

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 THE HON. KENT J. DAWSON, JUDGE PRESIDING
4

5 UNITED STATES OF AMERICA,)
)
6 Plaintiff,) Case No. CR-S-04-119-KJD(LRL)
)
7 vs.)
)
8 IRWIN SCHIFF, CYNTHIA NEUN,)
 and LAWRENCE COHEN,)
9)
 Defendants.)
10)
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13
14

15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 8)
16 Thursday, September 22, 2005
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18
19

20 APPEARANCES: (See Page 2)
21
22
23

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

1 APPEARANCES:
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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:

M. Desgrosellier	1874I	1888C 1936B 1944S	1958I	--	--
Matthew Diamond	1964I	1997C 2008B	--	--	--
Jacqueline Eller	2033I	2016S 2081C 2086S 2102B	--	--	--
Carol Branigan	2122N	2150C 2153S	2186N	--	--

EXHIBITS

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

77	--	1880
80, 81, and 82	--	2131
83	--	2137
84	--	2139
85	--	2140
112	--	2039
113	--	2042
114	--	2043
115	--	2046
116	--	2051
117	--	2049
118	--	2053
119	--	2054
120	--	2055
121	--	2057
122	--	2058
123	--	2060
124	--	2063
125	--	2068
126	--	2073
140	--	1971
141 and 142	--	1974

EXHIBITS (Continued)

2	EXHIBIT NO.:	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
3	Government's:		
4	143	--	1976
5	144	--	1979
	149	--	1996
6	153	--	2005
	238, 239, 239A, 240, 241, 241A,	--	1873
7	242, 243, 243A, 244, 245, 245A, 246		
8	Defendant Neun's:		
9	2507	2002	--
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1 LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 22, 2005; 9:09 A.M.

2 --oOo--

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

4 THE CLERK: All rise.

5 THE COURT: Thank you. Please be seated.

6 MR. BOWERS: Your Honor, very briefly.

7 With the Court's permission, the Government was kind
8 enough to grant me till Monday on that motion regarding -- if
9 the Court doesn't mind.

10 THE COURT: Okay.

11 MR. BOWERS: Thank you, your Honor.

12 THE COURT: Any other matters before we bring the jury
13 in?

14 MR. IGNALL: Well, we may have one brief matter, your
15 Honor.

16 THE COURT: Okay.

17 (Discussion among counsel.)

18 (Pause in the proceedings.)

19 MR. SCHIFF: I didn't know that Mr. Diamond was going
20 to testify. So I opened up his file. So I just want to give a
21 note to somebody to have --

22 THE COURT: Go ahead.

23 MR. SCHIFF: -- have the office bring the file.

24 THE COURT: Go ahead.

25 (Pause in the proceedings.)

1 MR. IGNALL: I'm sorry. We have one -- sorry about
2 that, your Honor.

3 (Pause in the proceedings.)

4 MR. IGNALL: All right. Your Honor, I think we're
5 ready for the jury now.

6 THE COURT: Okay. Let's have the witness resume the
7 stand.

8 (Pause in the proceedings.)

9 (Michelle Desgrosellier takes the witness
10 stand.)

11 THE COURT: Good morning. The jury will be in in a
12 minute. You can sit down if you wish.

13 (Pause in the proceedings.)

14 THE COURT: It might be a good idea -- Todd, it might
15 be a good idea if you would move that briefcase off the table.

16 MR. LEVENTHAL: I'll get it, your Honor.

17 (Jury enters the courtroom at 9:14 a.m.)

18 THE COURT: Please be seated.

19 Will counsel stipulate to the presence of the jury?

20 MR. BOWERS: Yes, your Honor.

21 MR. IGNALL: Yes, your Honor.

22 MR. CRISTALLI: Yes, your Honor.

23 THE COURT: Thank you.

24 Go ahead, Mr. Ignall.

25 MR. IGNALL: Your Honor, first matter: The parties

1 have reached a stipulation to enter the following exhibit
2 numbers into evidence. They are Exhibit Nos. 238, 239, 239A,
3 240, 241, 241A, 242, 243, 243A, 244, 245, 245A, 246. And I
4 believe that's the last one.

5 And, just so the record can reflect, those are records
6 from the Bank of America for, uh, bank accounts in the name of
7 Irwin Schiff and Freedom Books.

8 THE COURT: So stipulate?

9 MR. CRISTALLI: That's correct, your Honor.

10 MR. BOWERS: No problem, your Honor.

11 THE COURT: Mr. Schiff?

12 MR. SCHIFF: No objection.

13 MR. LEVENTHAL: Yes, your Honor.

14 MR. SCHIFF: Yes, your Honor.

15 THE COURT: Thank you. Same will be received.

16 MR. IGNALL: Thank you, your Honor.

17 (Government's Exhibit Nos. 238, 239, 239A,
18 240, 241, 241A, 242, 243, 243A, 244, 245,
19 245A, 246, received into evidence.)

20

21 MICHELLE DESGROSELLIER,

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

25

1 DIRECT EXAMINATION (Continued)

2 BY MR. IGNALL:

3 Q. Good morning, Ms. Desgrosellier.

4 A. Good morning.

5 Q. When we were taking yesterday, I asked you a question. I'm
6 not sure if we actually got the answer.

7 When is the last time you spoke with your mother?

8 A. I spoke with her, um, over five years ago now.

9 Q. All right. Have you been subpoenaed to appear here to
10 testify?

11 A. Yes.

12 Q. Yesterday we talked a little bit about Freedom Books. Do
13 you know whether Freedom Books was incorporated?

14 A. Um, no, it was not. It was a d/b/a.

15 Q. How do you know that?

16 A. Um, because I -- I mean, it's everywhere. It was Irwin
17 Schiff d/b/a Freedom Books.

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

19 A. No. Just that he wanted it to be, um, doing business as,
20 therefore, it would not, um, um, tax -- I mean, the tax
21 difference between a d/b/a and a corporation.

22 MR. SCHIFF: I can't hear her.

23 THE COURT: Do you want to go over there again?

24 (Pause in the proceedings.)

25 THE COURT: Is there a seat for Mr. Schiff? Can we get

1 one?

2 MR. CRISTALLI: I got it.

3 MR. BOWERS: We got one, your Honor --

4 THE COURT: Okay.

5 MR. BOWERS: -- right here.

6 THE COURT: Would you ask that last question again --

7 BY MR. IGNALL:

8 Q. I wanted --

9 THE COURT: -- for Mr. Schiff's benefit?

10 BY MR. IGNALL:

11 Q. -- to know if you knew whether Freedom Books was

12 incorporated or not.

13 A. No. It was a d/b/a, doing business as. Irwin Schiff doing

14 business as Freedom Books.

15 Q. And did you have a discussion with Mr. Schiff about that?

16 A. Just for purposes of, um, taxes and whether or not he was,

17 um, liable to pay income taxes versus --

18 MR. SCHIFF: Objection. There's no foundation.

19 THE COURT: Foundation. Sustained. Foundation for the

20 statement that it was for tax purposes. Time, place.

21 BY MR. IGNALL:

22 Q. When -- when did you have that conversation? Was it while

23 you were working at Freedom Books?

24 A. Yes, when I -- yes. When I first um became the office

25 manager, yes.

1 MR. IGNALL: Does that satisfy the foundation, your
2 Honor?

3 THE COURT: It does.

4 MR. IGNALL: All right. Thank you.

5 BY MR. IGNALL:

6 Q. Did you ever receive any, uh, funds from -- I believe you
7 said his name was Mr. Thomas in Indiana?

8 A. Um, yes. He would send me, um, some of the funds that came
9 from all credit card orders that came in. He was the one who
10 processed all of the credit cards orders, whether it be
11 MasterCard, Visa, or, um, of that sort.

12 Q. And in what form did those funds come?

13 A. Checks.

14 Q. Were they all checks or were there any other...

15 A. No. Always checks.

16 Q. Did you ever get any cash?

17 A. Not from Bill Thomas, no.

18 Q. Do you know if Mr. Schiff was ever on the radio locally?

19 A. Yes, he was.

20 Q. During what time period?

21 A. Um, when I first started there and even when I worked there
22 in 1998 as well he was on the same radio, um, station, KLAV, and
23 he had a radio program.

24 Q. Do you know who paid for that radio time?

25 A. Um, it usually came out of the Freedom Foundation account,

1 which would be from, um, any, um, moneys that were collected,
2 uh, for, uh -- people would just send them in to -- for
3 donations.

4 Q. Did you ever hear any other Freedom Books's employees appear
5 on the radio show?

6 A. Yes, several.

7 Q. Who did you hear?

8 A. Cheryl Godfrey and my mother.

9 Q. How often was your mother on the radio show?

10 A. Um, before I left, my mom became a regular on the show. But
11 originally when it started, it was Cheryl Godfrey and Irwin --

12 Q. All right. And --

13 A. -- basically.

14 Q. -- and, again, what was the time period when you left?

15 A. Um, April of 2000.

16 Q. Thank you.

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

18 THE COURT: You may.

19 BY MR. IGNALL:

20 Q. Handing you what we've marked as Government Exhibit 77 and
21 ask you: Do you recognize Exhibit 77?

22 A. Yes, I do.

23 Q. What is Exhibit 77?

24 A. They are copies of deposit slips, um -- let me make sure
25 here -- (reviewing exhibit) -- all in the Freedom Books's

1 account --

2 Q. Are they --

3 A. -- deposits.

4 Q. -- deposits that you yourself made?

5 A. (Reviewing documents.)

6 Yes, they are all in my writing. So, yes, they must
7 all be from me making these deposits. Yes.

8 Q. Did you make them during the course of your employment at
9 Freedom Books?

10 A. Yes.

11 MR. IGNALL: At this point, the Government moves into
12 evidence --

13 MR. SCHIFF: Excuse me. Were those exhibits?

14 MR. IGNALL: Yeah.

15 And we move those in -- at this point, the Government
16 moves in Exhibit 77.

17 THE COURT: 77. Any objection to 77?

18 MR. SCHIFF: Can I see them?

19 MR. CRISTALLI: Did we stipulate to 'em?

20 (Discussion between counsel.)

21 MR. SCHIFF: Can I just see them?

22 MR. CRISTALLI: No, your Honor, I don't have an
23 objection.

24 THE COURT: Okay.

25 MR. SCHIFF: I just want to see them.

1 THE COURT: We'll give you a chance.

2 MR. SCHIFF: Pardon me?

3 THE COURT: I'll give you a chance to see 'em before I
4 admit them if...

5 MR. IGNALL: Do you mind if I show you one?

6 MR. SCHIFF: Okay. I just want to see if...

7 MR. IGNALL: Yeah.

8 THE COURT: Mr. Bowers, do you have any objection?

9 MR. BOWERS: No, I -- I have none, your Honor.

10 (Discussion between Mr. Ignall and
11 Mr. Schiff.)

12 MR. SCHIFF: All the checks are from Freedom Books.
13 Your Honor, I don't understand it.

14 THE COURT: These are deposit slips.

15 MR. SCHIFF: Are these the checks that are being
16 deposited --

17 THE COURT: They are --

18 MR. CRISTALLI: No --

19 THE COURT: -- not checks.

20 MR. CRISTALLI: -- they are deposits.

21 THE COURT: Deposit slips.

22 MR. CRISTALLI: Deposit slips.

23 MR. SCHIFF: But I want to see the checks that are
24 being deposited.

25 MR. IGNALL: Those are in the bank records. You can

1 pull those out.

2 THE COURT: Take a close look.

3 (Pause in the proceedings.)

4 (Discussion between Mr. Schiff and
5 Mr. Cristalli.)

6 THE COURT: Mr. Schiff, do you have any objection to
7 77?

8 MR. SCHIFF: No, no.

9 THE COURT: Okay. It is received.

10 (Government's Exhibit No. 77, received into
11 evidence.)

12 (Discussion between Government counsel.)

13 MR. IGNALL: Excuse me.

14 Oh, yeah, could we publish Exhibit 77 to the jury?

15 THE COURT: You may.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. All right. And, if we look at Exhibit 77, the first page
19 here, uh, what is the amount of the deposit and the date?

20 A. Um, the total amount is \$2,974.52 and the date was, um, 8/3
21 of 1999.

22 MR. SCHIFF: Your Honor, what's the relevance of this
23 deposit? Is it illegal to deposit money to your account?

24 THE COURT: No.

25 Relevance, Counsel?

1 MR. IGNALL: The relevance of this is to show the
2 amount of money that they were making and that Mr. Schiff had
3 available.

4 MR. SCHIFF: Your Honor, I'll stipulate to whatever
5 amount of money I deposited. I told that to the Government.
6 I'll stipulate to all that. I'm not being charged, I don't
7 think, with making deposits to my account.

8 THE COURT: Well --

9 MR. IGNALL: Well --

10 MR. SCHIFF: I will stipulate --

11 THE COURT: The fact that you stipulate doesn't mean
12 that the Government can't show it to the jury.

13 MR. SCHIFF: It's irrelevant.

14 THE COURT: Even if you stipulate -- it's not
15 irrelevant to the charges.

16 MR. SCHIFF: I will stipulate that Freedom Books and I
17 received and deposited whatever amount of money the Government
18 wants to claim I deposited.

19 THE COURT: Okay. We'll get to that stipulation a
20 little later. If the Government will total up --

21 MR. IGNALL: All right.

22 THE COURT: -- the total amount, we'll get to that
23 stipulation.

24 MR. SCHIFF: My objection --

25 MR. IGNALL: We may be able to that.

1 MR. SCHIFF: My objection --

2 MR. IGNALL: We'll talk --

3 MR. SCHIFF: -- my objection, your Honor, is the jury's
4 liable to get this impression that this is illegal what I'm
5 doing.

6 THE COURT: Well, they are not going to get the
7 impression from that alone. But, uh, you can -- you can
8 certainly stipulate and the Government still will have the right
9 to show the jury the amount.

10 MR. SCHIFF: May I make one other objection?

11 THE COURT: The objection's overruled.

12 Go ahead.

13 MR. SCHIFF: I deposited money in my account. It
14 doesn't mean it's income, taxable income. And that's the key.

15 THE COURT: This is part of the Government's burden of
16 proof and so it comes in.

17 MR. IGNALL: I only have one more question, your Honor.

18 THE COURT: Yes.

19 BY MR. IGNALL:

20 Q. On this exhibit, is that your handwriting that says "SEE
21 TAPE"?

22 A. Yes, it is.

23 Q. What does that mean?

24 A. Um, every time that I ever made a deposit I made sure to,
25 um -- I had a regular, uh, 10-key calculator that I would run a

1 tape for every check, money order, and every documentation that
2 I would receive would go and also be attached to this, uh,
3 deposit slip so that if there was any question by Irwin or
4 whomever they could check the register tape. And Linda is the
5 one who trained me to do that as well because that was, um,
6 Irwin's -- Irwin had requested that --
7 Q. All right.

8 MR. SCHIFF: Okay. Can I --

9 MR. IGNALL: Thank you.

10 THE WITNESS: -- that we do that.

11 MR. SCHIFF: I understand.

12 What was the purpose of the tape?

13 THE COURT: The -- the answer was that she was told by
14 Linda to run a tape on -- recording every check.

15 MR. SCHIFF: Every check and money order?

16 THE COURT: Well, she didn't say that. She said --

17 MR. SCHIFF: Pardon me?

18 THE COURT: -- she said check.

19 THE WITNESS: Check or money order I --

20 THE COURT: Oh, check --

21 THE WITNESS: -- think I did --

22 THE COURT: -- or money order.

23 THE WITNESS: -- yeah.

24 MR. SCHIFF: She said money order also.

25 THE COURT: She did say money order.

1 THE WITNESS: Yeah, received, yes.

2 MR. IGNALL: All right. No further questions, your
3 Honor. Thank you.

4 THE COURT: Okay.

5 MR. IGNALL: Thank you, Ms. Desgrosellier.

6 MR. CRISTALLI: Your Honor, before I begin, I have an
7 issue that we need to discuss with the Court at sidebar.

8 THE COURT: Okay.

9 (Sidebar conference was held as follows:)

10 MR. CRISTALLI: Um, Judge, I have some concern. There
11 were a number of checks, um, from the account that we just
12 stipulated to have come in, um, um, that we have just went
13 through and are not in the exhibits that we've just perused.
14 Specifically, there's a check from April 10th, 2000, Check
15 No. 2645; another check from April 19th, 2000, Check No. 2673;
16 another check on April 24th, 2000, Check No. 2679. Each one of
17 those checks are made out to an individual by the name of Perry
18 Oshiro, O-s-h-i-r-o.

19 We have, um, a good-faith belief for a number of
20 reasons. If I'm not mistaken, Perry Oshiro was an individual
21 that was identified in the State of Nevada versus, uh, Sandra
22 Renee Murphy as a drug dealer that supplied heroin to Mr., um,
23 Ted Binion. Um, I also have additional information that he was
24 a drug dealer that supplied methamphetamine to Ms., uh,
25 Desgrosellier.

1 I would like to have those checks because I don't have
2 anything to ask her on as it relates to them other than my own
3 notations.

4 MR. IGNALL: Well -- I'm sorry, your Honor -- there are
5 two points: One, I assume we could probably find them. I don't
6 know the answer to that.

7 MR. CRISTALLI: That's my only concern.

8 MR. IGNALL: But, even if we did find them, I'm not
9 sure it's appropriate to show them to the witness other than
10 perhaps to refresh her recollection if she doesn't remember
11 writing this check. Because it appears to me that what
12 Mr. Cristalli is attempting to do is to impeach the witness's
13 credibility by saying that she was writing a check to a drug
14 dealer, I assume. And, if he's doing that, that's inappropriate
15 to cross-examine her --

16 MR. BOWERS: Well, except --

17 MR. IGNALL: -- for extrinsic evidence.

18 MR. BOWERS: -- except that she's going to acknowledge
19 having used methamphetamine and purchased it on certain
20 occasions.

21 MR. IGNALL: But, if Ms. Desgrosellier acknowledges
22 that she wrote a check to Mr. Oshiro, then I don't know what the
23 purpose of introducing that check to her would be.

24 MR. CRISTALLI: If she acknowledges it --

25 MR. BOWERS: If she acknowledges it --

1 MR. CRISTALLI: -- that's fine.

2 MR. BOWERS: -- there isn't.

3 MR. IGNALL: If she doesn't acknowledge it, then maybe
4 you could use that to refresh her recollection.

5 MR. BOWERS: Well, sure.

6 MR. CRISTALLI: That's fine. That's all I would like
7 to do.

8 MR. IGNALL: I don't know --

9 MR. SCHIFF: Could I --

10 MR. IGNALL: -- the answer to that.

11 MR. SCHIFF: When the Government raided my office, we a
12 whole -- I -- I charged her with embezzlement of over 50,000
13 bucks. I went to the police. There was a police report, which
14 they have which I found last night. I thought that he was gonna
15 subpoena that. The point is the Government knew from the
16 records that I fired her. She didn't -- she didn't --

17 THE COURT: Don't raise your voice.

18 MR. SCHIFF: Well, I'm sorry. I'm sorry.

19 MR. BOWERS: He can't hear.

20 MR. SCHIFF: The Government had to know that her
21 testimony that she quit because -- was false. They had the
22 police report.

23 THE COURT: You can cross-examine her if you wish.

24 MR. SCHIFF: Well, can I -- can I introduce the
25 police -- he says I can't introduce the police report.

1 MR. CRISTALLI: No.

2 THE COURT: No, you can't.

3 MR. BOWERS: You can refresh her recollection with it,
4 Irwin.

5 MR. CRISTALLI: No, you actually can't.

6 MR. SCHIFF: Pardon me?

7 MR. CRISTALLI: You cannot use the police report.

8 MR. SCHIFF: But didn't you have the police report --

9 MR. IGNALL: That's not --

10 THE COURT: Yeah.

11 MR. SCHIFF: Well, I don't know. I'm just --

12 MR. BOWERS: Tell him about that.

13 THE COURT: It's the rule of evidence.

14 MR. BOWERS: You can take care of this.

15 MR. LEVENTHAL: I'll --

16 MR. SCHIFF: I have to --

17 MR. BOWERS: Mr. Leventhal will explain it to you.

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

21 MR. CRISTALLI: May I, your Honor?

22 THE COURT: Go ahead, Mr. Cristalli.

23 MR. CRISTALLI: Thank you.

24

25

CROSS-EXAMINATION

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BY MR. CRISTALLI:

Q. Uh, Ms. Desgrosellier; correct?

A. Desgrosellier, yes.

Q. Desgrosellier.

Um, let's start, um, with your statement yesterday that -- it was an admission that you were using methamphetamine while you were at Freedom Books; correct?

A. Correct.

Q. You actually stated that, I think, one of the reasons why you were using the methamphetamine was because of the stress and the long hours that you were putting in at Freedom Books. Is that true?

A. Yes, that's true.

Q. Now, Ms. Desgrosellier, that's actually not true. Um, you used methamphetamine well before you worked at Freedom Books; correct?

A. Well, yes.

Q. So the first time that you began using methamphetamine wasn't during the stressful times at Freedom Books.

A. I never said that it was the first time, sir.

Q. Okay. So it'd be safe to say that you used methamphetamine before you worked at Freedom Books; correct?

A. At one point, yes.

Q. Well, at one point. Ma'am, isn't it true that you used

1 methamphetamine for a number of years before you worked at
2 Freedom Books?

3 A. That is correct. But I started when I was 10 years old,
4 sir. So not by choice necessarily.

5 Q. Okay.

6 A. But I've done a 12-Step Program long before I worked at
7 Freedom Books and Freedom Books is the reason why I went back to
8 methamphetamine.

9 Q. Okay. So Freedom Books is the cause of you goin' back to
10 the methamphetamine use; correct?

11 A. Just during the time that I worked there, yes.

12 Q. Just during the time you worked there. Okay.

13 Well, you testified yesterday that the last time you
14 used methamphetamine was three weeks ago; correct?

15 A. That is correct.

16 Q. Well, you weren't working at Freedom Books three weeks ago,
17 were you?

18 A. No, I sure wasn't.

19 Q. Okay. So there was no stress related to Freedom Books that
20 caused you to use methamphetamine --

21 A. Sir, I've been --

22 Q. -- on that particular occasion.

23 A. -- under subpoena for a long time. I've been under subpoena
24 for a very long time.

25 Q. So the fact that you're under subpoena caused you to ingest

1 methamphetamine?

2 A. Um, it was part of the reason, yes, in order to deal with
3 the stress that -- of what I am up here doing at this point,
4 yes.

5 Q. So you used methamphetamine to deal with the stress that
6 you're doing right now today; correct?

7 A. Correct.

8 Q. You used methamphetamine when you were trying to deal with
9 the stress that was going on at Freedom Books; correct?

10 A. Correct.

11 Q. You used methamphetamine to deal with the stress that was
12 going on with your life prior to your involvement with Freedom
13 Books?

14 A. During my childhood, yes.

15 Q. Okay. Into your adulthood also; correct?

16 A. Till I was -- I did my 12-Step Program, uh, right before I
17 turned 18, yes.

18 Q. Now, um, you've been in contact with government agents in
19 regard to this particular case; correct?

20 A. Yes, I have.

21 Q. You've been talking to them about your involvement in
22 Freedom Books; right?

23 A. Yes.

24 Q. Been talking to 'em about, um, the necessity of you having
25 to testify against your mother in this particular case; correct?

1 A. Correct.

2 Q. You know Agent Steiner. True?

3 A. Who?

4 Q. Agent Steiner.

5 A. Yes.

6 Q. Do you recognize him here in court today?

7 A. Of course I do.

8 Q. Can you point him out to us?

9 A. He's the gentleman sitting on the very end.

10 Q. Okay. So it would be safe to say that you had a number of
11 communications with Agent Steiner during the pendency of this
12 case. True?

13 A. Um, conversations, yes.

14 Q. You've called him, haven't you?

15 A. Yes, I have.

16 Q. Called him as -- you called him back on September 7, 2005,
17 didn't you?

18 A. Um, if that's the date, yes.

19 Q. You told him that, um, you wouldn't testify in this case
20 unless the Government would fix your arrest warrants; isn't that
21 true?

22 A. Not in those words, no.

23 Q. Okay. Did you tell them that the only way you'll testify is
24 if they'll fix your arrest warrants?

25 A. Not in that -- not in those words, no. If you'd like, I

1 could tell you exactly what I told him, in my words --

2 Q. Well, did --

3 A. -- what I told him.

4 Q. -- well, I'll ask you the question.

5 A. Okay.

6 Q. Did you not, ma'am, say that you did not wanna testify at
7 trial next week unless the Government can quash your outstanding
8 traffic warrants?

9 A. Those were not my exact words, no.

10 Q. So if the Government --

11 A. But --

12 Q. -- so if the Government drafted a document --

13 MR. IGNALL: Objection, your Honor. If he's trying to
14 impeach with a prior inconsistent statement, he has to give the
15 witness an opportunity to say what she actually said.

16 THE COURT: Sustained.

17 BY MR. CRISTALLI:

18 Q. Okay. So what did you say -- what did you tell him?

19 A. I asked -- I had called Adam and -- because I could not get
20 ahold of Sam and I called Adam and asked Adam, "Adam, due to the
21 fact" --

22 Q. And who is Adam?

23 A. Adam Steiner.

24 Q. Thank you.

25 A. This the first conversation I've ever had with Adam on the

1 telephone and I --

2 Q. Okay. And who initiated the telephone call?

3 A. I called him because I could not get ahold of Sam that
4 evening. I --

5 Q. And who is Sam?

6 A. Sam Holland is the other agent who is sitting right next to
7 him.

8 Q. Okay.

9 A. The two that I have been in contact throughout this entire
10 subpoena that I have been under.

11 Q. Okay.

12 A. So, when I spoke with Adam and I had already told him that I
13 called Sam's phone but Sam's phone -- for some reason I couldn't
14 get ahold of him. I had asked him -- I did not feel comfortable
15 coming to court with two federal [sic] traffic warrants: two
16 county and one city. I had asked them if there was anybody that
17 they could get me in contact with in order to quash my warrants,
18 whether it be me myself makin' the phone call or them, whatever
19 the case may be, in order to set up payment plans so that I
20 could get my driver's license back due to the fact that I did
21 not like transferring -- or traveling back and forth from my
22 home to the federal building or to the IRS building to do these
23 statements without a proper driver's license.

24 I then stated I did not see, you know, that it would be
25 fair that I do what I was about to do, clean and sober --

1 because doing what I'm doing today is very difficult for me --
2 clean and sober if they -- they had told me they would do what
3 they could with regard to getting me in touch with somebody to
4 take care of these things.

5 Q. Okay. Well, we're just talking about the warrants right
6 now. Okay?

7 A. That's all I'm speaking of is the warrants.

8 Q. So you wanted the Government to take care of your
9 outstanding traffic --

10 A. I did not --

11 Q. -- warrants.

12 A. -- ask them to take care of them, sir. I asked them if they
13 could get me in touch with somebody that I could. If I had to,
14 do -- take care of them myself, I would do them myself.

15 Q. Okay.

16 A. I did not tell them to do it for me.

17 MR. CRISTALLI: May I approach the witness, your Honor?

18 THE COURT: You may.

19 MR. CRISTALLI: Thank you.

20 MR. IGNALL: Objection, your Honor. I'm not -- well,
21 I'll wait until Mr. Cristalli --

22 THE COURT: Let's see what it is.

23 MR. IGNALL: -- asks his next question. But --

24 MR. CRISTALLI: Well, I mean, everybody -- the
25 Government knows what it is. They gave it to me. It's a --

1 MR. IGNALL: Objection, your Honor. She hasn't said
2 that she doesn't remember something. If she did, then he could
3 show that to her to refresh her recollection. But otherwise --

4 MR. CRISTALLI: That's what I'm doing.

5 THE COURT: These are not -- these are not verbatim,
6 these --

7 MR. CRISTALLI: No, it's someone else's.

8 THE COURT: -- these are 302's.

9 MR. IGNALL: It's a Memorandum of Interview in the IRS.
10 But the same idea.

11 THE COURT: Yeah. It's not a -- it's not a exact
12 quote. In fairness --

13 MR. CRISTALLI: Okay.

14 THE COURT: -- it's not. I don't think you can even
15 use it to impeach her because her -- her testimony is not --

16 MR. CRISTALLI: Well, I certainly can put Agent Steiner
17 on the stand --

18 THE COURT: You certainly can.

19 MR. CRISTALLI: -- ask him if he generated this
20 document.

21 THE COURT: You can.

22 MR. CRISTALLI: Okay.

23 THE COURT: Absolutely.

24 MR. CRISTALLI: Thank you.

25

1 BY MR. CRISTALLI:

2 Q. Okay. Let's go on a little bit then.

3 Um, during the conversation you had with Agent Steiner,
4 did you also tell him, in addition to asking him for assistance
5 in quashing your arrest warrants, did you also ask him for help
6 with an IRS tax refund wherein you indicated that the IRS owes
7 you \$7,000 and has only paid you \$800? Did you ask for
8 assistance with regard to that?

