWERS:

14 Q. -- consultation?

15 MR. CRISTALLI: -- Chad.

16 (Discussion between Mr. Cristalli and
17 Mr. Bowers.)

18 BY MR. BOWERS:

19 Q. I'm sorry, Mr. Thomas.

20 Now, you also just testified momentarily [sic] that
21 you -- you made two statements. You had no idea about the
22 operations in Vegas as to who picked up the packages, uh, when
23 Mr. Cristalli and you were talkin' about Ms. Desgrosellier, the
24 office manager; is that right? Do you recall that testimony?

25 A. Can you elaborate? I'm not sure I understand the question.

1 Q. Well, Mr. Cristalli was asking you about some sort of
2 procedure with respect to who picks up packages in Las Vegas.

3 A. Right.

4 Q. Do you recall that?

5 A. Yes.

6 Q. Okay. And your response was: You know, I don't really know
7 how Vegas operations work, um, in saying that I don't know
8 whether Michelle picked the package up or not. Do you recall
9 that?

10 A. Yes.

11 Q. Okay. So, is it fair to say that while you're familiar with
12 some things that happen in Las Vegas, um, there's other things
13 that you have no idea how they -- how the procedure works in
14 Las Vegas?

15 A. Yeah --

16 Q. Okay.

17 A. -- no idea.

18 Q. No idea. Okay.

19 Um, let me ask you this: Do you have any idea exactly
20 how the form that you receive in Indiana for a consultation
21 relates to what actually happened in Las Vegas?

22 A. I assume that -- that it was correct, person who charged an
23 hour, hour and a half, or half hour would fill it out. They
24 were filled out by different personal handwriting --

25 Q. Right.

1 A. -- and it was faxed to me. Does that answer your question?

2 Q. Well, sort of. Let me ask it a different way. Maybe we can
3 get to it.

4 Do you know that the person who filled out that form
5 wasn't filling it out and billing a consultation for Irwin and
6 was in fact --

7 A. Oh.

8 Q. -- billing their own consultation?

9 A. That happened a lot, yes.

10 Q. What happened a lot?

11 A. That someone filled out the -- the form --

12 Q. Right.

13 A. -- the information on the form for someone else who was
14 busy.

15 Q. Okay. So, for example, Larry -- someone was gonna have a
16 consultation with Irwin; Larry filled out the form. It says
17 Larry. There's a consultation. But it has nothin' to do with
18 Larry; it's Irwin's consultation with that person. Is that
19 right?

20 A. It's possible.

21 Q. Well, do you know one way or another how that worked in
22 Las Vegas?

23 A. I thought I did. Uh, it -- it -- maybe not.

24 Q. So -- and I don't want to argue or fight with you. I'm just
25 trying to be clear.

1 You had an assumption that the person who filled out
2 the form was the person who did the consultation. But you're
3 now telling me that you don't really know if --

4 A. Well --

5 Q. -- that's the case or not?

6 A. -- it usually happened that way. If somebody did a
7 consultation, they filled out the form and got credit for it.
8 And it didn't have to be. I would -- it -- someone else could
9 have done that. Sure.

10 Q. Okay. And -- okay. So that could have happened.

11 A. The office manager, Michelle, didn't do consultations; Linda
12 Hicks didn't do consultations. But she filled out the forms to
13 get the funds for that consultation.

14 Q. So that happened in at least the cases of those office
15 managers; right?

16 A. Yes.

17 Q. Okay. And -- and you're saying -- I'm unclear in your
18 testimony -- but it seems to me you're saying that could have
19 happened with other people as well.

20 A. It could have.

21 Q. Okay. And so is there any way as you sit here today -- you
22 said Larry's done some consultations and you admit you haven't
23 seen 'em. Is there any way, as you sit here today, that the
24 forms that Larry's name appeared on were consultations he
25 actually did, not forms he filled out for Irwin or somebody

1 else?

2 A. No.

3 Q. Okay. Hey, thank you very much, Mr. Thomas. I appreciate
4 your time.

5 THE COURT: Mr. Schiff.

6 MR. SCHIFF: Yes.

7

8 CROSS-EXAMINATION

9 BY MR. SCHIFF:

10 Q. Uh, Bill, in response to the prosecutor's first question,
11 you [sic] said, um, how did you first meet Irwin Schiff? And he
12 [sic] said, I got a call from Irwin Schiff.

13 Do you recall making that statement?

14 A. I -- I don't recall, no.

15 Q. Okay. Well, how could I have known -- that is what you
16 said -- but how could I have known about you, how could I have
17 called you? How did I find out about you?

18 A. I -- well, that's a figure of speech. I believe -- I
19 believe I worked for you for probably two or three weeks before
20 I ever talked to you. I was employed. I was sitting there in
21 your store -- in your warehouse working for you to help out. I
22 had -- until I -- I wouldn't have -- I didn't know you; I didn't
23 even know who you were.

24 Q. Okay. I was at that time renting space in your father's
25 building --

1 A. Correct.

2 Q. -- is that correct?

3 A. Correct.

4 Q. Okay. Your father was the owner and publisher of a magazine
5 called "Media Bypass"?

6 A. Right.

7 Q. Okay.

8 A. He was a stockholder.

9 Q. In Media Bypass.

10 A. Stockholder.

11 Q. Pardon me?

12 A. He was a stockholder, not an owner.

13 Q. I know. Stockholder. But he was the editor and the
14 publisher.

15 A. Okay.

16 Q. Okay. Do you happen to know how I got hooked up with your
17 father in Evansville? Do you happen to know how I got there?

18 MR. IGNALL: Objection. This is probably gonna call
19 for hearsay, but...

20 THE COURT: Sustained. It's not -- it's not really
21 relevant that I can see either. It's a waste of time.

22 MR. SCHIFF: Well, I --

23 THE COURT: What is the relevance?

24 MR. SCHIFF: It's relevant how I happened to be there.
25 I wanna know if he happened to know how I got there.

1 THE COURT: Why is it relevant?

2 MR. SCHIFF: Because his father was doing the hiring.

3 I rented -- what happened, if you wanna know, if I can

4 testify --

5 THE COURT: Well --

6 MR. SCHIFF: -- I was living --

7 THE COURT: Tell me the relevance.

8 MR. SCHIFF: All right.

9 BY MR. SCHIFF:

10 Q. At the time I hired you, were you aware that your father
11 had -- that there were at least two people doing your job before
12 you came aboard?

13 A. Yes.

14 Q. You knew that?

15 A. Yes.

16 Q. When I -- you knew I rented space in your father's building?

17 A. I knew of an Irwin Schiff that rented space.

18 Q. Yes, yes. You didn't meet me yet.

19 But you eventually paid your father what I had agreed
20 with your father to pay for space to warehouse my books and
21 provide me with shipping space.

22 A. Yes.

23 Q. What was I paying your father? How much a month because --
24 how much was I paying a month?

25 A. I -- I don't know. I -- I don't know if I ever knew.

- 1 Q. Well, you eventually had to pay him every month. You had
2 the checkbooks. You paid the rent on that space.
- 3 A. When I hired in, I didn't have access -- there was no bank
4 account.
- 5 Q. But eventually you paid him. Didn't I pay your father every
6 month for the rent?
- 7 A. Oh, yes. Yeah, you did.
- 8 Q. And what was the rent?
- 9 A. I believe it was \$500 per month.
- 10 Q. Right. At that -- right. It was 500 a month.
- 11 So you were not aware that when I moved to Las Vegas a
12 fellow in Fort Wayne, Indiana, was -- you never met him -- was
13 doing the shipping. Were you aware of that?
- 14 A. Um, I -- I recall that I have -- I've heard the story, yes.
- 15 Q. Did your father ever tell you about it?
- 16 A. The Freedom Books was in Fort Wayne before it came to
17 Evansville.
- 18 Q. Okay.
- 19 A. I was still in the -- it was a long -- it was before my
20 time.
- 21 Q. Yeah, yeah. But your father told you about that?
- 22 A. Yes.
- 23 Q. Okay. So you know that there was a fellow in Fort Wayne who
24 was shipping out my books.
- 25 A. Right.

1 Q. Okay.

2 A. Correct.

3 Q. Why was he doing that? Do you know?

4 A. Why what?

5 MR. IGNALL: Objection. As to --

6 BY MR. SCHIFF:

7 Q. -- why --

8 MR. IGNALL: -- why the witness would know nor do I
9 understand why this is relevant.

10 MR. SCHIFF: Okay.

11 BY MR. SCHIFF:

12 Q. It's relevant because when -- when you first started to ship
13 out my books, where was I living?

14 A. In Las Vegas.

15 Q. Okay. Did I have an office?

16 A. You were doing business out of your apartment.

17 Q. I was doing business out of my apartment. Correct.

18 A. Right.

19 Q. Did I have any employees?

20 A. You had one.

21 Q. What?

22 A. One girl.

23 Q. Well, initially.

24 A. I'm sorry?

25 Q. Initially I -- initially -- I had a girl?

1 A. Uh-huh.

2 Q. In '95? Do you know what her name was?

3 A. Um, Nancy Vanelle, Vanall. Nancy Vanall (phonetic).

4 Q. Nancy? Nancy, I never -- all right. The point is I didn't
5 have an office. Okay?

6 A. Okay.

7 Q. And you were aware that your father had hired for me people
8 who were doing your job, eventually your father had hired?

9 A. Okay. Yes.

10 Q. Right. Okay.

11 Do you happen to know how many other people had done
12 your job before you came aboard?

13 A. Two.

14 Q. Do you happen to know -- pardon me?

15 A. Two.

16 Q. That's correct.

17 MR. IGNALL: Your Honor, we'd move to strike --

18 BY MR. SCHIFF:

19 Q. Did there come a time --

20 THE COURT: Wait a minute.

21 MR. IGNALL: -- the "that's correct" and move to strike
22 that.

23 THE COURT: Strike.

24 MR. SCHIFF: All right.

25 BY MR. SCHIFF:

1 Q. Did there come a time when your father suggested that I hire
2 you for the job?

3 A. I don't know if it was suggested or not. I was hired by
4 you.

5 THE COURT: Well, what is --

6 BY MR. SCHIFF:

7 Q. Yeah. But --

8 THE COURT: -- the relevance of this?

9 MR. SCHIFF: The relevance will -- I mean, he was
10 making a lot of statements. But the relevance is --

11 THE COURT: Well, I know he made a lot of statements.
12 But what's the relevance of whether his father recommended him
13 or --

14 BY MR. SCHIFF:

15 Q. The relevance was --

16 THE COURT: -- or not?

17 BY MR. SCHIFF:

18 Q. -- your father suggested that I hire you. Is --

19 THE COURT: That's not relevant.

20 BY MR. SCHIFF:

21 Q. -- isn't that correct?

22 THE COURT: How is that relevant?

23 MR. SCHIFF: The relevancy will become apparent.

24 THE COURT: During this -- wait a minute. Don't just
25 tell me the relevance will become apparent. Tell me why it's

1 relevant right now.

2 MR. SCHIFF: Well, because the office was a mess
3 because the last person that he hired for me was totally
4 irresponsible.

5 THE COURT: So what does that have to do with --

6 MR. SCHIFF: Well, when he --

7 THE COURT: -- any of the issues in this case.

8 MR. SCHIFF: -- came aboard he told --

9 BY MR. SCHIFF:

10 Q. When you first came aboard --

11 THE COURT: Mr. Schiff, because something happened
12 doesn't make it relevant in this case. I want you to focus on
13 the issues in this case.

14 MR. SCHIFF: I am focusing on the issues.

15 THE COURT: I don't think you are. You're asking all
16 kinds of extraneous questions about --

17 MR. SCHIFF: I --

18 THE COURT: About how he got the job, which I don't
19 think is -- is relevant, at least based on anything you've told
20 me so far.

21 MR. SCHIFF: Okay.

22 THE COURT: Move on.

23 BY MR. SCHIFF:

24 Q. What did you tell me when you first took over the
25 responsibilities of shipping out books? What did you tell me

1 the condition of the office was?

2 A. I told you that it was a bucket of worms. It was no
3 accountability, no records. The people that were previously
4 there didn't show up for work; uh, the bills weren't paid;
5 customers were complaining.

6 Q. Did -- did you also tell me that you found purchase
7 orders --

8 A. I didn't hear --

9 Q. -- at various places?

10 A. -- you. I'm sorry?

11 Q. Did you tell me that you found unfulfilled purchase orders?

12 A. I still didn't hear you.

13 Q. Did you tell me that when you got in there you found
14 unfulfilled [sic] purchase orders --

15 A. Oh, yes.

16 Q. -- some were weeks and months old?

17 A. I did.

18 Q. And basically it was a mess?

19 A. I found orders hidden behind crates -- cases of books.

20 Q. Okay. So you immediately took over and cleaned up and --
21 and installed -- because you were familiar with computers -- and
22 you told me you were gonna put everything on a database.

23 A. I did.

24 Q. And was I happy about that?

25 A. Yes, you were. We needed -- we needed a record to keep

1 records of things.

2 Q. We needed to keep records because if someone ordered
3 something I would call you occasionally to find out what the man
4 ordered before so I knew what material of mine he had. And from
5 your database, you could tell me what he had ordered. Right?

6 A. From the -- from the computer database. Right.

7 Q. Right. And I was pleased about that, wasn't I?

8 A. From the -- yes.

9 Q. And then if somebody, uh, uh, said that they didn't get a
10 shipment, your computer database would show when we shipped out.

11 A. We could track it. Right.

12 Q. We could track it. And I was -- I was delighted that you
13 were --

14 THE COURT: Don't testify.

15 MR. SCHIFF: All right.

16 BY MR. SCHIFF:

17 Q. Was I -- do you recall how I felt --

18 THE COURT: Asked and answered.

19 BY MR. SCHIFF:

20 Q. -- what -- what -- all right. All right.

21 And, when you took over, I was paying the bills out of
22 Las Vegas. I had had to send you a check for your salary. I
23 had to pay the utilities, like the electricity. In other words,
24 I was paying all the bills; you weren't.

25 THE COURT: Is that a question?

1 BY MR. SCHIFF:

2 Q. Isn't that correct? I mean, your predecessor wasn't paying
3 any bills; he was -- when you took over, did you have any
4 responsibility about paying bills?

5 A. When I took over, the bills were being paid by Tree Top
6 Communications and you reimbursed them.

7 Q. Well, frankly, it was so long ago I can't -- all right. If
8 you say so. But why would your father be paying bills that I
9 incurred?

10 A. Why?

11 Q. Yeah. I'm...

12 A. I don't know what kind of arrangement you had before I got
13 there.

14 Q. But, in any case, you weren't paying the bills?

15 A. Not at first --

16 Q. Okay.

17 A. -- no. No.

18 Q. And, if for some reason you had to refund somebody money
19 because they returned merchandise or something, you needed a
20 check, a refund check; is that correct?

21 A. Sometimes.

22 Q. And I had to send you a refund check to give to that party.

23 A. Well, the refunds if they were paid by credit card I just
24 debited -- credited back to the account.

25 Q. Well, all right. But suppose they didn't. Suppose they

1 sent in a check or cash or what have you.

2 A. At first I -- I filled out a check and had to take it up --
3 it had to be taken up -- upstairs to a bookkeeper to sign. I
4 had no authorization, no signature. I could not write any
5 check.

6 Q. Okay. You couldn't write any check.

7 Now, do you recall in 19- -- you came aboard in 1995;
8 is that correct?

9 A. Correct.

10 Q. I did not have an office --

11 A. In your apartment --

12 Q. -- at the time?

13 A. -- right.

14 Q. I was working out of my apartment. Were you aware that in
15 1995 I was seeking denomination of the -- from the Libertarian
16 Party president?

17 MR. IGNALL: Objection. Relevance.

18 MR. SCHIFF: It's relevant.

19 THE COURT: What's the relevance?

20 MR. SCHIFF: The relevance is this: I was doing a lot
21 of traveling. Wasn't I? I spoke at about 20 state conventions.

22 THE COURT: Don't testify.

23 BY MR. SCHIFF:

24 Q. Well, were you --

25 THE COURT: You're testifying.

1 BY MR. SCHIFF:

2 Q. -- aware that I was doing a lot of traveling?

3 A. You traveled a lot.

4 Q. A lot of traveling?

5 A. Yes.

6 Q. So it was difficult at that time for me to get you the money
7 that you needed to pay the bills...

8 A. Okay.

9 THE COURT: Testifying. Strike.

10 BY MR. SCHIFF:

11 Q. Do you -- do you recall that there was a problem?

12 A. Yeah. Bills weren't bein' paid.

13 Q. Okay. Now, do you recall that at that time you gave me an
14 ultimatum with respect to why you might leave my employ?

15 A. I -- I don't recall the circumstance. Refresh my memory. I
16 don't --

17 Q. Well, didn't you tell me --

18 A. -- ultimatum of what?

19 Q. Well, didn't you tell me unless you could pay the bills and
20 take your salary yourself -- because I was traveling, I was
21 unreliable to pay the kind of money -- that you wanted the
22 responsibility or the authority to write checks to pay the bills
23 that were being incurred? Didn't you tell me that?

24 A. I -- I told you I couldn't work under those circumstances
25 that we're going under. I hadn't been paid --

1 Q. All right. You had --

2 A. -- the bills hadn't been paid --

3 Q. Okay.

4 A. -- and I could no longer work for free.

5 Q. Okay. So one of the problems that I had -- since I had no
6 office -- now, occasionally -- isn't it a fact that the girl you
7 mentioned when I traveled she wasn't there. She could only be
8 there --

9 THE COURT: Okay. Who are you referring to --

10 MR. SCHIFF: All right.

11 THE COURT: -- now?

12 MR. SCHIFF: He mentioned -- he mentioned somebody.

13 THE COURT: Rephrase -- well, do you remember the name?

14 BY MR. SCHIFF:

15 Q. All right. So there was a problem --

16 THE COURT: No, no. Listen to me. You're testifying.
17 I want you to ask one question at a time. And I want you to ask
18 it in sufficient detail that the witness can give an answer
19 without you interrupting him in the middle.

20 MR. SCHIFF: Okay.

21 BY MR. SCHIFF:

22 Q. So at that time there was a problem of my being able to get
23 you the funds -- let me backtrack a moment.

24 At some point, your father or Tree Top whatever -- was
25 not gonna pay any of these bills. Is that your recollection?

1 A. It wasn't his obligation to pay your bills.

2 Q. I understand that. I -- I never recall him doing it.

3 But, anyway, we reached a point where he wasn't gonna
4 do it, if he even agreed to it. It reached a point where I had
5 to send you money to pay your [sic] bills and to pay your
6 salary. Is that correct?

7 A. All employers pay their employees --

8 Q. I know.

9 A. -- yes. You're right, yes.

10 Q. I know. That was the arrangement.

11 A. Yes.

12 Q. But because I was traveling substantially, you didn't get
13 your money on time.

14 A. Okay. I -- I'll agree with you. Yes.

15 THE COURT: That's testimony.

16 MR. SCHIFF: Okay.

17 THE COURT: Strike.

18 BY MR. SCHIFF:

19 Q. And then, because of those problems, you presented me with
20 an ultimatum. What was that ultimatum?

21 A. That we needed a way to take care -- we needed -- we needed
22 money -- we needed -- I had to have a way to pay your bills.

23 Q. And what was that way?

24 A. To -- to either get me funds or open up a bank account.

25 Q. So you requested that I open up a bank account and give you

1 the authority to write checks so you could pay the bills
2 regardless of where I was.

3 A. Right.

4 Q. Okay. At that time, I still didn't have an office?

5 A. I...

6 Q. I was still operating out of my apartment?

7 A. Okay.

8 Q. Okay. So, on your insistence, I said okay. And that was --
9 so -- so -- so there came a time in Evansville, um, where you
10 could pay the funds out of -- and we opened up an account in
11 Freedom Books's name and I signed onto that account, didn't I?

12 A. We both signed the signature card.

13 Q. Yeah. So I think the Government had tried to pretend that
14 you --

15 THE COURT: No. You're not testifying.

16 MR. SCHIFF: Oh, sorry.

17 BY MR. SCHIFF:

18 Q. So there was no -- the reason that you were paying those
19 bills, as you recall --

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

22 BY MR. SCHIFF:

23 Q. -- it's not that I was trying to conceal any money --

24 THE COURT: Testifying. Strike.

25 BY MR. SCHIFF:

1 Q. What was so -- all right. So...

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

4 BY MR. SCHIFF:

5 Q. All right. So -- all right. So -- the reason that we had
6 the account was so that you could pay the bills so that Freedom
7 Books could operate efficiently; is that correct?

8 A. Yes.

9 Q. Okay. And it was your idea, as a matter of fact?

10 A. Yes.

11 Q. Okay. Now, wasn't I pleased at that time with the way you
12 were running things?

13 A. Yes.

14 Q. I might have -- I don't recall. But I might have even given
15 you have a raise at that time? How much did I initially pay you
16 when you started?

17 A. When I got paid?

18 Q. Yeah. When you got -- when you got paid initially. What
19 was your salary?

20 A. Well, three or four --

21 Q. How much a week?

22 A. -- three or four hundred dollars a week. I was paid weekly.

23 Q. And then eventually your salary was increased to what?

24 A. Six -- when I -- when I left your employ I was making six
25 fifty a week.

1 Q. Okay. So I increased your salary.

2 A. (Nods head.)

3 Q. Okay. Now, when you took a salary, when you wrote a check
4 for your salary --

5 A. Um-hum.

6 Q. -- did I ever ask you whether you were paying tax on what
7 you were taking as a salary or whether you were taking cash?
8 Did I ever inquire of you whether you were reporting or not
9 reporting what you were taking as a salary?

10 A. No.

11 Q. I never did?

12 A. No.

13 Q. I think you testified, however, if I -- that I didn't know
14 that you were taking a check instead of cash. Didn't you
15 testify?

16 A. I --

17 Q. I didn't know.

18 A. -- I don't know. I don't understand the question. Did I
19 testify --

20 Q. Well, I think --

21 A. -- to what?

22 Q. Well, if I can say, before the Grand Jury the question was,
23 suppose I knew that you weren't taking cash like the rest of my
24 employees, apparently. And you indicated, I think --

25 A. I can't take cash. There was no way -- there was no cash

1 for me to take.

2 Q. Well, the point is: I did not know you were taking a check
3 for your salary.

4 THE COURT: Testifying.

5 BY MR. SCHIFF:

6 Q. Isn't that correct? I didn't know it.

7 THE COURT: Strike.

8 BY MR. SCHIFF:

9 Q. However, the fact that you were taking a check was recorded
10 in the Freedom Books's checking account?

11 A. Correct.

12 Q. So why wouldn't I have known it? I mean, the check was
13 there in my own checking accounting.

14 A. Right.

15 Q. Why would I have not known it?

16 A. I -- I don't know.

17 Q. Isn't the fact is [sic] I never looked at the checking
18 accounting? I never tried to verify the expenditures you were
19 making. I gave you carte blanche?

20 A. Yes.

21 Q. In other words, you don't even recall any time when I
22 reviewed what you were paying for -- I trusted you completely
23 with the money and writing the checks. And, incidentally,
24 besides your salary, didn't you write checks --

25 THE COURT: Is that a question or --

1 MR. SCHIFF: All right.

2 THE COURT: -- is that --

3 MR. SCHIFF: All right.

4 THE COURT: -- just a speech?

5 MR. SCHIFF: All right. Well -- well, I didn't look at
6 the check.

7 THE COURT: Strike.

8 BY MR. SCHIFF:

9 Q. Isn't it a fact I never --

10 THE COURT: Strike.

11 BY MR. SCHIFF:

12 Q. -- looked at the checkbook?

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

14 BY MR. SCHIFF:

15 Q. Now, I don't know if I heard this correctly, though. But --
16 but did you say yesterday -- and maybe I heard it incorrectly --
17 that you basically took orders -- uh, you basically answered the
18 phone or you shipped out but you really didn't take any orders
19 or you took very few phone calls. I don't know if I got that
20 right.