9 A. No. I asked for the assistance of a phone number for me to
10 get in contact with somebody because I was told by Sam that he
11 may know of somebody that I could get ahold of to discuss the
12 situation with that person because they have no -- Sam told me
13 that he is just like everybody else.

14 Q. Who is Sam?

15 A. Sam Holland.

16 Q. Okay.

17 A. Who my phone conversation would have been with if he would
18 have answered the phone; however, I was unable to get ahold of
19 him.

20 Q. Okay.

21 A. Therefore, speaking with Adam I said, "Sam had mentioned to
22 me one time he may know somebody that I can get in touch with
23 that could help me with the IRS issue at hand." Therefore, that
24 was what I was asking was that phone number of that person to
25 the Taxpayer Advocate Office in order to get ahold of that

1 person myself to take care of an issue. Yes.

2 Q. Okay. But you asked them for assistance with regard to
3 getting an IRS refund back; correct? And you asked them for --
4 you didn't ask them for -- can I have a name for somebody to
5 assist me; you asked they them directly can you assist me with
6 this. And they said, well, we can maybe get you in touch with
7 somebody; correct?

8 A. No, incorrect.

9 Q. Okay. So, if Agent Steiner got up there and said somethin'
10 different, he would be incorrect; right?

11 A. I'm telling you that Sam had --

12 Q. I asked you a question.

13 If Agent Steiner got up there and said somethin'
14 contrary to what you're testifying to today, he would be wrong
15 and you would be right. Is that what you're telling me?

16 A. Yes, because I was crying --

17 Q. Okay.

18 A. -- on the telephone and I know --

19 Q. That's all I'm asking.

20 A. -- what I said and maybe he didn't correctly hear me.

21 Q. That's all I'm asking.

22 Ma'am, did you also state to Agent Steiner that if the
23 Government could not fix these problems you will not testify at
24 trial?

25 A. I did not say -- I did not say the Government to fix them.

1 Q. Okay. So, if Agent Steiner was to testify that that's what
2 you said --

3 MR. IGNALL: Objection. He can ask whether she said it
4 or whether she didn't say it.

5 THE COURT: Correct.

6 BY MR. CRISTALLI:

7 Q. You didn't ask -- you didn't ask him that?

8 A. What's that? I'm sorry.

9 Q. You didn't ask him to -- you didn't say if they -- the
10 Government didn't fix your problems you weren't gonna testify?

11 A. I said if they would not give me what it is that they had
12 told me they could offer me, which was a phone number for
13 somebody for the Taxpayer Advocate Office --

14 Q. Okay.

15 A. -- as well as somebody that, um...

16 Q. Who is gonna fix your warrants.

17 A. No. A phone number for -- not somebody -- will you please
18 stop putting words in my mouth?

19 THE WITNESS: I'm sorry --

20 BY MR. CRISTALLI:

21 Q. I'm not putting --

22 THE WITNESS: Your Honor --

23 BY MR. CRISTALLI:

24 Q. -- words in your mouth.

25 THE WITNESS: -- I'm sorry. But if --

1 BY MR. CRISTALLI:

2 Q. I'm asking you a question.

3 A. Yes, you are. You're putting words in my mouth.

4 THE COURT: Let her finish.

5 Go ahead.

6 THE WITNESS: A phone number in which I could get in
7 touch with somebody to squash my warrants in order to get my
8 driver's license back.

9 BY MR. CRISTALLI:

10 Q. Who are you gonna get in touch with to quash your warrants,
11 a lawyer? Is that what you're talking about?

12 A. No, sir. Maybe somebody at the court that could just fix me
13 up with, um, payment plans because I know how it works. I've
14 been through --

15 Q. Well, how does --

16 A. -- traffic tickets where you can go down to the court
17 instead of having to go down, sit down there with my
18 four-year-old son all day long and take the bus all the way down
19 to the court system -- I would like to not put my son through
20 that as well -- draw a number.

21 I wanted to find out if it was possible to overstep
22 that and go ahead and have a phone number to have the warrants
23 squashed and set up payment plans over the phone possibly
24 because I know that this is possible.

25 Q. So, in exchange for your testimony, you wanted the

1 Government to assist you with your, um -- assist you in
2 information in regard to correcting your warrant problems;
3 correct?

4 A. Incorrect.

5 Q. Okay.

6 A. Sir, I'm under a subpoena. I didn't -- there was no
7 exchange for anything.

8 Q. You asked --

9 A. I had asked them --

10 Q. -- you asked them for something. You said that you wouldn't
11 testify -- correct me if I'm wrong. You said to them you won't
12 testify unless they help you out giving -- whatever it may be,
13 whatever the help may be -- whether it be information, whether
14 or not it be doing something directly -- you asked for their
15 help in exchange for your testimony. Is that an inaccurate
16 statement, ma'am?

17 A. Yes, it is because it was not in exchange. Whether or not I
18 got that information, I still would be here today testifying. I
19 don't see how --

20 Q. Well, that's --

21 A. -- you can say "in exchange for."

22 Q. -- because they told you that. Correct? That's because
23 they told you that.

24 A. No. That's because I'm a smart woman and I know that.

25 Q. And so you didn't say to them that you will not testify

1 unless they help you with these things?

2 THE COURT: You can answer just yes or no.

3 THE WITNESS: No.

4 BY MR. CRISTALLI:

5 Q. Okay. And you did not state to them that if they didn't
6 assist you with these things you would not appear here in court
7 and testify clean and sober?

8 A. I didn't have a choice.

9 Q. Ma'am, I'm asking you a question. Is that --

10 THE COURT: Just answer --

11 BY MR. CRISTALLI:

12 Q. -- what you said?

13 THE COURT: -- yes or no.

14 THE WITNESS: No.

15 BY MR. CRISTALLI:

16 Q. You did not say that?

17 A. Not in those words, no.

18 Q. Well, what words did you use, ma'am?

19 THE COURT: Well, we've gone over this. We've gone --

20 THE WITNESS: Thank you.

21 THE COURT: -- over it a couple of times now.

22 MR. CRISTALLI: Your Honor, with all due respect --

23 THE COURT: She's already --

24 MR. CRISTALLI: -- this is --

25 THE COURT: -- said the words --

1 MR. CRISTALLI: -- cross-examination. I don't think I
2 have. I would like to know whether or not she's testifying
3 clean and sober if they didn't -- she didn't get what she
4 wanted.

5 THE COURT: Well, the -- the question has been asked
6 and answered several times.

7 BY MR. CRISTALLI:

8 Q. You said that the last time you used was three weeks ago.
9 But that's not true. Correct? You actually used on September
10 5th as you told Agent Steiner. It's less than three weeks ago.
11 Correct?

12 A. It's approximately three weeks ago is the last time I used.

13 Q. Okay. You haven't used since?

14 A. No, sir.

15 Q. Well, I thought you've been usin' because you're stressed
16 out about this whole situation.

17 A. I felt that I deserved to be clean and sober due to the fact
18 that other people were able to do things clean and sober and I
19 deserve it because I wanted to close the chapter of the last 20
20 years of my life and I want to start a new one for my son and
21 make sure that this same situation doesn't happen with him.

22 Q. Okay.

23 A. My son deserves that. I wanna see him get married some day.

24 Q. Did you tell the Government, um, that you -- that they
25 should be buying your testimony?

1 A. Are you kidding?

2 Q. No. I'm actually not kidding.

3 THE COURT: Answer just yes or no.

4 THE WITNESS: Uh, no.

5 BY MR. CRISTALLI:

6 Q. Okay. Did you tell the Government that they should be
7 buying your testimony and the fact -- and the fact that your
8 mother's not buying your testimony surprises you? Did you say
9 that?

10 A. Not in those exact words, no.

11 Q. Not in those exact words.

12 You smoke marijuana too, don't you?

13 A. I have, yes.

14 Q. You have? You smoke on a regular basis, don't you?

15 A. No, sir, I do not.

16 Q. Okay. When was the last time you smoked marijuana?

17 A. Over three weeks ago.

18 Q. So you smoked marijuana around the same time as you smoked
19 methamphetamine?

20 A. Yes, sir.

21 Q. Okay. Told the Government, also, you really wanna see your
22 mother go to prison; isn't that true?

23 A. Um, if she's guilty.

24 Q. Did you tell the Government that you really want to see your
25 mother go to jail? Did you say those words?

1 A. Not in those exact words, no.

2 Q. Okay. So you began working at Freedom Books in 1998;
3 correct?

4 A. Yes, sir. Yes, sir.

5 Q. You were actually at, uh, Freedom Books before your mom
6 began volunteering her services there; correct?

7 A. No.

8 Q. Okay. So your mom was volunteering her services before you
9 took the employ at Freedom Books?

10 A. Yes.

11 Q. Okay. Um, but you would acknowledge, would you not, ma'am,
12 that she was volunteering her services?

13 A. No. She was paying back, uh, a check that Irwin had written
14 for her for her rent.

15 Q. Ma'am, didn't you testify yesterday on direct examination
16 that your mother was vol- -- initially volunteering her services
17 at Freedom Books?

18 A. No. Initially, I had stated that Irwin had written my mom's
19 [sic] check for \$750 and my mom was paying that back by selling
20 his book.

21 Q. So, if the record suggests that you said specifically on
22 direct examination that your mom initially volunteered her
23 services at Freedom Books that would be an incorrect statement.
24 Is that what you're --

25 MR. IGNALL: Objection --

1 BY MR. CRISTALLI:

2 Q. -- saying today?

3 MR. IGNALL: -- your Honor. I don't think it's
4 appropriate impeachment. You can ask her what she said or what
5 she didn't say --

6 MR. CRISTALLI: I just did.

7 MR. IGNALL: -- and what the truth is.

8 MR. CRISTALLI: I just asked her what she -- what she
9 said on -- yesterday.

10 THE COURT: Go ahead and give an answer.

11 BY MR. CRISTALLI:

12 Q. Did you say that?

13 THE COURT: Do you remember what you said yesterday?

14 THE WITNESS: Yes, I remember exactly what I said
15 yesterday. And I said that Irwin had written a check -- Linda
16 wrote --

17 BY MR. CRISTALLI:

18 Q. No, that's not my question.

19 My question was: Did you testify yesterday that
20 initially your mom volunteered her services at Freedom Books?
21 She wasn't getting paid. Didn't you say that?

22 A. I did not say that. I said Irwin had written a check for
23 her rent for \$750, and so she was paying that back by trying to
24 sell his book. That's what I had said.

25 Q. Okay.

1 A. Did I not?

2 Q. I don't believe you did. But the record speaks for itself.

3 A. Okay.

4 Q. All right. So it would be fair to say that when you took
5 over Freedom Books you took over for Linda Hicks; correct?

6 A. Correct.

7 Q. And Linda Hicks handled all of the books at Freedom Books.
8 True?

9 A. Correct.

10 Q. Your mom didn't handle the books at Freedom Books; correct?

11 A. When I started working there?

12 Q. Well, before --

13 A. Is that what you're asking?

14 Q. -- you started workin' there, Linda Hicks was handlin' 'em;
15 right?

16 A. Correct.

17 Q. And then you remember handlin' 'em; correct?

18 A. Correct.

19 Q. So if she wasn't handlin' 'em --

20 A. No. Not in the beginning, no.

21 Q. Well, okay. You testified yesterday that you did all of the
22 work -- I'm just tellin' ya what --

23 A. I know.

24 Q. -- you've testified to.

25 A. I'm listening. I'm listening.

1 Q. You testified that you did all of the work for Irwin Schiff;
2 correct?

3 A. When I first started working there, yes, until --

4 Q. Okay. Well --

5 A. Okay.

6 Q. -- this is my question. You did -- you did the books;
7 right?

8 A. Yes, sir.

9 Q. You wrote the checks; correct?

10 A. Correct.

11 Q. You did the deposits; correct?

12 A. Correct.

13 Q. You made him breakfast; correct?

14 A. If my mom didn't, yes.

15 Q. You did his clothes occasionally. True?

16 A. True.

17 Q. And I think you said yesterday you do -- did everything for
18 him; right?

19 A. Originally, yes.

20 Q. Okay. And yesterday we saw checks that you wrote to
21 yourself; right?

22 A. Right.

23 Q. Sometimes Irwin would sign off on those checks and sometimes
24 you would stamp those checks; correct?

25 A. Correct.

1 Q. So Irwin entrusted you to handle the money; right?

2 A. Right.

3 Q. Okay. And, in the capacity of handling the money, you had
4 the ability to handle the bank accounts; correct?

5 A. Correct. Some of them; two of them.

6 MR. CRISTALLI: Can I have those that you had up
7 yesterday first?

8 (Discussion among counsel.)

9 THE COURT: Which exhibit are we --

10 MR. CRISTALLI: I think it's 78. Let me just...

11 THE COURT: 78 is the P.I.L.L.

12 MR. CRISTALLI: 73.

13 THE COURT: 73?

14 (Document displayed in open court.)

15 BY MR. CRISTALLI:

16 Q. Okay. Um, again, this is Exhibit 73. You recognize this
17 check; correct?

18 A. Yes, I do.

19 Q. And that's, um, written by you. True?

20 A. True.

21 Q. And, um, signed off -- would you -- would -- is your -- is
22 your testimony that that's Irwin's signature?

23 A. Yes, it is.

24 Q. It's not the signature stamp --

25 A. No --

1 Q. -- correct?

2 A. -- it's not.

3 Q. Okay. But what you would do with that is you'd get that
4 check, you'd go to the bank; correct?

5 A. Right.

6 Q. And you'd take the cash; right?

7 A. Yes.

8 Q. And you'd distribute the cash however the cash needed to be
9 distributed. True?

10 A. Correct.

11 Q. Okay.

12 MR. CRISTALLI: Could I see the next one?

13 (Document displayed in open court.)

14 BY MR. CRISTALLI:

15 Q. Um, here's another --

16 MR. CRISTALLI: If we could -- yeah.

17 BY MR. CRISTALLI:

18 Q. -- uh, here's another one which appears to be consistent
19 with the last one. It has your -- you wrote that one out.

20 True?

21 A. Yes.

22 Q. Irwin signed off on it; right?

23 A. Yes.

24 Q. And that's also similar to what you would have done with the
25 previous check is you would have went to the bank, got the cash,

1 and distributed however you needed it distributed. True?

2 A. True.

3 Q. Okay.

4 MR. SCHIFF: Can you hold off a little bit? That's --
5 what check number is that? 2393.

6 MR. CRISTALLI: Okay. Could I have the next one,
7 please?

8 (Document displayed in open court.)

9 BY MR. CRISTALLI:

10 Q. And this one's 2430- -- I think it's 2433 if I'm not
11 mistaken.

12 2433 written out by you. True?

13 A. Yes.

14 Q. And that's a signature stamp; correct?

15 A. Yes.

16 Q. So Irwin would not have signed off on that check; correct?

17 A. Correct.

18 Q. Okay. And you would have went to the bank, cashed it,
19 and -- and distributed it however you, um, would have
20 distributed it. True?

21 A. True.

22 Q. Okay.

23 MR. SCHIFF: Um...

24 BY MR. CRISTALLI:

25 Q. And, uh, let's just go through the -- the remaining ones

1 relatively quickly.

2 MR. SCHIFF: 2434?

3 (Document displayed in open court.)

4 BY MR. CRISTALLI:

5 Q. Okay. Now you have 2435. It appears to be the same type of
6 situation only that Irwin signed off on that check; correct?

7 A. Correct.

8 MR. SCHIFF: Can I -- can I have a conference? Can I
9 interrupt him for a moment?

10 MR. CRISTALLI: No.

11 (Document displayed in open court.)

12 BY MR. CRISTALLI:

13 Q. That's 20- -- 2448 [sic]. Similar to what we've been
14 previously discussing, but you would have went -- is that
15 Irwin's signature or is that a signature stamp?

16 A. Um, we're on 2445; correct?

17 Q. 24- --

18 A. Yeah.

19 Q. -- -48 [sic]. Is it 5? Yes.

20 A. Oh.

21 Q. I'm sorry. 2445.

22 A. Yes, that's Irwin's signature.

23 Q. Okay. And you would have went to the bank, you would have
24 gotten cash, and you would have distributed it accordingly?

25 A. Of course, yes.

1 MR. CRISTALLI: Next one, please.

2 (Document displayed in open court.)

3 BY MR. CRISTALLI:

4 Q. Again, Irwin's signature. Again the same situation --

5 A. Yes.

6 Q. -- as we had previously?

7 MR. SCHIFF: What's the check number, please?

8 BY MR. CRISTALLI:

9 Q. And so -- and so this would have went on during the entirety
10 of your employ; correct?

11 A. Yes.

12 Q. Okay.

13 A. Unless, um, there was no funds in the bank to do so, yes.

14 Q. Okay. Now, all of these checks that we've seen here so far
15 that the Government has displayed and entered into an exhibit
16 this is all your writing. True?

17 A. Yes.

18 Q. It's not your mother's writing, is it?

19 A. No. That's all mine.

20 Q. Okay. In fact, we haven't seen one check written by your
21 mother, have we?

22 A. No, not yet. No.

23 Q. Okay. And we haven't seen one check written to your mother,
24 correct --

25 A. Yes, there was --

1 Q. -- so far?

2 A. Oh. Um, yes, there was one check that was written to my
3 mother. But not in this set, no.

4 Q. Okay. Most of the time, though, you would go and cash the
5 checks. True?

6 A. True.

7 Q. Okay. Like 98 percent of the time; correct?

8 A. Yes.

9 Q. Okay. Be safe to say you handled a lot of cash; correct?

10 A. Yes.

11 Q. Um...

12 (Discussion between Mr. Cristalli and
13 Mr. Ignall.)

14 BY MR. CRISTALLI:

15 Q. Ma'am, I'm gonna show you what's already been introduced
16 as...

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

19 MR. CRISTALLI: I'm gonna show you what's been marked
20 part of Government's, um, Exhibit 238, your Honor.

21 THE COURT: Okay.

22 MR. CRISTALLI: If I can here.

23 THE COURT: Is it Government's 238?

24 MR. CRISTALLI: Yes, it is.

25 THE COURT: Okay.

1 Does the witness have that?

2 (Document displayed in open court.)

3 BY MR. CRISTALLI:

4 Q. Uh, can you see that?

5 A. Yeah, I can see it right here on the monitor. Yeah.

6 Q. Do you recognize that check?

7 MR. IGNALL: Your Honor, this -- this is part of the
8 larger Bank of America exhibits. It's not scanned and it's not
9 part of the exhibit books.

10 THE COURT: Oh. Thank you.

11 BY MR. CRISTALLI:

12 Q. Do you see that check there?

13 A. Yes, I do.

14 Q. It's written by you, isn't it?

15 A. Yes, it is.

16 Q. It's Irwin's signature stamp, isn't it?

17 A. Yes, it is.

18 Q. And it's made out for Perry Oshiro; correct?

19 A. That's correct.

20 Q. Okay.

21 (Document displayed in open court.)

22 BY MR. CRISTALLI:

23 Q. Do you see this check?

24 A. Yes.

25 Q. It's also made out by you; correct?

1 A. Yes.

2 Q. And it -- I'm sorry. What is -- let me just put that last
3 one back for a second. I just want to direct your attention to
4 the left-hand corner where it says "FOR." It says -- it says
5 "FOR work one week." True?

6 A. True.

7 Q. Okay. I'm gonna show you the next one again.

8 (Document displayed in open court.)

9 BY MR. CRISTALLI:

10 Q. And that's, again, made out by you to Perry Oshiro. And
11 that's a signature stamp of Irwin Schiff.

12 A. Yes, it is.

13 Q. And it also says "work for two weeks"; correct?

14 A. Correct.

15 Q. Okay.

16 (Document displayed in open court.)

17 BY MR. CRISTALLI:

18 Q. Now, I'm gonna show you another one made out to, uh, Perry
19 Oshiro.

20 A. Isn't that the same one?

21 Q. I don't think so.

22 A. Yes. This is the one you showed me.

23 THE COURT: 2673 --

24 MR. CRISTALLI: Did I skip --

25 THE COURT: -- you already showed.

1 MR. CRISTALLI: -- one of 'em? All right. Let me go
2 through it. Let me see what I did here.

3 (Pause in the proceedings.)

4 (Document displayed in open court.)

5 BY MR. CRISTALLI:

6 Q. I have three of them here, so -- okay. All right. So the
7 first one is Check No. 2645. Do you see that?

8 A. That's a different one. That's the --

9 Q. Okay.

10 A. -- third one then.

11 Q. Okay. That's the first one we'll deal with.

12 The first one, Check No. 2645; correct?

13 A. Correct.

14 Q. To Perry Oshiro dated April 4, 2000; correct?

15 A. Correct.

16 Q. In the amount of a thousand dollars; right?

17 A. Right.

18 Q. And that's a signature stamp of Irwin's; correct?

19 A. Correct.

20 Q. That you had authority to use; right?

21 A. Right.

22 Q. And it says, uh, "FOR part time two weeks" -- or --

23 A. No --

24 Q. -- "to answer phones."

25 A. It says, part time including the answer phones, yes.

1 Q. Okay.

2 (Document displayed in open court.)

3 BY MR. CRISTALLI:

4 Q. And the next one is --

5 A. There were three I thought.

6 Q. -- next one's 2673, check number; correct?

7 A. Correct.

8 Q. Dated April 19th, 2000; right?

9 A. Yep.

10 Q. To Perry Oshiro; right?

11 A. Right.

12 Q. In the amount of \$500; right?

13 A. Right.

14 Q. And the signature stamp of Irwin's; correct?

15 A. Correct.

16 Q. It says, "work for one week"?

17 A. Yes.

18 Q. Okay.

19 (Document displayed in open court.)

20 BY MR. CRISTALLI:

21 Q. And then the last one here, again, April 20th, 2000; right?

22 A. Yep.

23 Q. For Perry Oshiro; correct?

24 A. Correct.

25 Q. In the amount of \$500; right?

1 A. Right.

2 Q. Signature stamp of Irwin's; correct?

3 A. Correct.

4 Q. And it says, uh, "FOR work two weeks"; correct?

5 A. Correct.

6 Q. Okay.

7 (Discussion between Mr. Cristalli and
8 Mr. Modafferi.)

9 BY MR. CRISTALLI:

10 Q. So not being a mathematician, it appears that that's in the
11 amount of about \$2,000 in three weeks to this particular
12 individual; correct?

13 A. Correct. Very good.

14 Q. Thank you.

15 And so that -- pretty much if we take everything as a
16 whole in terms of those individuals that you said worked at
17 Freedom Books, that's probably more than most individuals were
18 makin' at Freedom Books; correct?

19 A. That's correct because Perry was not an employee.

20 Q. Right. He was your drug dealer; correct?

21 A. Incorrect.

22 Q. So he's not your drug dealer?

23 A. He wasn't my drug dealer when he first started working
24 there, no. I didn't even know he was a drug dealer when he
25 first started working there.

1 Q. Oh. He began -- he developed into being your drug dealer?

2 A. No. I was introduced to Perry through another employee,
3 Cheryl Godfrey. I did not know -- I assumed he was a vol- -- I
4 assumed that he followed Irwin's material. He started coding
5 Code books at -- upon Irwin's request at \$10 per book. Just
6 like another volunteer also was paid, he -- he could not accept
7 checks. Perry could accept checks, so I wrote Perry checks
8 because I was tired of everybody getting cash 'cuz it did look
9 very fishy. So then, upon Irwin's request and because Perry
10 could receive checks, I wrote checks to him.

11 During April, however, seeing as how April, the month
12 of all months for the IRS, Irwin is very busy. There are
13 probably very few checks in the month of April that were
14 actually signed by Irwin. Therefore, the signature stamp was
15 used. But Perry did work there. At that time I did not know he
16 was a drug -- I did not know he was a drug dealer because I did
17 not pay Perry for drugs directly until after.

18 Q. So there became a time after you began -- not including your
19 time at Freedom Books that you began to pay Perry for drugs;
20 correct?

21 A. Um, after Cheryl told me that he was where she was getting
22 the drugs from, then putting two and two together after I left
23 for not even a month, yes, I did purchase drugs from Perry out
24 of my own money, yes.

25 Q. Okay. Well, let's talk about that, out of your own money.

1 Um, you said that for whatever reason -- I don't think
2 we got it out yesterday -- that your employment at Freedom Books
3 ceased; correct?

4 A. Yes. I left.

5 Q. You left.

6 Well, isn't the reason you left is because you were
7 accused of embezzling \$50,000?

8 A. No, I was not accused of anything when I left.

9 Q. You never --

10 A. I left.

11 Q. Ma'am, are you saying you were never accused of embezzling
12 \$50,000?

13 A. Um, I believe when my mother banged on my girlfriend's door
14 she was accusing me of that. However, I did not leave under the
15 accusation that I was embezzling 50,000, no. I left. Then I
16 was accused, supposedly, of -- um, as my mother was banging on
17 my girlfriend's door, um, that I was embezzling money.

18 Q. And you are aware that there was money taken from Freedom
19 Books in the amount of approximately \$46,000 and change;
20 correct?

21 A. No. I was not under that understanding, no.

22 Q. Okay. Let me just check here something.

23 (Pause in the proceedings.)

24 MR. CRISTALLI: Court's indulgence.

25 THE COURT: Yes.

1 (Pause in the proceedings.)

2 MR. CRISTALLI: I'll get back to that.

3 BY MR. CRISTALLI:

4 Q. I just found something here that I want to go over it with
5 you again.

6 So with regard to, um, you stating that your mom didn't
7 initially volunteer her -- her time, you said that that's not
8 what you said yesterday, correct, it wasn't that your mom was
9 initially volunteering her time? Is that -- was she initially
10 volunteering her time or wasn't she according to your testimony?

11 A. She was initially paying back a check that Irwin had written
12 for her rent.

13 Q. Okay.

14 A. I thought we were clear on that.

15 Q. No. We actually weren't. But...

16 A. Okay. I'm sorry.

17 Q. That's what I'm trying to figure out.

18 Well, didn't you testify before the Grand Jury that,
19 um, I couldn't -- after you saying that you're doing all these
20 things for Irwin that you couldn't do it anymore and I figured
21 if my mom's gonna date him my mom might as well do the domestic
22 stuff.

23 Didn't you say that?

24 A. Yes, I did.

25 Q. And that's what you said, "So that's when I hired her to

1 come in and pay her." Correct? That's what you said; right?

2 A. Something to that effect, yes. That's why she was hired to
3 come in, yes. Yeah.

4 Q. And to pay her?

5 A. Yes.

6 Q. So it would be safe to say that prior to that occasion she
7 wasn't bein' paid; correct?

8 A. Not necessarily, no.

9 Q. Okay. And, um, it's also true, though, that your mom and
10 Irwin were livin' together; correct?

11 A. Not when I began work there, no.

12 Q. Well, there became a time when they began to live together.
13 True?

14 A. Not under -- not while I was working there did they combine
15 their households, no. They both had their own place of living
16 when I worked there -- while I worked there.

17 Q. Okay. But it's safe to say that Irwin spent a lot of time
18 at your mom's house; correct?

19 A. Yes. Irwin spent the night, yes. Um-hum.

20 Q. And you testified yesterday that you paid a lot of, um, the
21 bills for your mom -- for example, her rent; um, her utilities;
22 things of that nature -- correct? Groceries.

23 A. Yes, there were certain things that Irwin had approved --

24 Q. Right.

25 A. -- upon me paying her for, yes.

1 Q. And it would be safe to say that that was kind of part and
2 parcel of the relationship that existed between Irwin and your
3 mom; correct?

4 A. Uh, that was Irwin's business, uh, not mine.

5 Q. Right. Irwin said --

6 A. He told me to do what I did.

7 Q. Right. Take care of Cindy, pay her bills; correct?

8 A. He told me to -- whatever she brings me to go get cash and
9 pay her for them, yes.

10 Q. Right.

11 And that wasn't in exchange for the work that she was
12 performing at Freedom Books, but it was part and parcel of the
13 relationship that existed between the two of them?

14 A. I don't know. I wasn't there when they made that agreement.

15 Q. Now, prior to your involvement with Freedom Books and your
16 mom's involvement with Freedom Books, would it be safe to say
17 that she was basically a freelance artist; correct?

18 A. Correct.

19 Q. Not making a lot of money. True?

20 A. Depended.

21 Q. Well, didn't you testify that she was making about 20 or 50
22 bucks a painting?

23 A. A painting? No, a --

24 Q. Picture.

25 A. -- a poster.

1 Q. Poster.

2 A. All right. Big difference.

3 Um, her posters, no, not 20 to 50. It all depended on
4 the poster and the bar and how many she did. The smaller
5 posters were 15 to 20 bucks per poster, but they're
6 eight-and-a-half by eleven.

7 Q. Okay. But didn't you testify that she would make about 20
8 or 50 bucks a poster?

9 A. An eight-and-a-half by eleven. Maybe it was not specified.
10 However, that's for an eight-and-a-half-by-eleven-size poster.

11 Q. Okay. Now, um, around 1987, um -- prior to 1987, your mom
12 was working in [sic] Mission Linens; correct?

13 A. That's correct.

14 Q. Making a pretty good living there; correct?

15 A. I -- I don't recall. I don't know.

16 Q. Okay.

17 A. I was very young.

18 Q. And then she became disabled; correct?

19 A. Correct. She got in a car accident.

20 Q. Pretty serious car accident. True?

21 A. I guess. I don't know.

22 Q. She had major surgery.

23 A. Yes, she did.

24 Q. All right.

25 A. Yes.

1 Q. And, as a result of the accident and the surgery that she
2 went through, she couldn't perform the work that she previously
3 performed at Mission Linens; correct?

4 A. According to her, yes.

5 Q. Well, ma'am, do you deny the fact that your mother got in an
6 accident and --

7 A. I didn't say I denied the fact she got in an accident.

8 Q. Okay. Do you deny the fact that she had major back surgery?

9 A. I didn't deny that.

10 Q. Okay. And, based on that accident, she was disabled;
11 correct?

12 A. According to her. I don't know. I --

13 Q. Well, it was actually more than according to her. It was
14 according to Social Security and Disability.

15 A. Okay. Then you know better than I do.

16 Q. No. I --

17 A. I never seen the documentation stating it, no.

18 Q. Were you around her when --

19 MR. IGNALL: Objection. The question could be does she
20 know whether her mother obtained Social Security disability. I
21 don't think Ms. Desgrosellier can know what the definition is.

22 BY MR. CRISTALLI:

23 Q. Ma'am, are you denying that your mother was disabled?

24 THE COURT: She -- she -- I'm sure she can't answer in
25 the legal sense.

1 BY MR. CRISTALLI:

2 Q. Okay. Don't answer in the legal sentence.

3 Do you deny the fact that your mother was disabled?

4 A. As far as I could tell, yes.

5 Q. Thank you.

6 Now, let's go back to that issue as far as the money is
7 concerned. You did testify before the Grand Jury; correct?

8 A. Yes, I did.

9 Q. And you stated that there, um -- there's a question:

10 "Were there accusations made about you concerning
11 taking money out of the till?

12 "Of course there were."

13 You don't -- you don't disagree with that testimony?

14 A. No, I don't.

15 Q. Okay.

16 "And tell me what that was about?

17 "Well, when I found out and discovered that Cheryl
18 Godfrey was taking the money."

19 A. Right.

20 Q. You said that; right?

21 A. Yes, I did.

22 Q. "Not only out of the cash register because she had a very
23 severe gambling problem and drug addiction" --

24 MR. IGNALL: Objection, your Honor. I'm not sure that
25 it's an appropriate impeachment.

1 BY MR. CRISTALLI:

2 Q. Well, you testified before a Grand Jury, didn't ya?

3 MR. IGNALL: Yes. But she made --

4 THE COURT: How do you use it for impeachment? Got to
5 ask her --

6 MR. CRISTALLI: She -- she -- it's inconsistent with
7 her previous testimony.

8 THE COURT: That -- well --

9 MR. CRISTALLI: She said she was -- she said she was
10 gone before there was any accusations of stealing by anybody and
11 she denied that there was an accusation of stealing --

12 THE COURT: Well, you mean --

13 MR. CRISTALLI: -- by somebody internally.

14 MR. IGNALL: I think that mischaracterizes the
15 witnesses testimony.

16 THE COURT: That's apples and oranges. Two different
17 events.

18 BY MR. CRISTALLI:

19 Q. I think I understand the testimony. Your testimony was the
20 first time you heard about the accusation with regard to
21 stealing from the till was when your mother banged on your
22 friend's door; correct?

23 A. No. Incorrect. I did not say that.

24 Q. You didn't just say that?

25 A. No.

1 THE COURT: Go ahead. I think we're talking about two
2 different events. You're talking about her being accused of
3 taking \$46,000 --

4 MR. CRISTALLI: Right.

5 THE COURT: -- or some amount like that.

6 MR. CRISTALLI: Right.

7 THE COURT: And that's -- as I understand it, that's a
8 different accusation than -- than pilfering from the till.

9 MR. CRISTALLI: I don't think so, your Honor.

10 THE COURT: All right.

11 MR. BOWERS: Your Honor, I -- maybe I can alleviate the
12 confusion. I think she just testified here today that she had
13 not been accused of stealing money prior, this \$46,000, until
14 somebody came knocking at her door.

15 MR. CRISTALLI: Right.

16 MR. BOWERS: Right? Are we in agreement on that?

17 THE COURT: That's a separate accusation as I
18 understand it --

19 MR. BOWERS: Well, no. I --

20 THE COURT: -- from pilfering on a --

21 MR. BOWERS: Well, no, no. What Mr. Cristalli --

22 THE COURT: -- daily basis.

23 MR. CRISTALLI: No, it's not a daily basis, your Honor.
24 It's just taking money out of the till concerning that
25 particular event.

1 THE WITNESS: Two different events.

2 BY MR. CRISTALLI:

3 Q. Oh, now it's -- well, if it's two -- she says it's two
4 different events, it's two different events.

5 Is that what you're sayin' today, it's two different
6 events?

7 A. I brought the -- I brought it to the attention of Irwin
8 Schiff that --

9 Q. Wait, wait. Let's stop now.

10 What --

11 A. Do you want me to explain why --

12 Q. No. I wanna know -- I'm trying to get a timeline and --

13 A. That's exactly what I'm gonna give you --

14 Q. Okay.

15 A. -- if you let me.

16 Q. I will --

17 A. Okay.

18 Q. -- absolutely.

19 A. I brought it to Irwin's attention shortly --

20 Q. Well --

21 A. -- before -- shortly before I left Irwin's place of
22 employment --

23 Q. Right.

24 A. -- I brought it to his attention that Cheryl Godfrey -- I
25 had seen her steal money out of the till. I, being 23 at the

1 time, was concerned about this because I was the youngest
2 employee besides my brother that worked there and I was
3 everybody's boss.

4 I brought it to his attention privately, me and him.
5 My mom also walked in the office at that time and said to him,
6 yes, she's right. Cheryl must be taking the money.

7 Therefore, then, I was like, well, all of a sudden my
8 mom and Cheryl go to Irwin privately, I guess, somehow -- that's
9 what I was speaking of originally was turned around somehow. I
10 said, "I'm not gonna get involved in the till." I left.

11 Then my mom comes banging on my door about \$46,000 or
12 something ridiculous I was embezzling from Irwin.

13 Q. Right.

14 A. That's what I was in reference to --

15 Q. Right.

16 A. -- not out of the till. They were stating, None of your
17 records match. There's receipts and nothin' matches this.

18 Q. Okay.

19 A. That's regarding some --

20 Q. Okay. Let me --

21 A. -- ridiculous thing.

22 Q. Okay. Let me see if I can get it straight now then.

23 So you find out, because you saw Cheryl Godfrey takin'
24 money out, that --

25 A. Yes. And it concerned me, yes.

1 Q. Right.

2 It concerned you because you -- you thought that the
3 first person they were gonna come and accuse was you --

4 A. Incorrect.

5 Q. -- correct?

6 A. No, no.

7 I wanted Irwin to know where his money was going
8 because he was saying -- at that time that's when we set up this
9 entire book that's already been entered into the exhibits right
10 here. This is why we started this book originally for the
11 orders was because Irwin was concerned where all the money was
12 going from the daily walk-in orders because most of it required
13 cash. So I brought it to his attention. I said -- we started
14 to watch. Irwin and I both watched Cheryl in the front. And
15 Irwin even said, yes, because none of them matched at the end of
16 the day.

17 Well, at that -- I was so exhausted I couldn't take any
18 more from that employment and I left. Then I got a knock on the
19 door and it's like, oh, okay, so now I see how this is gonna all
20 play out. That's when I heard about it. And that was the end
21 of it. That's all I thought was just my mom banging on my
22 girlfriend's door stating I had stolen some ridiculous amount of
23 money. And --

24 Q. Right.

25 A. -- because I don't agree with thieves and I don't agree with

1 stealing, so...

2 Q. Right.

3 And so, um, it's true, though, is it not, that you said
4 that, "Because I wasn't on Social Security and I'm so young,
5 it's no problem if I'm the one who has to suffer." Correct?
6 "And that's probably the reason I'm here today." Is that right?

7 A. Um, was it -- that was in my Grand Jury's testimony --

8 Q. Yes.

9 A. -- correct?

10 Q. Right.

11 So in that --

12 THE COURT: Wait a minute.

13 What -- what is the purpose of reading that?

14 MR. CRISTALLI: She said that it wasn't because -- she
15 said -- I asked her a question, well, didn't they accuse her --
16 or she was afraid that they were gonna come and accuse her
17 directly. And she says no.

18 But in here it says that because she wasn't the one
19 that was receiving the Social Security and she was so young, it
20 wasn't a problem if they accused her. So I think it impeaches
21 her testimony.

22 THE COURT: I don't see how they have any connection.

23 MR. IGNALL: I object to this line of inquiry and I
24 don't see how this has anything to do with her truthfulness --

25 THE COURT: I don't either.

1 MR. IGNALL: -- or untruthfulness.

2 MR. CRISTALLI: It totally goes to bias and character.
3 And this is cross-examination. I think I should have the right
4 to be able to --

5 THE COURT: Well --

6 MR. CRISTALLI: -- cross-examine this witness.

7 THE COURT: -- you can cross-examine. But you can't --
8 you can't impeach with things that are not in contradiction of
9 her testimony. I don't see the relationship.

10 Sustained.

11 MR. CRISTALLI: Okay.

12 BY MR. CRISTALLI:

13 Q. Cheryl Godfrey wasn't doing the books, was she?

14 A. No, she wasn't.

15 Q. You were doin' the books; right?

16 A. Generally, yes.

17 Q. 98 percent of the time according to your testimony; correct?

18 A. With regard to the bank accounts, yes. But this -- if
19 you're considering --

20 Q. I'm asking you if you did the banking, the --

21 A. Oh, the banking, yes.

22 Q. Okay.

23 A. Generally, yes.

24 Q. Part and parcel of your responsibility with regard to the
25 banking was controlling the money including the cash. True?

1 A. Not in the lobby, no. Untrue.

2 Q. I'm not asking you about the lobby. I'm asking --

3 A. That's cash.

4 Q. Okay. Did you go to the bank -- did you on a regular basis
5 write checks to yourself and go to the bank and cash them? Did
6 you or did you not, ma'am?

7 A. Yes.

8 Q. Thank you.

9 A. We all know that.

10 Q. Okay. Ma'am, you haven't been indicted in this case, have
11 you?

12 A. No, sir, I am not. Not that I know of anyway.

13 Q. Government's in fact stated to you that you're not gonna be
14 indicted, you're not a target or subject of this investigation;
15 correct?

16 A. Um, they never stated that I was part of this indictment,
17 no.

18 Q. Yet you were the one handling the daily, uh, activity in
19 terms of banking from Freedom Books; correct?

20 A. Yeah, I handled the banking. Yes. I didn't know that
21 mattered.

22 MR. CRISTALLI: Court's indulgence.

23 THE COURT: Yes.

24 (Discussion between Mr. Cristalli and
25 Mr. Modafferi.)

1 BY MR. CRISTALLI:

2 Q. Okay. Um, now, ma'am, you do not dispute the fact that you,

3 um, earned wages; correct?

4 A. Did I earn money working at Freedom Books? Yes.

5 Q. Okay. And you never paid taxes; correct?

6 A. Correct.

7 Q. You never paid taxes before you worked at Freedom Books, did

8 you?

9 A. Uh, yes, I did.

10 Q. Are you working now?

11 A. No, I'm not.

12 Q. Are you paying taxes now?

13 A. Would I be required to pay taxes if I didn't work?

14 Q. I don't know.

15 A. Okay.

16 Q. Are you making money in any capacity?

17 A. Um, I get an allowance from my baby's father. Does that

18 count being a housewife -- or, I mean, a at-home mom, rather?

19 I'm sorry.

20 (Discussion between Mr. Cristalli and

21 Mr. Modafferi.)

22 MR. CRISTALLI: I have no further questions.

23 THE COURT: Thank you.

24 Um, well, let's -- Mr. Bowers, do you have any

25 questions?

1 MR. BOWERS: I'm not sure. If you're inclined to take
2 a break, maybe now will be an appropriate time. Otherwise --

3 THE COURT: Well --

4 MR. BOWERS: -- Court's indulgence for just a moment.

5 THE COURT: Humm?

6 MR. BOWERS: Otherwise Court's indulgence for just a --

7 THE COURT: Yes. We're a little bit ahead of the break
8 time.

9 MR. BOWERS: Okay.

10 THE COURT: But --

11 MR. BOWERS: Give me just a moment if you don't mind,
12 your Honor.

13 THE COURT: Depends on how long you're gonna be.

14 MR. BOWERS: I can answer that question very quickly.

15 (Pause in the proceedings.)

16 MR. BOWERS: Your Honor, just a couple questions.

17 THE COURT: Okay. Go ahead, Mr. Bowers.

18

19 CROSS-EXAMINATION

20 BY MR. BOWERS:

21 Q. Good morning, Ms. Desgrosellier. Right? I'm sorry.

22 A. Desgrosellier.

23 Q. Desgrosellier? I apologize.

24 A. Um-hum. That's okay.

25 Q. I'm Chad Bowers. I'm Larry Cohen's attorney in this matter.

1 Just so I'm clear, you have no personal knowledge of
2 anything involving Larry Cohen from the time you were associated
3 with Freedom Books; is that correct?

4 A. Yeah, that's correct.

5 Q. All right. And then I wanna just clarify a couple of
6 foundational things.

7 You've met with either Government attorneys or
8 Government agents on a number of occasions; is that correct?

9 A. That's correct.

10 Q. What's your best estimate of that number?

11 A. How many times you mean?

12 Q. Yeah. If it's, you know, five to ten; under 20; in excess
13 of two.

14 A. Um, throughout the entire time from the first time I met
15 with them regarding my subpoena? Are you including that as
16 well?

17 Q. The whole thing, from --

18 A. Probably five to ten.

19 Q. Five to ten times.

20 A. Yeah.

21 Q. Okay. And is it your understanding that it's the
22 Government's practice to take notes of those meetings in one
23 form or another?

24 A. I have no idea.

25 Q. Okay. So you don't know. You've never seen them take

1 notes?

2 A. Um, sometimes they'll jot things down but not direct notes
3 or, you know, like writing every word, no.

4 Q. No. But they write something down.

5 A. Sometimes and sometimes they don't.

6 Q. Okay. Do you -- did you ever write anything down from those
7 meetings?

8 A. No, I did not --

9 Q. Um --

10 A. -- that I recall.

11 Q. I understand.

12 Do you -- would -- would you say that your
13 conversations with the Government, uh, a sufficient recollection
14 of those meetings to say that your -- your memory is more
15 reliable than Government agents' memory?

16 A. Um, not necessarily. I do have a photographic memory, um,
17 with regard to certain things, yes --

18 Q. Okay.

19 A. -- I do.

20 Q. But --

21 A. Through studying and school and stuff I -- did I create --
22 you know, was able to do that.

23 Q. Well, is it fair to say that when you reference a
24 photographic memory you're referencing the notion that you
25 actually sort of create a picture in your mind's eye of a

1 document or a sentence or a phrase that's written down?

2 A. Um, that's possible, yes, or the situation in which I was in
3 and the word that came out of my mouth, yes.

4 Q. So your photographic memory you're saying applies to the
5 words as well?

6 A. Uh, no, not necessarily. My memory applies to the words as
7 well, not necessarily photographic but my memory.

8 Q. Okay. Um, I -- I'm sorry. You -- when you had consumed the
9 methamphetamine in whatever form over the years, was it snorted?
10 was it smoked? did you inject it? How was that done or did it
11 change over time?

12 A. Um, it started with, um, injection, um, not by choice, by a
13 family member. And then, uh -- when I was ten years old -- and
14 then, uh, when I went through my 12 steps, I never touched a
15 needle myself after I was 15 years old -- or 16, rather -- I'm
16 sorry -- 16 years old I never touched a needle again and went
17 through my 12-Step Program by the time I was 18. And, um, the
18 only other way I ever did it was smoke it or snort it.

19 (Discussion between Mr. Bowers and

20 Mr. Cristalli.)

21 BY MR. BOWERS:

22 Q. You -- you weren't living with your mother during the time
23 that you were shooting methamphetamine. Is that what you're
24 saying?

25 A. I did live with my mother while I shot methamphetamine, yes.

1 Q. Okay. So this is when you're younger. I don't really want
2 to talk about that. I want to --

3 A. Thank you.

4 Q. -- talk about when you're older. And you're either snorting
5 or smoking it; correct?

6 A. Generally, yes.

7 Q. Okay. Okay. Is there a preference? I mean, one more than
8 the other?

9 MR. IGNALL: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MR. BOWERS:

12 Q. Um, I'll withdraw that question. That's fine.

13 As I understand it, you had access to Mr. Schiff's, um,
14 checking accounts, at least some of them; right?

15 A. Two of them, yes.

16 Q. Okay. And a stamp with -- with his name on it, signature
17 stamp?

18 A. Yes.

19 Q. Okay. And you -- you had some accountability to Irwin,
20 meaning you explained to him what you did, but -- but you were
21 the one with access to that. Is that right?

22 A. I'm sorry. What?

23 Q. Well, you -- you would say, Mr. Schiff, I wrote a check for
24 this or I wrote a check for that. But you were -- you had sort
25 of carte blanche access to these things. Right?

1 A. No. Not carte blanche, no.

2 Q. No --

3 A. I mean, to the checkbooks themselves?

4 Q. Yes --

5 A. They --

6 Q. -- and the stamp that went with them.

7 A. Right. They were in my office, yes.

8 Q. Okay.

9 A. But Irwin could come in every once and a while and, you

10 know, grab a check here or there if he wished, um, or other, I

11 mean, employees if they wanted to steal a check they could.

12 But...

13 Q. Okay. So it's safe to say that there wasn't --

14 A. Check --

15 Q. -- it's not a case where it was locked up in a safe some --

16 A. I did get a lock box in order to lock them up and gave Irwin

17 a copy of those keys to the box that was in my desk that I

18 actually screwed down inside the door of my desk.

19 Q. Okay. But you also had a copy of those keys; right?

20 A. Only me and Irwin had copies of those keys.

21 Q. Thank you.

22 Um, and I'm sorry. You're a full-time housewife now?

23 A. Um, house mom. I'm sorry. I raise my son. I stay -- I'm

24 an at-home mom.

25 Q. I'm sorry.

1 A. Yes.

2 Q. I don't mean that in a disparaging way.

3 A. That's okay.

4 Q. Okay. I just -- I just wanna make sure.

5 And -- and then last thing was, just so I understand
6 this: There -- there's a gentleman named "Perry Oshiro" that
7 you don't dispute is -- is known to be a drug dealer, or at
8 least acted as a drug dealer for you; is that correct?

9 A. Um, yeah. Later my -- yes, my --

10 Q. Okay. So -- so Perry Oshiro sells drugs. Um, but your
11 testimony is that the checks that you gave Mr. Oshiro over a
12 two-week period in April of, I believe, it was 2000 or --

13 A. Um-hum --

14 Q. -- whatever --

15 A. -- 2000.

16 Q. -- you know which checks --

17 A. Yes.

18 Q. -- I'm talking about --

19 A. Yes.

20 Q. -- about; right?

21 A. Yes.

22 Q. Your testimony is that those funds were not written to
23 Mr. Oshiro to acquire narcotics of any kind but they were
24 instead written to him because you were paying him for him and
25 another person who were volunteering there? Was that...

1 A. Um, him and his son were filling out code books. But I
2 wrote the check to Perry, who is the father --

3 Q. Uh-huh.

4 A. -- of his son, Brian, who went to high school at the time.
5 And I assumed Perry followed Irwin's material.

6 Irwin knew Perry. Irwin knew Perry was a volunteer
7 because Perry was one of the very few volunteers who would
8 accept a check as payment for coding the IRS Code books.
9 Because we had so many orders for these things, we needed to
10 call in other volunteers.

11 There was another volunteer -- and I'm sorry. I do not
12 remember his name -- but he was a very strong follower of
13 Irwin's, um, a shorter gentleman, but I also paid him as well.
14 And he was included in some of the payroll checks because he
15 could only take cash for payment, \$10 per Code book that was
16 coded, or if they came in and answer phones as well.

17 We had to do that when we reprinted The Federal Mafia
18 and there were so many orders constantly. We were very busy.

19 Q. Okay. Um, I'm sorry. I --

20 A. We didn't have --

21 Q. -- must have --

22 A. -- enough employees.

23 Q. -- I must have asked that question wrong. Let me -- let me
24 try it again.

25 Um, your testimony is Mr. Oshiro was accepting checks

1 on behalf of him and other volunteers --
2 A. No.
3 Q. -- him and his son --
4 A. Right --
5 Q. -- because he was --
6 A. -- for him and his son.
7 Q. -- willing to accept checks --
8 A. Right.
9 Q. -- and that that money was for Mr. Oshiro's --
10 A. Work --
11 Q. -- and his son's --
12 A. -- that he had done for Irwin.
13 Q. -- volunteer services, not drugs?
14 A. Right --
15 Q. Okay.
16 A. -- right, yes.
17 Q. Okay.
18 A. Yes, yes.
19 Q. Thank you.
20 A. Yes, that's correct.

21 THE COURT: Mr. Schiff.

22

23 CROSS-EXAMINATION

24 BY MR. SCHIFF:

25 Q. Michelle, wasn't the reason that you had my checks and that

1 you could stamp it was that there were times when I was away for
2 three and four weeks at a time? As a matter of fact --

3 THE COURT: Wait a minute.

4 BY MR. SCHIFF:

5 Q. -- in that month of --

6 THE COURT: Just one question --

7 MR. SCHIFF: I'm sorry.

8 THE COURT: -- at a time, not a speech.

9 BY MR. SCHIFF:

10 Q. Wasn't I away --

11 THE COURT: Go ahead.

12 BY MR. SCHIFF:

13 Q. -- for weeks at a time?

14 A. Sometimes, yes.

15 Q. How long of a period of time do you recall me being away out
16 of the office?

17 THE COURT: Regarding which time?

18 MR. SCHIFF: Pardon me?

19 THE COURT: Which trip? Are you talking about one time
20 or are you --

21 MR. SCHIFF: No.

22 THE COURT: -- talking about --

23 MR. CRISTALLI: Well --

24 THE COURT: -- cumulative --

25 MR. SCHIFF: -- well --

1 THE COURT: -- or what?

2 BY MR. SCHIFF:

3 Q. The specific time that April when -- when we were talking
4 about when you were writing those checks. How many -- how many
5 weeks was I away for?

6 A. In April of what, '99 or 2000, and what checks?

7 Q. Well, do you have a recollection of me being away while you
8 were working for me, of my being away for an extended period of
9 time?

10 A. Uh, "extended" meaning more than a week, Irwin?

11 Q. Yes. Three, four weeks. Two weeks.

12 A. No, not more than three, four weeks, not usually, no.
13 Not --

14 Q. Well, two --

15 A. -- while I --

16 Q. -- weeks?

17 A. -- worked there.

18 Maybe two weeks if you had more than one seminar that I
19 set up for you in a row, yes.

20 Q. So I was going around doing seminars?

21 A. Yes, you were.

22 Q. And, therefore, bills had to get paid; my employees had to
23 get paid. And that's why you had the stamps. Is that correct?

24 A. Uh, yeah.

25 Q. Okay. Um, now, isn't it -- now, you testified that you

1 quit; is that right?

2 A. Yes, I did.

3 Q. Isn't it a fact that I caught you, you were embezzling money
4 by using my credit cards and ATM machines; that I called the
5 credit card company and they told me my credit cards were being
6 used?

7 MR. IGNALL: Objection, your Honor.

8 BY MR. SCHIFF:

9 Q. Isn't that why I fired you?

10 THE COURT: Wait a second.

11 MR. IGNALL: Inappropriate impeachment. The
12 impeachment -- if he thinks there's a specific instance of
13 conduct --

14 MR. CRISTALLI: He's not --

15 MR. IGNALL: -- he can ask --

16 MR. CRISTALLI: -- impeaching. He's --

17 MR. IGNALL: -- her if --

18 MR. CRISTALLI: -- asking a --

19 MR. IGNALL: -- she did it --

20 MR. CRISTALLI: -- question.

21 MR. IGNALL: -- or she didn't do it.

22 THE COURT: Sustained.

23 BY MR. SCHIFF:

24 Q. Didn't I in fact fire you?

25 A. No.

1 Q. Oh, I didn't.

2 Were you aware that I filed a police report against you
3 for about \$46,000?

4 A. Not in until after my Grand Jury, uh, testimony. The
5 Government actually is the one who informed me of that, uh,
6 police report. I had no clue.

7 Q. Were you aware that I got reimbursed by an insurance company
8 based upon the proof that I gave them that you were --

9 MR. IGNALL: Objection. Relevance to this --

10 THE WITNESS: No.

11 BY MR. SCHIFF:

12 Q. You weren't aware of it?

13 THE COURT: I'm sorry?

14 MR. IGNALL: Objection to relevance to this witness.

15 THE COURT: What is the relevance to this witness?

16 BY MR. SCHIFF:

17 Q. Do you recall --

18 THE COURT: Sustained.

19 BY MR. SCHIFF:

20 Q. -- your coming to me before your mother ever helped me out
21 at the office saying that she needed money for this that and the
22 other thing?

23 A. I -- I don't recall, Irwin. I don't recall.

24 MR. SCHIFF: Can I have -- can I have -- I want to
25 ask...

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

3 BY MR. SCHIFF:

4 Q. Um, you also indicated -- you discussed the Freedom
5 Foundation. Oh, incidentally, when you were making deposits,
6 didn't I hear you say that you deposit all of the money orders
7 that we got?

8 A. All of them?

9 Q. Yeah, the money orders.

10 A. Yeah, generally. Yes.

11 Q. And we got a lot of money orders, didn't we?

12 A. Yes, Irwin, we received a, uh, lot of payments --

13 Q. Yeah.

14 A. -- material.

15 Q. So I could have very easily have cashed all those money
16 orders and put it in my pocket and there would be no record.
17 But we deposited the money orders.

18 A. Oh, I -- well, you never -- we never discussed that. You
19 never told me that's what you wanted otherwise that's --

20 Q. But you --

21 A. -- what would --

22 Q. -- deposited everything.

23 A. -- have been done.

24 Q. Also, isn't it a -- you discussed the Freedom Foundation?

25 A. Yes --

1 Q. Okay. Yes.

2 A. -- an account that I had to hand over to Charity.

3 Q. And the fact is that we paid some of the, um, radio time
4 from the Freedom Foundation; is that right?

5 A. Yes, upon your request.

6 Q. Yeah.

7 We also paid expenses of other people who incurred
8 expenses by being a legal -- had legal fees. Does the word
9 "Peggy Williams" mean anything to you?

10 A. Um, Irwin, um, I really wasn't in control of Freedom
11 Foundation account. I don't understand why you're asking me
12 these questions.

13 Q. The point is --

14 A. Charity was basically in control of the Freedom Foundation
15 account.

16 Q. Okay. The fact is --

17 A. Remember?

18 Q. -- that the Freedom Foundation was created so people could
19 donate to the Freedom Foundation so --

20 A. That's not --

21 Q. -- I could use that money to promote the ideas that we were
22 espousing.

23 A. Okay. I --

24 Q. Did you ever write a check to me personally from the Freedom
25 Foundation?

1 A. Uh, not that I recall, Irwin.

2 Q. I never took a -- did I ever take any money out of the
3 Freedom Foundation account?

4 A. I did not have control of the Freedom Foundation account,
5 Irwin.

6 Q. I thought you testified that --

7 A. No --

8 Q. -- you did.

9 A. -- I did not. I testified that I gave that account to
10 Charity because I could not handle more than two accounts and
11 there was a lot regarding --

12 Q. Also --

13 A. -- the Foundation account because it was considered a
14 nonprofit --

15 THE COURT: Hold on a minute.

16 "Charity" meaning --

17 THE WITNESS: Another person.

18 THE COURT: -- a person --

19 THE WITNESS: Yes, Charity --

20 THE COURT: -- not a --

21 THE WITNESS: -- yes, was a person, yes.

22 BY MR. SCHIFF:

23 Q. Also --

24 THE COURT: -- not a nonprofit?

25

1 BY MR. SCHIFF:

2 Q. -- did you ever discuss with me why I paid my workers in
3 cash?

4 A. Yes, we did.

5 Q. And what did I tell you?

6 A. You are to pay them in cash. You are to do exactly as Linda
7 told you. Some people are on Social Security, Michelle. Some
8 people collect unemployment, Michelle. They are to receive
9 cash.