21 A. Yes, you got that --

22 Q. But your --

23 A. -- right.

24 Q. -- testimony is primarily you did shipping, but you didn't
25 really take many orders?

- 1 A. Not very many.
- 2 Q. Wasn't it a fact, though, I still did not have an office; is
3 that correct?
- 4 A. What time period are you talking about?
- 5 Q. 1995.
- 6 A. You were in your apartment.
- 7 (Pause in the proceedings.)
- 8 MR. SCHIFF: Humm. Excuse me.
- 9 (Pause in the proceedings.)
- 10 BY MR. SCHIFF:
- 11 Q. It shows you how time plays tricks with you.
- 12 Do you recall me sending out a lot of promotional
13 material telling people to contact you in Evansville directly
14 rather than contacting Freedom Books in Las Vegas? Do you
15 recall all that literature I sent out?
- 16 A. Well, I think you're -- when you say me, you mean
17 Evansville. When I --
- 18 Q. Evansville. Yeah, Evansville.
- 19 A. -- when I came on board, you had a -- you had an 800 number
20 in Evansville that a company took -- they did the same thing
21 that I did; they took credit cards and checks over the phone.
22 They took the funds and they took a percentage of your profit.
- 23 Q. That was --
- 24 A. It wasn't --
- 25 Q. That was --

1 A. -- it wasn't me. My phone number in Evansville was never an
2 800 number, never published to take national orders.

3 MR. SCHIFF: Your Honor, I don't want to have to make
4 this an exhibit, a later edition of The Federal Mafia an
5 exhibit. But just to refresh --

6 MR. IGNALL: Objection, your Honor. I'm not sure what
7 the relevance of this is --

8 MR. SCHIFF: -- his memory. Well, the relevance is --

9 BY MR. SCHIFF:

10 Q. Take a look.

11 MR. BOWERS: Irwin.

12 THE COURT: You're gonna have to explain the relevance
13 rather than just holding up the book and telling him to figure
14 it out for himself.

15 MR. SCHIFF: Your Honor, when I published this -- let
16 me show this to Bill.

17 THE COURT: Well, wait a minute. Now wait a minute.
18 We're going to follow the procedure --

19 MR. SCHIFF: Well, I want --

20 THE COURT: -- the procedure we've talked about. Have
21 it marked if you wish to question the man --

22 MR. SCHIFF: Yes.

23 THE COURT: -- from it.

24 MR. SCHIFF: This is the 1995 edition.

25 THE COURT: And the relevance is that there's a phone

1 number in it. And what is the relevance of that?

2 MR. SCHIFF: I'll show you. Well, you know, it's --
3 it's 10 years ago. People forget.

4 THE COURT: So even if -- if -- if there is a phone
5 number in it, what's the relevance of the phone? What's --

6 MR. SCHIFF: The relevance is --

7 THE COURT: -- your point here?

8 MR. SCHIFF: I'll show you in a moment.

9 THE COURT: No. You're gonna tell me what the
10 relevance is.

11 MR. SCHIFF: Well, when I published the 1995 edition, I
12 in this book showed that to get information and to order you
13 should right to Evansville, Indiana; there's the phone number.

14 THE COURT: So what? What does that have to do with
15 anything?

16 MR. SCHIFF: Anything is that I was relying on him and
17 the Evansville operation to distribute and to get phone calls
18 and to take care of sending out the book. I mean, he -- I
19 thought the implication was that he wasn't doing that when
20 everything at that time was directed by -- I even put the
21 Evansville address in the book I just published. So --

22 THE WITNESS: I can answer that. It's easy. You did.
23 But they --

24 THE COURT: Back off. No.

25 THE WITNESS: It was already -- when people purchased

1 your book and got it home, you gave them my number. They no
2 longer needed to call me. They'd already spent the money and
3 bought your product. So I had very few orders over the
4 telephone.

5 BY MR. SCHIFF:

6 Q. Well, but you got orders.

7 A. I'm sorry?

8 Q. But you got orders. And I directed people -- I'm on the
9 road; I don't have any other office.

10 A. And I did take some orders, yes. But that wasn't the
11 primary -- I agree with you; I did take orders.

12 Q. But the point is at that time I didn't have an office still.

13 MR. IGNALL: Objection. Asked and answered any number
14 of times.

15 THE COURT: Sustained and irrelevant.

16 BY MR. SCHIFF:

17 Q. If I had an office, I would have put my address there --

18 THE COURT: Strike.

19 BY MR. SCHIFF:

20 Q. -- but I put yours.

21 MR. SCHIFF: Okay.

22 THE COURT: Testifying.

23 MR. SCHIFF: Okay.

24 BY MR. SCHIFF:

25 Q. So when people called you -- hold on. Let me get the...

1 Oh, incidentally, you mentioned a lot of my employees.

2 Did you ever speak to Jerry Oliver?

3 A. Who?

4 Q. Jerry Oliver. Does that name ring a bell?

5 A. No.

6 Q. Oh, incidentally, in case I forget, I was the only one who
7 was doing consultations.

8 THE COURT: Strike.

9 BY MR. SCHIFF:

10 Q. Were you aware that there was nobody else in my office doing
11 consultations?

12 A. Not until this moment.

13 Q. Well, who else would be doing consultations?

14 MR. IGNALL: Objection. The witness just answered.

15 MR. SCHIFF: Okay.

16 THE COURT: Sustained.

17 BY MR. SCHIFF:

18 Q. Wouldn't the fact that there would be names -- suppose I did
19 a -- suppose somebody bought some books and I did a
20 consultation. So there would be the consultation and the books
21 on the same order; is that correct?

22 A. Sometimes, yes.

23 Q. And we were paying sales taxes; is that correct?

24 A. From where?

25 Q. Well, we were paying sales taxes, you know.

1 A. In Indiana?

2 Q. In Las Vegas eventually.

3 THE COURT: If you know.

4 BY MR. SCHIFF:

5 Q. But weren't we --

6 THE COURT: Let him answer. That's a question, I
7 assume. Let him answer.

8 THE WITNESS: The last year, yes.

9 BY MR. SCHIFF:

10 Q. We had to pay sales taxes on the -- on the merchandise that
11 we sold; is that correct?

12 A. I -- if you say so -- I guess. I don't...

13 Q. But we didn't have to pay sales taxes on my consultations.

14 A. Okay.

15 Q. So if somebody after I had a consultation went to somebody
16 and they bought some books and they had a purchase order for the
17 books and there was a consultation, that would have meant that
18 the person who sent in the order --

19 MR. IGNALL: Objection. This is testimony. I'm not
20 sure the witness has said that he has any personal knowledge of
21 any of this.

22 THE COURT: Well --

23 BY MR. SCHIFF:

24 Q. Well, in the conversations that I had with you over a long
25 period of time, did I ever tell you, Bill, that anybody other

1 than myself was authorized to do consultations?

2 A. I don't know. I don't know -- I know -- I know what's on
3 these forms; they are right here.

4 Q. Yeah.

5 A. They are black and white.

6 Q. Yeah. But -- all right. So you don't recall me tellin' you
7 over this period of time that I do the consultations?

8 A. You did consultations, but you couldn't have done a
9 consultation in New York City on a certain date. You weren't at
10 your office when these faxes came through.

11 Q. Well, I did some consultations over the phone. But the
12 point is nobody in my office was authorized to do -- with the
13 exception -- that's why I asked you of [sic] Jerry Oliver who
14 used to be employed at the IRS.

15 MR. IGNALL: Objection, your Honor.

16 THE WITNESS: I don't know anything about him.

17 THE COURT: Strike.

18 BY MR. SCHIFF:

19 Q. Okay. All right. You never heard of Jerry Oliver. Okay.

20 Now, we were taking -- initially we were taking orders,
21 checks, money orders, what have you. Did there come a time when
22 we realized that I could sell books on the Internet? I could --
23 I could take credit card orders; right?

24 A. Yes.

25 Q. But -- but were you aware that in order to take credit card

1 orders and to sell on the Internet I needed a merchant account.

2 Do you recall that?

3 A. Correct. You can't --

4 Q. All right. I needed a merchant account.

5 A. -- you can't take credit card orders without a merchant
6 account.

7 Q. Okay. Do you recall that I could not get a merchant
8 account?

9 A. Yes.

10 Q. Why couldn't I get a merchant account?

11 A. You didn't have any credit.

12 Q. Why didn't I have any credit?

13 A. I believe you told me that -- that the IRS had a lien
14 against you.

15 Q. I had a lien --

16 A. Lien or levy. I'm not sure what --

17 Q. Yeah.

18 A. -- the difference is.

19 Q. I had a lien for two and a half million. So I could not get
20 a merchant account --

21 A. Okay.

22 Q. -- in order to sell credit card [sic] orders; right?

23 A. Right.

24 Q. So what did you suggest at the time?

25 A. That I did it for you.

1 Q. Exactly right.

2 So you said you would get it, and that was only because
3 I couldn't get one. And that was done on your suggestion;
4 right?

5 A. Okay. Yes.

6 Q. And the reason I -- now, that wasn't done to conceal any --
7 any money into your account.

8 MR. IGNALL: Objection.

9 BY MR. SCHIFF:

10 Q. That wasn't done for --

11 MR. SCHIFF: Well, that's what the Government is trying
12 to contend, your Honor.

13 THE COURT: Well --

14 MR. SCHIFF: All right.

15 THE COURT: -- you're not going to testify --

16 MR. SCHIFF: All right.

17 THE COURT: -- from the --

18 MR. SCHIFF: All right.

19 BY MR. SCHIFF:

20 Q. So the purpose --

21 THE COURT: -- from the record without being under
22 oath. So the statement is stricken.

23 MR. SCHIFF: Okay.

24 BY MR. SCHIFF:

25 Q. So the purpose of your having that credit card [sic] and the

1 merchant was because I couldn't get one in my name?

2 A. Right.

3 Q. Okay. However, there came a time when I told you, hey, I
4 got a merchant account; isn't that correct?

5 A. Yes.

6 Q. Okay. When I got the merchant account, what happened?

7 A. You -- we started tapering off orders from Evansville.

8 Q. So when I got a merchant, the money went into my account,
9 when I got the merchant account number --

10 A. Right.

11 Q. -- except we allowed you to collect the money that you might
12 need to run Evansville; is that right?

13 A. Yes.

14 Q. So do you recall me saying to you something like, well, take
15 the -- take the merchant account money that came in on Monday
16 and we'll have it for Tuesday, Wednesday, and Thursday?

17 A. I worked with Joel and we worked together on that.

18 Q. Okay. So the minute I got my own merchant account, the
19 money came into my account, into my bank account; is that right?

20 A. Yes.

21 Q. Okay. So having the original account was your idea?

22 A. Yes.

23 Q. Okay. Now, isn't it a fact, Bill, that your father wrote
24 articles in Media Bypass as to why people didn't have to pay
25 income taxes?

1 MR. IGNALL: Objection to relevance of this line of
2 inquiry.

3 THE COURT: Irrelevant.

4 MR. SCHIFF: No --

5 THE COURT: Sustained.

6 MR. SCHIFF: -- I think it's relevant.

7 THE COURT: Well, I don't think it is.

8 MR. SCHIFF: Okay.

9 THE COURT: So that's the ruling.

10 MR. SCHIFF: All right. Okay.

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

13 BY MR. SCHIFF:

14 Q. Now, in addition, Bill -- in addition to taking the orders,
15 uh, you ordered -- you also ordered the Internal Revenue Code.

16 You -- you -- you did the orders -- you ordered the Internal
17 Revenue Codes, right, and they were shipped to Evansville?

18 A. Do you mean that I -- I had them printed --

19 Q. No, no, no.

20 A. -- to sell?

21 Q. No, no. The Internal Revenue Codes that I purchased from --
22 from, um, um -- what is that company?

23 (Pause in the proceedings.)

24 BY MR. SCHIFF:

25 Q. Yeah, Research Institute of America.

1 You were shipping out Internal Revenue -- you were
2 shipping out --

3 A. That was part of your product, yes.

4 Q. Yeah.

5 You were shipping out Internal Revenue Codes?

6 A. Right.

7 Q. So, when you got low, you would call and order?

8 A. Right.

9 Q. Okay.

10 A. Yes.

11 Q. Do you recall how many of these codes you would order at a
12 time?

13 A. 500.

14 Q. 500.

15 We were shipping out a lot of Internal Revenue Codes,
16 weren't we?

17 A. Yes.

18 Q. And, when these Codes came in, you had to highlight them and
19 you had to annotate them and you had to color code them. And
20 you did that or you hired people to do that?

21 A. Right.

22 Q. Right. So you were the one who were [sic] color coding the
23 codes.

24 And there came a time when I had to have books
25 published -- republished. I ran out of books. And did you

1 arrange for the -- for the printing and publishing of -- of a
2 new edition of How Anybody Can Stop Paying Income Taxes?

3 A. All your publications.

4 Q. All -- yeah. The Constitution.

5 A. Right.

6 Q. So you were doin' that also?

7 A. Yes.

8 Q. Okay. In other words, I was relying on you for a lot; is
9 that right?

10 A. Yes.

11 Q. Okay.

12 A. Yeah. Correct.

13 Q. So, for all intents and purposes, frankly, because I was
14 still doing a lot of traveling --

15 THE COURT: Strike. Testimony.

16 BY MR. SCHIFF:

17 Q. -- for all intents and purposes, you were actually running
18 Freedom Books and I would be in touch with you by phone.

19 A. I was runnin' the division of shipping department at Freedom
20 Books.

21 Q. Yeah. But you were getting orders. I mean, I don't --
22 Bill, do you recall when I opened up my first office? Do you
23 recall?

24 A. Yes.

25 Q. When was that?

1 A. Oh, '96/'7.

2 Q. '97.

3 So, for at least two years, you had -- you had the
4 books. You took the orders eventually?

5 A. I had everything physical, except the knowledge --

6 Q. Right.

7 A. -- we did no tax work.

8 Q. Right. And you were -- all right. I relied on you.

9 Now, eventually you took orders on various packages I
10 had: The W-4 packet, the Lien and Levy Packet --

11 A. Right.

12 Q. The Audit Packet; is that correct?

13 A. Yes.

14 Q. And, if somebody called Evansville -- if someone called you
15 directly and said the IRS just put a lien on my house or they
16 are levying my wages or they are levying my money in the bank,
17 what packet would you recommend?

18 MR. IGNALL: Objection, your Honor. It's a compound
19 hypothetical.

20 MR. SCHIFF: All right.

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. All right. I had a lot of different packets of material.

24 A. Um-hum.

25 Q. All right. If somebody called Evansville, you know, as a

1 result of these ads and stuff, and said to you: The IRS has
2 just put a levy on my bank account. Can you help me? what might
3 you tell them?

4 A. I never recommended any document -- any piece of paperwork
5 personally because I had no knowledge. The orders -- it was
6 faxed to me what to give these people. I sent everything you
7 had. I gave no knowledge for six years. I had no knowledge
8 today. I don't know. I never got involved.

9 Q. Did -- did you ever tell me when you worked -- this is the
10 first -- did you ever tell me when you worked for me -- and I --
11 and I saw people -- and I directed people to call you
12 directly -- when you had these packets, did you ever tell me:
13 Well, Irwin, if anybody calls I'm not gonna recommend sending a
14 Lien and Levy Packet. I'm not gonna recommend a W-4.

15 Did you ever tell me that?

16 A. I told everybody in the office that I had -- I didn't have
17 background. My background is airplanes. I knew nothing about
18 the tax movement.

19 Q. But -- but -- yet you just -- you just told somebody you met
20 Cindy at a seminar I put on. How many seminars of mine did you
21 attend?

22 A. Three or four. I don't know.

23 Q. Three or four. All right.

24 Now, when you attended my seminars, what was my policy
25 if anybody wanted to bring an accountant or lawyer or a tax

1 consultant? What was my policy?

2 THE COURT: What is the relevance of this?

3 MR. SCHIFF: Well, well, I think it's relevant.

4 THE COURT: Well, I don't care if you think it's
5 relevant.

6 MR. SCHIFF: All right.

7 THE COURT: I have to decide that.

8 MR. SCHIFF: All right. Well, he testified he went to
9 seminars of mine.

10 THE COURT: So? What does that have to do with his
11 testimony today?

12 MR. SCHIFF: He just said he knew nothing about the
13 income tax.

14 THE COURT: He said he knew nothing about your
15 packets --

16 MR. SCHIFF: Well --

17 THE COURT: -- and he would not recommend --

18 MR. SCHIFF: Okay.

19 THE COURT: -- any packet.

20 BY MR. SCHIFF:

21 Q. Did you ever tell me if anybody called -- did you ever tell
22 me --

23 THE COURT: You already asked him that.

24 MR. SCHIFF: No. He said he told other people.

25 THE COURT: He said he told you.

1 BY MR. SCHIFF:

2 Q. Did you ever tell me that you could not in good conscience
3 send out or recommend the Lien and Levy Packet?

4 A. I didn't say about good conscience. I told you that I
5 didn't have enough knowledge to recommend what people needed.

6 Q. You told me --

7 A. See --

8 Q. -- are you saying --

9 THE COURT: That was his answer just a moment ago.

10 THE WITNESS: Definitely, yes.

11 THE COURT: That's his exact answer --

12 BY MR. SCHIFF:

13 Q. All right. Let me ask --

14 THE COURT: -- a few moments ago.

15 BY MR. SCHIFF:

16 Q. -- you something, Bill. The knowledge -- you didn't have to
17 have any knowledge. All you had to do was put the packet in an
18 envelope --

19 THE COURT: Strike.

20 BY MR. SCHIFF:

21 Q. -- and mail it out.

22 THE COURT: Testimony.

23 BY MR. SCHIFF:

24 Q. Nobody's asking you --

25 THE COURT: Strike.

1 MR. SCHIFF: All right.

2 THE COURT: Testimony.

3 MR. SCHIFF: All right.

4 BY MR. SCHIFF:

5 Q. Let me ask you something else.

6 You did send out a lot of Lien and Levy Packets; is
7 that right?

8 A. Thousands. Yes, sir.

9 Q. All right.

10 A. Yes, sir.

11 Q. You did send out a lot of W-4 packets?

12 A. Yes, sir.

13 Q. And you did send out a lot of my books; is that correct?

14 A. Yes.

15 Q. Did it occur to you for one moment that you were sending out
16 anything that was encouraging people to break the law?

17 A. No. No, sir.

18 Q. No?

19 A. No.

20 Q. No?

21 A. No.

22 Q. So you believed that whatever was in that packet was lawful?

23 MR. IGNALL: Objection. That mischaracterizes his last
24 answer.

25 THE COURT: Sustained.

1 THE WITNESS: I don't know how to answer that.

2 BY MR. SCHIFF:

3 Q. Okay. Now, you knew me for five years.

4 A. Six.

5 Q. Approximately. Six.

6 You attended at least four of my seminars. You

7 taught -- we had breakfast together.

8 A. Yes.

9 Q. We had dinner together.

10 A. Yes.

11 Q. You talked to me almost every day with -- if we had

12 problems, I mean, with the various things.

13 A. Right.

14 Q. Did I ever say anything that would indicate to you that I

15 did not believe every word in all of my books and all of my

16 tapes?

17 A. No. I -- I -- you believed it with all your heart and soul.

18 Q. So there was no question that I believed everything that I

19 sent out?

20 MR. IGNALL: Objection, your Honor, asking --

21 THE COURT: Sustained.

22 MR. IGNALL: -- the witness to comment as to what

23 Mr. Schiff --

24 THE COURT: Strike.

25 MR. IGNALL: -- believes.

1 MR. SCHIFF: Well, he didn't --

2 THE COURT: It is an improper question. He cannot know
3 what you believed.

4 BY MR. SCHIFF:

5 Q. Well, did you form an opinion -- did you form --

6 THE COURT: Doesn't matter if he formed an opinion.
7 It's inadmissible. Respect the ruling. It is inadmissible.
8 You cannot testify as to --

9 MR. SCHIFF: All right, all right.

10 BY MR. SCHIFF:

11 Q. Did you -- knowing me for five years --

12 THE COURT: No. You're asking the same question --

13 MR. SCHIFF: No, no --

14 THE COURT: -- over again.

15 MR. SCHIFF: -- no, no. I asked if he formed an
16 opinion.

17 BY MR. SCHIFF:

18 Q. Did you --

19 THE COURT: And his opinion of your sincerity is
20 not admissible.

21 BY MR. SCHIFF:

22 Q. Did you --

23 THE COURT: Do you understand? Are you gonna abide by
24 my ruling or do I have to --

25 MR. SCHIFF: Can I --

1 THE COURT: -- hold you in contempt?

2 MR. SCHIFF: -- can I ask --

3 THE COURT: No, you can't. It's inadmissible. It's an
4 improper question.

5 MR. CRISTALLI: Your Honor, we would like to just ask
6 that -- we join in Mr. Schiff's position with regard to that
7 particular question. We believe that this person based on his
8 interaction with Mr. Schiff can make that assessment --

9 THE COURT: I've already -- I've already looked at the
10 cases. We'll discuss them during the lunch hour.

11 MR. CRISTALLI: Yes, sir.

12 THE COURT: The ruling stands.

13 MR. CRISTALLI: Yes, sir.

14 MR. SCHIFF: Now, he said he attended seminars. I
15 can't ask him any questions about what he observed at my
16 seminars?

17 THE COURT: If you can show us relevance. I don't
18 think you have.

19 MR. SCHIFF: Well, the relevance is I just simply said
20 to him this was --

21 BY MR. SCHIFF:

22 Q. What -- what was my practice if anybody wanted to bring
23 their accountant or tax lawyer?

24 THE COURT: I've already ruled on this.

25 BY MR. SCHIFF:

1 Q. What -- what was our policy?

2 THE COURT: Mr. Schiff --

3 MR. SCHIFF: Oh, I can't ask that?

4 THE COURT: -- I've ruled on it already.

5 MR. SCHIFF: Okay.

6 THE COURT: I already sustained an --

7 BY MR. SCHIFF:

8 Q. Now, incidentally --

9 THE COURT: Objection.

10 BY MR. SCHIFF:

11 Q. -- the question came up about the return of merchandise.

12 Wasn't our policy that if anybody returned anything you return
13 their money. If they wanted a refund, you give them their money
14 back?

15 A. If -- if they hadn't used it already and listened to the
16 tapes and marked the pages and so forth and so forth and so on.

17 Q. Isn't it a fact that you brought to my attention -- well,
18 strike that.

19 Normally you wouldn't ask me -- you wouldn't ask me
20 should I refund the man's money. That was our policy.

21 A. Okay.

22 Q. If someone called and said I want a refund, you wouldn't
23 call and say should I give the man a refund? You knew what our
24 policy was. Is that correct?

25 A. Yes.

1 Q. However, you did call me at times in connection with
2 requested refunds. Do you recall why you might have called me
3 specifically with regard to certain refunds?

4 A. If we'd have had a problem with the same person before or
5 they had used your material and then tried to send it back after
6 they used your material.

7 Q. In other words, didn't you call my attention to the fact
8 this man wants a refund, but he's had the material for three
9 months? Is that -- you would bring that to my attention?