10 I asked you, can we please pay them by check? And
11 several employees said, I don't want a check. I won't take a
12 check, including --

13 Q. Isn't the --

14 A. -- my mother.

15 Q. -- fact that was a -- I just paid by cash because I said
16 there was no law that says I can't pay by cash and some
17 employees didn't have checking accounts?

18 A. Uh, no, Irwin. That's not --

19 Q. Did I make --

20 A. -- your statement that you made to me.

21 Q. Did I make any secret that I was paying people in cash?
22 That's the way --

23 A. No.

24 Q. -- they wanted to get paid.

25 A. Okay.

1 Q. I wasn't --

2 A. I'm not arguing that.

3 Q. I wasn't paying people by cash to hide anything, was I?

4 A. Maybe they were. I -- I don't know. Maybe you taught them
5 to. I don't know --

6 Q. But --

7 A. -- Irwin.

8 Q. -- but that was a policy that was open. Anybody came in
9 I --

10 A. That was the policy --

11 Q. -- this is --

12 A. -- yes.

13 Q. -- what your salary is. I'll pay in cash. And that's it.

14 A. Okay.

15 Q. Okay.

16 A. I didn't argue that.

17 Q. Now, did you ever come to any of my seminars?

18 A. Yes, I did.

19 Q. Did you read my books?

20 A. Not all of them, no.

21 Q. But there is a big chapter in my book that explains how I
22 believe the IRS is illegally seizing money from the public.
23 There's -- there's a chapter in my book about how the
24 government --

25 THE COURT: Are you asking a question --

1 BY MR. SCHIFF:

2 Q. -- how the IRS --

3 THE COURT: -- or are you making a speech?

4 MR. SCHIFF: No. I'm saying if she read that chapter.

5 THE WITNESS: What book? I don't know.

6 BY MR. SCHIFF:

7 Q. In other words, if I believe the IRS was seizing money
8 illegally, why would I have to hide anything from the IRS?

9 A. I don't know, Irwin. I wasn't there to worry about that. I
10 was there to run your business as you saw fit. That's what my
11 job was, was not based on --

12 Q. Wasn't your --

13 A. -- anything else.

14 Q. -- job primarily to pay my bills?

15 A. Okay.

16 Q. And, because I was away a good part of the time, I trusted
17 you to --

18 A. Thank you.

19 Q. -- to pay the bills.

20 A. Thank you.

21 Q. And then I discovered that you were using --

22 A. Oh, I don't know --

23 Q. -- my credit card --

24 A. -- what you discovered.

25 MR. SCHIFF: All right.

1 THE WITNESS: I don't know --

2 MR. SCHIFF: No more questions.

3 THE COURT: No speeches.

4 THE WITNESS: Thank you.

5 THE COURT: All right.

6 Any redirect?

7 MR. IGNALL: Ever so briefly if we could.

8 THE COURT: All right. Hold on. Let's -- let's do

9 redirect and then we'll take our break.

10 MR. SCHIFF: One more question.

11 BY MR. SCHIFF:

12 Q. When you were working -- when you were working for me, was

13 Jerry Oliver working for me?

14 A. Who?

15 Q. Jerry Oliver.

16 A. I...

17 Q. He was the --

18 A. I'm sorry --

19 Q. -- he was a --

20 A. -- Irwin.

21 Q. -- former employee of the IRS.

22 A. I -- I don't recall that name. I don't know, Irwin. There

23 was a lot of volunteers and a lot of people who came in and out,

24 um, without my approval at the end. So I don't know. It could.

25 Q. You just mentioned there were a lot of volunteers.

1 A. A lot of volunteers and many employees you began to pay.

2 Q. But there were many volunteers.

3 A. There was a couple, yeah --

4 Q. Have you --

5 A. -- um-hum.

6 Q. -- any idea why people would volunteer to come work for
7 Freedom Books?

8 MR. IGNALL: Objection. Relevance and speculation.

9 THE COURT: What is the relevance?

10 MR. SCHIFF: Well, I just -- I can ask for --

11 BY MR. SCHIFF:

12 Q. Why would people come and volunteer to --

13 THE COURT: The objection --

14 BY MR. SCHIFF:

15 Q. -- work at Freedom Books?

16 MR. IGNALL: Same objection.

17 THE COURT: -- is sustained --

18 MR. IGNALL: Calls for her --

19 BY MR. SCHIFF:

20 Q. Could it be --

21 MR. IGNALL: -- to speculate on --

22 THE COURT: -- speculative.

23 MR. SCHIFF: It's speculative.

24 THE COURT: She's speculating.

25

1 BY MR. SCHIFF:

2 Q. But there were a lot of volunteers. And -- and --

3 THE COURT: Asked and answered.

4 BY MR. SCHIFF:

5 Q. -- isn't it a fact --

6 THE COURT: She answered that.

7 BY MR. SCHIFF:

8 Q. -- that I never heard of -- this Mr. Peroni [sic] never

9 worked for us to my knowledge?

10 A. Who?

11 MR. IGNALL: Objection. Beyond the scope --

12 BY MR. SCHIFF:

13 Q. The drug dealer.

14 MR. IGNALL: -- of direct and --

15 MR. SCHIFF: No further questions.

16 THE COURT: All right.

17 Redirect?

18 MR. IGNALL: Thank you, your Honor.

19 THE COURT: Do you want to take a break before you

20 redirect? We're right there.

21 MR. IGNALL: It's only -- it's hopefully two, three

22 minutes. Might be nice to --

23 THE COURT: Well, I don't know what it'll turn into.

24 So...

25 MR. IGNALL: Yeah.

1 MR. CRISTALLI: Well, if it's only two or three
2 minutes, it shouldn't be much.

3 MR. IGNALL: Pardon?

4 MR. CRISTALLI: If it's only two or three minutes, I
5 wouldn't think I would have much in response.

6 MR. BOWERS: Just one more question.

7 MR. IGNALL: All right.

8

9 REDIRECT EXAMINATION

10 BY MR. IGNALL:

11 Q. You were asked, Ms. Desgrosellier, on cross-examination
12 about allegations that you were stealing from Mr. Schiff. I
13 assume you remember those questions.

14 A. Yeah.

15 Q. Were you ever contacted by the police about any of those
16 allegations?

17 A. No, I was not. No, I was not.

18 Q. You used the word "volunteer" a number of times. When you
19 say "volunteer," did any volunteers actually get paid for doing
20 anything at Freedom Books?

21 A. Some of them did. Once the business got booming so much,
22 Irwin offered to pay some of them to help with coding IRS Code
23 books and certain things, answering phones, because it was a
24 high demand and we couldn't keep up. So, yes, he did offer and
25 they did accept payment.

1 Q. And did you have responsibility for paying these people?

2 A. Yes, I did.

3 Q. I believe on cross-examination you were shown a few checks
4 that you wrote out to Perry Oshiro.

5 A. Yes.

6 Q. I'm sure you remember that discussion.

7 Did -- did Mr. Schiff have access to the bank records
8 from that bank account?

9 A. Oh, of course.

10 Q. Did you have the ability to write a check to cash to pay
11 Mr. Oshiro in cash instead?

12 A. If I would have written a check to myself and went to the
13 bank and cashed it, yes, he could have received cash.

14 Q. You could have chosen to do that?

15 A. Yes, uh-huh. It didn't matters to Irwin; it mattered to me.

16 Q. Last question.

17 Has anyone from the Government made you any kind of a
18 promise in return for your testimony here today?

19 A. No, just that that they would do what they could to get me
20 the phone numbers that I needed to take care of my own stuff.
21 That's the only promise that --

22 Q. But was that in return --

23 A. -- and it wasn't even --

24 Q. -- for your testimony?

25 A. -- really a promise.

1 No, no, no, no.

2 MR. IGNALL: All right. No further questions, your
3 Honor.

4 THE COURT: Recross?

5 MR. CRISTALLI: Your Honor, I don't have anything.

6 THE COURT: Mr. Bowers, anything?

7 MR. BOWERS: No, no. I'm fine. Thanks, Judge.

8 THE COURT: Mr. Schiff?

9 MR. SCHIFF: No.

10 THE COURT: The witness is excused.

11 MR. IGNALL: Thank you, your Honor.

12 THE COURT: Thank you.

13 We're in recess for 15 minutes.

14 (Jury leaves the courtroom at 10:39 a.m.)

15 THE COURT: Any matters of business? Government?
16 Mr. Cristalli? Mr. Bowers?

17 MR. CRISTALLI: No, your Honor.

18 THE COURT: Mr. Schiff, any matters of business? All
19 right.

20 (Recess from 10:49 a.m. to 11:00 a.m.)

21 THE COURT: Go ahead and get them.

22 THE CLERK: They are right outside the door.

23 (Jury enters the courtroom at 11:01 a.m.)

24 THE COURT: Please be seated.

25 Will counsel stipulate to the presence of the jury?

1 MR. IGNALL: Yes, your Honor.

2 MR. CRISTALLI: Yes, your Honor.

3 THE COURT: Thank you.

4 Mr. Bowers?

5 MR. BOWERS: Yes, your Honor.

6 THE COURT: Mr. Schiff?

7 MR. SCHIFF: Yes, your Honor.

8 THE COURT: Jury is present. You may call your next
9 witness.

10 MR. IGNALL: United States calls Matt Diamond.
11 (Matthew Diamond takes the witness stand.)

12 MR. CRISTALLI: Your Honor --

13 THE COURT: Yes.

14 MR. CRISTALLI: -- I think we may need a quick sidebar.

15 THE COURT: Okay. Sidebar.
16 (Sidebar conference was held as follows:)

17 MR. CRISTALLI: I don't know. It's almost for the
18 Government to a certain extent too. She's pretty emotional
19 right now; she's crying. I mean, you wanna just have her
20 continue to -- I'm gonna try to get her straight.

21 MR. BOWERS: They'll waive to leave if you -- I mean --

22 THE COURT: Humm?

23 MR. BORK: They'll waive their right to be present
24 during this portion of the next witness's testimony and won't be
25 distracting I'm sure.

1 MR. CRISTALLI: Uh-huh. Broke my million-dollar pen.

2 THE COURT: I got a government pen.

3 MR. CRISTALLI: This is a -- Gary, is she doin' all
4 right, a little better.

5 MR. MODAFFERI: She looks pretty good.

6 MR. IGNALL: And I'm sorry. Is the proposal that she'd
7 want to waive her right to be present for this witness?

8 MR. MODAFFERI: She looks distraught, Judge. She's
9 crying.

10 MR. IGNALL: Do you want to do that? I'm not sure...

11 MR. CRISTALLI: What's the Court's position with regard
12 to that?

13 THE COURT: I'd rather not do it. But, you know --

14 MR. CRISTALLI: All right. Well, we'll --

15 MR. BOWERS: Otherwise --

16 MR. CRISTALLI: We'll get her straight. We'll get her
17 straight.

18 MR. MODAFFERI: If we could just get some tissues.

19 MR. CRISTALLI: Tissues and stuff, yeah.

20 THE CLERK: I have some tissues.

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

22 THE COURT: Let's see what --

23 MR. BOWERS: Can I raise --

24 THE COURT: -- maybe the testimony kind of --

25 MR. IGNALL: Yeah, this is --

1 MR. CRISTALLI: Mellow out.

2 THE COURT: -- take her mind off of it.

3 MR. IGNALL: -- not gonna be that exciting.

4 MR. CRISTALLI: No, it's not.

5 MR. IGNALL: I didn't mean that.

6 MR. BOWERS: Plus all the other --

7 THE COURT: I was watching the jury for sleepers.

8 MR. IGNALL: Can I just raise one thing quickly? I
9 don't know if we'll be able to -- I'm hoping to do this quickly.
10 Mr. Diamond is a bailiff over in --

11 THE COURT: Yes.

12 MR. IGNALL: -- state court.

13 THE COURT: Uh-huh.

14 MR. IGNALL: If there's some way we can get him done
15 before the lunch break because he has no one to cover him for
16 this afternoon. Hopefully we'll --

17 THE COURT: Yeah. Okay.

18 MR. IGNALL: If it's possible. If it's not, it's not.

19 THE COURT: Yeah. Well, we'll go as long as we can.

20 MR. IGNALL: Okay.

21 THE COURT: Ready?

22 MR. IGNALL: Yes. Thank you.

23 THE COURT: So let me know --

24 MR. CRISTALLI: Okay. Thank you, your Honor.

25 THE COURT: If you want to readdress it.

1 (Sidebar conference concluded and the
2 following is held in open court:)

3 THE CLERK: Go ahead and take the witness stand. Sir,
4 remain standing and raise your right hand.

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

8 THE WITNESS: I will.

9 THE CLERK: Please be seated.

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

12 THE WITNESS: Matthew Diamond. Last name,
13 D-i-a-m-o-n-d.

14

15 MATTHEW DIAMOND,

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

18

19 DIRECT EXAMINATION

20 BY MR. IGNALL:

21 Q. Good morning --

22 THE COURT: Go ahead.

23 BY MR. IGNALL:

24 Q. -- Mr. Diamond.

25 A. Good morning.

- 1 Q. Where do you live, Mr. Diamond?
- 2 A. In Las Vegas.
- 3 Q. How long have you lived in Las Vegas?
- 4 A. Eleven years.
- 5 Q. What do you do here in Las Vegas?
- 6 A. I'm a bailiff at the District Court.
- 7 Q. And how long have you been there?
- 8 A. Ten years.
- 9 Q. Do you earn a salary as a bailiff in the District Court?
- 10 A. Yes.
- 11 Q. Do you get a Form W-2 at the end of the year?
- 12 A. Yes.
- 13 Q. All right. Have you ever met -- have you ever heard of
- 14 someone named "Irwin Schiff"?
- 15 A. Yes.
- 16 Q. When did you first hear of Irwin Schiff?
- 17 A. Back in the '60s.
- 18 Q. How did that come about?
- 19 A. He was on a television show, David Susskind,
- 20 S-u-s-s-k-i-n-d.
- 21 Q. Since you moved to Las Vegas about 11 years ago, did you
- 22 ever hear of Mr. Schiff again?
- 23 A. Yes.
- 24 Q. When was that?
- 25 A. On the radio.

- 1 Q. Do you remember when?
- 2 A. I would say '95/'96.
- 3 Q. What was Mr. Schiff talking about on the radio?
- 4 A. He was promoting a zero tax return program.
- 5 Q. Was he promoting anything else on the radio show?
- 6 A. I'm not sure I understand.
- 7 Q. Was there anything else he was promoting on the radio show?
- 8 A. No. Just zero taxes.
- 9 Q. Was there anything he was trying to sell on the radio show?
- 10 A. His books. He's published several books.
- 11 Q. After you heard Mr. Schiff on the radio, did you do anything
- 12 in response to what you heard?
- 13 A. Not immediately.
- 14 Q. At some point did you do anything?
- 15 A. Yeah. About, uh, I think in '96, yes.
- 16 Q. What did you do in '96?
- 17 A. I purchased his book.
- 18 Q. Where did you go to purchase the book?
- 19 A. He had an office, uh, in some little -- a little, tiny
- 20 building somewhere. You have to go around the back. I'm not
- 21 sure where it was. It was in Las Vegas somewhere.
- 22 Q. What was the name of the business?
- 23 A. Uh, I think it was Freedom Books.
- 24 Q. What did you buy when you went into Freedom Books?
- 25 A. I bought The Federal Mafia.

1 Q. Uh, did you listen to Mr. Schiff's radio program at any
2 point after that?

3 A. Yes.

4 Q. And what did Mr. Schiff talk about on the radio program?

5 A. He talked about his program of zero tax returns and the, uh,
6 government's illegal collection and withholding of your taxes.

7 Q. In response to that, did you ever return to Freedom Books to
8 do anything?

9 A. Not immediately, no.

10 Q. At some point, did you go back to Freedom Books?

11 A. Yes.

12 Q. When was that approximately? If you don't recall, there may
13 be some documents I can show you that might refresh your
14 recollection.

15 A. Okay.

16 Q. Is there anything that would refresh your recollection as to
17 when that was?

18 A. Not particularly because...

19 Q. All right. Well, we'll -- we may get back to that in a
20 moment.

21 Why did you go back to Freedom Books?

22 A. To pick up forms.

23 Q. What kind of forms?

24 A. They were, uh, response forms to, uh, the information in his
25 book. If you use the information in his book, uh, and filed

1 your zero returns to -- to, uh, get a refund on your
2 withholdings, then the IRS would send you follow-up documents
3 and correspondence. And then he had a follow-up response to the
4 IRS's correspondence and anything subsequent -- there was always
5 another response.

6 Q. Was that something you had to purchase or did he give --

7 A. Oh, yes.

8 Q. -- those away?

9 A. It was à la carte.

10 MR. SCHIFF: Can I hear the question and answer to
11 that? I didn't hear it.

12 THE COURT: The question was regarding going back to
13 Freedom Books and the witness said that he went there to pick up
14 forms. He said, if you use the information in his book and
15 filed zero returns, then the IRS would send follow-up documents
16 and correspond and then he had a follow-up to the IRS
17 correspondence and anything subsequent. And --

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

19 THE COURT: -- that was the -- that was the -- one of
20 the questions.

21 And then the last question was, "Was that something you
22 had to purchase?" And the witness said, "It was à la carte."

23 BY MR. IGNALL:

24 Q. What do you mean by "à la carte"?

25 A. Well, each document had to be purchased -- each response had

1 to be purchased separately. It wasn't a bulk --

2 Q. All right.

3 A. -- package.

4 Q. Thank you.

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

6 THE COURT: You may.

7 BY MR. IGNALL:

8 Q. If I could ask you to look at Exhibit 140 that's been
9 previously marked.

10 Do you recognize Exhibit 140, Mr. Diamond?

11 A. Yes.

12 Q. What is Exhibit 140?

13 A. It's a 1040 return.

14 Q. Filed by whom?

15 A. Myself.

16 MR. SCHIFF: What year is that, please?

17 BY MR. IGNALL:

18 Q. And what year is that?

19 A. 1996.

20 MR. SCHIFF: 1996?

21 BY MR. IGNALL:

22 Q. And what amount to you report as your income as wages?

23 A. Zero.

24 Q. Why did you report zero on that Form 1040?

25 A. I was using the Schiff program.

1 MR. SCHIFF: What was the answer to that?

2 THE COURT: He was using the Schiff program.

3 BY MR. IGNALL:

4 Q. Where did you get the Schiff program?

5 A. From Freedom Books.

6 Q. Did you have wages in 1996 --

7 A. Yes.

8 Q. -- of more than zero dollars?

9 MR. IGNALL: Government moves Exhibit 140 into evidence
10 at this time.

11 THE COURT: Any objection to 140?

12 MR. CRISTALLI: No, your Honor.

13 MR. BOWERS: That's just Mr. Diamond's tax return;
14 correct?

15 THE COURT: Correct. 1996 tax return.

16 MR. BOWERS: I have no objection, your Honor. Thank
17 you.

18 MR. SCHIFF: No. I wanna see -- do I have a copy of it
19 here? Can I --

20 MR. BOWERS: Your Honor, maybe we can help...

21 MR. SCHIFF: I wasn't prepared for this witness.
22 Nobody told me he was gonna be here.

23 THE COURT: It's a 1996 tax return.

24 MR. BOWERS: Is it 141, your Honor?

25 THE COURT: 140.

1 MR. IGNALL: 140. And they are gonna be -- to speed
2 things up, the next exhibits are gonna be sequential to that.

3 MR. SCHIFF: I mean, I wasn't told he was gonna be a
4 witness otherwise I'd be better -- have everything with me.

5 THE COURT: Well, the Government -- I'm sure you
6 mentioned his name in the --

7 MR. SCHIFF: Yes, no objection.

8 THE COURT: All right. 140 is received.

9 (Government's Exhibit No. 140, received into
10 evidence.)

11 MR. IGNALL: If we could put Exhibit 140 on the screen
12 and if we could go down to line 7 borrow that up.

13 (Document displayed in open court.)

14 BY MR. IGNALL:

15 Q. Is that -- is that where you reported zero --

16 A. Yes.

17 Q. -- for your wages?

18 Did you seek -- did you have taxes withheld from your
19 salary during the year 1996?

20 A. Yes.

21 Q. Did you seek a refund of those taxes?

22 A. Yes.

23 (Document displayed in open court.)

24 BY MR. IGNALL:

25 Q. If we could turn to the next page, where -- where does that

1 appear on this tax return?

2 A. Line 59.

3 Q. All right.

4 (Document displayed in open court.)

5 BY MR. IGNALL:

6 Q. If we could turn to the next page, did you attach anything

7 to your tax return?

8 A. Yes.

9 Q. What is it you attached?

10 A. It was the after attachment, uh...

11 Q. Is that what we see here in Exhibit 140?

12 A. That's correct.

13 Q. Where did you get that attachment?

14 A. At Freedom Books.

15 Q. Did you write this yourself?

16 A. No, sir.

17 Q. Did you purchase this attachment?

18 A. Yes.

19 MR. SCHIFF: What was that question again?

20 THE COURT: Did you purchase the attachment?

21 (Discussion between Mr. Leventhal and

22 Mr. Schiff.)

23 BY MR. IGNALL:

24 Q. If I could turn your attention to Exhibit 141 -- let me back

25 up. I'm sorry, sir.

1 What -- what date did you fill out this tax return, the
2 1996 tax return?

3 A. April 13th, 1997.

4 Q. Okay. If I could turn your attention to Exhibit 141, do you
5 recognize this document?

6 A. Yes.

7 Q. What is this document?

8 A. 1997 1040 return.

9 Q. Did you fill this one out?

10 A. Yes.

11 MR. IGNALL: At this point, the Government moves into
12 evidence Exhibit 141 and we're --

13 THE COURT: Any objection, Mr. Cristalli?

14 MR. CRISTALLI: I'm sorry, your Honor?

15 THE COURT: 141?

16 MR. IGNALL: 141.

17 MR. CRISTALLI: No objection.

18 THE COURT: Bowers?

19 MR. BOWERS: I have no objection to either of the
20 documents. They just said they were going to tender these.

21 MR. SCHIFF: No, no objection.

22 THE COURT: 141 is received.

23 MR. IGNALL: And the next exhibit Government's gonna
24 approach to move in is 142. Is there any objection to that? It
25 might speed things up a little bit.

1 THE COURT: Okay. 140 is the -- or, 142 is the --

2 MR. IGNALL: 1998 --

3 THE COURT: 1998 --

4 MR. IGNALL: -- 1040.

5 THE COURT: -- 1040.

6 Any objection to that? Mr. Cristalli?

7 MR. CRISTALLI: No, your Honor.

8 THE COURT: Bowers?

9 MR. BOWERS: No, I don't have any objection.

10 THE COURT: None?

11 Mr. Schiff?

12 MR. SCHIFF: No, no objection.

13 THE COURT: 141 and 142 are received.

14 (Government's Exhibit Nos. 141 and 142,
15 received into evidence.)

16 MR. IGNALL: If we could put on Exhibit 141 on the
17 screen.

18 (Document displayed in open court.)

19 MR. IGNALL: Thank you, Agent Steiner.

20 BY MR. IGNALL:

21 Q. How much wages did you report on your 1997 tax return?

22 A. Zero.

23 Q. Why did you report zero?

24 A. I was employing the Schiff program.

25 Q. Did you seek a refund of the taxes you had withheld?

1 A. Yes.

2 Q. How much was that?

3 A. \$1190 --

4 Q. All right.

5 A. -- and 39 cents.

6 (Document displayed in open court.)

7 BY MR. IGNALL:

8 Q. If we could turn your attention to Exhibit 142, do you
9 recognize this document?

10 A. (Nods head.)

11 Q. Do you recognize this document, sir?

12 A. Yes.

13 Q. What is this?

14 A. 1998 1040 return --

15 Q. All right.

16 A. -- prepared by me.

17 Q. And did you request -- I'm sorry. How much wages did you
18 report on this --

19 A. Zero.

20 Q. -- 1998 tax return?

21 A. Zero.

22 Q. And, with respect to both of the returns, the '97 and the
23 '98 return, did you include an attachment with those returns?

24 A. Yes.

25 Q. And where did you get that attachment?

1 A. Freedom Books.

2 Q. If I could turn your attention to what we've marked as
3 Exhibit 143.

4 MR. IGNALL: Your Honor, the Government moves into
5 evidence Government Exhibit 143. It's a self-authenticating
6 public record.

7 MR. CRISTALLI: No objection.

8 MR. BOWERS: I have no objection.

9 THE COURT: 143?

10 MR. SCHIFF: No.

11 THE COURT: No objection, Mr. Schiff?

12 MR. SCHIFF: No --

13 THE COURT: Okay. Thank you.

14 MR. SCHIFF: -- no objection.

15 THE COURT: Thank you. I'm sorry. I didn't hear you.

16 143 is received.

17 MR. IGNALL: All right.

18 (Government's Exhibit No. 143, received into
19 evidence.)

20 (Document displayed in open court.)

21 BY MR. IGNALL:

22 Q. If I could turn your attention to what we've marked as
23 Government Exhibit 143 and blow that up, what is Exhibit 143?

24 A. Well, it includes my 1040 return for 1999 and a document
25 I've never seen before.

1 Q. The certification page you've never seen, I assume?

2 A. Excuse me?

3 Q. The first page is what you haven't seen?

4 A. This top page I've never seen before, yes.

5 Q. But after that --

6 A. It's my 1040 form for 1999.

7 Q. How much did you report in wages on your 1999 tax return?

8 A. Zero.

9 Q. And why did you report zero?

10 A. I was employing the Schiff program.

11 Q. All right. Uh, and when did you file this 1999 tax return?

12 A. April 15th --

13 Q. Of?

14 A. -- 2000.

15 Q. All right. Thank you.

16 And did you include an attachment with this tax return?

17 A. Yes.

18 Q. And where did you get that attachment?

19 A. Freedom Books.

20 Q. All right. Did you request a refund for 1999?

21 A. No.

22 Q. Did you have any income tax withheld during 1999?

23 A. Yes.

24 Q. Did you ever get any refunds from the IRS after filing these

25 tax returns?

1 A. No.

2 Q. Did you get anything else from the IRS?

3 A. Correspondence.

4 (Document displayed in open court.)

5 BY MR. IGNALL:

6 Q. If I could turn your attention to Exhibit 144, do you
7 recognize Exhibit 144?

8 A. (Reviewing document.)

9 Yeah, I rec- -- I recognize the document, yes.

10 Q. What is Exhibit 144?

11 A. Uh, it's a frivolous notice. A frivolous return notice.

12 Q. It's -- it's -- who is it from?

13 A. The IRS.

14 Q. Addressed to whom?

15 A. To myself and my wife.

16 Q. And this is a copy of a letter that you got from the IRS?

17 A. It could be.

18 Q. Does it look like a letter you got from the IRS?

19 A. It looks like letters of correspondence I've received, yes.

20 MR. IGNALL: Government moves into evidence
21 Exhibit 144.

22 THE COURT: Any objection?

23 MR. CRISTALLI: No objection.

24 MR. BOWERS: No objection, your Honor.

25 MR. SCHIFF: No objection.

1 THE COURT: 144 is received.

2 (Government's Exhibit No. 144, received into
3 evidence.)

4 MR. IGNALL: If we could put Exhibit 144 on the screen.

5 (Document displayed in open court.)

6 BY MR. IGNALL:

7 Q. After you got -- what's the date of this letter,
8 Exhibit 144?

9 A. June 21st, 2000.

10 Q. Does it say what tax period this refers to?

11 A. Yes.

12 Q. What tax period?

13 A. 1999.

14 Q. All right. And, if you could just read the, uh, first
15 sentence in this letter.

16 A. "[We've] determined that the information you sent is
17 frivolous and your position has no basis in law."

18 Q. What did you do once you got this letter?

19 A. I got the proper response from Freedom Books.

20 Q. Did you take this letter down to Freedom Books?

21 A. No.

22 Q. Did you speak with anyone at Freedom Books when you went
23 down there?

24 A. Yes.

25 Q. Do you --

1 A. I -- I called -- most of my contacts with them were over the
2 phone, what do I need to address this.

3 Q. Do you --

4 A. And so they would direct me to the proper form and I'd come
5 down and pick it up or else --

6 Q. Do you remember who you spoke to?

7 A. No. The -- the -- the staff always -- was continuously
8 changing.

9 Q. When you went down to Freedom Books to pick up a response,
10 did you have to pay for that response?

11 A. Yes.

12 Q. All right. Did you send in the response that you purchased
13 from Freedom Books --

14 A. Yes.

15 Q. -- to the IRS?

16 Did you ever get any response from the IRS as a result
17 of that?

18 A. I'm certain I did.

19 Q. You don't remember in par- -- specifically what it was?

20 A. Not in particular, no.

21 Q. If I could turn your attention to what we've marked as
22 Exhibit 145, do you recognize this document?

23 A. Yes.

24 Q. What is this document?

25 A. A deficiency.

1 Q. Do you remember receiving this document?

2 A. One like it, yes.

3 Q. What's the year that this pertains to?

4 A. Let me see. 1999.

5 Q. Do you recall getting a letter from the IRS about a
6 deficiency for the year 1999?

7 A. Yes.

8 Q. All right.

9 MR. IGNALL: At this point, Government moves into
10 evidence Exhibit 145.

11 MR. CRISTALLI: No objection.

12 MR. BOWERS: No objection.

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

15 MR. SCHIFF: Um, wait a minute. The only objection I
16 have, your Honor, to this exhibit is that it's not the -- it's
17 not the complete deficiency notice. I would like to see the
18 supporting documents. That's just the first two pages.

19 Do you have the rest of it? I would like to -- it's
20 important that the rest of it be shown.

21 THE COURT: Are --

22 MR. SCHIFF: That's only the first two pages.

23 THE COURT: -- there additional pages?

24 MR. IGNALL: Not in the exhibit. I'm not sure if we
25 have the records showing the, uh -- the enclosures that are

1 listed at the bottom.

2 MR. BOWERS: I think that's a fair objection.

3 MR. SCHIFF: Pardon?

4 What is significant is the supporting documents to
5 support that deficiency, and they are not here.

6 MR. IGNALL: Your Honor, we need not move that in.

7 BY MR. IGNALL:

8 Q. Did you get a letter from the IRS saying that you had a
9 deficiency for 1999?

10 A. Yes.

11 Q. What did you do in response to getting that letter?

12 A. I called Freedom Books to see what my next step would be.

13 Q. Did you purchase anything from Freedom Books as a result of
14 that?

15 A. I'm certain of it, yes.

16 Q. Did you ever call Freedom Books --

17 A. I'm certain of it, yes.

18 Q. Why are you certain of it?

19 A. Because every correspondence from the IRS had a
20 corresponding response from Freedom Books.

21 MR. SCHIFF: Can I have a -- can I have a question?

22 THE COURT: Yes.

23 MR. SCHIFF: For these years -- do you have in here the
24 4340's for all those years? We discussed 4340's yesterday.

25 MR. IGNALL: Those have not been admitted for this

1 witness.

2 MR. SCHIFF: You didn't?

3 MR. IGNALL: They are not relevant --

4 MR. SCHIFF: Well --

5 MR. IGNALL: -- to this witness's testimony.

6 MR. SCHIFF: -- your Honor, I think it's significant
7 that we get the 4340's for all these years. They have them;
8 they can get them.

9 THE COURT: For --

10 MR. SCHIFF: Because it bears on --

11 THE COURT: -- for this witness?

12 MR. SCHIFF: -- the legitimacy. Yes.

13 THE COURT: Well, you can ask him questions on
14 cross-examination. But right now, as I said earlier --

15 MR. SCHIFF: The reason I say that, your Honor, is that
16 he won't know about what's on his 4340's --

17 THE COURT: Well --

18 MR. SCHIFF: -- unless they show it to him now.

19 THE COURT: Yeah. The Government doesn't have to put
20 in all of them. It can put in whatever it wants. And then it's
21 up to you to develop --

22 MR. SCHIFF: Your Honor, could I ask for one 4340 for
23 any one of these three years?

24 MR. IGNALL: Your Honor, the relevance of Mr. Diamond's
25 testimony is that he followed the Schiff program, filed the zero

1 returns, got responses from the IRS, went back to Freedom Books,
2 purchased more materials, and then was sold something else to
3 send to the IRS.

4 MR. SCHIFF: Your Honor, the reason my question is
5 relevant, I wanna see on his 4340 how the government treated the
6 zero returns. We won't know that unless we look at a 4340.

7 THE COURT: Well, it --

8 MR. SCHIFF: Yeah. I mean -- I mean, I don't want to
9 hold up the proceedings. It's just a question. They should be
10 able to get it.

11 THE COURT: Well, you can ask him questions about them
12 on cross-examination. But the Government is not required to --

13 MR. SCHIFF: Your Honor, I can't --

14 THE COURT: -- put in the evidence you think it should
15 put in.

16 MR. SCHIFF: Your Honor --

17 THE COURT: The Government is developing its case
18 and --

19 MR. SCHIFF: I can't ask him questions on a 4340 if
20 he's never seen it. All I need is one --

21 THE COURT: Well --

22 MR. SCHIFF: -- for one year.

23 THE COURT: -- we'll deal -- we'll deal with it when
24 the jury is not here.

25

1 BY MR. IGNALL:

2 Q. All right. Mr. Diamond, did the responses that you
3 purchased from Freedom Books resolve your tax problems with the
4 IRS?

5 A. No.

6 Q. At some point, did you initiate any kind of a court
7 proceeding to try and resolve your problems?

8 A. Yes.

9 Q. When did you do that? Actually, let me withdraw that
10 question.

11 On whose suggestion did you initiate a court
12 proceeding?

13 A. Well, I called Freedom Books when the response to the
14 deficiency wasn't effective.

15 Q. Okay.

16 A. And I was told you'd have to file the petition for Tax
17 Court.

18 Q. Who told you that, if you recall?

19 A. Someone at Freedom Books.

20 Q. Did you go in there and meet with somebody?

21 A. Yes.

22 Q. And you don't recall who it was that you met with that told
23 you that?

24 A. I don't recall who told me that over the phone. But I did
25 go down with the materials that they said I needed to file a Tax

1 Court petition.

2 Q. Did you purchase anything from Freedom Books in connection
3 with this Tax Court petition?

4 A. Yes.

5 Q. What did you purchase?

6 A. The preparation of Tax Court petition.

7 Q. They had something -- a package or something that was
8 related to the Tax Court?

9 A. No. They had someone there that I was -- I was directed to
10 that would prepare the Tax Court petition.

11 Q. Do you remember how much you paid for this Tax Court
12 petition?

13 A. A few hundred dollars. I don't recall exactly how much.
14 But...

15 Q. Do you remember who prepared the Tax Court petition?

16 A. It was -- I was directed to a cubicle with some -- with a
17 gal at a computer. And I don't know if her name was Bobbie or
18 something like that. It was one of those kind of names. I
19 don't know if it was Bobbie, but that's the name that comes to
20 mind.

21 Q. Did you, uh, actually file this petition with the Tax Court?

22 A. Yes.

23 Q. What happened in this Tax Court proceeding?

24 A. I was scheduled for a court date and the case was decided
25 without any court proceedings.

1 Q. Did you ever receive any correspondence from the Tax Court
2 indicating that?

3 A. Actually, from the U.S. Attorney's Office after I had asked
4 for a copy because I hadn't received anything.

5 Q. All right. If I could turn your attention to what we've
6 marked as Exhibit 152, do you recognize Exhibit 152?

7 A. No, sir.

8 Q. Have you ever seen -- go past the first page.

9 A. Past the first page? Okay.

10 Q. Do you recognize from this page forward?

11 A. (Reviewing documents.) Yes.

12 Q. What is this document?

13 A. It's an Order of Decision from the Tax Court.

14 Q. This is an order in your case?

15 A. Yes.

16 MR. IGNALL: Government moves into evidence
17 Exhibit 152.

18 THE COURT: Cristalli, any objection?

19 (Discussion between Mr. Cristalli and
20 Mr. Modafferi.)

21 MR. CRISTALLI: Your Honor, my only -- my only issue is
22 I made a previous objection with regard to documentation that we
23 attempted to get in through independent, uh, legal sources,
24 i.e., counsel from a different jurisdiction. Just for the
25 purposes of having the ability to present, um, that position,

1 that legal basis, we have an objection to the Government
2 supplying an alternative legal, uh, position in terms of their
3 support.

4 MR. IGNALL: Let -- let me ask one other question, your
5 Honor.

6 BY MR. IGNALL:

7 Q. When you got this decision from the Tax Court, Mr. Diamond,
8 did you ever talk to anyone at Freedom Books about it?

9 A. No.

10 Q. You didn't. Okay.

11 MR. IGNALL: We'll withdraw that, your Honor.

12 THE COURT: Okay.

13 BY MR. IGNALL:

14 Q. What was the result of your Tax Court petition?

15 A. It was denied.

16 Q. Was there anything else other than you were denied? Was
17 there any kind of a penalty involved?

18 A. Yes.

19 Q. Do you remember how much the penalty was?

20 A. Not offhand, no.

21 Q. If I were to ask you to look at Exhibit 152, would that
22 refresh your recollection?

23 A. (Reviewing documents.)

24 Yes. It's listed on the end there.

25 Q. And how much was the penalty?

1 A. 7,500.

2 Q. Thank you.

3 Mr. Diamond, are you familiar with something called "a
4 collection due process hearing"?

5 A. Yes.

6 Q. How did you first hear of such a thing?

7 A. Through Freedom Books.

8 Q. And what did -- do you remember anyone in particular you
9 talked to at Freedom Books about this?

10 A. Not in particular that I can recall.

11 Q. What did someone at Freedom Books tell you a collection due
12 process hearing was?

13 A. Well, there's a form, an application form, for due process
14 hearing, and you file that and then you get a hearing date.

15 Q. And did you go in to fill out such a form?

16 A. I obtained the form and I submitted it to the --

17 Q. To get this hearing?

18 A. -- to the IRS.

19 Q. Did you get a hearing for this -- date for this collection
20 due process --

21 A. Yes.

22 Q. -- hearing?

23 Once you got that date, did you go back to Freedom
24 Books?

25 A. Yes.

1 Q. Why did you go back there?

2 A. To get some, uh, direction as to, uh, what was gonna occur
3 durin' this due process and what I needed to -- to inquire and
4 present at this hearing.

5 Q. Did you meet with anyone at Freedom Books to discuss what to
6 do at this hearing?

7 A. Yes.

8 Q. Who did you meet with?

9 A. Irwin Schiff.

10 Q. What did Mr. Schiff tell you to do at this collection due
11 process hearing?

12 A. Well, he outlined the points I needed to stress at this
13 hearing.

14 Q. Do you recall what those points were?

15 A. Some of the points were the verification documents, the
16 legal- -- legality of the hearing, and that they -- and some
17 compliance documents that they needed to have on hand and
18 present. And that was basically the crux of the entire hearing
19 was a dispute over these documents.

20 Q. Did you meet with anyone else at Freedom Books about what to
21 do at this collection due process hearing?

22 A. Well, the day of the hearing I -- I met with Cindy Noun
23 [sic] and she volunteered to go with me to the hearing that same
24 day. Uh, just kind of to lend some moral support.

25 Q. Did --

1 A. She told me she couldn't -- she wouldn't be allowed to
2 represent or partake in it. But, uh, more an advisory kind of
3 position she'd be in, in case I had some -- some questions of
4 what I needed to ask or what I needed to present.

5 Q. Did she say why she wouldn't be able to participate?

6 A. She just said the IRS doesn't allow her --

7 MR. SCHIFF: What was --

8 THE WITNESS: -- to participate.

9 MR. SCHIFF: -- that question? I'm sorry.

10 THE COURT: Did she say why she wouldn't be allowed --
11 able to participate. Answer, she said the IRS doesn't allow her
12 to participate.

13 BY MR. IGNALL:

14 Q. Do you see Ms. Neun -- or the woman who accompanied you to
15 the collection due process hearing, do you --

16 A. Yes.

17 Q. -- see her here in court today?

18 Can you identify her by what's she's wearing?

19 A. She's sitting at the defense table. She's wearing a black
20 jacket with what appears to be a beige top, red hair, glasses.

21 MR. IGNALL: May the record reflect the identification
22 of Defendant Neun?

23 THE COURT: Yes.

24 BY MR. IGNALL:

25 Q. Did Ms. Neun accompany you to the collection due process

1 hearing?

2 A. Yes.

3 Q. Who else was there?

4 A. Two hearing officers from the IRS.

5 Q. All right. What happened at that hearing?

6 A. We just -- we each had a tape recorder. We taped -- we

7 taped the session. And they introduced themselves; I introduced

8 myself.

9 MR. SCHIFF: What was the answer? I didn't hear the

10 answer.

11 THE COURT: Why don't you go over there --

12 MR. SCHIFF: Yeah.

13 THE COURT: -- and sit down again.

14 The question was, What happened at the hearing?

15 The answer is, We each have a tape recorder. She

16 introduced themselves and I introduced myself.

17 THE WITNESS: The IRS officers introduced themselves.

18 I introduced myself and Ms. Neun introduced herself.

19 MR. SCHIFF: Can you speak a little louder? I didn't

20 hear that answer.

21 THE COURT: Everyone introduced themselves at the

22 hearing.

23 MR. SCHIFF: I didn't hear that.

24 THE COURT: Everyone introduced themselves.

25 MR. SCHIFF: Okay, okay.

1 BY MR. IGNALL:

2 Q. What happened next? What did you discuss at that collection
3 due process hearing?

4 A. I went point by point on the items that, uh, Mr. Schiff told
5 me I needed to obtain from these hearing officers to validate
6 this hearing.

7 Q. Did you ask him -- did you ask any hearing officer about
8 what law required you to pay taxes or file tax returns?

9 A. Correct.

10 Q. Was Ms. Neun present when you asked that question?

11 A. Yes.

12 Q. Did either of the IRS employees answer that question?

13 A. Yes.

14 Q. What -- do you recall the names of either employee?

15 A. One of them was called, uh -- he had a French name like Mino
16 (phonetic).

17 Q. Does the name Tom Menaugh sound familiar?

18 A. Mino or somethin' like -- yeah.

19 Q. Okay.

20 A. He's from Phoenix.

21 Q. Someone from Phoenix?

22 A. Yes.

23 MR. SCHIFF: I'm sorry. What was that?

24 THE WITNESS: He's from Phoenix.

25

1 BY MR. IGNALL:

2 Q. And did either of the employees answer the question about
3 what law required you to pay income taxes and file tax returns?

4 A. No.

5 Q. I'm sorry. I thought you said before that --

6 A. You asked me liability.

7 Q. Pardon?

8 A. You asked me liability, did you not?

9 Q. All right. What -- what -- what did -- what did the hearing
10 officer explain during the proceeding?

11 A. He told me I wasn't entitled to raise the issue of
12 liability, that I had waived that right.

13 Q. But was there ever a discussion about different sections of
14 the Code requiring the payment of income taxes and the filing of
15 tax returns?

16 A. Yes. He pointed out one section that said married persons
17 have to file jointly.

18 Q. All right. What happened as a result of this collection
19 due -- how long did this hearing last?

20 A. Oh, 15 or 20 minutes.

21 Q. What happened as a result of this, uh, collection due
22 process hearing?

23 A. I just got another notice that it was denied, and I think
24 that's what precipitated the Tax Court case.

25 Q. Is that when you filed your petition in Tax Court?

1 A. Yes.

2 Q. If I could turn your attention to Exhibit 149.

3 A. (Complies.)

4 Q. Do you recognize this document?

5 A. It's a 1040 for 2001.

6 Q. And how much income did you -- is this your 1040,

7 Mr. Diamond?

8 A. Yes.

9 Q. And how much income did you report for the year 2001?

10 A. Zero.

11 Q. Okay. Did you have any income in excess of zero for 2001?

12 A. Yes. I had wages.

13 Q. Thank you.

14 When did you file this tax return?

15 A. 2002.

16 Q. And did you --

17 MR. IGNALL: At this point, the Government moves into
18 evidence Exhibit 149.

19 THE COURT: Any objection to 149?

20 MR. CRISTALLI: No.

21 MR. BOWERS: I have no objection.

22 MR. SCHIFF: What's 149?

23 You can put them all in. I have no objection.

24 BY MR. IGNALL:

25 Q. Did this --

1 THE COURT: It is received.

2 MR. IGNALL: All right. Thank you, your Honor.

3 (Government's Exhibit No. 149, received into
4 evidence.)

5 BY MR. IGNALL:

6 Q. Did this tax return include the same attachment that your
7 previous tax returns had included?

8 A. Yes.

9 Q. Why did you report zero as your total income on your 2001
10 tax return?

11 A. I was employing the Schiff program.

12 MR. SCHIFF: Pardon? What was the answer?

13 THE COURT: "I was employing the Schiff program."

14 MR. SCHIFF: That's unresponsive. That's unresponsive.

15 THE COURT: No.

16 Why did you report zero as your total income? The
17 answer was, "I was employing the Schiff program." It is
18 responsive.

19 BY MR. IGNALL:

20 Q. As a result of the zero returns you filed, did you ever get
21 any bills from the IRS?

22 A. Yes.

23 Q. Did those bills, uh, include any penalties and interest?

24 A. Yes.

25 Q. Do you know how much the IRS says you owe in penalties and

- 1 interest on top of the tax you would have otherwise owed?
- 2 A. Now?
- 3 Q. Now.
- 4 A. Nothing.
- 5 Q. How much was it -- why is it nothing now?
- 6 A. Because I pay my taxes.
- 7 Q. All right. Do you follow the Schiff program anymore?
- 8 A. I abandoned it years ago.
- 9 Q. Why was that?
- 10 A. Didn't work.
- 11 Q. All right. Anyone tell you -- anyone at Freedom Books ever
- 12 tell you that the program wasn't gonna work?
- 13 A. To the contrary.
- 14 Q. What did they tell you?
- 15 A. Well, the radio show, he was always promoting the successes
- 16 around the country.
- 17 Q. Any -- any discussion about people having to pay money the
- 18 way you had to pay?
- 19 A. No.
- 20 MR. IGNALL: No further questions, your Honor.
- 21 THE COURT: Cross?
- 22
- 23 CROSS-EXAMINATION
- 24 BY MR. CRISTALLI:
- 25 Q. Good morning, Mr. Diamond.

1 A. Good morning, Mr. Cristalli.

2 Q. We know each other.

3 A. Very well. Yes, we do.

4 Q. You are a bailiff over in the court -- in the state court
5 system?

6 A. And you are an attorney there as well.

7 Q. So we see each other quite often?

8 A. Every day.

9 Q. Um, before you came to Las Vegas and was a police -- was a
10 bailiff, what did you do before that period of time?

11 A. I'm a retired detective specialist from NYPD.

12 Q. So, uh, it would be safe to say that, uh, you put your dues
13 in back East as a police officer, uh, doing investigations and,
14 uh, preventing crimes?

15 A. Yes.

16 Q. You wouldn't consider yourself as somebody who would even
17 think about committing a crime; correct?

18 A. That's correct.

19 Q. In fact, you're somebody who spent most of your life trying
20 to prevent crimes from happening. True?

21 A. Yes.

22 Q. And then, if they happened, you would do what you could to
23 make sure whoever did it, um, is punished according to the law?

24 A. Yes.

25 Q. You met a lot of con men during your period of time in

1 New York; correct?

2 A. Yes.

3 Q. Met -- met a lot of people that, uh, committed crimes;
4 right?

5 A. Absolutely.

6 Q. Arrested a lot of 'em?

7 A. My share.

8 Q. A lot of 'em we want to prison; correct?

9 A. They all did.

10 Q. And, um, with regard to Irwin Schiff, you had -- you have
11 known of him for quite a long time in the '60s if I'm not
12 mistaken; correct? You have heard of him in some --

13 A. In the '60s --

14 Q. -- capacity.

15 A. -- yes.

16 Q. Um, he, in the '60s, was proclaiming pretty much what he is
17 proclaiming today and that's that you don't have to legally pay
18 income tax. Would that be an accurate statement?

19 A. No, it would not.

20 Q. It wouldn't.

21 So, in the '60s, he was teaching a different
22 philosophy?

23 A. Yes.

24 Q. Okay. And then, um, later on, more towards the period of
25 time that you came to Las Vegas, um, you heard him through the

1 radio show speaking about, um, the fact that you don't have to
2 legally pay income tax; correct?

3 A. Correct.

4 Q. And, um, during the period of time that you heard him on the
5 radio, um, at the very least you did not at that time dispel him
6 as a con man; correct?

7 A. No.

8 Q. In fact, you believed what he was saying at that particular
9 time?

10 A. Yes.

11 Q. You believed it to the extent that you went and purchased
12 his material --

13 A. Yes.

14 Q. -- correct?

15 And you digested the material, you read the material?

16 A. I did.

17 Q. You're an individual, based on your experience and training,
18 that is accustomed to doing your own investigations. True?

19 A. Yes.

20 Q. You are a detective; correct?

21 A. Not any longer.

22 Q. Well, it's hard to get rid of that; correct?

23 A. Pretty much.

24 Q. All right. So it'd be safe to say that in your -- in your
25 opinion you did your due diligence in terms of di- -- digesting

1 as much material as you possibly could get from Mr. Irwin
2 Schiff; correct?

3 A. Yes.

4 Q. Okay. And there became a period of time when you began to
5 implement those philosophies based on the readings that you,
6 um -- you did?

7 A. Yes.

8 Q. Okay. Um, and part of that philosophy would be to file the
9 zero returns with the -- with the Long attachment; correct?

10 A. Yes.

11 Q. Okay. After you did that you received a letter back from
12 the Internal Revenue Service claiming that the 1040 with the
13 Long attachment was frivolous; right?

14 A. If you represent that, yes. I can't...

15 Q. Okay. There came a point in time where --

16 A. I received correspondence.

17 Q. Right.

18 And then, in response to the correspondence you
19 received from the IRS, um, based on the information that you
20 obtained through Irwin Schiff's material -- and, by the way,
21 part of Irwin Schiff's material is the IRS Code; correct?

22 A. Yes. You can purchase that from him.

23 Q. Okay. And you did?

24 A. I did.

25 Q. Okay. And so, in response to correspondence from the IRS,

1 you filed for a hearing. True?

2 A. Eventually, yes.

3 Q. Eventually.

4 Um, and you were accompanied by Ms. Cynthia Neun at
5 that hearing. Is that accurate?

6 A. Yes.

7 Q. Okay.

8 (Discussion between Mr. Cristalli and
9 Mr. Modafferi.)

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

11 THE COURT: You may.

12 MR. CRISTALLI: Thank you.

13 (Discussion between Mr. Cristalli and the
14 clerk.)

15 (Defendant Neun's Exhibit No. 2507, marked
16 for identification.)

17 MR. CRISTALLI: May I approach the witness, your Honor?

18 THE COURT: You may.

19 BY MR. SCHIFF:

20 Q. Mr. Diamond, I'm going to approach you with what appears to
21 be the transcripts of the collection due process hearing. Could
22 you just take a look at that and tell me whether or not you
23 recognize that and is that an accurate transcription, to the
24 best of your knowledge, of the due process hearing that you
25 attended?

1 A. (Reviewing document.)

2 It appears to be, yes.

3 Q. Okay. Take your time if you want to look through it.

4 A. Yeah. Let me see.

5 MR. CRISTALLI: Your Honor, I'd like to move for the

6 Defendant's Proposed Exhibit 25- -- 25, I believe --

7 THE CLERK: 07.

8 MR. CRISTALLI: -- 07 into evidence.

9 MR. IGNALL: Your Honor --

10 THE COURT: Any objection?

11 MR. IGNALL: -- we have no objection, but we do have

12 the tape. And, in the interest of time with this witness, we

13 were gonna play the tape with another witness. But we don't

14 object to the tape being introduced as evidence at this time. I

15 don't know how the Court feels about --

16 MR. CRISTALLI: I would be agreeable to that.

17 THE COURT: That's the better procedure for -- for

18 evidence is to admit the tape. The transcript will not be

19 admitted, but the tape will. You can use the transcript.

20 MR. CRISTALLI: Yeah, and that's fine.

21 And, your Honor, for brevity purposes, I can shorten up

22 my examination if the Government can promise me that they will

23 in fact play that tape.

24 MR. IGNALL: Yes.

25 MR. CRISTALLI: Okay.

1 MR. IGNALL: We will stipulate to that.

2 MR. CRISTALLI: Thank you.

3 MR. IGNALL: It's Exhibit 153.

4 MR. CRISTALLI: Okay.

5 MR. IGNALL: We move the introduction of Exhibit 153.

6 THE COURT: 153, any objection?

7 MR. SCHIFF: No. I just -- when will the tape be
8 played, your Honor?

9 THE COURT: Are you gonna play it with this witness?

10 MR. IGNALL: We were not -- in the interest of his
11 time, we're not gonna play it with this witness.

12 THE COURT: Okay.

13 MR. IGNALL: We're gonna play it --

14 MR. SCHIFF: It'll shorten --

15 MR. IGNALL: -- with the IRS witness.

16 MR. SCHIFF: It'll shorten up my questions.

17 THE COURT: It'll be played with the IRS witness.

18 MR. CRISTALLI: He's gonna play it, Irwin.

19 MR. SCHIFF: What?

20 THE COURT: With the IRS witness. The Government's --
21 we're trying to shorten up the time on this witness. So it'll
22 be introduced by the Government -- I assume the hearing officer.

23 MR. IGNALL: Yes. It is Mr. Menaugh --

24 THE COURT: Yeah. Okay.

25 MR. IGNALL: -- to be specific.

1 THE COURT: Any objection to 153 --

2 MR. BOWERS: I don't have any.

3 THE COURT: -- the tape?

4 MR. BOWERS: No.

5 THE COURT: Tape of the hearing?

6 MR. SCHIFF: No. I wanna play it.

7 THE COURT: Okay.

8 MR. SCHIFF: No objection.

9 THE COURT: 153 is received.

10 MR. CRISTALLI: Thank you, your Honor.

11 (Government's Exhibit No. 153, received into

12 evidence.)

13 MR. CRISTALLI: May I continue?

14 THE COURT: You may.

15 BY MR. CRISTALLI:

16 Q. Uh, now, Mr. Diamond, with regard to the due process

17 hearing, would it be an accurate statement if -- throughout the

18 hearing you have dialogue with the agent; correct?

19 A. Yes.

20 Q. And, um, your dialogue as it related to the agent is

21 basically requesting verification from him as to why or what

22 legal authority existed that supports their position, the IRS's

23 position, that you owe this tax; correct?

24 A. Yes.

25 Q. And you, um, repeatedly asked for verification, i.e. Supreme

1 Court decisions and other type of authority, that they used in
2 support of their position that you had this liability. True?

3 A. Yes.

4 Q. At any time during the course of this hearing, did you feel
5 that you received from the agent of the IRS authority which
6 supported the IRS's position that you had this liability?

7 A. No.

8 Q. Okay. So, at the end in the conclusion of that particular
9 hearing, based on the dialogue that you had with that particular
10 agent, you did not believe that you received the information
11 that put you on notice that you legally had to pay that
12 liability; correct?

13 A. Correct.

14 Q. And so, therefore, not having that material in front of you
15 after requesting it you went one further and requested a hearing
16 in front of the Tax Court; correct?

17 A. Yes.

18 Q. And, at any particular time prior to, um, being contacted by
19 one of the agents in this criminal investigation, did any agent
20 of the IRS as it related specifically to your case ever give you
21 that authority to support their position that you legally -- you
22 had a legal -- you had a li- -- you had a legal liability to pay
23 that income tax or that tax?

24 A. Specifically to the liability, no.

25 Q. Okay. Now -- and then you eventually got contacted by

1 agents that were investigating this particular case; correct?

2 A. Yes.

3 Q. Uh, at any particular time did anyone from that

4 investigation advise you that other police officers in different

5 jurisdictions, I believe, i.e., Miami or Florida, have actually

6 been prosecuted and convicted for not, uh, filing proper 1040

7 returns? Do you recall that?

8 A. I don't recall that specific information offhand. It may

9 have occurred.

10 Q. So you don't recall any agent basically tellin' you that if

11 you don't live up to your responsibility in terms of paying your

12 taxes there's a possibility you could be prosecuted criminally?

13 A. Oh, yeah, they said that.

14 Q. Okay.

15 A. But they didn't specifically -- I don't specifically recall

16 police officers being -- uh, they did mention that other persons

17 were --

18 Q. Okay.

19 A. -- ultimately prosecuted, yes.

20 Q. So other persons that were claiming the same type of legal

21 positions that you were claiming have in fact been prosecuted

22 criminally?