10 A. That's -- that's correct.

11 Q. And I would say, well, I don't know, Bill.

12 A. You would say --

13 Q. What -- what do you think we oughta do?

14 THE COURT: Is that a question?

15 MR. SCHIFF: Yeah.

16 BY MR. SCHIFF:

17 Q. Well -- well -- well, those are the type of refund -- and
18 then what might I say in some cases?

19 A. I just told you. Sometimes we did; sometimes we didn't.

20 Q. I might say -- wouldn't you argue with me sometimes as to
21 whether or not he was entitled to the refund?

22 A. Right.

23 Q. So -- so this idea of you having the check with me -- our
24 policy was if the man wants his money back -- incidentally, in
25 the thousands of material that you sent out how many people

1 wanted refunds?

2 A. I don't recall.

3 Q. Approximately. Percentwise.

4 A. 3 percent.

5 Q. Now, isn't it a fact that sometimes I wanted the name to

6 find out from the person what was there about the material that

7 didn't meet his expectations. I was curious. Is that -- we

8 discussed that; right?

9 A. Yes.

10 Q. I even suggested to you -- did I suggest to you that you

11 should call up an individual who requests a refund and find out?

12 A. I did that on occasion.

13 Q. Yeah. Okay. But -- but the question -- okay.

14 Now, incidentally, I -- I did have a Lien and Levy

15 Packet; right?

16 A. Yes.

17 Q. At my seminars, you did hear me discuss what I believed to

18 be the IRS's illegal seizure of property; is that correct?

19 A. Yes.

20 Q. Did you hear me refer to IRS revenue agents? Did you hear

21 me characterize them from time to time? What kind of a

22 characterization did I put on revenue agents of the IRS? You

23 heard me say it.

24 A. I don't know what answer you're lookin' for. I don't --

25 Q. Well, how did I regard them? Did I -- did I think that they

1 were seizing property legally?

2 MR. IGNALL: Objection, your Honor. It's beyond the
3 scope of direct and also I'm not sure what the relevance is to
4 this witness.

5 MR. SCHIFF: The relevance is we talked about hiding
6 assets. I wasn't hiding assets.

7 MR. IGNALL: Your Honor --

8 MR. SCHIFF: All right. The --

9 MR. IGNALL: -- if he has any questions --

10 MR. SCHIFF: -- relevancy is --

11 MR. IGNALL: -- about P.I.L.L. --

12 MR. SCHIFF: I'm gonna get to P.I.L.L.

13 MR. IGNALL: -- that was covered --

14 MR. SCHIFF: I'll get to P.I.L.L.

15 MR. IGNALL: -- on direct.

16 THE COURT: There was never any mention of hiding
17 assets. There was mention of P.I.L.L.

18 MR. SCHIFF: I was concealing assets. The -- the
19 thrust of the Government's questions, your Honor, was that I was
20 using P.I.L.L. to somehow hide money that I believed was legally
21 owed to the IRS.

22 THE COURT: Not yet. The testimony was strictly what
23 was being sent.

24 BY MR. SCHIFF:

25 Q. Oh, as a matter of fact, was it your testimony --

1 THE COURT: Sustained.

2 BY MR. SCHIFF:

3 Q. -- that the reason I used P.I.L.L. was so that these
4 transactions wouldn't be recorded?

5 A. I never said that.

6 Q. Well, somebody --

7 A. I never said that.

8 Q. Read his testimony.

9 THE COURT: No. It wasn't said.

10 BY MR. SCHIFF:

11 Q. What was -- what -- what was your -- what was your belief as
12 to why I was using P.I.L.L.?

13 MR. IGNALL: Objection, your Honor, to this --

14 THE WITNESS: I never --

15 MR. IGNALL: -- what the --

16 THE WITNESS: -- I never --

17 MR. IGNALL: -- witness believes --

18 THE WITNESS: -- I've never --

19 MR. IGNALL: -- Mr. Schiff believes.

20 THE WITNESS: -- been asked that question.

21 BY MR. SCHIFF:

22 Q. I thought -- I thought --

23 THE COURT: No. You're --

24 MR. IGNALL: The witness has testified to --

25 THE COURT: -- you thought wrong. It wasn't asked.

1 BY MR. SCHIFF:

2 Q. Well, why did I use P.I.L.L.? Do you know why I used
3 P.I.L.L.?

4 A. I have a feelin' you're gonna tell me.

5 Q. No, I'm not gonna tell you.

6 THE COURT: No. He said --

7 BY MR. SCHIFF:

8 Q. I had a lot of discussions with you at that time. You would
9 have asked me. But I want to see if you remember. That's all.

10 A. It's an offshore savings.

11 Q. Well, what was the purpose of my using P.I.L.L.?

12 THE COURT: If you know.

13 THE WITNESS: No, I don't recall -- I don't --

14 BY MR. SCHIFF:

15 Q. Incidentally --

16 A. -- recall.

17 Q. -- I didn't make --

18 THE COURT: Wait.

19 BY MR. SCHIFF:

20 Q. -- incidentally --

21 THE COURT: Wait a minute. No incidental lies; no more
22 speeches.

23 MR. SCHIFF: All right.

24 THE COURT: Ask a question.

25 BY MR. SCHIFF:

1 Q. So you don't know why I used P.I.L.L.?

2 A. Why you used P.I.L.L.?

3 Q. Yes.

4 A. No.

5 Q. You were aware -- you were aware, were you not, that at some
6 point the IRS seized \$8,000 from my account, uh, at Bank of
7 America and they took all my funds? Were you aware of that?
8 Because you -- I think you alluded to it. Were you aware of
9 that?

10 A. Yes.

11 Q. Yes.

12 A. Yes.

13 Q. So, when they took all my funds, I didn't even have another
14 account where I could deposit checks; is that correct?

15 A. I don't know.

16 Q. Well --

17 A. If you say so.

18 Q. Well, when they walked in to Bank of America and -- after my
19 objection and they took all that money, I didn't have another
20 account. I had to search for another bank account.

21 A. But I wasn't involved in that. I don't know --

22 Q. I know.

23 Would that have been one of the reasons I might have
24 said to you send me cash? Because if you sent me a check, there
25 was no way I could deposit it.

1 A. Sure. Possibly.

2 Q. So, when the Government seized my money, you had to send me
3 cash; there was no other way I could pay my employees; is that
4 correct?

5 A. I agree with you.

6 Q. Okay. Incidentally, when you sent cash, it's -- to Freedom
7 Books?

8 A. It's what?

9 Q. When you sent cash -- also, when you -- let me backtrack.

10 The Government asked you -- and the Government went
11 through a series of checks. When I deposited money in P.I.L.L.,
12 you wrote checks payable to P.I.L.L., didn't you?

13 A. Yes.

14 Q. And you sent 'em to me?

15 A. Yes.

16 Q. So I didn't try to cover up the fact that I was depositing
17 money to P.I.L.L. I hoped the Government -- did I make any
18 effort to conceal the fact that I was sending money to P.I.L.L.?

19 A. I have no knowledge of it, no.

20 Q. Well, you just sent me a check payable to P.I.L.L. and I
21 sent it in. And I even -- is that correct?

22 A. Yes.

23 Q. And I even publicized the fact that I was using P.I.L.L.; is
24 that correct?

25 A. Publi- -- I don't know if you publicized it.

1 Q. Well, you -- but you put it in every order. I mentioned --
2 did you ever hear me mention it on my radio show?

3 A. Yes.

4 Q. I also mentioned it on the Schiff Reports.

5 A. Yes.

6 Q. So I made -- I made no bones about the fact that I was using
7 an offshore account.

8 A. Okay.

9 Q. Do you have any -- did I ever discuss with you why I was
10 using an offshore account?

11 A. You -- you probably did. It's been a long time.

12 Q. I know it's been a long time.

13 But you knew that I was sending out packets, whether
14 you read the packet or not -- oh, were you aware -- did you ever
15 read The Federal Mafia incidentally?

16 A. Yes.

17 Q. Did you?

18 A. Yes.

19 Q. Okay. Were you -- were you aware that the biggest chapter
20 in my book is Chapter 7, by far the biggest chapter. And that
21 chapter is called --

22 THE COURT: You're testifying.

23 BY MR. SCHIFF:

24 Q. Oh, no. I'm saying were you aware of this chapter which
25 says, "How The Federal Mafia illegally seizes property"? Did

1 you ever --

2 MR. IGNALL: Objection to --

3 BY MR. SCHIFF:

4 Q. -- read this chapter?

5 MR. IGNALL: -- what the relevance is with this

6 witness.

7 THE COURT: What is the relevance of that?

8 MR. SCHIFF: The relevance is, is that he knew that my

9 belief was that the Government illegally seizes property.

10 BY MR. SCHIFF:

11 Q. Is that correct?

12 A. I was --

13 THE COURT: What does that --

14 THE WITNESS: -- aware that you --

15 THE COURT: -- have to do --

16 THE WITNESS: -- believe that, yes.

17 BY MR. SCHIFF:

18 Q. Well, did --

19 MR. SCHIFF: Well, it has to do with why I was using

20 P.I.L.L. because -- I can tell you if you want me to tell you

21 why I was using P.I.L.L. I'll do it on direct.

22 THE COURT: Tell us the relevance of your question.

23 MR. SCHIFF: All right.

24 BY MR. SCHIFF:

25 Q. In any case, when you read this --

1 THE COURT: Tell us the relevance of --

2 MR. SCHIFF: Okay.

3 THE COURT: -- your question --

4 MR. SCHIFF: Okay.

5 THE COURT: -- why you --

6 MR. SCHIFF: Okay.

7 THE COURT: -- why you --

8 MR. SCHIFF: Because the implication -- the
9 Government's -- the Government's implication is that I was using
10 P.I.L.L. to somehow conceal money that I believe I owed the
11 government.

12 THE COURT: Well, what's your belief about their
13 implication and what came out in his testimony are two different
14 things.

15 MR. SCHIFF: Well, the point of -- but this is correct,
16 what came out --

17 THE COURT: I don't know what the implication of it
18 was. They asked if money --

19 MR. SCHIFF: All right.

20 THE COURT: -- went into those --

21 MR. SCHIFF: All right.

22 THE COURT: -- and that was it.

23 BY MR. SCHIFF:

24 Q. Now, Bill, when I say "the missing paragraph," does that
25 mean anything to you? The missing paragraph?

1 A. No.

2 Q. It doesn't. Okay.

3 In any case, in discussions that you had with me and
4 that you overheard at my seminar, there was no doubt in your
5 mind, was there, that I believed that all IRS seizures were
6 illegal?

7 MR. IGNALL: Objection.

8 THE COURT: Sustained. More of the same.

9 BY MR. SCHIFF:

10 Q. Well, did you form -- all right.

11 THE COURT: Sustained.

12 MR. SCHIFF: All right.

13 BY MR. SCHIFF:

14 Q. Okay. Now...

15 (Pause in the proceedings.)

16 BY MR. SCHIFF:

17 Q. Do you happen to recall what an IRS Notice of Levy is?

18 A. Do I happen to what?

19 Q. Does -- do you happen to remember what an IRS Notice of Levy
20 means? What is an IRS Notice of Levy?

21 MR. IGNALL: Object to the relevance of this with this
22 witness as well.

23 MR. SCHIFF: Well --

24 THE COURT: Not relevant for this witness.

25 MR. SCHIFF: I'm just -- what did you say, was it

1 relevant?

2 THE COURT: Not relevant.

3 MR. SCHIFF: It's not relevant.

4 THE COURT: For this witness not relevant.

5 MR. SCHIFF: Okay.

6 BY MR. SCHIFF:

7 Q. Do you recall anything about a miss -- all right. You...

8 So, frankly -- maybe I misunderstood -- all your
9 testimony with respect to P.I.L.L. that was elicited from you by
10 the Government you now state you don't know why I used P.I.L.L.
11 Is that your testimony now?

12 A. I know why you -- I know what you just told me.

13 Q. Pardon me?

14 A. You just told me why you used P.I.L.L.

15 Q. No. But when you testified before and you made certain
16 representations as to why you believed I used P.I.L.L.

17 THE COURT: No, he didn't make any representations.

18 MR. SCHIFF: He didn't? I thought --

19 THE COURT: No, he didn't.

20 MR. SCHIFF: All right.

21 THE COURT: You're the only one who has informed us why
22 you used P.I.L.L.

23 MR. SCHIFF: All right.

24 THE COURT: In spite of my sustaining --

25

1 BY MR. SCHIFF:

2 Q. Now --

3 THE COURT: -- and striking --

4 BY MR. SCHIFF:

5 Q. -- now, let me ask you --

6 THE COURT: -- you've told us.

7 BY MR. SCHIFF:

8 Q. -- something, Bill. Would you -- being in the Air Force for
9 25 years, would you encourage people to be associated with any
10 kind of a program or operation that would encourage people to
11 break the law or evade income taxes? Would you be a party to
12 tax evasion?

13 A. No. No, sir.

14 Q. No. Is that -- what was your answer?

15 A. No, sir.

16 Q. No.

17 So all the material that you were sending out, whether
18 you understood all of it, you never for a moment thought that
19 what you were doing was encouraging people to break the law; is
20 that right?

21 A. Shipping products was not breaking the law, no, sir.

22 Q. No. But what you were shipping was not encouraging people
23 to break the law.

24 A. No.

25 Q. No.

1 And, if you thought that what you were shipping was
2 encouraging people to break the law, would you have shipped it?
3 Would you have -- be associated with me?

4 A. No, sir.

5 Q. No. Okay.

6 Then there came a time when you were shipping out
7 Schiff Reports Series 1, Series 2, Series 3, Series 4, my Lien
8 and Levy Packet, my W-4 Packet, all of these packets you did not
9 for a moment believe that any of these were encouraging people
10 to break the law?

11 MR. IGNALL: Objection. Asked and answered.

12 THE COURT: Sustained.

13 MR. SCHIFF: Okay. No, I didn't --

14 THE COURT: All right. You want to repeat it?

15 MR. SCHIFF: Okay.

16 THE COURT: But it's been asked and answered.

17 MR. SCHIFF: Okay.

18 (Pause in the proceedings.)

19 MR. SCHIFF: I'm -- I'm skipping over the questions
20 that I thought I could ask.

21 THE COURT: I hope you will skip because we're right up
22 against the --

23 MR. SCHIFF: Okay.

24 THE COURT: -- noon hour.

25 MR. SCHIFF: I won't be much longer.

1 THE COURT: How much longer?

2 MR. SCHIFF: Not much longer. I'm skipping over --

3 THE COURT: What does that mean?

4 MR. SCHIFF: -- all the questions that I thought I
5 could ask.

6 THE COURT: Tell me what "not much longer means."

7 MR. SCHIFF: How much longer? Ten or fifteen minutes.

8 I don't know. Well, he -- the Government had him on much longer
9 than I'm having him on.

10 BY MR. SCHIFF:

11 Q. Okay. Now, just going over -- I wasn't prepared for this.

12 Okay.

13 Now, I just wanna go over some of the testimony you
14 gave today which, of course, I heard for the first time. Now,
15 you testified that you made the checks out to P.I.L.L. for
16 15,000, 5,000, and 10,000; right?

17 A. Yes, sir.

18 Q. And those were recorded in our checking account. So the
19 Government could very easily find those checks and subpoena my
20 bank records. Okay?

21 A. Correct.

22 Q. Now, you also said -- you discussed my -- how I paid my
23 people in Vegas. And the Government talked to you at length
24 about your knowledge about how -- why would I discuss with you
25 in Evansville -- what business would it had have of you how I

1 paid my people in Las Vegas? Why would you have any interest in
2 how I paid my people in Las Vegas?

3 A. I didn't have an interest in how you paid --

4 Q. And I --

5 A. -- your people.

6 Q. And I never had discussions with you about how I paid people
7 in Las Vegas.

8 A. Yes, you did.

9 Q. I had discussions with you about how I paid people in
10 Las Vegas?

11 THE COURT: He said yes, you did.

12 BY MR. SCHIFF:

13 Q. Well, why would --

14 THE COURT: Don't repeat the question.

15 MR. SCHIFF: Okay. I didn't --

16 THE COURT: Let him give --

17 MR. SCHIFF: -- hear him.

18 THE COURT: -- the answer and ask him another question.

19 BY MR. SCHIFF:

20 Q. Okay. Why would I have had discussions like that with you?

21 MR. IGNALL: Objection, your Honor.

22 BY MR. SCHIFF:

23 Q. You said --

24 MR. IGNALL: He can ask what --

25 THE COURT: Sustained.

1 MR. IGNALL: -- the discussion was but not why.

2 BY MR. SCHIFF:

3 Q. So, Bill, if I understand you, you were saying that I had
4 discussions --

5 THE COURT: Mr. Schiff --

6 MR. SCHIFF: All right.

7 THE COURT: -- you've just repeated that a third time.

8 BY MR. SCHIFF:

9 Q. Now --

10 THE COURT: Move on.

11 MR. SCHIFF: Okay.

12 BY MR. SCHIFF:

13 Q. Now, the prosecutor asked you about the Freedom Foundation.
14 Why was the Freedom Foundation set up?

15 A. To my understanding, it was set up to help people that were
16 bein' persecuted by the government and that needed financial
17 help with legal advice, with expenses, so forth. That was my
18 understanding.

19 Q. And did you ever see the incorporation certificate of the
20 Freedom Foundation?

21 A. No, sir. I have no knowledge of that.

22 Q. Okay. If I were to tell you --

23 MR. IGNALL: Objection to --

24 MR. SCHIFF: All right.

25 THE COURT: Sustained.

1 MR. SCHIFF: Okay.

2 BY MR. SCHIFF:

3 Q. So you wouldn't know -- all right. So you would -- now,
4 would there be any reason -- the -- the, uh, prosecutor asked
5 you whether you looked over the expenses of the Freedom
6 Foundation, the books of the Freedom Foundation. What interest
7 would you have had --

8 A. I didn't --

9 Q. -- in looking over the books of the Freedom Foundation?

10 A. I don't recall him asking me that.

11 THE COURT: He didn't ask that question.

12 MR. SCHIFF: Pardon me?

13 THE COURT: He didn't ask that question.

14 THE WITNESS: I don't recall him asking me that.

15 MR. SCHIFF: There were -- I thought he asked about the
16 Freedom Foundation.

17 BY MR. SCHIFF:

18 Q. Incidentally --

19 THE COURT: No. No incidental lies.

20 MR. SCHIFF: All right. I thought he asked him
21 about --

22 THE COURT: No.

23 BY MR. SCHIFF:

24 Q. I asked for records for every -- did you state with respect
25 to a question, I asked for records for every transaction in

1 connection -- I thought with the Freedom Foundation or -- but
2 you specifically said I asked for records --

3 THE COURT: Mr. Schiff, you are wondering.

4 MR. SCHIFF: Well --

5 THE COURT: I want you to focus on a question and ask
6 him a question --

7 MR. SCHIFF: All right.

8 THE COURT: -- rather than --

9 BY MR. SCHIFF:

10 Q. Did you --

11 MR. SCHIFF: All right.

12 THE COURT: -- making statements.

13 BY MR. SCHIFF:

14 Q. -- did you say I asked for records for every transaction in
15 connection with either Freedom Books or the Freedom Foundation?
16 Did you say something to that effect?

17 A. What I said was if someone joined or donated money to the
18 Freedom Foundation it would be in your best interests for me to
19 put it in our database so we'd have a record of it.

20 Q. We did. And we -- the account for the Freedom Foundation
21 was carried -- do you -- the account for the Freedom Foundation
22 was --

23 THE COURT: You're testifying now.

24 BY MR. SCHIFF:

25 Q. -- carried --

1 THE COURT: Strike.

2 BY MR. SCHIFF:

3 Q. Well, were you --

4 THE COURT: Strike. You're testifying. Stop
5 testifying.

6 BY MR. SCHIFF:

7 Q. Well, were you aware that the account for the Freedom
8 Foundation was set up in Las Vegas?

9 A. Yes.

10 Q. And all the money you ever got you would notify us and
11 presumably we'd deposit it into that account; is that correct?

12 A. I don't know where -- I don't know where it went.

13 Q. Well, you would assume that that's what --

14 MR. IGNALL: Objection, your Honor, to what --

15 MR. SCHIFF: All right.

16 MR. IGNALL: -- the witness might assume.

17 THE COURT: Sustained.

18 MR. SCHIFF: All right.

19 THE WITNESS: It wasn't any of my business.

20 BY MR. SCHIFF:

21 Q. It wasn't any of your...

22 Now, if the checks were made payable to the Freedom
23 Foundation, where else are we gonna deposit it?

24 MR. IGNALL: Objection, your Honor.

25 THE COURT: Sustained.

1 MR. SCHIFF: All right.

2 BY MR. SCHIFF:

3 Q. Did the --

4 THE COURT: Calls for speculation.

5 BY MR. SCHIFF:

6 Q. -- did the name John Alizando (phonetic) mean anything to
7 you?

8 A. Yes.

9 Q. Who is John Alizando?

10 A. He was your -- I think he was your landlord at the first
11 Freedom Books or he had an office next door to your Freedom
12 Books.

13 Q. At -- at the time you were sending these checks, wasn't he
14 actually the president and treasurer of the Freedom Foundation?
15 Or did you know that?

16 A. I -- I didn't know it at the time.

17 Q. Okay. But -- okay --

18 Incidentally, did you know -- did you know that the
19 Government got all the records of the Freedom Foundation?

20 MR. IGNALL: Objection.

21 THE COURT: Sustained.

22 MR. SCHIFF: All right. Okay.

23 BY MR. SCHIFF:

24 Q. Now, there -- there was a lot of questions of you as to
25 whether you knew how I was paying employees, how I was running

1 Freedom Books in Las Vegas. Did I ever discuss with you, to any
2 significant degree, how I was running Freedom Books in
3 Las Vegas? Did I ever discuss that with you to any degree?

4 A. You personally?

5 Q. Yes.

6 A. You told me you paid your people in cash.

7 Q. Well -- but why did I pay them in cash?

8 A. I don't know.

9 Q. Is there a law that says I can't pay cash?

10 MR. IGNALL: Objection, your Honor.

11 THE COURT: Sustained. Argumentative.

12 MR. SCHIFF: I -- I just paid them in cash.

13 THE COURT: Sustained.

14 MR. SCHIFF: I got to keep records.

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: All right.

17 THE COURT: -- quit making --

18 BY MR. SCHIFF:

19 Q. But, in other words --

20 THE COURT: -- statements.

21 BY MR. SCHIFF:

22 Q. -- you knew -- did you believe I was paying them in cash for
23 some illegal purpose?

24 THE COURT: Mr. Schiff, sustained.

25 BY MR. SCHIFF:

1 Q. All right. Did you ever -- all right. Bill, did you
2 ever --

3 THE COURT: Move on to something else.

4 MR. SCHIFF: I'm almost all through.

5 BY MR. SCHIFF:

6 Q. Bill, you also testified yesterday or the day before that I
7 hadn't given you a 1090 [sic] or W-4 or something like that.
8 Didn't you testify to that?

9 A. Yes.

10 Q. Okay. Were you concerned about that?

11 A. I -- I needed one in order to file my taxes.

12 Q. Did you ever ask me why I didn't give you such a document if
13 you were concerned about it?

14 A. Yes.

15 Q. Did you ever recall -- oh. So you recall asking me why I
16 didn't give you one -- I didn't send you one; is that right?

17 A. You did not send one.

18 Q. But you asked me about it. Do you recall the reason I gave
19 you as to why I didn't send one to you?

20 A. Told me I didn't need one.

21 Q. But you said you needed one?

22 A. I needed one.

23 Q. Oh, yeah. But --

24 A. You said I didn't need one.

25 Q. But what reason did I give you for why I didn't give you

1 one?

2 A. Because paying federal taxes weren't required.

3 Q. I don't want to lead the witness.

4 A. I'm sorry?

5 Q. But didn't I tell you that I didn't find a law that says I
6 was required to give you a --

7 A. Okay. Same --

8 Q. -- okay. That's the reason.

9 A. -- same difference. I might have interpreted it wrong.

10 Q. Yeah. I mean, I didn't give you one because I didn't
11 believe the law required me to do so. That simple.

12 A. In six years, I never received one.

13 Q. Yeah.

14 A. Okay.

15 Q. And, if you were concerned about it, you would have asked
16 me; we would have discussed it. And that's what I would have
17 told you. Right?

18 A. I solved the problem after I didn't get one. Right.

19 Q. Yeah. You could -- I never asked you whether you were
20 paying taxes on this money --

21 MR. IGNALL: Objection, your Honor. Asked and
22 answered.

23 THE COURT: Sustained.

24 MR. SCHIFF: Okay.

25 THE COURT: Testifying.

1 MR. SCHIFF: Okay.

2 THE COURT: Asked and answered.

3 BY MR. SCHIFF:

4 Q. Okay. So let me ask you something, Bill: Frankly, I relied
5 upon you more than anybody else.

6 THE COURT: You're testifying.

7 BY MR. SCHIFF:

8 Q. Is it -- is it -- is it a fact that you were printing my
9 books, you were operating out of an office when I -- isn't it a
10 fact that I relied upon you more than anyone else in my
11 organization? You did more for me than anybody else.

12 THE COURT: If you know.

13 BY MR. SCHIFF:

14 Q. Isn't that a fact?

15 A. I thought I did, yes.

16 Q. Okay. In other words, you were more involved in my
17 operation than either Cindy Neun or Lawrence Cohen?

18 A. I stayed longer in your employ than any other employee.

19 Q. And it was just you and I at one time, just you and I. You
20 were my only employee; is that right?

21 A. And Nancy Vanall.

22 Q. Okay. So, if there was a conspiracy involved in what we
23 were doing, you should have been part of it?

24 MR. IGNALL: Objection.

25 THE COURT: Sustained.

1 BY MR. SCHIFF:

2 Q. Isn't that correct?

3 A. I don't...

4 Q. I mean, you should have been part of it. I'm --

5 THE COURT: No. Sustained.

6 MR. SCHIFF: I must --

7 THE COURT: You're just --

8 MR. SCHIFF: -- warn you. Okay. All right.

9 THE COURT: -- you're just playing games.

10 MR. SCHIFF: All right.

11 THE COURT: Look --

12 MR. SCHIFF: I -- I hope the Government doesn't --

13 THE COURT: You --

14 MR. SCHIFF: -- make you a part --

15 THE COURT: -- you told me --

16 MR. SCHIFF: -- of the conspiracy.

17 THE COURT: -- you told me --

18 MR. SCHIFF: Okay.

19 THE COURT: -- you told me you had --

20 MR. SCHIFF: Okay. I have no further questions, your

21 Honor.

22 THE COURT: We're in recess for the lunch hour. We'll

23 resume at 1:30. Standard instruction still applies.

24 THE WITNESS: 1:30?

25 (Jury leaves the courtroom at 12:13 p.m.)

1 (Witness leaves the courtroom.)

2 THE COURT: With respect to the -- the issue of whether
3 the witness is able to express his lay opinion regarding the
4 sincerity of the defendant's beliefs, the Seventh Circuit and
5 all Circuits who have addressed the issue say that lay opinion
6 testimony regarding defendant's beliefs about the propriety of
7 filing returns and paying taxes is excludable. You can't have a
8 layperson testify as to the ultimate fact to be decided by the
9 jury. And, while they can talk about circumstances and fact,
10 they cannot express an opinion as to the -- properly express an
11 opinion as to the sincerity of the defendant. So that's --
12 that's the purpose of the ruling.

13 MR. CRISTALLI: Thank you, your Honor.

14 And I would assume that it works in both directions
15 then, that if somebody tried to express a view about the
16 insincerity, um, that is directly parallel to the Court's
17 position.

18 THE COURT: It is. And it has to be based on factual
19 occurrences.

20 MR. CRISTALLI: Yes, sir.

21 MR. SCHIFF: Your Honor, can I make a -- I wasn't
22 trying to have him say what the law was. I --

23 THE COURT: No. You're trying to -- no. You're not
24 trying to have him say what the law is; you asked him about his
25 opinion about his sincerity.

1 MR. SCHIFF: Yeah, I asked --

2 THE COURT: It was properly excludable.

3 MR. SCHIFF: I asked him about his opinion.

4 THE COURT: About your sincerity.

5 MR. SCHIFF: Not whether his opinion was valid but
6 whether at that time he had a belief that what he was sending
7 out was lawful --

8 THE COURT: His opinion is --

9 MR. SCHIFF: -- not whether or not it was lawful or
10 not.

11 THE COURT: You're missing the point.

12 MR. IGNALL: May I raise one other issue? I'm not sure
13 it's gonna come up, but it came up briefly with this witness. I
14 wanted to explain it outside the presence of the jury.

15 I believe Mr. Cristalli was gonna get into an
16 allegation that one of the Government's witnesses, Michelle
17 Desgrosellier, was stealing from Mr. Schiff. I'm sure they are
18 gonna get into that on her cross-examination. But I believe
19 some of those questions from Mr. Thomas were an attempt to prove
20 that extrinsically, which is inappropriate under Rule 608 or
21 609. So, therefore, I just want to express that in case that
22 objection comes up again. I don't want to have to make it as
23 explicitly in front of the jury.

24 THE COURT: Right. Okay. Well, we may need another
25 sidebar. You've been pretty good about --

1 MR. CRISTALLI: Yes, sir.

2 THE COURT: -- sidebars.

3 MR. CRISTALLI: Yes, sir.

4 MR. IGNALL: Thank you.

5 THE COURT: So thank you.

6 MR. IGNALL: And I'm not sure it's gonna come up again.

7 I just wanted to get that out.

8 THE COURT: Okay. We'll address it if we need to.

9 MR. IGNALL: Thank you, your Honor.

10 THE COURT: Thank you.

11 (Lunch break, 12:17 p.m. to 1:38 p.m.)

12 THE CLERK: All rise.

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

14 MR. IGNALL: Yes, your Honor.

15 MR. CRISTALLI: Yes, your Honor.

16 THE COURT: Ms. Clerk.

17 THE CLERK: Yes, sir.

18 MR. IGNALL: Should we get the witness back on the

19 stand?

20 THE COURT: Yes, please.

21 (Pause in the proceedings.)

22 (Jury enters the courtroom at 1:40 p.m.)

23 THE COURT: Please be seated.

24 Will counsel stipulate to the presence of the jury?

25 MR. IGNALL: Yes, your Honor.

1 MR. CRISTALLI: Yes, your Honor.

2 THE COURT: Thank you.

3 MR. BOWERS: Yes, Judge.

4 THE COURT: Thank you.

5 MR. SCHIFF: Yes.

6 THE COURT: Go ahead. Redirect.

7

8 REDIRECT EXAMINATION

9 BY MR. IGNALL:

10 Q. All right. Mr. Thomas, I believe on cross-examination
11 Mr. Cristalli asked you if you ever sent a check to Las Vegas
12 written out to Cynthia Neun. Do you remember that question?

13 A. If I ever sent a check to Cynthia Neun?

14 Q. Yes. Do you remember that question?

15 A. No.

16 Q. Did you ever send a check to Cynthia Neun?

17 A. I sent checks to --

18 Q. I'm sorry. Written out payable to Cynthia Neun.

19 A. No.

20 Q. Did you ever write checks payable to any employee in
21 Las Vegas?

22 A. Yes.

23 Q. For their -- for their salary?

24 A. I don't know what it was for.

25 Q. All right. Maybe just to be clear, when -- did you have any

1 responsibility for sending funds for payroll to Las Vegas?

2 A. Yes, I did.

3 Q. And in what format did you send those funds?

4 A. Cashier's checks and cash.

5 Q. Thank you.

6 I believe when Mr. Bowers was examining you he asked
7 you about the credit card slips that you got that had -- in
8 which you wrote names or initials for who did the consultation.

9 A. Yes, sir.

10 MR. BOWERS: Objection. That misstates prior
11 testimony. I asked the witness about the forms, nothing about
12 credit card slips.

13 BY MR. IGNALL:

14 Q. I'm sorry. On what -- on what form did you write down
15 initials or names?

16 A. On the database.

17 Q. I'm sorry. On the database.

18 Do you recall ever writing down the name Linda Hicks or
19 her initials for doing a consultation?

20 A. Yes.

21 Q. Do you ever remember writing down the name Michelle
22 Degrosellier for doing a consultation?

23 A. No.

24 Q. I believe Mr. Schiff asked you about the time he opened up a
25 merchant account --

1 A. Right.

2 Q. -- here in Las Vegas?

3 A. Right.

4 Q. Do you know what tax ID number Mr. Schiff used on that
5 account?

6 A. In Las Vegas?

7 Q. In Las Vegas.

8 A. I have no idea.

9 Q. And I believe Mr. Schiff talked to you about some checks
10 that you wrote to P.I.L.L. for his account.

11 A. Right.

12 Q. If we could pull up Exhibit 87A. You might be able to look
13 at it in the hard copy or, if things work out well, we'll have
14 it on the screen here.

15 A. Okay.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. If we could skip ahead to page 10 on the screen -- I'm not
19 sure what that number is -- there's a screen to your left also
20 if that might be easier.

21 A. Uh, okay.

22 Q. If we could blow up just the check maybe that'll make it a
23 little clearer.

24 Do you recall ever sending any cashier's checks payable
25 to P.I.L.L.?

1 A. Oh, yes. Yes.

2 Q. On whose instructions?

3 A. Uh, office manager and Irwin Schiff.

4 Q. And how did you physically get this cashier's check?

5 A. I physically went to the bank and --

6 Q. And did you write --

7 A. -- I wrote -- I wrote a check out of --

8 Q. Who was that check --

9 A. -- the Freedom Books's account and exchanged it for a

10 cashier's check.

11 Q. Who was that original check payable to?

12 A. It was made out to the bank.

13 Q. All right. And is this an example of one of those cashier's

14 checks?

15 A. I can't read the one on the -- on the thing here.

16 Q. How about the one that's in front of you?

17 A. Yeah, this is -- this is -- this is one of the checks I

18 wrote.

19 Q. Okay.

20 A. This is the Proper International League Trust.

21 Q. Pardon me?

22 A. This is to the P.I.L.L. itself.

23 Q. Yeah. But --

24 A. This is not -- I mean, this is a personal check out of our

25 account.

1 Q. No, no. I'm looking -- if you skip ahead a few pages.

2 A. I -- this is not a cashier's check.

3 Q. I'm looking at something -- do you see what's on the screen?

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

5 THE COURT: You may.

6 THE WITNESS: Yeah. That's not -- Exhibit A [sic],
7 that's not my exhibit here that I'm lookin' at. You said 87A.

8 MR. IGNALL: If we -- let me help you out here.

9 THE WITNESS: That's not the same as what's up there.

10 BY MR. IGNALL:

11 Q. If we skip ahead a little bit. I'm sort of confusing this.

12 A. I'm sorry.

13 Q. I apologize. Here we go.

14 A. Okay. All right. That's...

15 Q. Do you recognize that, Mr. Thomas?

16 A. Yes.

17 Q. What is that?

18 A. That's a cashier's check to P.I.L.L., Prosper International
19 League Limited Trust. And this was a cashier's check I sent
20 from Evansville, Indiana, to the Las Vegas office, Freedom
21 Books.

22 Q. And how did you purchase that cashier's check?

23 A. With a personal check.

24 Q. Payable to?

25 A. Uh, it -- to Citizens Bank.

1 Q. All right. Did you do that on more than one occasion?

2 A. I -- yes, a lot.

3 Q. All right.

4 THE COURT: When you say "personal check," you mean
5 your own check?

6 THE WITNESS: Yes, sir. Freedom Books's check.

7 THE COURT: Freedom Books's check.

8 THE WITNESS: Not my personal, but...

9 THE COURT: Okay. Thank you.

10 BY MR. IGNALL:

11 Q. I believe Mr. Schiff asked you about whether you believe you
12 were doing anything illegal by sending -- by shipping materials.
13 Do you remember that question?

14 A. Yes, I do.

15 Q. Did you ever follow any of the advice in any of Mr. Schiff's
16 material yourself?

17 A. I did not.

18 MR. IGNALL: No further questions, your Honor.

19 MR. CRISTALLI: Nothing on behalf of Ms. Neun, your
20 Honor.

21 THE COURT: Thank you.

22 MR. BOWERS: Just real briefly, your Honor.

23

24

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RECROSS-EXAMINATION

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BY MR. BOWERS:

Q. Okay, Mr. Thomas, in this box here --

MR. BOWERS: This has been admitted into evidence;
correct?

MR. IGNALL: (Nods head.)

BY MR. BOWERS:

Q. -- what's in this box?

MR. BOWERS: May I approach, your Honor?

THE COURT: You may.

THE WITNESS: These are fax -- faxes that I got over
the fax machine.

BY MR. BOWERS:

Q. Um, is this -- is this an example -- well, this -- this is
an order form. I'm gonna try to find an example of a newer one
that's not already admitted.

Those order forms are over here in these boxes right,
Mr. Thomas? Is that where they'd be? These were all admitted
into evidence yesterday?

MR. IGNALL: Your Honor, if I could assist.

I believe it's Exhibit 91 and there are 10 boxes that
are Exhibit 91.

MR. BOWERS: Do we know -- are these all the same type
of order forms or do we know if there's more recent ones?

All right. Well, you know what? These all appear to

1 be the same. So I'm just gonna pull out...

2 BY MR. BOWERS:

3 Q. Mr. Thomas, would you randomly grab one of those order forms
4 out of the box in front of you?

5 A. Grab one?

6 Q. Yeah, any one. Pick one.

7 A. They should be in numerical order.

8 Q. Well, don't interrupt the order. But just pick one out.

9 A. (Complies.)

10 Q. Okay. So I want to put this up on the screen and maybe we
11 can -- I can ask you a question about it. If you can't see it,
12 let me know.

13 A. Okay.

14 Q. All right.

15 (Document displayed in open court.)

16 BY MR. BOWERS:

17 Q. All right. Can you see that, Mr. Thomas?

18 A. Yes.

19 Q. Okay. So this -- this is a credit card order form; right?
20 To the best of your knowledge.

21 A. No. It's a cash.

22 Q. Cash. Okay.

23 But this is -- this is the order form you used to
24 fulfill orders and keep track of things in --

25 A. Well, we -- I grabbed -- of all the orders -- of all the

1 faxes, I grabbed the local -- I grabbed an order that was picked
2 up in their store in Las Vegas, uh, that they came in and picked
3 up in person.

4 Q. Okay. Well, that --

5 A. I didn't fill that order.

6 Q. All right. That'll work for us. But this is -- this is the
7 sort of -- this is the form of the document that you would use
8 to keep track of that stuff?

9 A. Right.

10 Q. It's got the address, the individual's name --

11 A. Right.

12 Q. -- how they were paid, what the tax was, pick up. That kind
13 of stuff; right?

14 A. Right.

15 Q. Okay. So -- and under here it says "Order Materials." Then
16 it says "Mafia." Right?

17 A. Right.

18 Q. Okay. So, if I understand your testimony correct, if this
19 had been for a consultation it would say "consultation" there?

20 A. Right.

21 Q. Okay. And then this -- this, apparently, Eve, does that
22 mean anything to you, the name "Eve"?

23 A. That was a -- that was one of the employees.

24 Q. Okay. So that's what you understand Eve to mean; correct?

25 And then, if this had said "consultation," whether the

1 consultation was with, uh, Irwin or someone else, and it had a
2 different name up here, like Larry, for example, that wouldn't,
3 as I understand your testimony, mean that it was Larry that had
4 the consultation; that just means Larry wrote the order and the
5 consultation was given by whomever. Is that right?

6 A. If that -- under "remarks" or "materials" if it would have
7 said "consultation, \$200 Eve," it didn't mean -- necessarily
8 mean that Eve did the consultation --

9 Q. Perfect. Or Larry --

10 A. -- anybody --

11 Q. -- or anybody else --

12 A. -- anybody could have done it.

13 Q. Right. And I -- and I can pull any form out here, the old
14 or new format or whatever, and that's -- regardless of -- um,
15 that's not gonna change your testimony about this issue --

16 A. Right.

17 Q. -- right? Okay.

18 So this is just a random form just for illustration;
19 right?

20 A. Right.

21 Q. Okay. Thanks, Mr. Thomas. If you can put that back in
22 order.

23 A. All right.

24 Q. That's all I have for you.

25 A. All right.

1 Q. Have a nice day.

2 A. All right.

3

4

RE CROSS-EXAMINATION

5 BY MR. SCHIFF:

6 Q. Bill, in the five years that you worked for me, you sent out
7 a lot of our material --

8 A. A lot of what?

9 Q. -- is that correct? A lot of books, a lot of tapes, a lot
10 of packages.

11 A. Right.

12 Q. And you came to seminars?

13 A. Right.

14 Q. And you talked to people at my seminars during the breaks
15 and after.

16 Did you ever hear anybody comment that even if they
17 believed this information to be true they would be afraid to
18 adopt it? Was that a comment you heard?

19 A. Yes.

20 Q. Yes.

21 So the mere fact that you paid taxes does not
22 necessarily mean that you don't believe what's in the material.
23 But there's always a danger to not pay taxes in the traditional
24 manner. There's always a danger and my book warns you of the
25 danger. And there is a danger.

1 THE COURT: That's enough. That's enough --

2 MR. SCHIFF: So --

3 THE COURT: -- of the speeches.

4 MR. SCHIFF: All right.

5 BY MR. SCHIFF:

6 Q. So that was enough --

7 MR. IGNALL: Your Honor --

8 MR. SCHIFF: I'm sorry.

9 MR. IGNALL: -- the question might be why Mr. Thomas
10 did or didn't pay his own taxes.

11 MR. SCHIFF: Well, the implication was because the
12 information was false. All right. No further questions. Oh,
13 one other thing.

14 BY MR. SCHIFF:

15 Q. I don't know if -- in my move to Las Vegas, didn't I offer
16 you a job if you wanted to relocate to Las Vegas?

17 A. I believe you did at one time.

18 Q. And wasn't the reason that I terminated is that I finally
19 moved into a facility where I had enough room to have a shipping
20 department and I explained that --

21 MR. IGNALL: Your Honor, beyond the scope of redirect.

22 BY MR. SCHIFF:

23 Q. Do you recall --

24 THE COURT: Sorry. I didn't hear.

25 MR. IGNALL: Beyond the scope of redirect.

1 THE COURT: It is. Sustained. Beyond the scope of
2 redirect.

3 MR. SCHIFF: Okay. No further questions.

4 THE COURT: Any further questions?

5 MR. IGNALL: No, your Honor.

6 May this witness be excused? This witness lives in
7 Indiana, so --

8 THE COURT: Yes, I understand. I'm just waiting to
9 hear if anyone wants him subject to recall.

10 The witness is excused.

11 Government's next witness.

12 MR. NEIMAN: Your Honor, the United States would call
13 Douglas McEwen to the stand. Or McEwen. I'm sorry.

14 THE COURT: Okay.

15 (Douglas McEwen takes the witness stand.)

16 THE CLERK: Sir, would you please raise your right
17 hand.

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

21 THE WITNESS: Yes, I do.

22 THE CLERK: Please be seated.

23 Please state for the record your full name and spell
24 your last name.

25 THE WITNESS: Douglas McEwen, M-c-E-w-e-n.

1 MR. CRISTALLI: I'm sorry. Could you repeat that
2 spelling for me?

3 THE WITNESS: M-c-E-w-e-n.

4

5 DOUGLAS McEWEN,
6 called as a witness on behalf of the Government, having been
7 first duly sworn, was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. NEIMAN:

11 Q. Good afternoon, Mr. McEwen.

12 A. Good morning.

13 Q. Mr. McEwen, how are you employed?

14 A. I'm a special agent with the Criminal Investigation Division
15 of the Internal Revenue Service.

16 Q. And for how long have you been a special agent with the IRS?

17 A. 21 years.

18 Q. And to which field office are you currently assigned to?

19 MR. SCHIFF: Could I -- your Honor, I object to him
20 offering any testimony whatsoever on the grounds he's not
21 authorized to testify in an income tax case.

22 THE COURT: Overruled.

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

24 THE COURT: No, you can't.

25 MR. SCHIFF: Well, can I ask you: Is he being offered

1 as an expert in taxes?

2 THE COURT: We'll see when -- when he's questioned
3 whether he is or is not offered.

4 MR. SCHIFF: Well, I just want to say if he is I want
5 to voir dire him to see if he's an expert.

6 THE COURT: We'll find out when the Government offers
7 it.

8 BY MR. NEIMAN:

9 Q. Special Agent McEwen, to which field office are you
10 currently assigned?

11 A. Louisville.

12 Q. And what are your responsibilities as a special agent with
13 the Internal Revenue Service?

14 A. I'm a special agent field investigator. I conduct
15 investigations of violations of the Internal Revenue Code and/or
16 money laundering statutes.

17 Q. Special Agent McEwen, if I could just ask you to pull the
18 microphone a little closer so that it's easier -- it's big
19 courtroom; sometimes difficult to hear.

20 Thank you.

21 Are part of your duties and responsibilities as a
22 special agent with the IRS to sometimes act in an undercover
23 capacity?

24 THE WITNESS: Uh, yes, it is.

25 Q. Have you received any training with regards to how to act in

1 this -- in this undercover capacity?

2 A. Yes. The, uh, uh, Service has a two-week undercover agent
3 training program that all agents in the program must complete
4 and successfully complete.

5 Q. And what types of topics are discussed in this training?

6 A. Typically, how to meet and deal with, uh, individuals using
7 an assumed identity in an undercover capacity and how to develop
8 evidence.

9 Q. At some point, were you asked to become involved in the
10 investigation of activities going on at Freedom Books?

11 A. Uh, yes.

12 Q. Uh, and did you assume an undercover name with -- with
13 regards to this investigation?

14 A. Yes, I did.

15 Q. What was that name that you assumed while acting undercover
16 in that investigation?

17 A. That name was Doug Malone.

18 Q. And what was the, uh, purpose or what were you -- what was
19 your role, I guess, with regards to acting as an undercover
20 agent?

21 A. I contacted, um, Freedom Books or the personnel that worked
22 there, uh, and explained that I had received some Notices of
23 Deficiency from the Internal Revenue Service and was seeking
24 advice on how to handle that situation.

25 Q. And what is a Notice of Deficiency?

1 A. That's a notice from the Internal Revenue Service that you
2 have a tax liability due and owing for --

3 MR. SCHIFF: May I --

4 THE WITNESS: -- some previous period.

5 MR. SCHIFF: -- may I have an objection? Unless he's
6 qualified as an expert, your Honor --

7 THE COURT: He hasn't been offered as an expert. Sit
8 down.

9 MR. SCHIFF: But then --

10 THE COURT: He hasn't been offered as an expert. Sit
11 down.

12 MR. SCHIFF: But I -- he's testifying on the law,
13 though, your Honor.

14 BY MR. NEIMAN:

15 Q. If you could please finish your answer, Mr. McEwen, what is
16 a Notice of Deficiency?

17 A. Well, again, that's a notice that you have a tax liability
18 due and owing for a specific period of time, um...

19 Q. Now, Special Agent McEwen what was your supposed occupation
20 in assuming this identity of Douglas Malone for this
21 investigation?