23 A. I don't know that.

24 Q. Did that --

25 A. They only represented that, yes.

1 Q. They represented that to you.

2 And, you know, I mean, as a -- as a former New York
3 police officer, um, and a bailiff here in Clark County, you
4 have -- you have a pension I would assume; correct?

5 A. Yes, I do.

6 Q. And you -- you to this day are still employed by the County.
7 True?

8 A. Yes.

9 Q. And would it be safe to say that -- Mr. Diamond, that, um,
10 you in no way want to go through a criminal investigation and/or
11 prosecution for any of these activities?

12 A. That would be correct to say that, yes.

13 MR. CRISTALLI: I have no further questions, your
14 Honor.

15 Thank you, Mr. Diamond.

16 THE COURT: Mr. Bowers.

17 MR. BOWERS: Just two or three real quickly.

18

19 CROSS-EXAMINATION

20 BY MR. BOWERS:

21 Q. Good morning, Mr. Diamond. How are ya?

22 A. Good morning.

23 Q. I'm Chad Bowers. I'm an attorney for, uh, Larry Cohen. You
24 may or may not recognize me.

25 A. Yeah. We know each other, yes.

1 Q. Okay. I'm just...

2 A. You can say that.

3 Q. Okay. We've seen each other before.

4 Um, just for the record, you don't have any personal
5 knowledge of any transaction with this individual over here,
6 Mr. Cohen; is that correct? Do you have any recollection to
7 that effect?

8 A. Personal transaction?

9 Q. Personal knowledge of any transaction? Do you recall
10 anything where he --

11 A. By whom?

12 Q. -- said anything? By Mr. Cohen here.

13 A. Between him and myself?

14 Q. Yeah.

15 A. Other than seein' him at the counter the two or three visits
16 that I made to Freedom Books and just casual conversation,
17 that's -- that's the extent of my contact with Mr. -- with
18 Mr. Cohen.

19 Q. Right.

20 He was -- he was there, but you don't recall what, if
21 anything, you talked to him about; right?

22 A. I don't believe, uh, it was anything pertinent to this.

23 Q. Okay. Um, Mr. Cristalli talked how you were a detective.
24 Part of that process of bein' a detective or -- or solving
25 problems, would you agree, is to gather information and then

1 make a decision or -- or follow that information?

2 A. Gather all the information you can, yes.

3 Q. Is it -- is it fair to say that in approaching, uh,
4 Mr. Schiff's or -- or Freedom Books's teachings that that's a
5 process you employed?

6 A. Yes.

7 Q. And, in coming to an opinion as to what, if anything, you
8 should do or -- or -- regarding the validity of this, uh,
9 program did you rely on, uh, things other than simply what Irwin
10 Schiff told you or what you heard?

11 A. Well, the information he imparted over the radio would give
12 you the direction in which to conduct your search as to the
13 validity of his claims.

14 Q. Let me -- let me ask it a different way.

15 Did the fact that his radio show was publicly
16 broadcasted and not stopped affect your thoughts regarding
17 Mr. Schiff's program in any way?

18 A. Certainly.

19 Q. They did?

20 A. Yes.

21 Q. And how was that?

22 A. Well, if -- if he were taken off the air, I would assume
23 that he was, uh, incorrect --

24 Q. Doing something wrong?

25 A. -- at the very least --

- 1 Q. Okay.
- 2 A. -- in his promotion of his program, yes.
- 3 Q. Did the seminars and -- and the ongoing nature of the
4 seminars suggest the same thing to you?
- 5 A. Well, he held seminars all the time.
- 6 Q. Right.
- 7 And did you rely on the fact that those were widely
8 held to suggest that if he were doing something wrong he would
9 have been stopped?
- 10 A. It was quite an open forum, yes.
- 11 Q. And the sign -- did you go to Mr. Schiff's building where
12 you see the sign "Pay No Income Tax"?
- 13 A. I was there a couple of times, yes.
- 14 MR. BOWERS: Um, do -- do we have access to Exhibit
15 111?
- 16 I'm sorry. I just wanna -- I wanna confirm this is the
17 sign we're talking about, real quick, Mr. Diamond. All right.
18 Blow it up for us.
- 19 (Document displayed in open court.)
- 20 BY MR. BOWERS:
- 21 Q. This one; right? Does that look familiar to ya?
- 22 A. Yes.
- 23 Q. It's not subtle; right? I mean...
- 24 A. No. It's out there.
- 25 Q. It's red and -- okay. And so that -- that indicated -- that

1 affected your thoughts on the subject, am I correct?

2 A. Not particularly.

3 Q. No, the sign didn't?

4 A. No.

5 Q. Okay. Um, one of the -- is it fair to say that one of the
6 teachings or -- or part of the -- the Freedom Books's discussion
7 is show me the law that makes me liable for this tax and I will
8 pay it?

9 A. Correct.

10 Q. Okay. And, um, you adopted that notion or did you rely on
11 that notion or did you --

12 A. I looked into it.

13 Q. -- rely on that notion.

14 A. I looked into it.

15 Q. Okay.

16 A. I purchased the IRS Code.

17 Q. And along those same lines, did you rely on the fact that,
18 at least to your knowledge, Mr. Schiff had never paid a reward
19 that he offered over his radio show for someone to pay -- to
20 show him the Code or what made him liable and he'd pay?

21 A. That's correct.

22 Q. You relied on that. Okay.

23 Um, did you have an occasion where you heard a call
24 from Mr. Schiff to the United States Attorney's Office in
25 Las Vegas and they hung up on Mr. Schiff as soon as they heard

1 it was him?

2 A. Several times.

3 Q. Okay. What, if anything, did that do to affect your
4 thoughts on, uh, Mr. Schiff's teachings?

5 A. Well, I thought if -- if they just addressed it at that
6 point it would put an end to it. But the -- the evasive action
7 lent more credibility to what his position was.

8 Q. That's -- that's what you were thinking about the process?

9 A. That's the way I saw it.

10 Q. Okay. Let me ask you somethin' else. The IRS sent you a
11 letter assessing you a frivolous penalty. And I believe that's
12 Exhibit 141 or 144. I'm sorry. The Government has my exhibit
13 book. I've been sharing.

14 MR. NEIMAN: 144, I believe.

15 MR. BOWERS: Yes. Exhibit 144.

16 (Document displayed in open court.)

17 BY MR. BOWERS:

18 Q. We talked about that briefly. Do you recognize that,
19 Mr. Diamond?

20 A. Yes.

21 Q. Okay.

22 MR. BOWERS: Could we blow up the first paragraph?

23 BY MR. BOWERS:

24 Q. We -- we've seen this language before. But, for the jury's
25 benefit, could you -- could you read this to me? This is a

1 standard form, but I wanna be sure we're clear on it.

2 A. Which part would you like me to read?

3 Q. Just that first paragraph there. I'm sorry, Mr. Diamond.

4 Right below --

5 A. The first --

6 Q. -- your name.

7 A. The first paragraph?

8 Q. Yeah. This part, "We have determined."

9 A. "We have determined that the information you sent is

10 frivolous and your position has no basis in law. Claims, such

11 as yours, have been considered and rejected repeatedly as

12 without merit by the federal courts - including the U S Supreme

13 Court. Therefore, we will not respond to future correspondence

14 concerning these issues."

15 Q. Did -- did you find that to be a satisfactory answer as to

16 whether or not you had an obligation or a liability under the

17 Tax Code?

18 A. Well, there were no --

19 MR. IGNALL: Objection. Relevance.

20 THE WITNESS: I'm sorry.

21 MR. BOWERS: This all goes to his reliance in forming

22 whatever opinion he formed.

23 MR. IGNALL: I'm not sure it does, your Honor.

24 MR. BOWERS: Well, let me -- that was the question.

25 Let me ask it --

1 MR. IGNALL: Okay.

2 MR. BOWERS: -- a different way.

3 BY MR. BOWERS:

4 Q. Mr. Diamond, did you rely on the nature of this response to
5 the IRS -- from the IRS is in any way to determine whether or
6 not, uh, to make a decision about the validity of Mr. Schiff's
7 teachings?

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

9 Q. When -- you got this letter from the IRS; is that correct?

10 A. Yes.

11 Q. Okay. When you got this letter, did whatever this letter
12 contain influence your decision with respect to Mr. Schiff in
13 any way?

14 A. No.

15 Q. Okay. So it -- it didn't change your opinion in any way?

16 A. No.

17 Q. Is there a reason for that?

18 MR. IGNALL: Objection. I'm not sure what the
19 relevance is now.

20 MR. BOWERS: Well, you know what? I'm gonna let this
21 go. I think it's unclear and -- and I know what the Court's
22 gonna do if I try to pursue it further.

23 THE COURT: Okay.

24 MR. BOWERS: So thank you, Mr. Diamond.

25 THE COURT: Mr. Schiff.

CROSS-EXAMINATION

- 1
- 2 BY MR. SCHIFF:
- 3 Q. Mr. Diamond --
- 4 A. Yes.
- 5 Q. -- I did not realize you heard me on the David Susskind
- 6 show.
- 7 A. Yes.
- 8 Q. That was a pretty big show in those days --
- 9 A. The biggest.
- 10 Q. -- wasn't it?
- 11 A. The biggest.
- 12 Q. Biggest.
- 13 That was in the '70s.
- 14 A. I'd like to say --
- 15 Q. '70s, yeah.
- 16 A. The '60s. In the '70s -- I was in the Navy in the early
- 17 '70s.
- 18 Q. All right.
- 19 A. I couldn't have heard --
- 20 Q. Had to be early on.
- 21 Okay. Now, you kept referring to, uh, my program.
- 22 When you came into Freedom Books, did we sign you up to any
- 23 program?
- 24 A. No.
- 25 Q. Did the Government suggest that you use that term "program"

1 when you testified?

2 A. Pardon?

3 Q. Did the Government suggest you use the term "program"?

4 A. No. That's my word.

5 Q. But I don't have a program.

6 A. Looks like a program to me.

7 Q. Well, you purchased a book and you could have stopped right

8 there. Is that correct?

9 A. Correct.

10 Q. And you purchased the Internal Revenue Code from me?

11 A. Yes.

12 Q. And you purchased The Great Income Tax Hoax from me? Did

13 you purchase that book?

14 A. I have it. I don't know if --

15 Q. You have it.

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

17 MR. SCHIFF: I would like --

18 THE WITNESS: -- it was given --

19 MR. SCHIFF: -- to put that book --

20 THE WITNESS: -- to me or not.

21 MR. SCHIFF: -- in an exhibit also.

22 MR. IGNALL: Objection. Relevance.

23 MR. SCHIFF: The Great Income Tax Hoax.

24 THE COURT: Sustained.

25 MR. SCHIFF: Pardon me?

1 THE COURT: Next question.

2 MR. SCHIFF: Okay.

3 BY MR. SCHIFF:

4 Q. Now, when you read this material and you put the attachments
5 on and signed it under penalty of perjury I -- I didn't tell
6 you -- I didn't tell you to file a zero return, did I? Did I
7 tell you to do this.

8 A. Excuse me, sir?

9 Q. I didn't tell you to file a zero return.

10 A. You didn't personally tell me that, no.

11 Q. So you filed this of your own free will. And, being a law
12 enforcement officer to a degree, you probably would have checked
13 out all of the legal references that you put on this document.
14 I happen to have the 1996 return.

15 MR. IGNALL: Your Honor, it's already been admitted. I
16 believe that's Exhibit...

17 MR. CRISTALLI: Irwin, come here just one second.

18 (Discussion between Mr. Cristalli and
19 Mr. Schiff.)

20 MR. IGNALL: It's Exhibit 140.

21 BY MR. SCHIFF:

22 Q. Oh. The reason I say that, Mr. Diamond, is that when you
23 purchased this book -- I know you're -- there was no question in
24 this book that throughout the book I explain about going to --
25 the last third of the book is about my experience in jail; is

1 that correct?

2 A. Correct.

3 Q. Throughout the book, uh, I show how the IRS has seized money
4 from me under various circumstances. As a matter of fact, in
5 here I think there's a letter --

6 THE COURT: No speeches.

7 BY MR. SCHIFF:

8 Q. -- that I got --

9 THE COURT: No speeches. Just ask him questions.

10 MR. SCHIFF: Pardon me.

11 BY MR. SCHIFF:

12 Q. As a matter of fact -- here. Did you -- when you read this
13 book, for instance, Chapter 7, did you --

14 MR. SCHIFF: Can I approach the witness?

15 THE COURT: You can ask him from there.

16 BY MR. SCHIFF:

17 Q. On page 117, there's a letter to me from --

18 THE COURT: No. Don't testify. Ask him the question.

19 BY MR. SCHIFF:

20 Q. Well, would you read -- would you read -- had you read that
21 chapter? Do you recall?

22 A. I read your entire book --

23 Q. Read the entire book.

24 A. -- nine years ago.

25 Q. Right.

1 MR. SCHIFF: That's why I have to refresh his
2 recollection, your Honor.

3 BY MR. SCHIFF:

4 Q. And on page 117 --

5 MR. SCHIFF: Can I give him a copy of the book, your
6 Honor?

7 THE COURT: Ask him if he remembers reading page --
8 whatever it is on page 117.

9 BY MR. SCHIFF:

10 Q. It's nine years ago. If you read the book --

11 A. I don't remember the content of that page, sir.

12 Q. But in -- in the -- in the book on this -- on page 117,
13 there's a letter to me from a bank informing me that they are
14 turning over 10,000 of my money to the IRS; right?

15 A. If you represent that it's so.

16 MR. SCHIFF: Well, your Honor, it's nine years ago.

17 THE COURT: Ask him if he remembers it.

18 MR. SCHIFF: Well, how could anybody remember from nine
19 years ago?

20 THE COURT: Why don't you ask him the question and see.

21 BY MR. SCHIFF:

22 Q. Oh, incidentally, is this --

23 THE COURT: No. Ask him the question.

24 MR. SCHIFF: All right.

25

1 BY MR. SCHIFF:

2 Q. Is this the book you purchased? Because there are different
3 editions.

4 A. The title's the same. I'm not sure that --

5 Q. Okay.

6 A. -- the cover's the same.

7 Q. Okay. Now, can I -- in this edition -- in my earlier
8 editions, as in this edition, there is no --

9 THE COURT: Mr. Schiff, you cannot --

10 MR. SCHIFF: All right.

11 THE COURT: -- testify.

12 MR. SCHIFF: All right. It's very hard for me to...

13 BY MR. SCHIFF:

14 Q. Now, were you aware that in this edition --

15 (Discussion between Mr. Leventhal and
16 Mr. Schiff.)

17 BY MR. SCHIFF:

18 Q. We -- do you recall the fact that in this edition there was
19 no instructions or no suggestions about getting a refund? Would
20 you recall that?

21 A. I don't recall that.

22 Q. Would it refresh your recollection if I showed you the page
23 where the zero return is shown? Would it --

24 A. It may.

25 Q. All right. There are different editions of this book.

1 Okay. First of all, do you want to take this book?

2 THE COURT: The question was: Would it refresh your
3 recollection --

4 MR. SCHIFF: Okay. Right.

5 THE COURT: -- if I showed you the page where the zero
6 return is shown?

7 BY MR. SCHIFF:

8 Q. Now --

9 THE COURT: Let him answer the question.

10 MR. SCHIFF: Yeah, yeah.

11 BY MR. SCHIFF:

12 Q. Next one. Now, do you --

13 THE COURT: Would it refresh your recollection?

14 BY MR. SCHIFF:

15 Q. The point is --

16 THE COURT: No. You're not making a point. You're
17 gonna let him answer the question.

18 THE WITNESS: (Reviewing book.)

19 THE COURT: Does that --

20 THE WITNESS: I don't --

21 THE COURT: -- refresh your recollection?

22 THE WITNESS: No, it doesn't.

23 BY MR. SCHIFF:

24 Q. Do you read -- how about the bottom paragraph?

25 THE COURT: He said it doesn't refresh --

1 MR. SCHIFF: Okay.

2 THE COURT: -- his recollection.

3 BY MR. SCHIFF:

4 Q. Matt, you said that when you came to -- did I understand
5 your testimony when you said you came to Freedom Books to get an
6 attachment was -- was your testimony that we charged you for the
7 attachments?

8 A. Yes.

9 Q. Well, can you -- we charged you for the attachment?

10 A. Yes.

11 Q. Is that your recollection?

12 A. That's my testimony. Yes.

13 THE COURT: Asked and answered. Move on.

14 BY MR. SCHIFF:

15 Q. But... Okay.

16 Um, now, when you read that book, Matt, did that book
17 persuade you that the payment of income tax was voluntary?

18 A. Yes.

19 Q. Did the book persuade you that the IRS seized property
20 illegally?

21 A. Yes.

22 Q. Did that book along with the Internal Revenue Code persuade
23 you that there was law that made you liable?

24 A. In those two books, yes.

25 Q. And that book in connection with the Internal Revenue Code

1 and The Great Income Tax Hoax, did it persuade you that income
2 for tax purposes meant a corporate property?

3 A. I have not read The Great --

4 Q. Yes. As --

5 A. -- Income Tax Hoax.

6 Q. -- a matter of fact --

7 A. I've not read it. I couldn't testify to any contents --

8 MR. SCHIFF: Can I approach --

9 THE WITNESS: -- in that book.

10 MR. SCHIFF: -- the witness with his -- with his 1997
11 return?

12 THE COURT: It's on -- it's in evidence. He already
13 has it up there.

14 MR. SCHIFF: Okay.

15 MR. IGNALL: It's Exhibit 141, your Honor.

16 THE COURT: Take your book back. He has the returns.

17 You can --

18 MR. SCHIFF: Oh, he has the returns. Okay. I'm -- I'm
19 not going to go through the whole thing, just...

20 MR. CRISTALLI: Irwin.

21 (Discussion between Mr. Cristalli and
22 Mr. Schiff.)

23 BY MR. SCHIFF:

24 Q. Now -- now, Matt, when you put on the first line of, uh,
25 that attachment that you could find no law that made you liable,

1 but you did find that -- that the Code provided liability with
2 respect to Sections 4401, 5005, 5703 which related to wagering,
3 alcohol, and tobacco taxes, did you verify that?

4 A. Yes. Those direct taxes, yes.

5 Q. Okay. So you verified that.

6 Now, just skipping down a little bit to, uh,
7 paragraphs, uh -- paragraph 6, you cited that you believe that
8 the zero return was a valid return and you cited U.S. v. Long,
9 U.S. v. Kimball -- those are two Ninth Circuit decisions --
10 U.S. v. Moore, which is a Seventh Circuit decision, and Cross v.
11 U.S., which is a decision of the Bankruptcy Court right here in
12 Las Vegas. Did you -- did you rely on those decisions as
13 indicating that this was a valid return?

14 A. I believe I looked up those --

15 Q. Okay.

16 A. -- first two citations --

17 Q. Now --

18 A. -- because they were --

19 Q. -- in paragraph 7, however, when you wrote, "It should also
20 be noted that ... income according to The Supreme Court's
21 definition of income" -- and then you said -- "(See Note 1), ...
22 in Merchant's Loan & Trust Co." -- you -- you quoted the Supreme
23 Court as saying -- "The word (income) must be given the same
24 meaning in all of the Income Tax Acts of Congress that was given
25 to it" --

1 MR. IGNALL: Objection, your Honor. This
2 mischaracterizes the witness' testimony whether he quoted it or
3 this is an attachment he purchased from Mr. Schiff.

4 THE COURT: Sustained.

5 MR. SCHIFF: Well, first of all, it's an attachment
6 that he adopted.

7 THE COURT: Well, whether he adopted it or not, he got
8 it from you.

9 MR. SCHIFF: All right.

10 THE COURT: That's the point.

11 MR. SCHIFF: Exactly.

12 BY MR. SCHIFF:

13 Q. -- "The word (income) [has] the same meaning in all of the
14 Income Tax Acts of Congress that was given to it in the
15 Corporation Excise Tax Act of 1909. Therefore," [you wrote] --
16 or you adopted my wording -- "since" --

17 THE COURT: Is there a question here or --

18 BY MR. SCHIFF:

19 Q. -- "since" -- yeah, I'm saying -- so did you believe -- did
20 you believe when you wrote that that income for tax purposes --

21 THE COURT: He didn't write it.

22 BY MR. SCHIFF:

23 Q. -- was a corporate profit?

24 THE COURT: He got it from you.

25

1 BY MR. SCHIFF:

2 Q. Did you believe --

3 THE COURT: There is no evidence before the Court that
4 he wrote that. He got that from you.

5 BY MR. SCHIFF:

6 Q. Well, when you wrote that -- or when you -- when you adopted
7 that paragraph was -- you know, did you believe it?

8 A. Sir, I purchased these forms from you --

9 Q. Yeah.

10 A. -- as they are and I submitted them with my return.

11 Q. Well -- but, Matt, I didn't put a gun to your head.

12 Presumably you read that and checked it out.

13 A. According to your system, yes.

14 Q. As a matter of fact, when you purchased The Great Income Tax
15 Hoax aren't there two whole chapters on the meaning of "income"
16 and I make the point income is a corporate profit?

17 THE COURT: Mr. Schiff --

18 THE WITNESS: I've testified to that already. I
19 haven't read that book, sir.

20 BY MR. SCHIFF:

21 Q. Okay. That's right. Okay.

22 THE COURT: Mr. Schiff, you are testifying.

23 BY MR. SCHIFF:

24 Q. Okay. Now, in -- in addition -- in addition, the final
25 paragraph -- you wanna check the final paragraph? -- you cited a

1 number of other cases which you believed would have supported
2 your position that income is a corporate profit?

3 A. (Reviewing document.)

4 (Discussion between Mr. Cristalli and
5 Mr. Schiff.)

6 BY MR. SCHIFF:

7 Q. Okay. Now -- I know we're gonna hear the tape. Let me have
8 it. I won't take too much time because -- well, we did bring up
9 the collection due process hearing.

10 Matt, do you happen to recall what the purpose of a
11 collection due process hearing was?

12 A. What the purpose of it was?

13 Q. Yes.

14 A. Yes, to challenge the IRS's claims against my --

15 Q. Pardon me? I didn't hear that.

16 A. To challenge the IRS's claims against me.

17 Q. Right. Um, excuse me.

18 In other words, did you see this book over at
19 Freedom -- Freedom Books, The Power to Destroy?

20 A. I -- I've never seen that book.

21 Q. You didn't purchase the book. Okay.

22 Um, so -- but -- so you went to the collection due
23 process hearing and you believed that you had a right to ask for
24 certain documents.

25 A. Yes.

1 Q. Do you happen to recall -- I think you referred to them --
2 you had -- do you know what the -- recall the documents that,
3 uh, they had to produce in order to justify the seizure of your
4 property? Do you happen to recall what those documents were?
5 You had a meeting with me and I would have gone over it; right?

6 A. The day of the -- the day of the hearing, yes, I was in your
7 office.

8 Q. Would it refresh your recollection if I just suggested some
9 of these documents to you?

10 A. It may.

11 Q. The law said you had -- you had to produce verification from
12 the Secretary; is that correct?

13 A. Yes.

14 Q. I think -- all right. The law also gave you a right to ask
15 for -- did you ever receive a Notice and Demand for Payment?

16 A. Yes.

17 MR. BOWERS: Your Honor, I would request a brief
18 sidebar.

19 MR. SCHIFF: All right. I'm gonna be off pretty soon.

20 MR. BOWERS: Let --

21 MR. SCHIFF: The point is --

22 THE COURT: I'm sorry?

23 MR. BOWERS: I would request a very brief sidebar with
24 your Honor.

25 THE COURT: Okay. Does it need it be right now?

1 MR. BOWERS: Uh, for this issue, yes. Very briefly.

2 (Sidebar conference was held as follows:)

3 MR. BOWERS: This is gonna be over really quickly.

4 I want to just very quickly renew my motion for
5 severance. Mr. Schiff is dismantling the only effective
6 cross-examination I've seen and -- and we can't --

7 MR. SCHIFF: I appreciate what you did. But -- and
8 he's trying -- well, all right. I just wanna ask him one more
9 question. That's it. Then --

10 THE COURT: There's been a motion for --

11 MR. BOWERS: This was a --

12 THE COURT: Yeah.

13 MR. BOWERS: -- wonderful witness.

14 THE COURT: -- severance is --

15 MR. BOWERS: He has no idea --

16 THE COURT: -- denied.

17 MR. BOWERS: -- what's going on here. Sorry, your
18 Honor.

19 MR. SCHIFF: I'm gonna ask him one question.

20 MR. BOWERS: You don't even need one question.

21 (Sidebar conference concluded and the
22 following is held in open court:)

23 BY MR. SCHIFF:

24 Q. Matt, if I can -- didn't you say to the hearing office --
25 and I quote from this transcript which is already in evidence --

1 "You haven't shown me one supporting document"?

2 A. Yes.

3 Q. And that's why you appealed?

4 A. Yes.

5 MR. SCHIFF: No further questions.

6 THE COURT: Government?

7 MR. IGNALL: No redirect, your Honor.

8 MR. CRISTALLI: Nothing, your Honor.

9 MR. BOWERS: Nothing, Judge. Thank you.

10 THE COURT: The witness is excused.

11 MR. IGNALL: Thank you, your Honor.

12 MR. CRISTALLI: Thank you, your Honor.

13 THE COURT: We'll be in recess for the noon hour.

14 We'll resume at 1:30. Standard instruction applies.

15 (Jury leaves the courtroom at 12:14 p.m.)

16 (lunch recess, 12:14 p.m. to 1:34 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Jury is coming in.

19 Can you bring your next witness in, please?

20 (Jacqueline M. Eller takes the witness

21 stand.)

22 (Pause in the proceedings.)

23 THE CLERK: Ready?

24 THE COURT: Yep.

25 THE CLERK: Okay. Come on in.

1 (Jury enters the courtroom at 1:36 p.m.)

2 THE COURT: Please be seated.

3 Will counsel stipulate to the presence of the jury?

4 MR. BOWERS: Yes, your Honor.

5 MR. NEIMAN: Yes, your Honor.

6 MR. CRISTALLI: Yes, your Honor.

7 MR. SCHIFF: Yes, your Honor.

8 THE COURT: Thank you.

9 Government, you may proceed.

10 Will you please stand and be sworn.

11 THE CLERK: Please raise your right hand.

12 You do solemnly swear that the testimony you shall give

13 in the cause now pending before this court shall be the truth,

14 the whole truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated.

17 Please state for the record your full name and spell

18 your last name.

19 THE WITNESS: Jacqueline M. Eller, E-l-l-e-r.

20

21 JACQUELINE M. ELLER,

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

23 first duly sworn, was examined and testified as follows:

24

25 THE COURT: You may proceed.

1 MR. IGNALL: To save some time, your Honor, may I
2 approach the witness --

3 THE COURT: Yes.

4 MR. IGNALL: -- with the exhibits I intend to use?

5

6 DIRECT EXAMINATION

7 BY MR. IGNALL:

8 Q. Good afternoon, Ms. Eller.

9 A. How are you?

10 Q. Where -- where do you live generally?

11 A. In Las Vegas.

12 Q. How long have you lived here?

13 A. Um, I moved here in October of 1993. But, um, on three
14 different occasions I went and stayed in California for a few
15 months with my daughters.

16 Q. Ms. Eller, have you ever filed tax returns in the past?

17 A. I've been filing tax returns, I guess, since I was 16 or
18 something like that.

19 Q. And, on those tax returns, did you report the income that
20 you earned each year?

21 A. Yes.

22 Q. Did there come a time when you stopped filing a tax return
23 reporting the income for each year?

24 A. Yes. Um, after I learned of, uh, Mr. Schiff's program --

25 Q. All right.

1 A. -- I started filing what they called the zero returns.

2 Q. How did you find out about Mr. Schiff's program?

3 A. Um, I was, um, working -- actually, I was working two jobs.

4 But I was working one day at a auto dealership and, um, a
5 customer started talking about he had heard about this great tax
6 program where you got refunds back on previous tax returns and
7 you didn't have to, uh, withhold any taxes. And, um, it sounded
8 great because I was struggling so much to make ends meet. But
9 probably the reason that I remembered it and followed up on it
10 was because he told me the phone number was (800) TAX-NO-MO and
11 it stuck to me till this day.