22 A. I assumed the occupation of a truck, um -- in the trucking
23 industry as a broker, brokering loads for truckers.

24 Q. Did you ever make any phone calls pretending to be Douglas
25 Malone to Freedom Books?

1 A. Yes, I did.

2 Q. Approximately how many phone calls did you make to Freedom
3 Books?

4 A. I made, uh, three phone calls.

5 Q. And were these conversations recorded?

6 A. Yes, they were.

7 Q. Do you remember what phone number you dialed when calling
8 Freedom Books?

9 A. Um, yes. It was an 800 number. It was, I think, 1-800-tax
10 no more.

11 Q. No more or --

12 A. "No mo," I think, or something like that, yes.

13 Q. Okay. Who did -- who did you have conversations with over
14 the telephone -- or let me rephrase -- ask you another question.

15 When did you make this contact with Freedom Books over
16 the telephone?

17 A. Uh, this all took place in the fall of 2002. The first
18 phone call took place during the month of November.

19 Q. And do you remember who you spoke to on this first phone
20 call?

21 A. Yes. I spoke with an individual who identified himself as
22 Woody.

23 Q. And what did you discuss with Woody on the telephone?

24 A. I explained to Woody that I received these Notices of
25 Deficiency and I was concerned with any action that, you know,

1 may be coming my way from the IRS and, um, sought their advice.

2 Q. And what advice did Woody give you with regards to what to
3 do?

4 A. Woody instructed me -- or asked me and then instructed me
5 that I need to buy the package 5 that explained how to handle
6 that situation.

7 Q. Did you make a second phone call to Freedom Books?

8 A. Uh, yes, I did.

9 Q. And who did you speak to on the second phone call?

10 A. I spoke to an individual on the second call that identified
11 himself as Larry.

12 Q. Okay. And what did you tell Larry?

13 A. Basically the same thing, that I'd received these Notices of
14 Deficiency and -- and how should I handle them.

15 Q. And what was the advice that you were given by this
16 gentleman named Larry?

17 A. Again, that I was asked if I had package 5. And, if I did
18 not, that I needed to purchase the package 5 material and study
19 up on the material included in it.

20 Q. Did this gentleman named "Larry" reference any other tax
21 philosophies or suggestions other than products of Mr. Schiff?

22 MR. CRISTALLI: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: Uh, yes. He did, uh, talk that he was
25 working on an alternative method to this -- he mentioned the

1 zero return that, uh, Mr. Schiff, um, had promoted and that he
2 was working on an alternative to that that involved some UCC
3 filings.

4 BY MR. NEIMAN:

5 Q. Did you make a third phone call to Freedom Books?

6 A. Uh, yes.

7 Q. And approximately when did that third phone call take place?

8 A. Again, that took place, I think, in November of, uh, 2002.

9 Q. And who did you speak to on this third phone conversation?

10 A. Uh, Cindy Neun.

11 Q. And what was the purpose?

12 MR. CRISTALLI: Objection. Foundation.

13 BY MR. NEIMAN:

14 Q. Did the person who you --

15 THE COURT: What -- he said November 3rd. The call was
16 in November. What --

17 MR. CRISTALLI: Not as to time, your Honor. As to how
18 he identified her as Cindy Neun.

19 THE COURT: Okay. Foundation.

20 BY MR. NEIMAN:

21 Q. Did the person who you spoke to at Freedom Books identify
22 him- or herself?

23 A. Yes.

24 Q. And how did this person identify him- or herself?

25 A. As Cindy.

1 Q. What was the purpose of this phone call to, uh, Freedom
2 Books and -- when you spoke to Ms. Neun?

3 A. Again, it was to discuss the Notices of Deficiency and to
4 possibly set up an appointment to come to Freedom Books.

5 MR. NEIMAN: Your Honor, if I may approach the witness?

6 THE COURT: You may.

7 (Government's Exhibit Nos. 104, 105, 106,
8 107, 109, 109A, and 111, marked for
9 identification.)

10 MR. NEIMAN: I'm handing the witness what's been marked
11 as Government's Exhibits 104, 105, 106, 107, 109, and 111.

12 BY MR. NEIMAN:

13 Q. If I could direct your attention to Government Exhibit 109.

14 A. (Complies.)

15 Q. Do you recognize Government Exhibit 109?

16 A. Yes. Uh, this -- yes. This is the tape recording of the,
17 uh, telephone call that took place on November 26th, 2002 --

18 Q. And how --

19 A. -- and the transcript.

20 Q. -- and have you listened to the tape recording?

21 A. Yes, I have.

22 MR. CRISTALLI: Could I have the date again on that?

23 I'm sorry. I did not hear --

24 THE COURT: November 26th, 2002.

25 MR. CRISTALLI: I'm sorry, your Honor?

1 THE COURT: November 26th.

2 MR. BOWERS: And then --

3 MR. NEIMAN: Is 109 -- if we can check the date, I may
4 have given you the wrong....

5 Your Honor, I'm sorry.

6 MR. BOWERS: Do we know who this call involves --
7 which --

8 MR. NEIMAN: It's Ms. Neun.

9 MR. BOWERS: Ms. Neun. Thank you.

10 BY MR. NEIMAN:

11 Q. You recognize Government Exhibit -- how do you recognize
12 Government Exhibit 109?

13 A. Well, it's a tape and it has my initials on it where I
14 initialed it, uh...

15 Q. And does this tape fairly and accurately depict the
16 conversation you had on that date?

17 A. Uh, yes.

18 Q. And have you reviewed the transcript which is marked as
19 Government Exhibit 109A?

20 A. Uh, yes.

21 Q. And does the transcript fairly and accurately represent what
22 is being said on the tape recording?

23 A. Uh, yes, it does.

24 MR. NEIMAN: Your Honor, the Government at this time
25 would move into evidence Exhibit 109 and 109A.

1 THE COURT: The, uh, transcript doesn't come in but the
2 tape will.

3 MR. NEIMAN: We'd move --

4 THE COURT: The transcript will be marked if it hasn't
5 been already. And the tape itself is the evidence, not the
6 transcript.

7 MR. BOWERS: I'm sorry, your Honor. What did you say
8 was happening with the transcript? It's just saying it's
9 marked. Correct?

10 THE COURT: It's marked. It can be used. But the
11 evidence is the tape itself.

12 MR. NEIMAN: That's fine, your Honor. The Government
13 would only submit, then, Government Exhibit 109 to the clerk.

14 THE COURT: 109? Any objection to 109?

15 MR. BOWERS: No, absolutely not, your Honor. I'm just
16 seeing if we have an exhibit copy of 109A anywhere.

17 MR. CRISTALLI: My only concern is I have, uh,
18 transcripts of -- of December 17th 2002. But I don't have that
19 particular transcript. I -- I'm sure I got it. Um...

20 THE COURT: Okay.

21 MR. BOWERS: I'm not sure I got it.

22 MR. CRISTALLI: I don't know.

23 MR. BOWERS: I don't have it now.

24 MR. NEIMAN: They were provided at a later date, your
25 Honor, but they were provided.

1 THE COURT: Okay.

2 Well, if they don't have them and can't locate them

3 now, we can make -- make a copy. How many pages is it?

4 MR. NEIMAN: Uh...

5 THE COURT: The transcript.

6 THE WITNESS: It looks like it's 14 pages.

7 THE COURT: Okay.

8 Ms. Hoskin, Leanne, will you take a copy of the -- that

9 and make one, two, three --

10 LAW CLERK: Three copies?

11 THE COURT: -- three copies, please. Just hand it to

12 Donna. She can do it.

13 (Pause in the proceedings.)

14 MR. BOWERS: Court's indulgence for just a second.

15 THE COURT: Yes.

16 MR. NEIMAN: Yeah. Your Honor, we're trying to resolve

17 some evidentiary issues.

18 (Pause in the proceedings.)

19 MR. BOWERS: Um, your Honor, did we decide we're going

20 to be able to make some copies?

21 THE COURT: It's being made.

22 MR. BOWERS: There may be one other document to add to

23 that. Thank you. Sorry to -- sorry.

24 (Discussion between Mr. Neiman and

25 Mr. Cristalli.)

1 MR. NEIMAN: Your Honor, I could go ahead and lay the
2 foundation for the next series of tapes prior -- while we're
3 waiting for the --

4 THE COURT: Go ahead while we're waiting.

5 MR. NEIMAN: While we're waiting.

6 THE WITNESS: May I clarify something on that
7 transcript?

8 THE COURT: Is it something related to the -- to the
9 accuracy of the transcript?

10 THE WITNESS: No.

11 BY MR. NEIMAN:

12 Q. Does it relate to the date?

13 A. Yes.

14 Q. What is the date of the transcript?

15 A. Okay. This tape actually contains two telephone calls, and
16 I was looking at the transcript. The first call is the November
17 26th call in which, um, I -- I had asked to speak with Cindy and
18 she wasn't available. The, uh, transcript is primarily the
19 telephone call that was made at a later date, on December the
20 3rd.

21 Q. While we're waiting for, uh, the copies to be made, if we
22 could just move along. After you had this phone conversation
23 with Ms. Neun, did you plan a trip out to Las Vegas?

24 A. Yes.

25 Q. And what was the purpose of your trip out to Las Vegas?

1 A. To have a face-to-face meeting to discuss, um, um, these
2 Notices of Deficiency and how to proceed.

3 Q. And did you actually come -- have a meeting in Las Vegas?

4 A. Yes, I did.

5 Q. And where did that meeting take place?

6 A. It took place at Freedom Books on Sahara Avenue.

7 Q. If I could direct your attention to Government Exhibit 111,
8 do you recognize Government Exhibit 111?

9 A. Uh, yes. It appears to be a photo of the sign that was in
10 front of the office building on Sahara.

11 Q. And does the photograph fairly and accurately depict the
12 sign that you saw outside of the Freedom Books store?

13 A. Yes, it does.

14 MR. NEIMAN: Your Honor, at this time the Government
15 would move into evidence Exhibit 111.

16 THE COURT: Any objection to 111?

17 MR. BOWERS: Absolutely not, your Honor.

18 MR. CRISTALLI: No, your Honor.

19 THE COURT: 111?

20 MR. SCHIFF: No.

21 THE COURT: Okay. 111 is received.

22 (Government's Exhibit No. 111, received into
23 evidence.)

24 MR. NEIMAN: If we could publish to the jury Government
25 Exhibit 111, please.

1 Ms. Vannozzi, do you know how to remove this -- there's
2 an arrow.

3 (Pause in the proceedings.)

4 THE COURT: Can't remove the arrow?

5 MR. NEIMAN: I was given instructions, your Honor, to
6 just -- I had to touch the top right corner. But, of course,
7 nothing's as easy as they make it sound.

8 (Pause in the proceedings.)

9 MR. NEIMAN: Your Honor, if we could just maybe
10 instruct the jury not to pay any attention to what the arrow is
11 pointing to.

12 THE COURT: Disregard the arrow. We don't have enough
13 white out to cover it.

14 MR. NEIMAN: Thanks.

15 (Document displayed in open court.)

16 BY MR. NEIMAN:

17 Q. Was this the sign outside of Freedom Books when you went to
18 meet with Ms. -- meet there?

19 A. Yes.

20 Q. Okay. Who -- are we all settled with 109 yet or --

21 MR. CRISTALLI: Yes.

22 MR. BOWERS: 109's good, yeah.

23 THE COURT: 109.

24 MR. NEIMAN: 109 is already in evidence. If we could
25 go back so I can kinda get back on track myself and --

1 THE COURT: 109 is received if -- if hasn't been
2 already.

3 (Government's Exhibit No. 109 and 109A,
4 received into evidence.)

5 MR. NEIMAN: All right. If I can publish, your Honor,
6 with permission Government's Exhibit 109 and transcript.

7 THE COURT: Have counsel received transcripts?

8 MR. CRISTALLI: Yes, sir, we have.

9 MR. BOWERS: Yeah, that's fine, Judge. No problem.

10 THE COURT: Okay.

11 MR. LEVENTHAL: Yes.

12 THE COURT: All right. Thank you.

13 Go ahead. You may publish.

14 (Audio recording played in open court.)

15 BY MR. NEIMAN:

16 Q. Special Agent McEwen, after having this conversation with
17 Ms. Neun, I believe you already testified you came out to
18 Las Vegas?

19 A. Yes.

20 Q. How shortly after having this conversation did you come out
21 to Las Vegas?

22 A. A week to ten days. I came back on the 17th -- or I -- I
23 went to Freedom Books on December the 17th.

24 Q. And do you remember where Freedom Books was located?

25 A. Yes. Uh, it's on Sahara Avenue.

1 Q. And did you actually enter the facility of Freedom Books?

2 A. Yes, I did.

3 Q. Can you describe what it was that you saw when you walked
4 in?

5 A. I would estimate, I guess, the office space to be maybe 2000
6 square feet, 2500 square feet. There was a little reception
7 area when you first came in -- when you first immediately came
8 in with a counter that was immediately in front of the front
9 door and I'd say a waiting area with a couch, um, coffee table.

10 Off to the right was a small little room where I think
11 was the bookstore. I think, if I recall, there was racks of
12 books and things like that in there. And to the left was a --
13 through a doorway was a working-type room where there appeared
14 to be several desks and people answering phones and things like
15 that.

16 Q. Was the place slow? busy? How would you characterize the
17 activity inside the store?

18 A. I was the only individual in the waiting area. But, uh, as
19 I recall, there appeared to be numerous phone calls coming in.
20 The people on the phone were busy, you know, dealing with people
21 on the telephone.

22 Q. When you walked into Freedom Books, uh, were you approached
23 by anyone?

24 A. Yes. When I first arrived, someone approached me and asked,
25 you know, if they could help me or why I was there. Um, I

1 stated that I had an appointment with Ms. Neun.

2 Q. And was Ms. Neun there?

3 A. No.

4 Q. Did Ms. Neun eventually come to Freedom Books?

5 A. Yes. Um, someone called and -- and I waited approximately
6 10 to 15 minutes for her to arrive.

7 Q. And you actually eventually met with Ms. Neun?

8 A. Yes.

9 Q. Where in the Freedom Books store did you sit down and meet
10 with Ms. Neun?

11 A. She had a separate work area away from the -- the area I
12 described to the left where there was like several desks. She
13 had a separate, uh, work area, office type, that was, um,
14 directly in front of the doors or behind the counter and I guess
15 you would say behind the wall. But it was separate from the
16 other people.

17 Q. If I could direct your attention to Government's
18 Exhibits 104, '5, and '6. Do you recognize these documents?

19 A. (Reviewing documents.)

20 Uh, yes. These are the Notices of Deficiency that I
21 took with me to that meeting.

22 Q. And did you discuss those Notice of Deficiencies with
23 Ms. Neun at your meeting?

24 A. Yes. I gave them to her to look at and basically said this
25 is what I received.

1 MR. NEIMAN: If I could -- your Honor, at this time the
2 Government would move into evidence Exhibits 104, -5, and -6.

3 THE COURT: Any objection?

4 MR. CRISTALLI: No objection, your Honor.

5 MR. BOWERS: I don't have any objection, Judge.

6 MR. SCHIFF: Well, I object to the fact that I don't
7 think he's competent to discuss deficiency notices, unless
8 you're qualified as an expert in tax law. Is he an expert in
9 tax law?

10 THE COURT: He is not discussing it. He's a percipient
11 witness. That means he's a fact witness. He has not testified
12 to anything that would require expert opinion. I've ruled on
13 that objection now three times. He has not been submitted as an
14 expert; he is testifying to facts. Overruled.

15 104, 105, and 106 will be received.

16 (Government's Exhibit Nos. 104, 105, 106,
17 received into evidence.)

18 MR. NEIMAN: If we could just display Government
19 Exhibit 104.

20 (Pause in the proceedings.)

21 MR. NEIMAN: Like that. It's gone. If we could just
22 blow up the -- who this is addressed to.

23 BY MR. NEIMAN:

24 Q. Who is this Notice of Deficiency addressed to, Mr. McEwen?

25 A. It's addressed to Douglas Malone at P.O. Box 1832,

1 Louisville, Kentucky.

2 Q. And is that your undercover identity for purposes of this
3 case?

4 A. Yes.

5 Q. And for what tax periods did you have Notice of Deficiencies
6 provided?

7 A. Okay. This, uh -- the one we're looking at is for the tax
8 year ending December 31st, 1998, and we had one for the tax
9 period ending December 31st, 1999, and then the third one was
10 for the period ending December 31st, 2000.

11 Q. When you met Ms. Neun at Freedom Books, did you recognize
12 her voice as the voice you heard on the telephone?

13 A. Yes.

14 Q. And did you discuss these Notice of Deficiencies, uh, with
15 Ms. Neun?

16 A. Yes, I stated that I had received them in -- in -- I stated
17 in the telephone call I didn't know what to do and I was
18 concerned that, um, you know, I would have problems and how
19 should I handle this.

20 Q. Was your meeting with Ms. Neun recorded?

21 A. Yes.

22 Q. Similar to the recording we heard of the telephone
23 conversation?

24 A. Yes.

25 Q. If I could direct your attention to Government Exhibit 110

1 and 110A. Do you recognize Government's Exhibits 110 and 110A?

2 A. (Reviewing exhibits.)

3 Uh, yes. I have, uh, marked as 110 a CD-ROM disk that
4 was the recording of the, uh, meeting on -- on December 17th of
5 2000 at Freedom Books.

6 Q. And is also 110 -- are there also audio cassettes there?

7 A. Yes, there's audiotapes there also that contain my initials.

8 Q. And do those -- have you listened to these tapes?

9 A. Yes, I've listened to the audiotapes. Yes.

10 Q. Do the tapes fairly and accurately represent your
11 conversation with Ms. Neun?

12 A. Yes.

13 Q. And have you reviewed the transcript, Government's
14 Exhibit 110A?

15 A. Yes. I reviewed the transcripts while listening to the
16 tapes.

17 Q. And does the transcript fairly and accurately represent what
18 is being said on the recording?

19 A. Yes.

20 MR. NEIMAN: Your Honor, at this time the Government
21 would move into exhibit -- excuse me -- into evidence
22 Exhibit 110.

23 THE COURT: Any objection to 110?

24 MR. CRISTALLI: No objection.

25 MR. BOWERS: No, no, no.

1 THE COURT: 110? Mr. Schiff, 110 is proposed for
2 admission.

3 MR. SCHIFF: Could I see...

4 (Discussion between Mr. Leventhal and
5 Mr. Schiff.)

6 MR. SCHIFF: What is this recording?

7 MR. BOWERS: This is a recording of a meeting at
8 Freedom Books between Cindy and the special agent.

9 MR. SCHIFF: No, I have no objection.

10 THE COURT: 110 is received.

11 (Government's Exhibit No. 110 and 110A,
12 received into evidence.)

13 MR. NEIMAN: If I could play a clip of Government
14 Exhibit 110 where I -- I believe you just identified you
15 discussed the Notice of Deficiencies with Ms. Neun.

16 THE WITNESS: Yes.

17 MR. NEIMAN: If we could, please, play clip Exhibit A.

18 MR. CRISTALLI: Your Honor, if we -- I think the
19 proposal by the Government was to play a portion of that tape.

20 THE COURT: Yes.

21 MR. CRISTALLI: Um, I would request that the entire,
22 uh -- the entire tape be played in its -- in its entirety. I
23 don't know how long it is.

24 THE COURT: I don't either. How long is it?

25 MR. NEIMAN: I think the entire tape is in excess of 50

1 minutes.

2 MR. CRISTALLI: Fifteen?

3 MR. NEIMAN: 50, five zero.

4 The Government is playing about 25 minutes worth of it.

5 If Mr...

6 THE COURT: Has counsel been furnished with a full

7 transcript?

8 MR. NEIMAN: Yes, they have.

9 THE COURT: They can --

10 MR. CRISTALLI: I believe I have --

11 THE COURT: They can --

12 MR. CRISTALLI: -- the whole transcript.

13 MR. BOWERS: Your Honor, I don't. I'm not objecting to

14 anything. I'm just requesting a copy at somebody's convenience.

15 THE COURT: How many pages is the transcript?

16 MR. NEIMAN: It's rather lengthy, your Honor. I

17 believe it's about six --

18 THE WITNESS: 61.

19 THE COURT: 61 pages.

20 MR. CRISTALLI: I have no objection, your Honor, to

21 having the entire transcript entered into the record as an

22 exhibit.

23 THE COURT: Well, we don't usually do that. It's --

24 it's not --

25 MR. CRISTALLI: I could --

1 THE COURT: -- it's not proper procedure. The tape is
2 the evidence and not the transcript. And -- and --

3 MR. CRISTALLI: Correct.

4 THE COURT: -- so, as -- as a matter of practice in
5 this district, we don't admit the, uh, the transcript; we admit
6 the tape or the other recorded, uh, item but not the transcript.

7 MR. NEIMAN: Your Honor, the entire tape is being
8 offered and it has been admitted into evidence. The Gov- --
9 so...

10 THE COURT: Well, the tape is -- it's like this: If
11 you want to play some other part of it --

12 MR. CRISTALLI: Yes.

13 THE COURT: -- you may. But you can't make the
14 Government decide that, you know, they are gonna put in the
15 whole phone book when they --

16 MR. CRISTALLI: No. I understand.

17 THE COURT: -- are only really focusing on one name.

18 MR. CRISTALLI: Yeah, I understand. I was just -- you
19 know, I would want the jury to have an opportunity to access the
20 entirety of the tape. That would be --

21 THE COURT: Well, they will. The whole tape will be in
22 evidence.

23 MR. CRISTALLI: And then just logistically, you know,
24 my ability to have the Government generate portions of the tape
25 that I want to have him identify. Maybe --

1 THE COURT: Well, logistically we'll have to talk when
2 it comes up and see, you know, how difficult your request is.

3 MR. CRISTALLI: Okay.

4 THE COURT: They have excerpted what they want to use
5 and I'm going to allow them to use only part of it rather than
6 put the whole phone book in, so to speak.

7 MR. BOWERS: I don't object to anything. I don't want
8 to delay anything. If there's any possibility that we could
9 work on getting a transcript without slowing down this witness
10 or these proceedings I'd appreciate it.

11 THE COURT: Have defense counsel already been provided
12 with the transcript?

13 MR. NEIMAN: They have previously --

14 THE COURT: Okay.

15 MR. NEIMAN: -- all been provided copies. I --

16 MR. CRISTALLI: I have the transcript.

17 THE COURT: He has one. Mr. Cristalli has one.

18 MR. NEIMAN: I will do my best to locate an extra copy.

19 MR. BOWERS: And, again, I don't want to hold up the
20 Court and I know I have the ones that pertain to my client. I'm
21 just making a request. Thank you, your Honor.

22 THE COURT: Okay.

23 MR. NEIMAN: Your Honor --

24 THE COURT: Go ahead.

25 MR. NEIMAN: -- they have all been provided to all

1 defense attorneys.

2 If we could play clip A, please.

3 (Audio played in open court.)

4 BY MR. NEIMAN:

5 Q. Special Agent McEwen, do you see Ms. Neun here in the
6 courtroom today?

7 A. Yes.

8 Q. Can you please identify her from where she's sitting?

9 A. She's the lady sitting at the defense table.

10 Q. What is she wearing? Or I guess that's sufficient to
11 describe her.

12 THE COURT: That's probably --

13 MR. NEIMAN: Sorry.

14 THE COURT: -- probably good enough.

15 MR. NEIMAN: Yeah. Sorry.

16 THE COURT: Record will reflect identification.

17 BY MR. NEIMAN:

18 Q. Special Agent McEwen, did there come a time when Ms. Neun
19 gave you advice as to what to do next after responding to this
20 series -- this Notice of Deficiency?

21 A. Um, yes. She prepared a, uh, letter to submit in response
22 to these.

23 Q. And was that discussed?

24 A. Um, somewhat, yes.

25 MR. NEIMAN: If we can play clip B, please.

1 (Audio played in open court.)

2 BY MR. NEIMAN:

3 Q. Uh, Special Agent McEwen, what document was Ms. Neun reading
4 from, uh, in that clip we just heard from?

5 A. Um, she was reading from the Notice of Deficiency.

6 Q. And those are Government's Exhibits 104, -5, and -6 which
7 you have brought into the office?

8 A. Yes.

9 Q. Did there come a time in your meeting with Ms. Neun where
10 she discussed whether or not she had ever gone to the IRS?

11 A. Yes. She stated she'd been there many times.

12 MR. NEIMAN: If we could please play clip C.

13 (Audio played in open court.)

14 BY MR. NEIMAN:

15 Q. Did you meet Mr. Schiff during your meeting at, uh, Freedom
16 Books in December of 2002?

17 A. Yes, I did.

18 Q. Uh, what was the circumstances surrounding that meeting?

19 A. As I recall, Mr. Schiff was walking by and, uh, Ms. Neun
20 called out to him to come over, meet me, and introduce me to
21 him.

22 MR. NEIMAN: If we can please play clip D.

23 (Audio played in open court.)

24 BY MR. NEIMAN:

25 Q. Special Agent McEwen, did you later on in your meeting -- or

1 how long did this entire meeting take place, I guess?

2 A. Um, approximately -- I was probably in the business for
3 approximately an hour, including the wait time. Uh, the actual
4 meeting probably took 45 to 50 minutes.

5 Q. And, during this meeting, did there come a time when you
6 discussed with Ms. Neun her -- her -- her feelings about the
7 IRS?

8 A. Yes.

9 MR. NEIMAN: If we could please play clip E.

10 (Audio played in open court.)

11 BY MR. NEIMAN:

12 Q. At some point during your face-to-face with Ms. Neun, did
13 you -- did she ever mention to you anything about the radio
14 show?

15 A. Yes. Um, I mean, we did discuss the radio show and, um, I
16 think in one of the earlier phone calls she suggested I call
17 into the show.

18 Q. All right. And did Ms. Neun ever discuss to you about her
19 own personal filing history with the IRS during this
20 face-to-face meeting, if you recall?

21 A. Yes. She said she -- she stated she had not filed tax
22 returns in a number of years.

23 MR. CRISTALLI: I'm sorry. I didn't hear that
24 response.

25 THE WITNESS: I said she stated she had not filed

1 returns herself in a number of years.

2 MR. NEIMAN: If we could please play clip F.

3 (Audio played in open court.)

4 BY MR. NEIMAN:

5 Q. Special Agent McEwen, did you discuss with Ms. Neun what the
6 Public Alert Team was?

7 A. Yes.

8 Q. Uh --

9 MR. SCHIFF: What was that?

10 (Discussion between Mr. Leventhal and
11 Mr. Schiff.)

12 BY MR. NEIMAN:

13 Q. Do you recall what she told you with regard to the Public
14 Alert Team?

15 A. That it was a group of people on the evenings that the radio
16 show took place that would hand out fliers and stand, like, on
17 the street corner and things like that handing out promotional
18 material.

19 MR. NEIMAN: If we could please play clip G.

20 (Audio played in open court.)

21 BY MR. NEIMAN:

22 Q. Did you discuss, uh, the phrase or term "tax protesters"
23 with Ms. Neun, if you recall?

24 A. I don't specifically recall using that term. Um, it would
25 be in the recording if we did.

1 Q. All right. Well, maybe if we play clip H it'll refresh your
2 memory.

3 (Audio played in open court.)

4 MR. NEIMAN: If we could please play clip "I" as well.

5 (Audio played in open court.)

6 BY MR. NEIMAN:

7 Q. Special Agent McEwen, did you make any purchases when you
8 were at Freedom Books on this visit?

9 A. No.

10 Q. Did -- were you given any materials, however?

11 A. Yes. I was given some -- some tapes.

12 Q. What -- what were you given specifically?

13 A. Um, when Mr. Schiff, uh, learned, um, that, um, I was in the
14 trucker/brokering business, he asked that I be given some tapes
15 to take back to hand out to people that I deal with that might
16 be interested.

17 Q. Were they entire tapes or were they samples, if you know?

18 A. I did not listen to them, so I do not know.

19 Q. Okay.

20 MR. NEIMAN: If we could please --

21 MR. SCHIFF: Can I -- can I -- repeat the question so I
22 know what he said. I gave him some tapes? Can I...

23 BY MR. NEIMAN:

24 Q. Special Agent McEwen, if you could please repeat your
25 answer.

1 A. Yes. I was given -- I was given some tapes, um, to take
2 with me when I left the business.

3 MR. NEIMAN: All right. If we could please play
4 clip K, I believe, or J? J.

5 (Audio played in open court.)

6 BY MR. NEIMAN:

7 Q. Special Agent McEwen, I believe my notes were a bit out of
8 whack there.

9 Do you remember what prompted this conversation to take
10 place about the Social Security Administration, employees of the
11 IRS, and -- and judges?

12 A. It, um -- Ms. Neun was talking about an injury she had, um,
13 had received at some time in the past. I don't think it was
14 specifically mentioned when. But, uh, I assume it was when she
15 was working at another job and --

16 MR. CRISTALLI: Objection. Move to strike. This is
17 his assumptions.

18 THE COURT: Sustained.

19 BY MR. NEIMAN:

20 Q. If you could only testify as to what she told you or what
21 you personally observed. Did she tell you that she was injured
22 at another job?

23 A. Yes. Um, while making a hundred thousand dollars a year
24 and --

25 MR. CRISTALLI: Objection. Nonresponsive and move to

1 strike.

2 MR. NEIMAN: Your Honor, the witness is just answering
3 the question.

4 THE COURT: The question was: Did she tell you that
5 she was injured at another job? The answer was, yes, while
6 making a hundred thousand dollars a year. And I think we all
7 heard that. The question [sic] was responsive and consistent
8 with the -- the tape. Overruled.

9 BY MR. NEIMAN:

10 Q. Well, what did you see Ms. Neun doing actually at Freedom
11 Books?

12 A. Um, she was busy putting a -- a response letter together,
13 looking through files, um, moving in and about her desk.

14 Q. Did you see her interact with any other people at Freedom
15 Books?

16 A. Yes. There was a -- uh, an individual that came by the
17 desk, uh. I don't recall his name. But he -- he had been in
18 the office to see somebody else and stopped by and there was
19 some, you know, conversation exchanged.

20 Q. And was this individual a customer if you know or you don't
21 know?

22 A. I don't think he was an employee; it was a customer or
23 somebody that knew them. Yes.

24 Q. All right. And where I thought we were goin' with this
25 clip, at some point you mentioned that you were given some

1 tapes?

2 A. Yes.

3 Q. Okay.

4 MR. NEIMAN: If we could, hopefully, play the clip K if
5 there is one.

6 MR. BOWERS: Sorry. What are we playin'?

7 MR. NEIMAN: The clip K.

8 MR. BOWERS: Thank you.

9 (Audio played in open court.)

10 BY MR. NEIMAN:

11 Q. And the -- at the conclusion of your meeting, did you have
12 any contact with anybody else at Freedom Books?

13 A. Yes. Uh, Mr. Lewis, that -- he was an employee that I was
14 told took care of copying the tapes, making duplicates, and
15 things like that.

16 Q. Do you know what Mr. Lewis's first name was?

17 A. I don't recall.

18 Q. Okay.

19 MR. NEIMAN: I have nothing further, your Honor.

20 THE COURT: Cross-examination?

21 MR. CRISTALLI: Thank you, your Honor.

22 THE COURT: I think it might be a good time to take our
23 mid afternoon break. We have been going for an hour and a half.
24 So we'll be in recess approximately 15 minutes.
25 (Jury leaves the courtroom at 3:05 p.m.)

1 THE COURT: We're in recess.

2 MR. BOWERS: Your Honor, I'm sorry. How long?

3 THE COURT: 15 minutes.

4 MR. BOWERS: Thanks.

5 (Recess from 3:06 p.m. to 3:22 p.m.)

6 THE CLERK: All rise.

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

8 THE CLERK: Yes, sir.

9 (Pause in the proceedings.)

10 (Jury enters the courtroom at 3:23 p.m.)

11 THE COURT: Please be seated.

12 Will counsel stipulate to the presence of the jury?

13 MR. NEIMAN: Yes, your Honor.

14 MR. CRISTALLI: Yes, your Honor.

15 THE COURT: Thank you.

16 You may cross-examine Mr. Cristalli.

17 MR. CRISTALLI: Thank you, your Honor. May it please
18 the Court.

19

20 CROSS-EXAMINATION

21 BY MR. CRISTALLI:

22 Q. Good afternoon, Agent McEwen is it?

23 A. Yes.

24 Q. It's Agent McEwen now. But that's not how you identified
25 yourself when you were acting as an undercover operative;

1 correct?

2 A. That's correct.

3 Q. You referred to yourself as Douglas Malone?

4 A. Yes.

5 Q. Is that true? Okay.

6 Now, you contacted Freedom Books specifically to speak
7 to Ms. Cindy Neun; correct?

8 A. Yes.

9 Q. And that was because you were in the process of conducting
10 an investigation into the activities of Freedom Books. But
11 specifically on this occasion -- or these occasions you were
12 trying to gather information as it related to Cynthia Neun's
13 participation in Freedom Books. True?

14 A. I was not conducting an investigation of Freedom Books. I
15 was only assigned to do the undercover contacts. I -- I did not
16 do the overall investigation.

17 Q. All right. Your investigation, however, was specific on --
18 well, at least, um, the meeting over the telephone, which was
19 December 3rd, 2002; correct?

20 A. Yes.

21 Q. During that meeting, your specific task, your specific duty,
22 was to speak directly to Cynthia Neun. True?

23 A. That's true, yes.

24 Q. Um, and -- and your duties included trying to gather
25 information to use in -- in the ongoing investigation against,

1 um, Irwin Schiff and Cynthia Neun, correct --

2 A. Yes.

3 Q. -- Larry Cohen, those individuals that have been charged in
4 this particular case. Correct?

5 A. Yes.

6 Q. Okay. Now, um, when you spoke -- I want to direct your
7 attention specifically to the telephone call on December 3rd,
8 2002, with Cindy.

9 First of all, uh, sir, uh, obviously we know that you
10 didn't identify yourself in your true name; correct?

11 A. That's correct.

12 Q. Um, and, uh, in addition to that, um, you tape-recorded the
13 conversation with Ms. Neun. True?

14 A. Yes.

15 Q. Sir, you didn't tell her that you were tape recording the
16 conversation with her; correct?

17 A. That's correct.

18 Q. She was unaware that there was a -- that the -- that the
19 conversation was being recorded?

20 A. I do not know what she was aware of, but I did not tell her
21 that it was being recorded.

22 Q. Well, obviously, if you didn't notify her that it was being
23 recorded, she would have no way to know that it was being
24 recorded. Would that be an accurate statement?

25 A. That would be accurate.

1 Q. Okay. Now, during the course of your telephone call with
2 her on December 3rd, 2002, um, she referred to herself as a
3 fellow student of, uh, Mr. Schiff's material; correct?

4 A. That's correct.

5 Q. Okay. During the period of time that you spoke with her,
6 um, she was cooperative with you; correct?

7 A. Yes.

8 Q. Trying to give you helpful information as it related to the
9 issue that you presented to her?

10 A. Yes.

11 Q. Okay. In fact, um, during the conversation she even, um,
12 instructed you to contact your local Congressman for the issues,
13 uh, that you were dealing with. True?

14 A. Yes. I believe there was some mention of that --

15 Q. Okay.

16 A. -- Congressman, yes.

17 Q. Um, in fact, during the course -- and I think the initial
18 discussions on the telephone were with regard to a deficiency
19 notice; correct?

20 A. That's correct.

21 Q. And you told her, uh, that you didn't file, uh, tax returns;
22 correct?

23 A. Yes, that's correct.

24 Q. Okay. And she tried to give you information as it related
25 to what you should do in that situation based on the information

1 that was provided by Freedom Books; correct?

2 A. That's correct.

3 Q. Okay. And she also encouraged you to come in and talk to
4 her with regard to your issues. True?

5 A. Yes. I think she invited me to come in, yes.

6 Q. Okay. She actually encouraged that?

7 A. Yes.

8 Q. Okay. In fact, she said that, um, once Irwin was successful
9 in changing the tax laws, she can go home and paint and, um,
10 renew her love for sculpturing?

11 A. Yes, that --

12 Q. Do you recall that?

13 A. Yes, that was said.

14 Q. Now, with regard to the face-to-face meeting on December
15 17th, 2002, when you walked into Freedom Books Cindy was not
16 present; correct?

17 A. That is correct.

18 Q. Um, and, when she got to Freedom Books, she actually
19 explained to you that -- and she apologized to you. But she
20 indicated that she wasn't feeling well that day; correct?

21 A. That's true. Correct.

22 Q. Um, and so when you went there, you sat down with her in
23 somewhat of an informal setting, I would assume, and you
24 presented her with the documentation that you had; correct?

25 A. Yes.

1 Q. Now, sir, um, I think it's safe to say that the
2 documentation that you had was, um, generated by your offices;
3 correct?

4 A. Yes.

5 Q. So it was to a certain extent bogus documentation?

6 A. Yes. From the standpoint that, uh, that the person it was
7 addressed to didn't really exist, yes.

8 Q. Right. It was created by your office which is the, I would
9 assume, Internal Revenue Service?

10 A. Yes. It was created by someone in the Internal Revenue
11 Service.

12 Q. Okay. Um, and when you began -- when you had the sit-down
13 with Ms. Neun, she explained to you what she felt the
14 appropriate procedures would be for you to do in response to the
15 deficiency notices that you received; correct?

16 A. Yes.

17 Q. In fact, she went, um, a long way in trying to explain to
18 you what the procedures were. Would that be a fair statement?

19 A. Yes.

20 MR. CRISTALLI: Could you load up that first one for
21 me? I knew I was gonna forget it.

22 AGENT STEINER: L.

23 MR. CRISTALLI: L.

24 THE COURT: Clip L.

25 MR. CRISTALLI: I think it's identified as -- it's --

1 it's the tape. I'm sorry, your Honor.

2 THE COURT: Okay.

3 MR. CRISTALLI: The tape recording.

4 (Audio played in open court.)

5 MR. CRISTALLI: Could we just stop it one second?

6 Sorry.

7 BY MR. CRISTALLI:

8 Q. Just in response to that, during that period of time when

9 she's explaining to you what your responses would be, um, uh,

10 with regard to a deficiency notice, is she now writing, um,

11 information down for you?

12 A. Yes. As I recall, she was --

13 Q. Okay.

14 A. -- writing, preparing information.

15 Q. Okay.

16 MR. CRISTALLI: Please.

17 (Audio played in open court.)

18 BY MR. CRISTALLI:

19 Q. Okay. Now, so we have a situation where she's explaining to

20 you the fact that, um, the income tax system is a voluntary

21 system, um, and she's writing down information for you to

22 provide in a response to the deficiency notice; correct?

23 A. Correct.

24 Q. Okay. Now, during that period of time, she never, um, asked

25 you for a fee in exchange for the information that was -- she

1 was providing to you; correct?

2 A. That's correct.

3 Q. Okay.

4 MR. CRISTALLI: The next one, please.

5 (Audio played in open court.)

6 MR. CRISTALLI: Thank you.

7 BY MR. CRISTALLI:

8 Q. Um, so in that, um -- during the course of that period of
9 the conversation, uh, Cindy was basically trying to explain to
10 you, um, um, how the teachings of Freedom Books were in
11 compliance with the law; correct?

12 A. Um, I...

13 Q. Well --

14 A. Rephrase that, please.

15 Q. Okay. The essence of the -- the teaching was that there
16 was, um, no law suggesting that you had to pay income tax;
17 correct?

18 A. Yes, that's what she --

19 MR. NEIMAN: Objection, your Honor. I think the tape
20 speaks for itself. Mr. Cristalli commenting on it, I think, is
21 objectionable.

22 THE COURT: Sustained.

23 MR. CRISTALLI: Okay.

24

25

1 BY MR. CRISTALLI:

2 Q. Um, it would -- during the course of the -- and, by the way,
3 during -- during that period of time when you guys are -- or
4 she's, um, basically advising you of what her position, uh, on
5 the tax laws are she did not request any money for -- from you
6 for that information; correct?

7 A. No, she did not.

8 Q. Okay. Now, during that period of time in support of her
9 position, she, uh -- she showed you her Internal Revenue Code;
10 correct?

11 A. Yes.

12 MR. CRISTALLI: Um, may I approach, your Honor?

13 THE COURT: You may.

14 BY MR. CRISTALLI:

15 Q. And, Agent, I'm going to show you what's been marked as
16 Defendant's Proposed Exhibit, I believe, 2500, two five zero
17 zero.

18 Do you recognize that as being the, uh, Internal
19 Revenue Code that was shown to you by Ms. Neun?

20 A. I don't -- I can't specifically say that was the same one.
21 But the one that she held up had many bookmarks in it and tabs.
22 So it could be, yes.

23 Q. And is this Internal Revenue Code consistent with the
24 condition of the Code, um, that she presented to you on that
25 particular day?

1 A. Yes. I -- I did not handle the code book that day. She
2 just held it up. And so --

3 Q. Right.

4 A. -- it could be the same one, yes.

5 Q. Okay. And it looked like this. True?

6 A. Yes.

7 Q. And she cited from sections in -- in this book as we've seen
8 on the screen --

9 A. Yes.

10 Q. -- in the course of the conversation?

11 A. Okay.

12 Q. Now, she also -- you also, during the course of your direct
13 examination, indicated that, um, her heart was in the job,
14 correct, based on your interaction with her?

15 A. I made that statement in the -- in the --

16 Q. Correct.

17 A. -- conversation of December 17th, yes.

18 Q. And, um, some of the reason why you made that statement is
19 she indicated to you that she goes in front of the, uh, Internal
20 Revenue Service -- Service on almost a weekly basis; correct?

21 A. She did state that she quite frequently, yes, goes to the
22 IRS.

23 Q. In fact, one particular week she said that she went to the,
24 um, the Internal Revenue Service on nine occasions?

25 A. Yes.

1 Q. Okay. And, um -- and, during the course of her going to the
2 Internal Revenue Service, um, part of the practice was to go
3 there and to, um -- and to present, uh, arguments to justify her
4 position as it related to the tax laws; correct?

5 A. Yes.

6 Q. Okay. During the course of the communications that you had
7 with, uh, Ms. Neun on that occasion, she also spoke in a
8 patriotic tone; correct?

9 A. I guess it could be interpreted in that way, yes.

10 Q. Well, she spoke about Americans and standing up for her
11 rights and the country and the Constitution. Would that be
12 accurate?

13 A. Yes.

14 Q. Okay. Um, and the gist of her discussions with you during
15 the course of the conversation, as I noticed, was that her --
16 she -- she -- she stated that the philosophy, the ideals, was a
17 protest of illegal taxes; correct?

18 A. Yes.

19 Q. Okay. Now, I want to get to a point where you said the
20 Government had talked to you about the fact that Ms. Neun had,
21 uh -- had been injured, uh, in approximately 1997. Are you
22 familiar with that discussion you had with her?

23 A. She discussed having an injury; there was no specific date
24 mentioned.

25 Q. Okay. Now, um, there was a statement made by you that she

1 was -- she -- she had said that she was making a hundred
2 thousand dollars a year?

3 A. Yes. That's in the recording.

4 Q. I'm sorry?

5 A. That's in the recording she said she was in a job making
6 \$100,000 a year.

7 Q. Right.

8 And she -- and -- and are you familiar that the -- the
9 employment was for [sic] Mission Linens? Did that come out
10 during the course of the discussions?

11 A. She made a statement that she was a representative of, uh, a
12 linen company or a laundry company I think is the way it is in
13 the tape.

14 Q. And that was prior to 1990- -- 1987, prior to the injury
15 that she suffered; correct?

16 A. I don't -- I don't know. There was no dates mentioned --

17 Q. Okay.

18 A. -- for that.

19 Q. And, sir, are you aware of the fact that Ms. Neun had paid
20 all of her taxes as it related to her employment with Mission
21 Linen -- linens?

22 A. I have no knowledge of that.

23 Q. All right. Now, during the course of your communication
24 with Cindy Neun at Freedom Books on December 17th, 2002, it
25 would be accurate, sir, would it not, that she presented herself

1 in a forthright and honest manner?

2 MR. NEIMAN: Objection to --

3 MR. CRISTALLI: Forthright?

4 MR. NEIMAN: -- "honest" more so than "forthright."

5 THE COURT: Sustained.

6 BY MR. CRISTALLI:

7 Q. Did she present herself in a forthright manner?

8 A. Yes.

9 Q. Okay. Was she passionate about what she was discussing with
10 you?

11 A. Yes.

12 Q. Okay. Now, did there also come a time during the course of
13 the conversation that you had with her -- I think it was in the
14 beginning of the meeting that she had asked you whether or not
15 you wanted this, uh -- the conversation to be tape-record so
16 that you could use it for your, uh -- for purposes of learning
17 and studying?

18 A. I recall I think I was asked that, yes.

19 Q. Okay. And, during that period of time, you were obviously
20 recording her because we saw that; correct?

21 A. Correct.

22 Q. And she didn't know that you were recording her; correct?

23 A. No, she did not.

24 Q. Because it was undercover and you didn't advise her of that.
25 True?

1 A. No, I did not.

2 MR. CRISTALLI: Your Honor, I have no further
3 questions --

4 THE COURT: Thank you.

5 MR. CRISTALLI: -- of the agent.

6 THE COURT: Mr. Bowers?

7 MR. BOWERS: I don't believe I have any. I'm gonna
8 request that Mr. Schiff go first. If he does, then...

9 THE COURT: Okay.

10 MR. SCHIFF: I have no questions.

11 MR. BOWERS: Well, then I don't have anything.

12 THE COURT: Any -- any redirect?

13 MR. NEIMAN: No, your Honor.

14 THE COURT: All right.

15 MR. CRISTALLI: Wow.

16 THE COURT: Thank you. The witness is excused.
17 Government's next witness.

18 MR. IGNALL: Government calls Kris Morgan.
19 (Kristy Morgan takes the witness stand.)

20 THE CLERK: Please remain standing and raise your right
21 hand.
22 You do solemnly swear that the testimony you shall give
23 in the cause now pending before this court shall be the truth,
24 the whole truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Please be seated.

2 Please state for the record your full name and spell
3 your last name.

4 THE WITNESS: Kristy Morgan, K-r-i-s-t-y, M-o-r-g-a-n.

5

6 KRISTY MORGAN,
7 called as a witness on behalf of the Government, having been
8 first duly sworn, was examined and testified as follows:

9

10 THE COURT: Go ahead.

11 MR. IGNALL: Your Honor, I think it's a good point -- I
12 have a quick question for the clerk, if I could.

13 I'm not sure if Exhibit 22 has been admitted yet.

14 THE CLERK: It is not.

15 MR. IGNALL: All right.

16 Your Honor, at this point the Government moves into
17 evidence the following exhibits, which are all certified public
18 records: Exhibit 22, 26 through 33, 35, 36, 37, 39 through 51,
19 and 58 through 65 and 65A. And, again, those are all certified
20 public records of the Internal Revenue Service.

21 THE COURT: Mr. Cristalli?

22 MR. CRISTALLI: Uh, just -- the Court's indulgence just
23 one brief moment, your Honor.

24 THE COURT: All right.

25 (Pause in the proceedings.)

1 MR. BOWERS: Your Honor, maybe -- could the Court's
2 clerk read back just those exhibit lists again?

3 THE COURT: I can do that. 22, 26 through 33, 35, 36,
4 37, 39 through 51, 58 through 65 and 65A.

5 MR. BOWERS: I -- I have no objection to the admission
6 of those documents. But I believe this witness has been called
7 as custodian of records.