12 Q. Did you ever call that phone number?

13 A. That's how I got started in the program, yes.

14 Q. Around what time -- what year was that?

15 A. I think it was in early 1998 and it would have -- the first
16 return it would have involved was 1996.

17 Q. Ms. Eller, could you try and speak a little closer to the
18 microphone, see if that will help.

19 A. Is that better? No.

20 Q. Well, we'll try.

21 A. Is this better?

22 Q. That's better.

23 THE COURT: Yes.

24 THE WITNESS: Okay.

25

1 BY MR. IGNALL:

2 Q. And it's a big courtroom, so it's good to make sure the
3 jurors and everyone else here can hear everything.

4 Uh, I'm sorry. You said you called the telephone
5 number --

6 A. Yes.

7 Q. -- and you said it was about '98?

8 A. I believe it was --

9 Q. Okay.

10 A. -- early in '98.

11 Q. Do you remember who you spoke to when you called the
12 telephone number?

13 A. No, I don't know who I talked to then. But whoever it was
14 told me where the office was located. It was just north of
15 Charleston, I think on 6th or 7th. I'm not sure.

16 Q. Here in Las Vegas?

17 A. Yes. And, um, they sounded nice and reasonable and what
18 have you. So I went on in.

19 Q. What was the name of the business?

20 A. Well, I didn't really know until I got there that it was
21 called Freedom Books.

22 Q. Okay. So what happened when you went into the office?

23 A. Um, there was a real nice young girl there sitting at -- it
24 was like a -- the desk was sitting diagonally, sort of like a
25 receptionist style. And, um, she told me a little bit about how

1 the program worked -- pretty much reiterated what that other man
2 had told me before I called -- and, um, just convinced me it was
3 real easy and it was a sure thing and there was no reason not to
4 and --

5 MR. SCHIFF: Objection.

6 THE WITNESS: -- so...

7 MR. SCHIFF: Objection. Hearsay. This is hearsay.

8 This is hearsay.

9 Who told you that, "sure thing"?

10 THE COURT: You can ask that on cross. It is
11 foundational --

12 MR. IGNALL: All right.

13 THE COURT: -- and is received --

14 BY MR. IGNALL:

15 Q. -- did you purchase --

16 THE COURT: -- for foundation.

17 BY MR. IGNALL:

18 Q. -- anything on that first visit to Freedom Books?

19 A. I think I bought one set of tapes that time -- I don't know
20 what the title would have been -- and I got a couple of sample
21 tapes from the radio -- radio program.

22 Q. Had you heard the radio program before?

23 A. No. I did listen to it a few times after that.

24 Q. Did you buy a book?

25 A. I don't know if it was that first -- it probably was that

1 first visit, but I don't know for sure that I bought the, um,
2 uh, Federal Mafia, I believe is the name of it.

3 Q. All right. How much money did you spend on your first trip
4 to Freedom Books?

5 A. I think it was about 65 or 75 dollars.

6 Q. You said at some point you bought The Federal Mafia?

7 A. Yes. I think it was that first time.

8 Q. Did you read The Federal Mafia cover to cover?

9 A. Not very well at all. Um, I went directly to the area that
10 talked about the zero returns so that I could work with that.
11 But I really didn't do my homework like I should have.

12 Q. Where were you working at the time that you first went into
13 Freedom Books?

14 A. I had two jobs. I was working at a place called "TCA
15 Motors" during the day and I was working at Bank of America in
16 the Proof Department at night.

17 Q. Were both of your employers withholding taxes from you at
18 that time?

19 A. Yes.

20 Q. Did you ever do anything to change that?

21 A. Yes.

22 Q. And when was that?

23 A. Um, I think I did it right away with the, um, auto
24 dealership.

25 Q. "Right away" meaning after what or...

1 A. After I decided to file the zero returns.

2 Q. Okay. And what did you file? I'm sorry.

3 A. I'm sorry? Oh, what I filed --

4 Q. Yeah.

5 A. -- was a new W-4 that, um, said that I was exempt from taxes
6 and then on the back -- so I did zero deductions. And then on
7 the back I wrote on it that this was, um -- I was submitting a
8 W-4 for employment purposes rather than taxation purposes;
9 something like that.

10 Q. Why did you write that down on your --

11 A. That was --

12 Q. -- W-4?

13 A. -- advised along with the Schiff tax program.

14 Q. All right. Did you ever, uh, file any zero tax returns?

15 A. Yes, I did.

16 Q. I'd like to turn your attention to what we've marked as
17 Exhibit 112.

18 A. (Complies.)

19 Q. Do you recognize Exhibit 112? You probably don't recognize
20 that first page. But after that do you recognize this?

21 A. I can't -- I didn't hear what you said.

22 Q. Do you recognize Exhibit 112?

23 A. Yes.

24 Q. What is Exhibit 112?

25 A. It's my, um, income tax return for 1997. And it, um -- do

1 you want me to describe what's on it?

2 Q. No.

3 Is that the form that you filled out and sent into the
4 IRS?

5 A. Yes.

6 MR. IGNALL: At this point, the Government moves into
7 evidence Exhibit 112.

8 MR. CRISTALLI: No objection.

9 MR. SCHIFF: No objection.

10 MR. BOWERS: Court's indulgence just a moment, your
11 Honor. Your Honor, no objection.

12 THE COURT: Received.

13 (Government's Exhibit No. 112, received into
14 evidence.)

15 MR. IGNALL: If we could put this up on the screen.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. If you could look at line 7 where it says "Income: Wages
19 salaries tips," what did you write next to that? Is that your
20 handwriting next to that?

21 A. Yes. "Please see attached letter."

22 Q. All right. And how much did you report as wages, salaries
23 and tips for that year?

24 A. Zero.

25 Q. Did you have more than zero in wages, salary, or tips for

1 that year?

2 A. Yes, I did.

3 Q. Why did you write down zero on line 7?

4 A. Because according to the program, I was taught to believe

5 that wages were not taxable; that income tax was to, um, uh,

6 apply to corporate earnings.

7 Q. All right. Did you have any taxes withheld from your salary

8 during 1997?

9 A. I'm -- I -- I probably did. I mean, I don't remember

10 even --

11 Q. If you -- maybe if you can turn to the next page and see if

12 that refreshes your recollection.

13 A. Oh, probably my W-2's are here? (Reviewing documents.)

14 Okay. Yes, the tax withheld is on line 54.

15 Q. All right. Did you seek a refund of that?

16 A. No, I never did get a refund.

17 Q. Did you seek a refund?

18 A. Yes.

19 Q. All right. And did you do that on this tax return here?

20 A. Yes.

21 Q. All right. And what's the date that you filed this tax

22 return?

23 MR. SCHIFF: Your Honor, the answer [sic] was did she

24 get a refund?

25 MR. IGNALL: The question was --

1 THE COURT: She said --

2 MR. IGNALL: -- did she ask for one, seek one.

3 THE COURT: That was the question, did she seek a
4 refund.

5 MR. SCHIFF: And did she get one?

6 THE COURT: She hasn't answered that. That's not the
7 question.

8 BY MR. IGNALL:

9 Q. What date -- what date did you file this tax return,
10 Ms. Eller?

11 A. August 1st, 1999.

12 Q. If I could turn your attention to the two-page attachment
13 that follows, do you recognize this attachment?

14 A. Yes.

15 Q. Did you write this attachment yourself?

16 A. No. I copied it and -- I mean, I copied it on a copier
17 machine --

18 Q. From where?

19 A. -- and I filled in the blanks.

20 Q. Where did you copy it from?

21 A. Um, in the Freedom Book office. Even though this is in the,
22 uh -- the, uh, Federal Mafia, I believe, I was given some
23 handouts that had these letters and some other things for my use
24 and I copied those.

25 Q. If I could turn your attention to, uh, Exhibit 113. My next

1 question is: Did you ever get a refund for your 1997 taxes
2 withheld?

3 A. No, I did not.

4 Q. Did you ever get any correspondence from the IRS about this
5 tax return?

6 A. I received a lot of correspondence from the IRS that I
7 didn't expect. I presume I received some for 1999. It might be
8 this exhibit.

9 Q. All right. Why don't you look at Exhibit 113 and tell the
10 jury if you recognize that exhibit.

11 A. Yes, it's a letter pertaining to tax period ending December
12 31, 1999.

13 Q. And it's a letter that you received?

14 A. Yes.

15 MR. IGNALL: Government moves into evidence
16 Exhibit 113.

17 MR. CRISTALLI: No objection.

18 MR. BOWERS: No objection, your Honor.

19 MR. SCHIFF: No objection.

20 THE COURT: 113 is received.

21 (Government's Exhibit No. 113, received into
22 evidence.)

23 MR. IGNALL: And if we could put 113 on the screen.

24 (Document displayed in open court.)

25

1 BY MR. IGNALL:

2 Q. If you could just read the first, uh, sentence to us.

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

5 Q. All right. If you could turn your attention to Exhibit 114,
6 do you recognize that document?

7 A. Yes.

8 Q. What is Exhibit 114?

9 A. It's another later -- letter, um. This one, again, refers
10 to 1997 and it's, um, notifying me of a deficiency and penalties
11 for the taxes that year.

12 Q. And was this addressed to you?

13 A. Yes.

14 Q. All right.

15 MR. IGNALL: Government moves Exhibit 114 into
16 evidence.

17 MR. CRISTALLI: No objection.

18 MR. BOWERS: No objection.

19 MR. SCHIFF: No objection.

20 THE COURT: 114 is received.

21 (Government's Exhibit No. 114, received into
22 evidence.)

23 BY MR. IGNALL:

24 Q. Did you take any of the letters that you got from Freedom
25 Books -- got from the IRS into Freedom Books?

1 A. Yes. I believe I took everything I ever received in there.

2 Q. And when you first, uh, went into Freedom Books to pick up
3 materials to fill out that first zero return, did anyone tell
4 you that you were gonna get correspondence like this from the
5 IRS?

6 A. No. I thought I was gonna receive checks back and
7 everything after that was gonna be clear sailing.

8 Q. All right. When you got these letters and you brought them
9 into Freedom Books, did you talk to anyone at Freedom Books?

10 A. Definitely.

11 Q. Do you remember who you spoke to?

12 A. Um, no, I don't remember because that was early on. And I
13 think a lot of the people that were working there dropped off as
14 the years went by. Um, I may have met Cynthia Neun that day.
15 I'm not sure.

16 Q. All right. When you went in with the letters -- did you go
17 in more than once with letters you got from the IRS?

18 A. Say that again.

19 Q. Did you go in more than one time with letters that you'd --

20 A. Yes.

21 Q. -- received?

22 A. Yes. Many times.

23 Q. Did you ever -- what did the Freedom Books employees do the
24 first time you went in with letters from the IRS?

25 A. Well, I was really upset because this letter indicated I had

1 done something wrong. And, so I went in there and I said, "What
2 is this about? What -- what is going to happen? Why do I have
3 this?"

4 And they said, "Oh. They just always send those out.
5 And, um, it's all going to be okay."

6 And, when they saw what a nervous wreck I was, they
7 said, "you know, Cynthia could be your" --

8 MR. CRISTALLI: Objection, hearsay.

9 MR. IGNALL: All right.

10 BY MR. IGNALL:

11 Q. Well, did -- did anyone offer to sell you anything in
12 response to these letters?

13 A. Yeah, especially early on there was always, like, well, you
14 need the next set of tapes. But then, you know, after a while
15 they weren't always trying to sell me somethin'. I think they
16 knew I couldn't afford them.

17 Q. Did you ever buy any additional materials from Freedom
18 Books?

19 A. I bought one or two more sets of tapes at different times.
20 Um, I bought a tax Code book.

21 Q. All right. If I could turn your attention to Exhibit 115,
22 do you recognize this document?

23 A. Yes, this is my return from 1998.

24 Q. And this is a return you signed?

25 A. Yes.

1 Q. On what date?

2 A. October 27, '99.

3 MR. IGNALL: United States moves Exhibit 115 into
4 evidence at this time.

5 MR. CRISTALLI: No objection.

6 MR. BOWERS: None, your Honor.

7 MR. SCHIFF: No objection.

8 THE COURT: 115 is received.

9 (Government's Exhibit No. 115, received into
10 evidence.)

11 BY MR. IGNALL:

12 Q. What did you report as your wages, salaries, and tips on
13 this tax return, Ms. Eller?

14 A. Zero. And it has the notation, "Please see attached
15 letter."

16 Q. All right. Did you seek a refund of taxes withheld for that
17 year?

18 A. Yes, I did.

19 Q. And did you attach that same letter we looked at in the
20 previous exhibit?

21 A. Yes.

22 Q. All right. Did you ever get a --

23 A. All I --

24 Q. -- refund?

25 A. -- did was whited out the parts and changed them from --

1 usually, that's what I did because I never did retype the whole
2 letter.

3 Q. Okay. Did you ever receive a refund?

4 A. No.

5 Q. All right. Did you receive any correspondence from the IRS,
6 uh, concerning your 1998 tax return?

7 A. I'm sure I did.

8 Q. All right. If I could turn your attention to Exhibit 117,
9 do you recognize this document?

10 A. 117?

11 Q. 117, yes, ma'am.

12 A. Yes. This is, um, the same letter I referred to before for
13 '97, only this is for '98 --

14 Q. Okay.

15 A. -- but there is an attachment that refers to, um, a copy
16 going to my authorized representative as well.

17 Q. Are we looking at Exhibit 117?

18 A. I'm sorry?

19 Q. Are we looking at Exhibit 117?

20 A. I'm looking at 117.

21 Q. Oh, I'm sorry. I was looking at 116.

22 A. Okay.

23 Q. It's the other --

24 A. Okay.

25 Q. -- we'll stay with 117. I'm sorry.

1 THE COURT: That's all right.

2 BY MR. IGNALL:

3 Q. And -- and -- and this is -- is 117 correspondence you got
4 from the Internal Revenue Service?

5 A. Yes.

6 Q. On what date?

7 A. The letter was dated, um, March 9, 2001.

8 MR. IGNALL: Government moves Exhibit 1- --

9 MR. SCHIFF: Again, this is not a complete document.
10 The supporting documents that support the deficiency are not
11 here.

12 MR. BOWERS: We haven't put that in yet.

13 MR. SCHIFF: Are we gonna put the supporting documents
14 in?

15 MR. IGNALL: All right. Well, the Government moves
16 Exhibit 117 into evidence.

17 THE COURT: Any other objections to 117?
18 Mr. Cristalli?

19 MR. CRISTALLI: Just one moment, your Honor. Just
20 wanna....

21 (Discussion between Mr. Cristalli and
22 Mr. Modafferi.)

23 MR. CRISTALLI: No objection.

24 THE COURT: Bowers.

25 MR. BOWERS: I don't have any objection, your Honor.

1 MR. SCHIFF: I object. It's not a complete document.

2 THE COURT: I heard your objection.

3 MR. SCHIFF: Yeah. Are they gonna put the whole
4 document in?

5 THE COURT: 117 is received.

6 (Government's Exhibit No. 117, received into
7 evidence.)

8 MR. IGNALL: Thank you.

9 If you could put that on the screen.

10 BY MR. IGNALL:

11 Q. If you could look at the -- the third page of Exhibit 117,
12 do you recognize this part of Exhibit 117?

13 A. Yes.

14 Q. It says something about copy to authorized representative,
15 Cynthia L. Neun. Do you see that?

16 A. Yes.

17 Q. At some point, did you retain Ms. Neun to be your
18 authorized --

19 MR. CRISTALLI: Objection. Foundation.

20 BY MR. IGNALL:

21 Q. -- authorized representative?

22 MR. CRISTALLI: Objection. Foundation as to --

23 THE COURT: Subject to --

24 MR. CRISTALLI: -- retained.

25 THE COURT: -- foundation.

1 Go ahead.

2 THE WITNESS: That's what I started to refer to before.
3 Um, at some point early on when I started getting letters and I
4 was so nervous, it was suggested to me -- I can't remember what
5 person it was at that time -- but they suggested that I could,
6 uh, use Cynthia Neun as my power of attorney and then I wouldn't
7 have to worry about all this; she would handle it. And that's
8 what I did.

9 BY MR. IGNALL:

10 Q. Do you remember when that was that you retained Ms. Neun as
11 your --

12 MR. CRISTALLI: Objection.

13 BY MR. IGNALL:

14 Q. -- power of attorney?

15 MR. CRISTALLI: Misstates the evidence. She never
16 testified that she retained anybody; she said she used.

17 THE COURT: Sustained.

18 MR. IGNALL: All right.

19 BY MR. IGNALL:

20 Q. Do you remember at what time you began to use Ms. Neun as
21 your power of attorney?

22 A. I don't remember the date that I signed that, no.

23 Q. Was it before the date of this Notice of Deficiency?

24 A. I'm sure it was.

25 Q. All right. If I could turn your attention back to

1 Exhibit 116 briefly.

2 A. (Complies.)

3 Q. Do you recognize Exhibit 116?

4 A. (Reviewing document.)

5 Was that a question? I'm sorry.

6 Q. Do -- do you recognize Exhibit 116?

7 A. Yes.

8 Q. What is Exhibit 116?

9 A. It's another letter where they determined, um, my return to
10 be frivolous.

11 Q. For what year?

12 A. Um, this refers to 1998.

13 Q. All right.

14 MR. IGNALL: Government moves Exhibit 116 into
15 evidence.

16 MR. CRISTALLI: No objection.

17 MR. BOWERS: No objection, your Honor.

18 MR. SCHIFF: No objection.

19 THE COURT: 116 is received.

20 (Government's Exhibit No. 116, received into
21 evidence.)

22 BY MR. IGNALL:

23 Q. Is this is a similar letter to the one you had gotten for
24 the 1997 tax year?

25 A. Yes.

1 Q. All right. I'd like to turn your attention to Exhibit 118.

2 A. (Complies.)

3 Q. Do you recognize this document?

4 A. (Reviewing document.)

5 Yes, I do.

6 Q. What is Exhibit 118?

7 A. It's a 1040 tax return for the year, um, 1999.

8 Q. And is this another return where you reported zero at
9 line 7?

10 A. Yes, it is.

11 Q. Does this contain the same attachment that we saw on the
12 previous two tax returns?

13 A. Yes.

14 Q. And when did you file this tax return?

15 A. April 16th, 2000.

16 Q. And why did you write "zero" on line 7 of this tax return?

17 A. Again, because I was still following through with the belief
18 that I had joined in some kind of trailblazing program to
19 correct this -- this tax situation and I was saving myself from,
20 um -- from having to have taxes withheld from my pay. So I had
21 more take home pay.

22 Q. Whose program were you following or part of?

23 A. Irwin --

24 MR. SCHIFF: Objection.

25 THE WITNESS: -- Schiff's.

1 MR. SCHIFF: Objection. There's no foundation --
2 there's no proof that has been offered that I have any program.

3 THE COURT: Well, that's her word, "program."

4 MR. SCHIFF: Well, no.

5 THE COURT: She's used it over and over again. So --

6 MR. SCHIFF: Yeah, because I think the Government --

7 THE COURT: You can take her on cross and -- and ask
8 her what she means by "program." Overruled.

9 BY MR. IGNALL:

10 Q. I'm sorry. Whose program did you say you were following?

11 A. Irwin Schiff's.

12 MR. IGNALL: Government moves Exhibit 118 into
13 evidence.

14 THE COURT: Any objection to 118?

15 MR. CRISTALLI: No, your Honor.

16 MR. BOWERS: I don't have any objection.

17 MR. SCHIFF: No -- no objection.

18 THE COURT: 118 is received.

19 (Government's Exhibit No. 118, received into
20 evidence.)

21 BY MR. IGNALL:

22 Q. If I turn your attention to Exhibit 119.

23 A. (Complies.)

24 Q. Do you recognize Exhibit 119?

25 A. Yes. It's another lettuce [sic] -- letter about the

1 frivolous, um -- from the IRS stating that my return was
2 frivolous for --

3 Q. For what year?

4 A. -- for the year 1999.

5 MR. IGNALL: At this point, Government moves
6 Exhibit 119 into evidence.

7 THE COURT: Any objection to 119?

8 (Discussion between Mr. Cristalli and
9 Mr. Modafferi.)

10 MR. CRISTALLI: No, your Honor.

11 MR. BOWERS: I have no objection, Judge.

12 MR. SCHIFF: I have no objection.

13 THE COURT: 119 is received.

14 (Government's Exhibit No. 119, received into
15 evidence.)

16 BY MR. IGNALL:

17 Q. If I can turn your attention to Exhibit 120, please.

18 A. (Complies.)

19 Q. Do you recognize Exhibit 120, Ms. Eller?

20 A. Yes, I do.

21 Q. What is Exhibit 120?

22 A. It's a Notice of Deficiency referring to the year 1999.

23 Q. Is it addressed to you?

24 A. Yes.

25 Q. From whom?

1 A. From Department of Treasury, Internal Revenue Service.

2 Q. And do you know what tax year this relates to?

3 A. 1999.

4 Q. All right.

5 MR. IGNALL: Government moves Exhibit 120 into
6 evidence.

7 MR. CRISTALLI: No objection.

8 MR. BOWERS: No, I have no objection.

9 MR. SCHIFF: The only objection I have, your Honor, is
10 that it's an incomplete -- on here it says the deficiency is
11 1,174. But the Government hasn't shown how that deficiency was
12 determined because the documents are missing.

13 THE COURT: 1 --

14 MR. SCHIFF: I must object to allowing the Government
15 to put into evidence --

16 THE COURT: You've objected. Now, I don't need a
17 speech. You've objected and you've stated the basis. I don't
18 need a speech.

19 120 is received.

20 (Government's Exhibit No. 120, received into
21 evidence.)

22 BY MR. IGNALL:

23 Q. If I could turn your attention, Ms. Eller, to Exhibit 121.

24 Do you recognize this document?

25 A. (Reviewing document.)

1 Yes, I do.

2 Q. What is this document?

3 A. It's the tax -- my tax return for the year 2000.

4 Q. And how much did you report in income --

5 A. Zero.

6 Q. -- on line 7?

7 A. Zero.

8 Q. And did you attached the same attachment as you had on the

9 three previous returns?

10 A. Yes.

11 Q. And -- and one last time on this: Why did you write down

12 zero on line 7 of that 2000 tax return?

13 A. Um, again, to, um -- just because I -- I always call it "the

14 program." But I'm sorry if that's offensive -- um, because

15 according to the plan that I was following, um, I didn't have to

16 report wages, I didn't have to have taxes withheld.

17 Q. And who's plan was that?

18 A. Irwin Schiff's.

19 Q. Thank you.

20 What date did you file this tax return?

21 A. Um, April 18th, '0- -- or -- I think it's -- I don't know if

22 it's April 13th or April 18th of '01.

23 Q. All right.

24 MR. IGNALL: Government moves Exhibit 121 into

25 evidence.

1 MR. CRISTALLI: No objection.

2 MR. BOWERS: No objection, your Honor.

3 MR. SCHIFF: No objection.

4 THE COURT: 121 is received.

5 (Government's Exhibit No. 121, received into
6 evidence.)

7 BY MR. IGNALL:

8 Q. If I could turn your attention to Exhibit 122, do you
9 recognize this document?

10 A. Yes, I do.

11 Q. What is this document?

12 A. It's another, um, letter stating that my return was
13 frivolous and this refers to the year 2000.

14 Q. What's the date of this letter?

15 A. Uh, May 25th -- I can't read the year. Um, it's stamped on
16 there. I don't know if it's...

17 Q. Does it look like -- well, it's for the 2000 tax year.
18 Would that help?

19 A. It's probably 2001, but I...

20 MR. IGNALL: Government moves Exhibit 122 into
21 evidence.

22 MR. CRISTALLI: No objection.

23 MR. BOWERS: I have no objection.

24 BY MR. IGNALL:

25 Q. All right. The correspondence we just looked at, did you

1 bring that correspondence --

2 THE COURT: Hold on a minute. Just a second. We
3 haven't --

4 MR. SCHIFF: I'm sorry. No objection.

5 MR. IGNALL: I'm sorry, your Honor.

6 THE COURT: 122 is received.

7 (Government's Exhibit No. 122, received into
8 evidence.)

9 BY MR. IGNALL:

10 Q. Ms. Eller, the correspondence we were just looking at from
11 the IRS, did you ever bring those letters into Freedom Books?

12 A. As far as I know I did every time I received something
13 because I -- and I felt like I was bein' a pest, but I was
14 assured that I could do that and that it would all be okay.

15 Q. And did you bring these letters in shortly after you got
16 them?

17 A. Probably -- you know, not always the next day. But, yes,
18 before the time action was required.

19 Q. All right. Did you ever purchase anything from Freedom
20 Books to respond to any of these letters?

21 A. There were times when I paid to have documents typed for me.
22 Is that what you mean?

23 Q. You -- you -- you tell me.

24 A. Well, I mean, other than buying, um, tapes and the books,
25 um, I -- I did spend some money on having documents prepared

1 and, um, twice, um, I had, um, someone accompany --

2 Q. All right. We'll --

3 A. -- actually three tax people accompany me to hearings.

4 Q. All right. We'll get to that in a minute.

5 A. Okay. But I'm just talking about...

6 Q. If I could turn your attention to Exhibit 123.

7 A. (Complies.)

8 Q. Do you recognize Exhibit 123?

9 A. Yes.

10 Q. What is Exhibit 123?

11 A. It's a letter -- I -- I'd have to read it again to be able

12 to describe it to you.

13 Q. Well, without reading it --

14 A. But, just by looking at it, I can tell it's a -- it's a

15 letter that was prepared through the program whereby I filled in

16 the blanks.

17 Q. Did you purchase this letter from Freedom Books?

18 A. I don't think I paid for it. I think it was given to me.

19 Q. You got the form from someone --

20 A. From --

21 Q. -- at Freedom Books?

22 A. -- there, yes.

23 Q. Do you remember who at Freedom Books?

24 A. Not this letter in particular. Everybody there was always

25 very helpful to me.

1 Q. Now, what's the date of this letter?

2 A. Um, June 25th, '01.

3 Q. How -- how long before June 25th, '01, do you recall that

4 you obtained the form for this letter from Freedom Books?

5 A. I -- I don't know. I probably received this form when I

6 needed it to write -- to -- to send this in response to

7 something else. But I couldn't give you a date.

8 Q. Now, we may be able to help refresh your recollection.

9 MR. IGNALL: United States moves Exhibit 123 into

10 evidence.

11 MR. CRISTALLI: No objection.

12 MR. BOWERS: That's fine, Judge.

13 (Discussion between Mr. Leventhal and

14 Mr. Schiff.)

15 MR. SCHIFF: No, I don't have any objection.

16 THE COURT: 123 is received.

17 (Government's Exhibit No. 123, received into

18 evidence.)

19 MR. IGNALL: If we could put this on the screen.

20 (Document displayed in open court.)

21 BY MR. IGNALL:

22 Q. If I could -- who is this addressed to?

23 A. Mr. Paig.

24 Q. Do you know who Mr. Paig is?

25 A. I don't recall unless it tells me in this letter.

1 Q. If you were to turn your attention back to Exhibit 122, can
2 you tell me if that refreshes your recollection about who this
3 person is?

4 A. Okay. Mr. Paig was the person that sent me the letter about
5 the frivolous return.

6 Q. All right. And could you read the first line of
7 Exhibit 123?

8 A. "Your letter" -- oh, okay. This is a letter I wrote
9 Mr. Paig?

10 Q. Yes.

11 A. "Your letter of May 25, 2001," and I crossed out
12 "identifies" and I wrote in "'portrays' -- "you as being Chief,
13 Examination Branch. However, IRS Manual MT1100-34" --

14 Q. Okay. We don't need to go through that.

15 A. Okay.

16 Q. I just wanted to go...

17 Did you attach the May 25th letter?

18 A. Uh, yes, I did 'cuz it says I did.

19 Q. Okay. And what is the May 25th letter?

20 A. (Reviewing documents.)

21 That's the letter stating that my 2000 return was
22 frivolous.

23 Q. Did you write any portion of this letter yourself?

24 A. Just the parts that are printed in.

25 Q. In handwriting?

1 A. And I'm sure I signed it. I'm trying to find the
2 signature -- yes, I can testify that's my signature.

3 Q. All right. And you sent this off to the IRS?

4 A. Yes.

5 Q. What happened after you sent this letter to the IRS?

6 A. I honestly don't recall what -- I mean, every time I
7 received some -- every time I did something, every time I
8 received something I was just as confused as I am right now.
9 And that's why I always went running in there and --

10 Q. "There" being? Where is "there," Ms. Eller?

11 A. I'm sorry. Into Freedom Books.

12 Q. Thank you.

13 MR. SCHIFF: Can I hear the answer, please?

14 THE COURT: Every time she received something she was
15 as confused as she is now and she went to Freedom Books.

16 MR. SCHIFF: Okay.

17 BY MR. IGNALL:

18 Q. All right. We talked a little bit earlier about a power of
19 attorney. If I could turn your attention to Exhibit 124, do you
20 recognize this document?