8 THE COURT: That's correct.

9 MR. BOWERS: I would submit that --

10 MR. IGNALL: Well, she has some other testimony, your
11 Honor.

12 THE COURT: She's not being called as a custodian.
13 These are certified records of the IRS.

14 MR. BOWERS: I don't object, so --

15 THE COURT: All right.

16 Mr. Cristalli has no objection.

17 Mr. Schiff?

18 MR. SCHIFF: Um, she's not being -- what is her
19 official title, your Honor?

20 THE COURT: Well, she hasn't been asked that yet. The
21 Government is moving to --

22 MR. SCHIFF: She's not being --

23 THE COURT: She's not --

24 MR. SCHIFF: -- qualified as an expert in taxes.

25 THE COURT: Well, I don't know if she is or not. That

1 remains to be seen. The -- the examination has not started. We
2 are just dealing with the housekeeping matter of whether
3 certified records of the IRS as mentioned by the Government are
4 going to be received into evidence.

5 (Discussion between Mr. Leventhal and
6 Mr. Schiff.)

7 MR. SCHIFF: All right. I have no objection.

8 THE COURT: All right. Same will be received.

9 (Government's Exhibit Nos. 22, 26 through 33,
10 35, 36, 37, 39 through 51, 58 through 65 and
11 65A, received into evidence.)

12 MR. IGNALL: May I approach the witness --

13 THE COURT: You may.

14 MR. IGNALL: -- with these exhibits, your Honor?

15 THE COURT: You may.

16

17 DIRECT EXAMINATION

18 BY MR. IGNALL:

19 Q. Does that block your view there?

20 A. Just seeing the exhibits is all I need to see.

21 THE COURT: Do you want them down on the floor instead?

22 MR. IGNALL: Yeah. You can put them wherever you want.

23 I'm gonna ask you one at a time. But they should be in numbered
24 folders to -- in an ideal world you should be able to find them
25 pretty quickly.

1 BY MR. IGNALL:

2 Q. All right. Ms. Morgan, could you tell me where you work?

3 A. I work for the Internal Revenue Service in Ogden, Utah.

4 Q. How long have you worked for the Internal Revenue Service?

5 A. I started in 1984.

6 Q. And what are your current job responsibilities at the
7 Internal Revenue Service?

8 A. Currently I'm a court witness and investigative aide in the
9 Criminal Investigation Division.

10 MR. SCHIFF: Can I hear that description? I didn't
11 hear.

12 THE COURT: Could you repeat that, please.

13 THE WITNESS: I'm a court witness/investigative aide
14 with the Criminal Investigation Division.

15 BY MR. IGNALL:

16 Q. How long have you had that job?

17 MR. SCHIFF: Can I -- I never heard of such a
18 description.

19 Are you a special agent or revenue agent or...

20 MR. IGNALL: Your Honor, I think she's answered the
21 question.

22 THE COURT: She's mentioned her title. The fact that
23 you haven't heard of it --

24 MR. SCHIFF: Okay.

25 THE COURT: -- makes two of us.

1 So go ahead.

2 BY MR. IGNALL:

3 Q. What are your job responsibilities in your current position?

4 A. As a court witness, I review tax data, tax returns, and
5 prepare them for trial. I help the special agents and attorneys
6 in preparation for their cases. I also explain the normal
7 business practices of the IRS. And I testify on behalf of the
8 Commissioner as a custodian of records.

9 As an investigative aide, I look at raw tax data, tax
10 returns, and create cases that can be referred out to the field
11 office for further investigation.

12 Q. How long have you had your current position as a court
13 witness/investigative aide?

14 A. As a court witness, I've had for four years; the
15 investigative aide for two years.

16 Q. What was your job before you had your job as a court
17 witness?

18 A. I was the civil penalty coordinator in the Frivolous Filer
19 Department in the Examination Branch.

20 Q. What were your job responsibilities as a civil penalty
21 coordinator in the Frivolous -- did you say Frivolous Filer
22 Branch?

23 A. Correct. Frivolous Filer Department.

24 Q. Frivolous Filer Department. Okay.

25 What were your job responsibilities there?

1 A. Excuse me.

2 I give technical assistance to the tax examiners in
3 that department. I assess the \$500 frivolous return penalty. I
4 also worked with the area counsel regarding new frivolous
5 arguments asking for legal discussions on whether or not they
6 were frivolous. I developed training and letters regarding the
7 Frivolous Filer Department. And I also talked with taxpayers
8 regarding their tax obligations and their questions on their tax
9 returns that they filed with our department.

10 MR. SCHIFF: I didn't hear what -- could I just hear
11 her description again? I'm sorry. I couldn't hear very well.

12 THE COURT: I'll read it back to you.

13 I also work with area counsel regarding new frivolous
14 arguments asking for legal discussions. I develop training and
15 letters regarding the Frivolous Filer Department. I also talked
16 with taxpayers regarding their tax obligations on their
17 questions on their tax returns --

18 MR. SCHIFF: Tax obligations.

19 THE COURT: -- that they filed with our department.

20 MR. SCHIFF: So tax obligations.

21 Did I understand -- did she say she determines criteria
22 for frivolous returns?

23 THE COURT: She said that --

24 MR. SCHIFF: Did I hear her right?

25 THE COURT: No. You didn't -- you didn't hear --

1 MR. SCHIFF: She doesn't determine -- all right.

2 THE COURT: She said she did assess the \$500 frivolous
3 return penalty.

4 MR. SCHIFF: Oh, she did assess the 500.

5 MR. BOWERS: I'm sorry, your Honor. I thought she
6 testified that she consulted with counsel about new frivolous
7 arguments?

8 THE COURT: She did that as well.

9 MR. SCHIFF: So she --

10 MR. BOWERS: Okay. Thank you.

11 MR. SCHIFF: -- assessed the frivolous penalties.

12 THE COURT: That's what she testified to.

13 MR. SCHIFF: Well...

14 BY MR. IGNALL:

15 Q. How long, Ms. Morgan, were you employed in the Frivolous
16 Filer Department?

17 A. For 10 years.

18 MR. SCHIFF: Um --

19 BY MR. IGNALL:

20 Q. What ten years were those?

21 MR. SCHIFF: -- your Honor, may I have an objection
22 here?

23 THE COURT: Go ahead.

24 MR. SCHIFF: If she assessed the frivolous penalties,
25 then she -- and if she takes my return and says it's frivolous,

1 then she's making a determination with respect to tax law. Now,
2 if she's not an expert in tax law --

3 THE COURT: She's just testified what her job function
4 was at the time. You may not like what she did, but that was
5 her job function at the time.

6 MR. SCHIFF: I'm not making a comment on what she did.
7 I'm saying she would have to be a tax expert to determine a
8 return is frivolous. Is she -- I mean, I'm assuming --

9 THE COURT: Well, that's just argument. And -- and
10 what's your point?

11 MR. SCHIFF: That she's an expert in taxes.

12 THE COURT: She's not -- she hasn't claimed to be an
13 expert.

14 MR. SCHIFF: Well, then, your Honor, I don't see how
15 she can determine if a return is frivolous.

16 THE COURT: She testified what she did. And if you
17 wish to cross-examine her. Your -- your --

18 MR. SCHIFF: All right.

19 THE COURT: -- objection makes no sense to me. You
20 don't like what she did?

21 MR. SCHIFF: I like -- I have -- I have no objection to
22 what she did. I just am assuming she has to be an expert in
23 taxes.

24 THE COURT: Well, you assume at your own peril.

25 MR. SCHIFF: All right.

1 THE COURT: It has nothing to do with what she's
2 testifying to right now.

3 BY MR. IGNALL:

4 Q. Ms. Morgan, what years did you work in the Frivolous Filer
5 Department?

6 A. From 1992 to 2002.

7 Q. And where was that department located?

8 A. It's located in Ogden, Utah.

9 Q. Is that where you work today?

10 A. Yes, it is.

11 Q. I'm gonna show you -- if you can look in the box there pull
12 out Exhibit 22.

13 A. (Complies.)

14 MR. IGNALL: And if we can pull up the second page of
15 Exhibit 22.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. Do you recognize the pages that are contained in Exhibit 22?

19 A. Yes, I do.

20 Q. What are those?

21 A. This is the Form 4340, Certificate of Assessments, Payments
22 and Other Specified Matters, for Irwin Schiff.

23 Q. All right. Is the Certificate of Assessments, Payments and
24 Other Specified Matters a document that you're familiar with in
25 your job?

1 A. Yes.

2 Q. Can you describe that in layperson's terms to the jury?

3 A. Basically what we do is ask the computer to research a
4 certain year and a certain Social Security number or an employee
5 identification number. And we would do that by requesting that
6 year and a Social Security number. And, in turn, it will search
7 all records maintained at the Martinsburg Computing Center and
8 print us a Form 4340 giving us a record of everything that's
9 happened on that account for the taxpayer for that year.

10 Q. And what's included in "everything"?

11 A. It would be: if the return was filed, if there was payments
12 made, when the refund was sent out, if there was an audit done,
13 if there was any changes, any penalties assessed, that would all
14 show on this record.

15 Q. If we could turn to -- it's probably the third page of the
16 exhibit after the blue ribbon sheet.

17 A. (Complies.)

18 THE COURT: What is the Bates number?

19 MR. IGNALL: The Bates number at the bottom is
20 DS008923.

21 THE COURT: Thank you.

22 THE WITNESS: Two three?

23 THE COURT: Two three or one three?

24 MR. IGNALL: I think it's two three.

25 THE COURT: Well, is it the one that's up on the

1 screen?

2 MR. IGNALL: No. Hopefully the one that's up on the
3 screen will be the same one that -- I -- that's not it. I'm
4 sorry.

5 (Pause in the proceedings.)

6 MR. IGNALL: It should be one page after this. That's
7 a different year. I think we have a little bit of a -- if we
8 could turn -- what's the --

9 BY MR. IGNALL:

10 Q. If I could turn your attention -- flip a little bit farther,
11 Ms. Morgan. We can look in the book, we can hopefully end up on
12 the same page. I believe it's probably another half dozen
13 pages. If we go to the one for the tax period December 1984.

14 THE COURT: Is it the same Certificate of Assessment?

15 MR. IGNALL: Yeah. Looks like...

16 THE WITNESS: 1984?

17 BY MR. IGNALL:

18 Q. Yes. On the bottom -- the number on the bottom is DS008913.

19 A. Okay. I have that.

20 Q. Are you on that page? All right.

21 Could you explain briefly what each line item on that
22 is?

23 A. Okay. Starting at the top, it shows the name of the
24 taxpayer, which is Irwin Schiff. It shows the Social Security
25 number.

1 Q. Okay.

2 A. And then below that it shows it's a U.S. individual income
3 tax for the individual; the tax period is December 1984.

4 The next columns are the dates. Then it has an
5 explanation of the transaction --

6 Q. Okay.

7 A. -- the assessment, whether it be an assessment debit or a
8 reversal, then it has a payment common -- column -- excuse me --
9 and then the assessment date.

10 Q. All right. And then let's go to the first item.

11 A. The very first item shows the date of August 8, 1991. There
12 was a Prompt Assessment made.

13 Q. What's a Prompt Assessment?

14 A. That's when a individual actually brings in a tax return to
15 the -- usually a field office and they find that they need to
16 process that return as soon as possible. And so an
17 administrative decision is made to get the return on the
18 assessment as quick as possible.

19 Q. Okay. Could you -- uh, and is there an amount of the
20 assessment listed on this form?

21 A. The amount assessed is \$5,567.

22 MR. SCHIFF: What doc-...

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

25

1 BY MR. IGNALL:

2 Q. And just -- just briefly go to the other items that are
3 listed on this page here.

4 A. The next date, September 6, '91, there was a federal tax
5 lien in place.

6 October 22nd, '91, the assessment statute expiration
7 date was extended. So that means it gives permission for an
8 additional time to actually get the -- the tax assessed and
9 collected.

10 August 21st, 1992, a lien again.

11 Then there was some penalties assessed --

12 Q. All right.

13 A. -- the estimated tax penalty of \$350; an additional tax
14 assessment by exam was nothing; additional tax assessed by the
15 default letter, which is the 90-day letter, was nothing; and a
16 renumbered tax return, means the audit was closed --

17 Q. Okay.

18 A. -- was April 18th, 1994; and then the quick assessment was
19 nothing.

20 Q. All right. If you could look at -- at this document for
21 year 1984, do you have some way to tell how much the balance is
22 for this taxpayer for that tax year?

23 A. Yes. The balance on the Form 4340 is showed on the last
24 page, which the number is DS008916 --

25 Q. Let me --

- 1 A. -- and it shows a balance owed of \$20,247.01.
- 2 Q. And as of what date?
- 3 A. As of -- the certification date is December 13th, 2004.
- 4 However, I pulled an account transcript as of August 16th of
- 5 2005 and this amount is still correct.
- 6 Q. From looking at this document for tax year 1984, can you
- 7 determine whether Mr. Schiff has made any payments on his 1984
- 8 tax liability --
- 9 A. Yes.
- 10 Q. -- up through that date?
- 11 A. As far as this certified document, there's been no payments
- 12 made.
- 13 Q. All right. Have you reviewed documents, these Certificates
- 14 of Assessments and Payments for the years 1983 -- have you
- 15 reviewed one for the year 1983?
- 16 A. Yes.
- 17 Q. Is there still a tax balance outstanding for the year 1983?
- 18 A. There is an outstanding tax for 1983, and that amount is
- 19 \$98,268.30.
- 20 Q. How about for 1982?
- 21 A. The balance owed for 1982 is \$365,161.52.
- 22 Q. And let's go back to 1981.
- 23 A. '81. The amount showed owed on 1981 is \$13,364.
- 24 Q. And how about 1980?
- 25 A. The amount owed in 1980 is \$34,148.43.

1 Q. And, finally, how about 1979 tax year?

2 A. 1979 balance owed is \$169,679.01.

3 Q. Have you reviewed IRS records, including these

4 assessments -- Certificate of Assessments, Payments, and Other

5 Specified Matters, to determine whether Mr. Schiff has

6 voluntarily made any payments on his taxes due for the years

7 1979 through 1984?

8 A. Yes, I have.

9 Q. Has he made any voluntary payments for those tax

10 liabilities?

11 A. Not any voluntary payments, no.

12 Q. If I can turn your attention to Exhibit 23 -- actually, can

13 I skip that? Can we turn your attention to 52?

14 A. 52?

15 Q. 52, please.

16 A. Kind of in the dark down here.

17 Q. Maybe if I turn the light on for a moment.

18 THE COURT: We need lights.

19 MR. IGNALL: I'm sorry. Exhibit -- and Exhibit 52 was

20 already admitted, your Honor. So it may be --

21 THE COURT: Okay.

22 MR. IGNALL: -- in the pile here.

23 THE COURT: Hold on a minute. It looks like 55

24 [sic] --

25 MR. IGNALL: Ms. Morgan, it may not be down in that

1 box. I apologize.

2 THE COURT: 55 may be in the hands of the clerk.

3 THE WITNESS: Got me standing on my head.

4 MR. IGNALL: Yeah. I apologize for that.

5 THE WITNESS: That's okay. Thank you.

6 MR. IGNALL: Thank you.

7 BY MR. IGNALL:

8 Q. If I could turn your attention to what's the second page of
9 this document -- or probably the third page, second page after
10 the certification --

11 A. Okay.

12 Q. -- if you can look at line 62. Can you tell me what line
13 62...

14 A. 62 is showing the total amount of payments.

15 Q. I'm sorry. I -- I want you to look at line 54. I'm sorry.

16 A. Oh. 54 shows the total amount of taxes.

17 Q. And what's the amount there?

18 A. The amount showed is \$36,413.

19 Q. All right. And, if we could turn your attention back to
20 Exhibit 22 -- I believe we can probably put it on the screen. I
21 think it's page 27 of Exhibit 22.

22 (Document displayed in open court.)

23 BY MR. IGNALL:

24 Q. Does that -- does that give an assessment amount --

25 A. It does.

- 1 Q. -- from the IRS computer?
- 2 A. It shows a Prompt Assessment of \$36,413.
- 3 Q. And how does that number compare to the number on line 54 of
- 4 Exhibit 52?
- 5 A. It's exactly the same number.
- 6 Q. And had there been any payments made on Mr. Schiff's tax
- 7 liability for the year 1980?
- 8 A. There had not.
- 9 Q. Thank you.
- 10 If I could turn your attention to what we've marked as
- 11 Exhibits 24 through 33. And start with those and then we'll...
- 12 I'm gonna ask one or two quick questions about those. These may
- 13 have already -- some of these came in through Special Agent
- 14 Wethje.
- 15 A. Okay. And number -- I start with number 26.
- 16 Q. Yes. I think 24...
- 17 A. Thank you.
- 18 Q. And I'm sorry. If we could start with 23. I apologize.
- 19 THE CLERK: That's okay.
- 20 BY MR. IGNALL:
- 21 Q. What -- what are these documents? Have you seen these
- 22 before?
- 23 A. Yes, I've seen this before.
- 24 Q. And what are these documents?
- 25 A. This is the nineteen nine -- 1980 tax return, 1040, that was

1 obtained by Revenue Agent Robert Netcoh during the probation
2 hearing for Irwin Schiff.

3 Q. And was there a Social Security number on that document?

4 A. The Social Security number is 047-16-29 -- excuse me --
5 2491.

6 Q. And how does that Social Security number compare to the
7 Social Security number on Exhibit 22, the Certificate of
8 Assessments and Payments?

9 A. It is the same.

10 Q. All right. Have you reviewed the documents -- and I think
11 there are a number of them -- for various years that are
12 Exhibits 23 through 33 previously? Have you looked them over?
13 I'm gonna ask you if you've reviewed the amount of income that's
14 reported on each of those.

15 A. Yes, I have.

16 Q. And what is the amount of income that's reported on each of
17 those tax returns?

18 A. Well, we've already done income.

19 Q. The amount of income that's reported on each of those --

20 A. Okay. Income --

21 Q. -- from 23 to 33.

22 THE COURT: You're asking for a total or individually?

23 MR. IGNALL: Individually, although the total I
24 believe -- well, I won't comment.

25 THE WITNESS: Okay. The income reported on 1980 tax

1 return is zero.

2 BY MR. IGNALL:

3 Q. Is that true for the other tax returns that are contained in
4 Exhibits 24 through 33?

5 A. (Reviewing exhibits.) 24 is zero. 25 is zero.

6 Q. Now, if you could just give the year as well.

7 A. Sure.

8 Exhibit 24 is the 1981 year, which is zero.

9 Exhibit 25 is 1982, which is also zero.

10 Q. Next let's go to Exhibit 33.

11 A. The Exhibit -- 33?

12 Q. Yes. Up through Exhibit 33?

13 A. Oh. So Exhibit 26 for the year 1983, the amount of income
14 is zero.

15 Exhibit 27 for tax year 1984 is zero income.

16 Exhibit 28 for tax year 1985 is zero.

17 Exhibit 29 for tax year '86 is zero.

18 Exhibit 30 for tax year '87 is also zero.

19 Exhibit 31 for tax year 1988 is zero.

20 Exhibit 32 for tax year 1989 is zero.

21 Exhibit 33 is a Certificate of Lack of Record. So --

22 Q. And what does that mean?

23 A. That means there was no return filed.

24 Q. For what tax period?

25 A. For the tax period December 1990.

1 Q. Okay. For any other tax periods?

2 A. December 1991 and December 1995.

3 Q. For the ones -- the exhibits we've looked at, Exhibits 23
4 through, I believe, 32, do you know if those were all filed on
5 the same date or all received by IRS on the same date?

6 A. You want me to quote the signature date or...

7 Q. Or the received date. Either one.

8 A. All right. The signature date on the return was October
9 13th, 1990 on the '80.

10 Signature date on the '81 is October 13th.

11 Signature date on '82 is the same, October 13th.

12 Signature date on the '83 is the same, nine -- October
13 13th.

14 Signature date on the 1984 is October 13th.

15 Signature date on the 1985 is October 13th.

16 Signature date on the 1986 is October 13th.

17 Signature date on the 1987 is October 13th.

18 Signature date on the 1988 is October 13th.

19 On the 1989, the signature date is October 13th.

20 Q. And I believe that's it. Thank you, Ms. Morgan.

21 A. That's it. All the same date.

22 Q. I appreciate that.

23 If we could jump ahead a little bit, if I could ask you
24 to look at Exhibit 58 which should be in that box, I hope.

25 THE CLERK: It's here.

1 MR. IGNALL: I'm sorry. Have we already introduced
2 that?

3 THE CLERK: It's been submitted previously.

4 BY MR. IGNALL:

5 Q. Ms. Morgan, do you have Exhibit 58?

6 A. I do have 58.

7 Q. Oh, okay. All right. Thank you.

8 MR. IGNALL: If we could pull that up.

9 Ms. Vannozzi, could we dim the lights?

10 THE CLERK: Sure.

11 MR. IGNALL: Can you blow up the top half of that?

12 (Document displayed in open court.)

13 BY MR. IGNALL:

14 Q. Can you tell the jury what this document is?

15 A. This is a Form 3050, a Certification of Lack of Record.

16 Q. And what does that mean?

17 A. That means that the computer searched a certain record for
18 either a Social Security number or an employee identification
19 number and found no record of any returns being filed.

20 Q. And what's the date of this certification?

21 A. This date of -- is August 3rd, 2005.

22 Q. And what entity or person does this relate to?

23 A. This is relating to Freedom Foundation Incorporated.

24 Q. And is there an address associated with this?

25 A. It's one one --

1 Q. And what -- I'm sorry -- and what does this document tell us
2 about Freedom Foundation Inc.?

3 A. It shows that there was no tax return filed. There's no
4 record for any tax period.

5 Q. Do nonprofit organizations file tax returns with the IRS?

6 A. Sure.

7 Q. And are there records kept in the computer to show that
8 returns are filed?

9 A. Right. That's normal business practice. Yes.

10 Q. All right. I'd like to turn your attention now to
11 Exhibit 49, which I hope is in -- in the box there.

12 A. (Complies.) 49.

13 MR. IGNALL: If we could pull it up here for me.

14 (Document displayed in open court.)

15 BY MR. IGNALL:

16 Q. Do you recognize Exhibit 49?

17 A. Yes, I do.

18 Q. What is Exhibit 49.

19 A. This is a letter that is sent out to an individual that
20 files what could be assessed a frivolous return penalty of \$500.
21 It explains to them why and gives them an opportunity to change
22 that position.

23 Q. Are you familiar with this form of the letter?

24 A. Yes, I am.

25 Q. How are you familiar with it?

1 A. This is a letter that I composed back in 1994 to try and
2 educate the taxpayers regarding the type of returns that they
3 were filing.

4 Q. When does the IRS send this form of letter?

5 A. It's sent out when a return is received that is possibly
6 going to receive the \$500 frivolous return -- frivolous return
7 penalty. Excuse me.

8 Q. Who determines at the IRS whether a return should --
9 somebody who files such a return should get a letter like this?

10 A. The tax examiners make that determination after we have
11 received written determination from our area counsel that a
12 return is subject to the penalty.

13 Q. And, from reading Exhibit 49, can you tell me why the IRS
14 sent its frivolous letter to -- who is it sent to? I'm sorry.
15 Let's back up.

16 A. This was sent to Irwin Schiff.

17 Q. And on what date?

18 A. It was sent July 24th, 1995.

19 Q. And does it reference a certain tax period?

20 A. It's to the 1994 tax period.

21 Q. All right. And can you tell me from reading this letter why
22 Mr. Schiff got a frivolous letter from the Internal Revenue
23 Service on July 24th, 1995?

24 MR. BOWERS: I'm sorry, your Honor. I -- I believe
25 she's -- is she going to be offering testimony on -- on a legal

1 opinion?

2 THE COURT: Well, I don't know. But, if the question
3 calls for legal opinion, she's being asked if she can tell from
4 reading the letter why. So, no, she's not --

5 MR. BOWERS: Well --

6 THE COURT: -- she's being asked if she can determine
7 from the letter why he got the frivolous letter.

8 MR. BOWERS: And I don't want to argue with the Court.
9 But I do want to point out that I believe this witness just
10 stated that she wrote that. And the only reason I'm
11 wondering --

12 THE COURT: Well, she wrote the form of the letter.
13 This is a form she developed. I'm not sure she's testified she
14 wrote this particular letter.

15 MR. BOWERS: Okay.

16 MR. SCHIFF: Can I -- can I have an objection? Can I
17 her make a comment? Did somebody other than yourself --

18 THE COURT: No.

19 MR. SCHIFF: I object.

20 THE COURT: You object to what?

21 MR. SCHIFF: Objection. It's hear -- I just want to
22 know: Did somebody other than her make the determination? I
23 don't know what you would call that, an objection.

24 THE COURT: I'm not sure that's an objection. The --
25 the letter is already in. You can cross-examine her concerning

1 the letter when it's your turn to do so. I don't -- I haven't
2 heard a good objection yet.

3 Go ahead.

4 BY MR. IGNALL:

5 Q. From reading this letter, Ms. Morgan, do you know why the
6 IRS -- let me back up.

7 Did you personally write this exact letter to
8 Mr. Schiff?

9 MR. SCHIFF: Pardon?

10 THE WITNESS: I personally composed the letter that is
11 used by the Frivolous Return Program; the tax examiners use this
12 letter.

13 THE COURT: The form of the letter?

14 THE WITNESS: Form of letter. It's still used today.

15 BY MR. IGNALL:

16 Q. Do you know from reading Exhibit 49 why the tax examiner
17 generated this letter?

18 A. Yes. In the second paragraph, it explains why.

19 Q. What does it say there?

20 A. It says, "You show your income as zero based on arguments
21 that only income derived from corporate activities is taxable
22 and since you had no such income, you can only swear to having
23 'zero' income."

24 And then it says, "The position you have taken has no
25 basis in law and represents a frivolous position."

1 Q. Was it --

2 MR. SCHIFF: Objection, your Honor. Can I ask for
3 sidebar on this?

4 THE COURT: No, we're not gonna take a sidebar. We're
5 not going to take a sidebar.

6 Mr. Bowers?

7 MR. BOWERS: Your Honor, it appears that that last
8 sentence is a legal conclusion, which is fine I guess. I'm
9 just --

10 THE COURT: Well, her previous testimony was that these
11 letters were generated after the tax examiners consult with area
12 counsel on whether it merits the penalty.

13 MR. BOWERS: Well, I guess she just testified that this
14 is the letter she wrote.

15 THE COURT: No, no. Listen. She -- she --

16 MR. BOWERS: She composed.

17 THE COURT: She --

18 MR. BOWERS: Not this specific letter but that
19 language.

20 THE COURT: She developed the form that is in use by
21 the IRS. She can tell from looking at this form why the
22 frivolous penalty was assessed.

23 MR. SCHIFF: Can I make a comment.

24 THE COURT: Do you understand?

25 MR. BOWERS: Um.

1 THE COURT: She didn't send this particular letter.

2 MR. BOWERS: I understand that.

3 THE COURT: She developed the form that is in use. She
4 can tell from looking at this form why a frivolous penalty was
5 assessed.

6 MR. SCHIFF: Can I --

7 THE COURT: Do you understand? She didn't send this
8 particular letter, no.

9 MR. BOWERS: I understand that.

10 THE COURT: She developed a form that is in use and she
11 can tell from looking at this letter why a frivolous penalty was
12 assessed.

13 MR. BOWERS: So she would not have been the person that
14 had written that language contained in the last paragraph?

15 THE COURT: She wrote the form. It's in use by the
16 IRS.

17 MR. SCHIFF: Your Honor, can I raise an objection here
18 for the record?

19 Wouldn't a person who should be testifying is the
20 person who determined it's frivolous and not the person who
21 said, well, somebody determined it's frivolous and I put it in
22 this letter?

23 THE COURT: No. She -- she can testify to why this
24 language is here and she can testify as to her opinion as to why
25 you received it based --

1 MR. SCHIFF: But she's not testifying --

2 THE COURT: -- on your zero return.

3 MR. SCHIFF: -- that the document is itself frivolous.

4 THE COURT: The document -- are you referring to the
5 tax document you submitted?

6 MR. SCHIFF: Well, this statement that says --

7 THE COURT: She is testifying to why a penalty -- or a
8 frivolous return penalty was assessed based on what's in this
9 letter.

10 MR. IGNALL: And, your Honor, just to be clear, the
11 relevance of this is notice to the taxpayer that this is the IRS
12 position.

13 THE COURT: That's correct. And it's received for that
14 purpose and that purpose only.

15 BY MR. IGNALL:

16 Q. If I were to turn your attention -- and I'm gonna hold this
17 letter out too -- if we could look back at Exhibit 37.

18 A. (Complies.) Okay. I have 37.

19 Q. What -- what is Exhibit 37?

20 A. That is the 1994 Form 1040 for Irwin Schiff.

21 Q. And is this in any way related to the letter we're looking
22 at as Exhibit 49?

23 A. This is the reason why the letter was sent is because of
24 this type of tax return that we received.

25 Q. And, if you look at Exhibit 1994 [sic], can you tell me just

1 from your experience as a matter of IRS policy why Exhibit 49
2 was sent in response to this tax return?

3 A. Right. Because the tax return showed zero and the
4 attachments that are included.

5 Q. What about the attachment triggered this letter pursuant to
6 IRS policy?

7 A. Based on the decision that we have and our procedures when
8 this type of return is received with these type of attachments,
9 they could be subject to a frivolous return penalty. So, in
10 turn, we send a letter and give the taxpayer an opportunity to
11 change that position. We also send them Form 1040's to file.
12 We also send them a publication explaining different things
13 about the return that they filed and wait to see if they will
14 come in with a corrected return.

15 Q. If you could look at this attachment to Exhibit 37, have you
16 seen this attachment before, it's a two-page attachment?

17 A. Yes.

18 Q. When have you seen this attachment?

19 A. Uh, starting in 1992 when I started working in the Frivolous
20 Filer Department.

21 Q. Where did you see this attachment?

22 A. It was attached to hundreds of returns that we've seen.

23 Q. Does the IRS have any way of keeping track of how many
24 returns the IRS received with this attachment?

25 A. They -- we do have a database that keeps track of different

1 types of arguments. It's maintained for inventory purposes.

2 Q. And is there some particular code that was given to this
3 attachment that we're looking at --

4 A. Yes. Each --

5 Q. -- in Exhibit 37?

6 A. -- each different argument that's identified has a number
7 and the tax examiner has a responsibility to enter the Social
8 Security, name of the individual, and the tax argument into the
9 database.

10 Q. And have you seen this exact letter more than once?

11 A. Oh, yes.

12 Q. Have you checked in the IRS records to determine how many
13 returns contained this letter based on the coding that you just
14 described?

15 A. Right. Yes, I have.

16 Q. And what -- what number did you come up with?

17 A. When the database was searched for this type of return, it
18 showed that for the years 1998 through 2002 there was 3,435
19 either 1040 or 1040X's received. And that is a very
20 conservative number.

21 Q. I was gonna ask you: Does that number necessarily include
22 every return like this that was filed with the IRS anywhere in
23 the country?

24 A. No. That's Ogden's. There's also some other factors to
25 take into consideration.

1 Q. Which would be...

2 A. Originally we had a database that we changed. And, when the
3 two databases were merged, they weren't compatible. So they
4 only picked up, like, one return. If an individual had filed,
5 say, '97, '98, and '99, when we merged the database it only
6 picked up one return instead of three. So the numbers are
7 conservative.

8 And then, also, the 1998 Restructuring Act also states
9 that after a taxpayer that has filed this type of document
10 corrects their position and correctly files for two years, they
11 are to be removed from the database. So, after two years of
12 correct filing, we take them off the database.

13 Q. Was there a criteria to put this code in the computer
14 regarding how much income was reported on the return?

15 A. As far as how much income was reported?

16 Q. Meaning can -- can we --

17 MR. SCHIFF: I got to make an objection, your Honor.
18 Income is a legal conclusion. We're talking about income
19 without defining what they mean by income.

20 THE COURT: Well --

21 MR. SCHIFF: I just can't sit here --

22 THE COURT: -- are you referring to what the amount
23 that was put on the line on the return?

24 MR. SCHIFF: But...

25 THE COURT: Are you referring to the reported income on

1 the return in the column 7 through 22? Is that what you're
2 referring to by your question?

3 MR. IGNALL: Yes. Let me ask it again --

4 THE COURT: All right.

5 MR. IGNALL: -- and maybe I'll ask it a little better,
6 I hope.

7 BY MR. IGNALL:

8 Q. Ms. Morgan, do you know if all of those -- because those
9 3,000-something returns were -- you know, had the same code in
10 the IRS computer if all those returns reported the same number
11 as income on line 31?

12 A. Yes, they would.

13 Q. And what was that number?

14 A. That number would be zero.

15 Q. Thank you.

16 If I could -- if I could turn your attention to
17 Exhibit 48.

18 A. (Complies.)

19 Q. Do you rec- -- actually, let me hold off a second. I -- no,
20 that's okay. Exhibit 48, let's go to that.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. What is this document?

24 A. This is a notice. It's called a CP-15. It's the notice
25 that the civil penalty was charged, the \$500, under Section 6702

1 which is for filing a frivolous document.

2 Q. And how is this letter triggered? What triggers this
3 letter?

4 A. The actual assessment being input into the computer and in
5 turn generates the notice to the taxpayer.

6 Q. Does this follow the -- the letter that was sent out that we
7 looked at as Exhibit 49?

8 A. Yes, it does. That's the sequence. We receive the return;
9 the letter goes out. If there's a frivolous response/no
10 response, then the penalty is assessed.

11 Q. Thank you.

12 THE COURT: What is -- what is the date of that and who
13 is it to?

14 THE WITNESS: The date of the notice is March 13th,
15 1995, and it is to Irwin A. Schiff.

16 BY MR. IGNALL:

17 Q. And this is for what tax period?

18 A. Tax period is 1993.

19 Q. While you were working in the Frivolous Return Unit -- I'm
20 sorry. What's it called? I think I've gotten the title wrong.

21 A. That's -- Frivolous Return Unit is fine --

22 Q. Okay.

23 A. -- program.

24 Q. Did you actually see many of these zero returns with the
25 attachment we've looked at?

1 A. Yes, we've seen thousands of these returns.

2 Q. What impact did those returns have on the office in Ogden?

3 A. Well, in the office in Ogden, not only just the fact of the
4 people that receive and open the returns in sorting but it also
5 had a high --

6 MR. SCHIFF: Objection, your Honor. He's asking for
7 her opinion.

8 THE COURT: Well, he can -- he's not. He's asking for
9 what happened, a fact not --

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

11 THE COURT: -- an opinion.

12 MR. SCHIFF: I don't understand. When I asked for an
13 opinion of, uh, Mr., uh -- what's his name? --

14 MR. CRISTALLI: I have a different --

15 MR. SCHIFF: -- I couldn't elicit his opinion on
16 anything.

17 MR. CRISTALLI: I have a foundational objection, your
18 Honor.

19 THE COURT: He asked what happened to the -- to the
20 Ogden office.

21 But I'll hear your objection.

22 MR. CRISTALLI: A foundational objection.

23 Um, is the Government trying to make a connection to
24 those zero returns somehow in this conspiracy without any
25 additional foundational basis? I don't think it's appropriate.

1 I think it needs better foundation to connect to this
2 conspiracy.

3 THE COURT: Well, it's -- she's testified to the
4 notice. We've seen the notice that she identified; we have seen
5 it with other witnesses.

6 MR. CRISTALLI: If I might -- no. My concern is we
7 don't -- if there's thousands of these things, we don't know out
8 of the thousands how many are specific to the teachings of Irwin
9 Schiff. It could be five. It could be ten. It could be --

10 THE COURT: It looked to me that it was the very same
11 document that we had had other witnesses testify they had
12 attached to their returns based on the --

13 MR. CRISTALLI: Okay.

14 THE COURT: -- advice of Freedom Books.

15 MR. CRISTALLI: Okay. I -- I misunderstood that. I
16 didn't see that.

17 THE COURT: Exact same document.

18 MR. BOWERS: Judge, I'm sorry. I --

19 MR. SCHIFF: Your Honor --

20 THE COURT: Mr. Bowers.

21 MR. BOWERS: Just very briefly.

22 I -- she's about to testify to some information about
23 what happens in Ogden. And I'm unsure in what capacity this is,
24 if this is from her days as a civil investigator or her current
25 job as an investigative aide. Or maybe if we could -- I'm not

1 arguing. I just don't understand where this information is
2 coming from.

3 MR. IGNALL: I believe I asked when she was -- while
4 you were working in the Frivolous Return Unit. But...

5 THE COURT: Correct. You did.

6 MR. SCHIFF: Can I -- relevance. The Indictment
7 accuses me of filing a false and fraudulent return, not a
8 frivolous return. Now, as I understand it, she has given no
9 testimony that the information is illegal or fraudulent.

10 Now, is the Government gonna put on a witness in -- in
11 their case in chief that will testify that this information is
12 fraudulent and false? She has said I filed this return. But
13 she hasn't stated that the information is fraudulent or contrary
14 to law. I believe the Government should put on a witness who
15 will state that the information is contrary to law.

16 MR. IGNALL: Your Honor, if I may briefly --

17 THE COURT: Go ahead.

18 MR. IGNALL: -- this particular evidence pertains
19 mostly to Count One, which is the conspiracy to impair and
20 impede the lawful function of the IRS through dishonest and
21 deceitful means. Now, there may be some other evidence that
22 she's given just to read off what numbers are on the tax return
23 and the Government will provide evidence later in the case in
24 terms of why the number zero on Mr. Schiff's tax returns is
25 false.

1 MR. SCHIFF: But they --

2 MR. IGNALL: But this testimony right now deals with
3 the conspiracy to impede and impair the lawful function of the
4 IRS.

5 THE COURT: I understand that. And --

6 MR. SCHIFF: In other words --

7 THE COURT: -- and the order of the presentation of the
8 Government's evidence is up to the Government. You don't tell
9 them when they need to put on their witnesses.

10 MR. SCHIFF: Okay. So --

11 THE COURT: They have other witnesses that are coming
12 and she'll testify to what she can testify to of her own --

13 MR. SCHIFF: Okay.

14 THE COURT: -- knowledge and experience. And -- and --

15 MR. SCHIFF: So --

16 THE COURT: -- you'll get a chance to cross-examine
17 her.

18 MR. SCHIFF: All right. So to my -- my understanding,
19 so she's just testifying to -- that these documents were filed.
20 She's not stating that anything on those documents are contrary
21 to law. But, at some point, the Government will put on a
22 witness who presumably is an expert who will then testify that
23 these statements are false as a matter of law. Okay.

24 THE COURT: Well, the Government will choose its
25 witnesses. And I don't pretend to know what they are going to

1 put on.

2 MR. SCHIFF: Okay.

3 MR. IGNALL: The objection is overruled.

4 THE COURT: Would you like to ask the question again?

5 MR. IGNALL: Let me see if I can remember it.

6 BY MR. IGNALL:

7 Q. I believe you stated you worked in the Frivolous Return Unit
8 from '82 to 2002?

9 A. Correct.

10 Q. Did you see the number of these returns with the attachment
11 we looked at in Exhibit 37 increase over that time?

12 A. Yes. It was approximately 55 to almost 60 percent of our
13 inventory.

14 Q. At -- at what time period?

15 A. At the beginning of the inventory of 2000 -- 1992 through
16 1996/'97. It was the largest part of our --

17 Q. What --

18 A. -- inventory.

19 Q. -- about after that?

20 A. It -- it changed. But we also got other, uh, types of
21 frivolous arguments because the program consolidated in Ogden.
22 Ogden, starting in 1998, works all frivolous returns.

23 Q. All right.

24 A. So we see many different types.

25 Q. But, in the 1992 to 2002 time period, were you seeing a

1 number of these tax returns with the zero and the attachment
2 that we looked at?

3 A. Yes.

4 Q. Did those tax returns being filed have any impact on the
5 operation in Ogden?

6 A. Yes.

7 Q. What impact did those --

8 A. They have --

9 Q. -- tax return filings have?

10 A. In the Frivolous Return Program, it would be -- it was a
11 high increase into the inventory of the tax examiners alone.
12 Some of 'em went from having one or two hundred audits to do. I
13 had one individual in there that had over 2,000 assigned to her
14 to try and work through.

15 So, as far as frivolous return penalties, that job was
16 mine and I had a clerk helping me. We went from assessing --
17 maybe one year we assessed 92 to the following year assessing
18 over 3,000 civil frivolous return penalties.

19 So it stopped the impact of helping taxpayers that were
20 trying to comply. It slowed down the time in which we were
21 trying to send letters out to inform these people so that they
22 could change and maybe file a corrected return. It had an
23 impact on inventory immensely. It slowed down the whole
24 process.

25 Q. Thank you.

1 If I could turn your attention now to Exhibit 59.

2 THE COURT: Are you gonna be a while longer?

3 MR. IGNALL: I think I may be able to finish in a few

4 more minutes if the Court --

5 THE COURT: Well, let's see if there's any

6 cross-examination intended.

7 Mr. Cristalli, do you intend to cross-examine the

8 witness?

9 MR. CRISTALLI: Your Honor, I do. It won't be long,

10 but I do intend to do --

11 THE COURT: All right.

12 MR. CRISTALLI: -- some cross-examination.

13 THE COURT: Mr. Bowers?

14 MR. BOWERS: Yes, your Honor. It'll be --

15 THE COURT: Mr. Schiff obviously will.

16 MR. SCHIFF: I didn't hear your question.

17 THE COURT: Do you intend to cross-examine the witness?

18 MR. SCHIFF: Absolutely.

19 THE COURT: Okay.

20 All right. Well, we're gonna take our break.

21 MR. IGNALL: All right.

22 THE COURT: We're now --

23 MR. IGNALL: Thank you, your Honor.

24 THE COURT: -- 25 to. So we'll be in recess until

25 tomorrow morning.

1 What do we have first thing? Anything?

2 THE CLERK: Nothing.

3 THE COURT: 9:00 a.m. tomorrow morning, ladies and
4 gentlemen of the jury. Thank you for your attentiveness. And
5 please remember my admonition not to discuss the case among
6 yourselves or with others or to allow yourselves to be
7 influenced, not to read any media -- or view any media accounts,
8 and to refrain from forming any conclusions until the case is
9 submitted to you for deliberation.

10 Tomorrow morning. Thank you.

11 MR. IGNALL: Thank you.

12 (Jury leaves the courtroom at 4:35 p.m.)

13 THE COURT: We're in recess.

14 (Pause in the proceedings.)

15 MR. CRISTALLI: Your Honor, I have one brief matter I'd
16 like to put on the record.

17 THE COURT: Do you want to address this while the
18 witness is out of the room?

19 MR. CRISTALLI: It doesn't matter. But yeah, that's --
20 we can wait.

21 THE COURT: Okay.

22 MR. CRISTALLI: It's up to your Honor.

23 (Pause in the proceedings.)

24 THE COURT: Okay. Go ahead.

25 MR. CRISTALLI: Thank you, your Honor.

1 Um, your Honor, my concern with this particular witness
2 is that there was a mention by her in her testimony that, uh,
3 it -- that there was a -- she had reviewed anywhere between
4 2,000 to 3,000 frivolous returns. It does not appear that there
5 has been a foundation laid to connect those returns to this
6 conspiracy. And that's the concern I have.

7 Now, if each one of those 3,000 returns had the -- had
8 the attachments that are contained in Mr. Schiff's packages,
9 then I would say to your Honor then there may be enough to -- to
10 have her testify to that. How --

11 THE COURT: That was my understanding of her testimony
12 is that they categorized each one of these according to the --
13 according to what was attached. And the prosecution can go into
14 this again tomorrow if -- or you can do it on cross-examination.
15 But my understanding was is these were categorized according to
16 what was attached and -- and the arguments that were made in
17 those attachments.

18 MR. CRISTALLI: And -- and I have a little bit of a
19 different understanding. I think that's where our problem lies.
20 I thought her testimony was there was a percent of those
21 frivolous returns or frivolous filings, whatever they are, that
22 had the similar-type attachments but not all of them. I think
23 we're having -- I just have a foundational issue in terms of --
24 because it is so important because it's ultimately gonna be tied
25 into --

1 THE COURT: I understand.

2 MR. CRISTALLI: -- this conspiracy.

3 THE COURT: Well, we can go into it tomorrow when --

4 MR. CRISTALLI: Okay.

5 THE COURT: -- she's back on the stand.

6 MR. CRISTALLI: Okay.

7 MR. IGNALL: And, your Honor, I'd be happy to clarify
8 that because indeed -- as I understand it and we'll ask the
9 witness obviously -- that the attachment that she looked at that
10 was attached to Mr. Schiff's return she had seen in particular
11 and that the IRS had a particular code for that exact
12 attachment.

13 THE COURT: That was my understanding, but --

14 MR. CRISTALLI: I may be wrong.

15 MR. IGNALL: But I can go into that and I can go into
16 the years that she searched in the database.

17 MR. BOWERS: I thought she said she went through each
18 argument and developed a code.

19 MR. IGNALL: Yes. Each -- each -- different --
20 different frivolous arguments had different codes. But there
21 was a specific code assigned to that letter --

22 MR. BOWERS: So --

23 MR. IGNALL: -- that we looked at.

24 MR. BOWERS: -- each argument and then the whole letter
25 gets its own code as well.

1 MR. IGNALL: No, no, no. We'll clarify that in the
2 morning.

3 MR. CRISTALLI: And that's a concern. If it's just an
4 argument, then --

5 THE COURT: Well, she's talking about two different
6 things.

7 MR. CRISTALLI: Yeah.

8 THE COURT: First of all, she's talking about this --
9 this -- this attachment and then she's talking about
10 generalities and where they -- where they codified arguments.
11 So we'll clear it up in the morning.

12 MR. CRISTALLI: Thank you.

13 MR. IGNALL: Thank you, your Honor.

14 MR. BOWERS: And, just for the record -- and I guess
15 we'll deal with it tomorrow -- we're talking about returns well
16 outside of the time frame of the charged conspiracy. She's
17 provided no breakdown.

18 MR. IGNALL: Your Honor, I can clarify that tomorrow,
19 what years are in issue here.

20 MR. CRISTALLI: Thank you, your Honor.

21 THE COURT: Thank you.

22 MR. BOWERS: Thanks, Judge.

23 THE COURT: Have a good evening.

24 MR. IGNALL: All right.

25 THE COURT: We'll start at 9:00.

1 MR. IGNALL: Thank you, your Honor.

2 THE COURT: We're in recess.

3 Go ahead. Don't wait for me.

4 MR. BOWERS: Thank you.

5 MR. IGNALL: Thank you.

6 (Proceedings adjourned at 4:43 p.m.)

7 --oOo--

8 I hereby certify that pursuant to Section 753, Title 28, United
9 States Code, the foregoing is a true and correct transcript of
10 the stenographically reported proceedings held in the
11 above-entitled matter.

12

13 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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