21 A. Yes, I do.

22 Q. What is this document?

23 A. It's the Power of Attorney and Declaration of Representative
24 that I signed to give Cynthia Neun, um, authority to handle all
25 this tax paperwork for me.

1 Q. Now, did you sign this document?

2 A. Yes.

3 Q. What day did you sign it?

4 A. November 3rd, 2000.

5 Q. Do you know if Ms. Neun signed this document?

6 A. Same day.

7 Q. Did you see her sign it?

8 A. I'm not sure that I did.

9 Q. Okay.

10 MR. IGNALL: Government moves into evidence

11 Exhibit 124.

12 (Discussion between Mr. Cristalli and

13 Mr. Modafferri.)

14 THE COURT: 124?

15 MR. CRISTALLI: Is it the power of attorney?

16 MR. IGNALL: Yes.

17 MR. CRISTALLI: Yeah, I have no objection to that.

18 MR. BOWERS: I have no objection, Judge.

19 THE COURT: 124? Mr. Schiff --

20 MR. SCHIFF: No objection.

21 THE COURT: -- 124?

22 MR. IGNALL: If we could put that on the screen.

23 THE COURT: 124 is received.

24 (Government's Exhibit No. 124, received into

25 evidence.)

1 (Document displayed in open court.)

2 BY MR. IGNALL:

3 Q. All right. If I could show -- in part 1, item 1, Taxpayer
4 Information, what does this Power of Attorney say? Who -- who
5 is the taxpayer listed there?

6 A. That was myself.

7 Q. All right. Go on to the next section where it says,
8 "Representative." Who is listed as the representative?

9 A. Um, Cynthia Neun.

10 Q. Do you recognize the address?

11 A. Well, there were two offices on Sahara. I think this would
12 have been the first one on Sahara. But I'm only guessing.

13 Q. Office -- whose office?

14 A. Of Freedom Books.

15 Q. All right. Thank you.

16 Did you ever attend any type of a hearing at the IRS?

17 A. Yes, I did.

18 Q. Do you recall what kind of hearing it was?

19 A. Um, it -- the first one, I believe, was supposed to be about
20 the frivolous return, but there was some quibble about one day
21 because when I made my response that it was a 30-day month
22 instead of a 31-day month. And so they had a -- some kind of
23 substitute kind of hearing since I wasn't eligible to have the
24 normal hearing for the frivolous return.

25 Q. Did you ever attend --

1 MR. CRISTALLI: Give us some time -- could we have a
2 time frame on that, the first hearing?

3 THE WITNESS: What -- what -- was that a question to
4 me?

5 MR. IGNALL: I may be able to clarify that.

6 THE COURT: Foundation.

7 BY MR. IGNALL:

8 Q. Did you ever attend a hearing with anyone at Freedom Books?

9 A. Did I ever attend...

10 Q. An IRS hearing along with someone from Freedom Books.

11 A. Yes.

12 Q. With whom?

13 A. The one I was just now talking about, um, Cynthia Neun
14 accompanied me.

15 Q. All right. Let's -- and did -- did you -- if I returned you
16 to Exhibit 124, the Power of Attorney, would that help refresh
17 your recollection as to the time roughly of that hearing?

18 A. (Reviewing document.)

19 It was my recollection that the Power of Attorney was
20 long before that.

21 Q. Okay. So it would have been sometime after this? Is that
22 your recollection?

23 A. I believe so.

24 Q. All right. Did you pay Ms. Neun to go to this hearing with
25 you?

1 A. Would -- yes, I did. It was understood that if she -- first
2 I was told that I wouldn't -- if I was charged with going to a
3 hearing, I wouldn't even have to go; she could go for me. But
4 then, when reality happened and I had to go to a hearing, then
5 it was, well, she can go with me. Then when it came time to go,
6 I was told that somethin' had changed; that she could no longer
7 speak at the meetings. And -- and it was always said that if
8 she did go to a meeting that it would cost \$200. Then after we
9 went to the meeting -- or the hearing and she was not able to
10 speak for me she told me I only needed to pay her 100.

11 Q. Did you pay her \$100?

12 A. Yes, I did.

13 Q. Did you attend the hearing at the IRS with Ms. Neun?

14 A. Yes.

15 Q. Do you see Ms. Neun in the courtroom right now?

16 A. Yes.

17 Q. Can you identify her by what she's wearing?

18 A. Looks like a black jacket with a beige top on.

19 MR. IGNALL: Will the record reflect identification of
20 Defendant Neun?

21 THE COURT: Yes.

22 BY MR. IGNALL:

23 Q. What happened as a result of that hearing at the IRS?

24 A. You know, I feel ridiculous sayin' this, but I don't even
25 know. I mean, it -- it didn't go well.

1 Q. Okay. Did you -- did you go into Freedom Books to talk to
2 anyone about how things went at the hearing?

3 A. Every time I got upset and scared and admitted my confusion,
4 I was assured that everything was gonna be okay. This
5 happened --

6 MR. SCHIFF: Hearsay, your Honor. Objection.

7 THE COURT: Sustained.

8 BY MR. IGNALL:

9 Q. The question was: Did you go into Freedom Books to talk to
10 anyone about the result of this hearing?

11 A. Yes.

12 Q. And did anyone at Freedom Books recommend doing anything
13 after this hearing?

14 A. Yes. I continued on...

15 Q. What was the next step? If you don't recall --

16 A. I don't --

17 Q. -- I may be able to --

18 A. -- I don't recall.

19 Q. All right. If I could turn your attention to Exhibit 126.

20 A. We're skipping 125?

21 Q. Uh, no. Let's -- let's -- thank you. Let -- let -- let's
22 go to Exhibit 125. Thank you.

23 Do you recognize Exhibit 125?

24 A. Um, yes, it says, "Decision Letter, Concerning Equivalent
25 Hearing." So this would be the result of the hearing I went to

1 with Cynthia Neun.

2 Q. Okay. Did you receive this letter?

3 A. Yes.

4 Q. Did you bring this letter into Freedom Books?

5 A. I'm sure I did.

6 Q. All right.

7 MR. IGNALL: Government moves Exhibit 125 into
8 evidence.

9 THE COURT: Cristalli?

10 MR. CRISTALLI: I'm sorry. 125 you said?

11 THE COURT: Yes.

12 MR. CRISTALLI: No, objection.

13 THE COURT: Bowers?

14 MR. BOWERS: No, your Honor.

15 THE COURT: Schiff?

16 MR. SCHIFF: No, your Honor.

17 THE COURT: 125 is received.

18 (Government's Exhibit No. 125, received into
19 evidence.)

20 MR. IGNALL: If we could pull that up.

21 (Document displayed in open court.)

22 BY MR. IGNALL:

23 Q. Did you bring -- I'm sorry. You said you brought this
24 letter into Freedom Books?

25 A. I'm sure I did. But, I mean, I can't be specific about what

1 day or anything.

2 Q. Did you end up doing anything in response to getting this
3 letter?

4 MR. SCHIFF: Uh, is there a copy of the hearing in here
5 also?

6 THE WITNESS: You're asking me --

7 BY MR. IGNALL:

8 Q. Did you take any action after getting this letter,
9 Ms. Eller?

10 A. What I was looking for here was to see if it requested any
11 action because I'm sure I did what I was told to do at Freedom
12 Books.

13 Q. If I could turn your attention to Exhibit 126 and ask you:
14 Does that refresh your recollection as to whether you took any
15 action after your IRS hearing?

16 A. You want me to say what this is?

17 Q. Does that refresh your recollection as to whether you took
18 any action?

19 A. See, I don't remember what --

20 MR. BOWERS: Your Honor --

21 THE WITNESS: -- followed what --

22 MR. BOWERS: -- I have an objection --

23 THE WITNESS: -- but yes.

24 MR. BOWERS: -- regarding this exhibit. So I don't --
25 I don't have an objection to the pending question. But I would

1 like to exercise some caution about how the witness talks about
2 the exhibit.

3 MR. CRISTALLI: And, your Honor, I think we lodged a
4 similar objection as related to this exhibit on a previous
5 witness. And I think it's going to be a consistent objection as
6 it relates to this particular document because we were, uh, not
7 allowed an opportunity to get another document in as it related
8 to another legal opinion. And it was sustained.

9 THE COURT: What -- what is the question? You haven't
10 moved for admission. What is the question?

11 MR. IGNALL: I haven't moved for admission yet.

12 BY MR. IGNALL:

13 Q. Does this refresh your recollection as to whether you took
14 any other legal actions with respect to --

15 A. This was --

16 Q. -- your IRS hearings?

17 A. -- probably the first, um, document that I paid to have
18 prepared for me --

19 Q. All right.

20 A. -- because I know I didn't do this myself. But I remember
21 seeing --

22 Q. Can you briefly describe what this document is?

23 MR. CRISTALLI: Well --

24 MR. BOWERS: I'm gonna lodge that objection again.

25 And, in fact, your Honor, the witness's last answer I -- I

1 believe suggests that she couldn't have relied on this document,
2 that she doesn't even understand what it is.

3 MR. IGNALL: That's not what it's offered for, your
4 Honor.

5 THE COURT: I'm sorry?

6 MR. IGNALL: May I ask another the foundational
7 question?

8 THE COURT: Go ahead.

9 BY MR. IGNALL:

10 Q. Do you recognize Exhibit 126?

11 A. Yes, I do.

12 Q. Is this a document that you yourself wrote?

13 A. No, it's not.

14 Q. Who wrote this document?

15 A. I don't know who, um, um, worded it. But it was typed at
16 the office there at Freedom Books I'm sure --

17 Q. All right.

18 A. -- and possibly by, um, a lady named "Melissa" --

19 Q. All right.

20 A. -- Toni's mother.

21 Q. But someone typed this for you --

22 A. Yes.

23 Q. -- at Freedom Books?

24 All right. What is this document generally? Don't
25 read any part of it to us quite yet.

1 A. It's an appeal, um -- it's an appeal to the, um, due process
2 hearing determination.

3 Q. An appeal to where?

4 A. To the, um, United States District Court for the District of
5 Nevada.

6 Q. Did you file such an appeal in the United States District
7 Court?

8 A. Yes, apparently I did.

9 MR. CRISTALLI: Your Honor, I --

10 BY MR. IGNALL:

11 Q. Do you recall filing an appeal in the United States District
12 Court?

13 MR. CRISTALLI: Your Honor, I apologize. I do not have
14 an objection to this exhibit. I -- I was --

15 MR. BOWERS: We thought it was something other than
16 what it was. We --

17 MR. CRISTALLI: I apologize.

18 MR. BOWERS: We withdraw our objection and apologize to
19 the Court.

20 MR. IGNALL: At this point, Government moves
21 Exhibit 126 into evidence.

22 MR. CRISTALLI: No objection.

23 MR. BOWERS: That's fine. Again, our apologies.

24 MR. SCHIFF: No objection.

25 THE COURT: Did Mr. Schiff say "no objection"?

1 MR. SCHIFF: No, I don't have any.

2 THE COURT: All right.

3 MR. IGNALL: All right.

4 THE COURT: 126 is received.

5 MR. IGNALL: If we could put that on the screen.

6 (Government's Exhibit No. 126, received into
7 evidence.)

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. Did you file an appeal -- did you file any kind of appeal in
11 the United States District Court?

12 A. Yes.

13 Q. Do you recall doing that?

14 A. When I first was looking at this, I -- I was thinkin' it was
15 still something different because I had gone to two hearings at
16 the IRS building.

17 Q. Okay.

18 A. But this -- this is the -- the final one that I went to,
19 yes.

20 Q. All right. And who draft -- you said someone at Freedom
21 Books drafted up this --

22 A. Yes.

23 Q. -- appeal?

24 Did you file this with the United States District
25 Court?

1 A. Yes.

2 Q. All right. Do you know what the result of your appeal was?

3 A. I know it was denied, but I couldn't be specific about what
4 the letter said.

5 Q. If I could turn to your [sic] exhibit -- to Exhibit 127.

6 A. (Complies.)

7 Q. Do you recognize Exhibit 127?

8 A. (Reviewing document.)

9 Yes, I recognize it.

10 Q. What is Exhibit 127?

11 A. Pardon me?

12 Q. What is Exhibit 127?

13 A. It's an Order from the United States -- granting the United
14 States's Motion for Summary Judgment.

15 Q. Did you receive a copy of this order?

16 A. I believe I did.

17 Q. Did you ever talk to anyone at Freedom Books about, uh,
18 getting this order?

19 MR. SCHIFF: I didn't -- what was the question?

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

22 THE WITNESS: Um, there's a -- you know, it probably
23 was before I received this. But I'm not sure --

24 BY MR. IGNALL:

25 Q. Okay.

1 A. -- when I -- I stopped going in there --

2 Q. All right.

3 A. -- so...

4 Q. Let me back up then.

5 Did you ever have a hearing here in the federal

6 courthouse --

7 A. Yes.

8 Q. -- about your tax situation?

9 A. Yes.

10 Q. Do you remember roughly when that was?

11 A. That's what I'm havin' trouble remembering. Um, I'm looking

12 for a date on here. If this was written November 4th, 2002, I

13 presume it was maybe a month or so before that.

14 Q. All right.

15 A. But I'm just guessing.

16 Q. When you -- but at some point you got notice that there was

17 gonna be a hearing here in the federal court?

18 A. Yes.

19 Q. Did you talk to anyone about that hearing before you came to

20 the hearing?

21 A. Say that again, please.

22 Q. Did you speak to anyone about that hearing before coming?

23 A. Oh, at -- yeah, because when I filed for -- when I filed

24 with the District Court, the -- the big -- the big appeal or

25 whatever it was, I was, like, thinkin' I've got to stop this; I

1 can't take this stress. And I was told that this would be easy,
2 that --

3 Q. Who told you that?

4 A. Everybody -- it was like a big family in there. But I know
5 I talked to Larry Cohen about this, um, and several people that
6 were in there at the time. It probably was Toni and her mother,
7 Melissa.

8 Q. Okay.

9 A. And I -- there was a young fella in there too.

10 Q. All right.

11 A. I don't know if his name was John.

12 Q. All right. But did you -- let's move on -- did you speak to
13 anyone specifically about this upcoming hearing and what to do?

14 A. As soon as I received word that I had to, uh, appear at a
15 hearing here, um, I called Freedom Books and they told me that
16 that was important; Mr. Schiff would wanna talk with me and they
17 gave me his home phone number.

18 Q. Did you speak with Mr. Schiff?

19 A. I called him up and he arranged to meet me in his office.
20 And -- and then we talked about it and he said he would
21 accompany me to the hearing.

22 Q. Okay. Did you talk about what to say at the hearing?

23 A. Yes, we talked about it a lot.

24 Q. Did he make any suggestions?

25 A. Well, yes.

1 MR. SCHIFF: What was the question?

2 THE COURT: Did he make any suggestions?

3 MR. SCHIFF: Yes.

4 THE WITNESS: He gave me ideas that I should remember
5 to point out and I wrote them down like in, um, outline style.

6 BY MR. IGNALL:

7 Q. And did you bring those with you to court?

8 A. Yes.

9 Q. Who, if anyone, accompanied you to this court hearing?

10 A. Just Mr. Schiff.

11 Q. And --

12 A. Actually, Cynthia wanted to, I believe. But she had another
13 engagement that day. So then she met us outside when it was
14 over.

15 Q. Now, let's go to what happened in the hearing.

16 Did you raise any of these arguments that Mr. Schiff
17 had given you in the court hearing?

18 A. I got so upset that day when the court started and they said
19 it was United States of America versus me that I just wanted to
20 disappear. And I remember making one statement that I didn't
21 believe I needed to pay taxes because I was a wage earner and
22 that taxes were due by corporate earnings or corporations who
23 earned --

24 Q. Was Mr. Schiff in the courtroom when you made that argument?

25 A. Yes.

1 Q. All right. Did the judge respond to that argument?

2 A. Yes. The judge jumped on me and stated the law and said
3 that that wasn't true and it just wiped me out. So...

4 Q. All right. After the hearing, you said you saw Ms. Neun
5 outside?

6 A. Yes.

7 Q. Did you tell her what happened in the hearing?

8 A. I was sobbing so hard I couldn't talk.

9 Q. Uh, do you still, um, follow the -- the plan or -- of
10 Mr. Schiff?

11 A. No. It was after that hearing I decided that I didn't
12 know -- you know, I had believed in this program admittedly by
13 being prodded along, but I had to believe in it or else I
14 couldn't be doing what I was doing. So, as confused as I was, I
15 wanted to believe in it.

16 But, after that hearing, I decided no matter how good
17 or bad or right or wrong it was, I couldn't be part of it
18 anymore. I just couldn't take the stress. And somebody else
19 was gonna have to make the way for society to get everything
20 straightened out with the IRS. It couldn't be me.

21 Q. When you say "get everything straight with the IRS," had you
22 had discussions with Mr. Schiff about the purpose of this
23 program?

24 A. Well, it was gonna make everything right because I was told
25 that everybody in the IRS lied to us and was doing illegal

1 things and -- and it needed to be corrected.

2 Q. Corrected how? Did Mr. Schiff say?

3 A. So that across the board everybody would be doing what I was
4 doing and not paying taxes and...

5 Q. Have you filed accurate returns since leaving the Mr. Schiff
6 program?

7 A. Yes. After --

8 MR. CRISTALLI: Objection.

9 THE COURT: What is the objection?

10 MR. CRISTALLI: Well, it's a characterization on the --

11 BY MR. IGNALL:

12 Q. Have you been filing returns that --

13 THE COURT: Overruled.

14 MR. IGNALL: I'm sorry.

15 THE COURT: It's overruled.

16 MR. IGNALL: All right.

17 THE COURT: You can answer.

18 THE WITNESS: After the hearing --

19 MR. IGNALL: Yes.

20 THE WITNESS: -- and I think it was probably before I
21 even received this decision, but I'm not positive. But, after
22 that hearing, I wrote a letter, an original letter of my own, to
23 the IRS and I said that I wanted to straighten out my account
24 and...
25

1 BY MR. IGNALL:

2 Q. And have you done so?

3 A. Yes.

4 Q. Did -- did you have to pay any interest and penalties on top
5 of the tax that you owed to straighten things out?

6 A. That's still, um, pending because as it stands right now the
7 IRS has it as, um, uncollectible because of my financial status.
8 But I think it's reviewed every year or something like that.

9 Q. So there's still an outstanding balance that you owe?

10 A. Yes.

11 Q. Does that including penalties and interest --

12 A. Yes.

13 Q. -- for filing zero returns?

14 MR. IGNALL: One -- one moment, your Honor.

15 (Discussion between Mr. Ignall and
16 Mr. Neiman.)

17 BY MR. IGNALL:

18 Q. Ms. Eller, I believe you said you paid Cynthia Neun a
19 hundred dollars to attend an IRS hearing with you?

20 MR. CRISTALLI: Objection. Asked and answered.

21 MR. IGNALL: I just want to -- that's a preface.

22 THE WITNESS: You said when? How?

23 BY MR. IGNALL:

24 Q. No. How did you make that payment?

25 A. By check.

1 Q. All right.

2 MR. IGNALL: No further questions, your Honor.

3 THE COURT: Thank you.

4 Cross-examination?

5 MR. CRISTALLI: Thank you, your Honor.

6

7 CROSS-EXAMINATION

8 BY MR. CRISTALLI:

9 Q. Good afternoon, Ms. Eller.

10 A. Good afternoon.

11 Q. Ms. Eller, just to pick up where the Government left off, in
12 terms of the check that you made out to Cynthia -- the check
13 that you made out, that check was made out to Freedom Books;
14 correct?

15 A. I think I made the one to Cynthia in her name.

16 Q. Okay. It -- are you sure of that? Is -- could it be that
17 you couldn't make it out to Ms. Neun, that you made it out to
18 Freedom Books?

19 A. My recollection is I made it out to her, but I can't be
20 positive.

21 Q. You're not absolutely sure with regard to that; correct?

22 A. Correct.

23 Q. And, um, you initially found out through the office that,
24 um -- not through Cynthia specifically but through other
25 individuals when you inquired about somebody going with you,

1 that it would cost you \$200; correct?

2 A. Right.

3 Q. Okay. And no one at that particular time said to you that,
4 um -- that that \$200 specifically goes to Cynthia Neun for her
5 participation in your hearing. True?

6 A. Well, I think it was Cynthia that told me it would be \$200.
7 And I don't think -- I -- I don't know if she said that'll be
8 due to me. But it --

9 Q. You don't know where --

10 A. -- it --

11 Q. -- that money went?

12 A. -- it didn't make any difference to me. I was -- you know
13 what I mean? I thought -- as far as how they handled their
14 money within their business, that wasn't my business.

15 Q. Right.

16 What I'm trying to get at: You don't know whether or
17 not Cynthia Neun directly received that, uh, money or if Freedom
18 Books or somebody else in the organization received that money;
19 correct?

20 A. I don't really know. I was under the impression it would be
21 her because she was doing the power of attorney in her own name.
22 But I didn't know that for sure --

23 Q. But you --

24 A. -- and I didn't question it.

25 Q. -- you don't know the structure of Freedom Books in terms of

1 payment, um, as to when a particular person may go and represent
2 somebody at a hearing; correct?

3 A. Right.

4 Q. And you don't know whether or not that -- the person who
5 goes to the hearing is the person who is going to get the money
6 for participating in that hearing. True?

7 A. Right.

8 Q. Okay. And you don't know for certain who that check was
9 made out to; correct? You have some inclination, but you don't
10 know for certain?

11 A. Right.

12 Q. Okay. And it's also true that when Cynthia found out she
13 couldn't represent you -- represent you in terms of speaking at
14 the hearing that she reduced her -- reduced the fee from \$200 to
15 a hundred dollars; correct?

16 A. Yes.

17 Q. Okay. Um, it's also true that when you, um -- when
18 individuals at Freedom Books found out that financially you
19 couldn't afford the material, they were agreeable to reduce the
20 amounts for the material; correct?

21 A. The only thing that occurred with was, um, the typing of the
22 documents. They charged me either \$50 or a hundred dollars. I
23 think I paid them three times. I think it was \$50 twice and
24 \$100 once. And -- and it was like we know this should really
25 cost more, but we're gonna do this for you.

1 Q. Okay. So they gave you kind of a --

2 A. A break.

3 Q. -- reduced rate --

4 A. Um-hum.

5 Q. -- correct?

6 A. Right.

7 Q. All right. You said that you currently have had not only

8 your underlying tax liability that's pending with the IRS but

9 you also have penalties and interest with regard to that;

10 correct?

11 A. Right.

12 Q. Um, the IRS has not indicated to you that they were gonna

13 give you a reduction for those penalties or interest, have they,

14 because of your financial situation?

15 A. No.

16 Q. And basically, you know, at this particular time or at some

17 time you abandoned, the, um -- the philosophy and the teachings

18 that you learned through the material of Mr. Schiff because --

19 not because of -- of your belief as to whether or not it's

20 legitimate or not legitimate. It's just that you didn't want to

21 deal with this anymore; correct?

22 A. Right. Exactly.

23 Q. In fact, you were upset with yourself when you went to the,

24 um, hearing with Mr. Schiff that you couldn't represent his

25 position a little bit better. Is that true?

1 A. I wish I wouldn't have had to have said a word and he could
2 have handled it --

3 Q. Right.

4 A. -- yeah. That's basically the way I did it all the way
5 through. And I always felt guilty for not doin' my homework and
6 bein' able to be a good part of the program. But, like I say,
7 every time I said I can't do this they say, well, you'll be okay
8 and we'll help you.

9 Q. Okay. And -- and -- and that's kind of a reoccurring theme
10 that I'm getting from you is that everybody that you associated
11 with Freedom Books tried to assist you to the best of their
12 ability. True?

13 A. True.

14 Q. And -- and you went to this -- first of all, you went to
15 the -- the deficiency hearing and you spoke to IRS agents,
16 correct, at --

17 A. If that was the deficiency hearing.

18 Q. Yeah.

19 And do you recall whether or not the agents, um, that
20 were there or the people representing the Internal Revenue
21 Service were -- were helpful in advising you as to what your
22 legal responsibilities were at that particular time? Did
23 they -- did they clarify things for you? Did they -- they
24 didn't -- they didn't -- let me -- let me try to make it a
25 little bit clearer.

1 Based on the information that the Internal Revenue
2 Service told you at those particular hearings, you didn't stop
3 implementing the teachings that were offered to you by
4 Mr. Schiff; correct?

5 A. Correct.

6 Q. Okay. So it wasn't -- and so it wasn't as if at that
7 particular time you were convinced that what you were doing was
8 illegal; right?

9 A. I was never convinced it was illegal or I wouldn't have been
10 doing it.

11 Q. Correct. Thank you.

12 MR. CRISTALLI: No further questions.

13

14

CROSS-EXAMINATION

15 BY MR. SCHIFF:

16 Q. Ms. Eller, you were aware just from the title of my book and
17 the -- wait. Excuse me.

18 You were aware, were you not, just from the title of my
19 book, *The Federal Mafia, How The Government Illegally Imposes*
20 *and Unlawfully Collects Income Taxes* -- so you were aware, were
21 you not, that I had a belief that the Government illegally
22 collects income taxes, didn't you?

23 A. Yes.

24 Q. And the book points out that there are risks of asserting
25 your rights in the face of an oppressive government backed by a

1 biased judiciary, which I state in here; is that correct?

2 A. I -- I honestly didn't -- I honestly did not read enough of
3 it to have ever read that part. There have been other parts of
4 the book that have been pointed out to me more recently that I
5 didn't read either.

6 Q. But I never led you to believe that you just -- you fill
7 this out and nothing's gonna happen to you. As a matter of
8 fact, when you filed --

9 MR. IGNALL: Objection, your Honor. It's gonna be --

10 THE COURT: Sustained.

11 MR. IGNALL: -- compound question. There's another --

12 THE COURT: Testifying.

13 MR. SCHIFF: All right.

14 THE COURT: Strike.

15 MR. SCHIFF: I'm sorry.

16 Where is the zero returns that -- where is the returns
17 that she filed?

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

20 MR. SCHIFF: Oh, I thought I took them out. Frivolous
21 return. Frivolous returns. Okay. Okay. Okay.

22 BY MR. SCHIFF:

23 Q. For instance, um, in the document that you sent, I'm
24 assuming -- when you sent this --

25 THE COURT: What document are you referring to?

1 MR. SCHIFF: Okay.

2 BY MR. SCHIFF:

3 Q. When you sent this in --

4 THE COURT: What document are you referring to?

5 MR. SCHIFF: Um, you're looking at the -- uh, this is
6 the return for 1999. Now, I'm --

7 THE COURT: Exhibit number?

8 MR. SCHIFF: 19- -- let me see. It's -- it's
9 Exhibit 118.

10 THE COURT: 118.

11 BY MR. SCHIFF:

12 Q. Before sending this in to the government, did you read the
13 attachment?

14 A. I believe I read it. I don't think I understood it.

15 Q. Well, let me ask you something: If you didn't understand
16 doc- -- if you didn't understand a paragraph of all the times
17 you came to see me, wouldn't you have asked me to explain it to
18 you if you didn't understand it?

19 A. Do you mean you personally?

20 Q. Yes.

21 A. Um, I think I -- I just -- whenever I met with you, I'd
22 listened to what you had to say respectfully and I don't -- I
23 think I left my questions and -- and showed my ignorance more to
24 your employees because I was embarrassed to be that way in front
25 of you.

1 Q. Well, first of all, when you came to Freedom Books, you
2 realize we paid rent. We had employees. You wouldn't expect an
3 organization like us to be able to provide free services even to
4 people who bought our books. You wouldn't expect that.

5 A. Right.

6 Q. But, when you spoke to me, I never charged you, did I?

7 A. You yourself? No.

8 Q. And I might suggest to you that there are certain products
9 that we have that would explain --

10 THE COURT: Don't testify.

11 MR. SCHIFF: All right.

12 BY MR. SCHIFF:

13 Q. Wouldn't I have --

14 THE COURT: You're not asking a question; you're
15 testifying.

16 BY MR. SCHIFF:

17 Q. Do you recall me telling you that if you had a problem it
18 might be explained in one of our supplemental tapes or
19 something?

20 A. Yes.

21 Q. Yes.

22 A. You would -- you would --

23 Q. Okay.

24 A. -- suggest that I buy more of them.

25 Q. Okay. Now, just -- I wanna shorten this. When -- when --

1 I -- I want to go to Exhibit 126 -- oh, before I go there --
2 before I go there, one of the paragraphs in the returns that you
3 filed said -- can --

4 THE COURT: Which one are you referring to?

5 MR. SCHIFF: Paragraph 7.

6 THE COURT: Of which exhibit?

7 MR. SCHIFF: Of this document that I just referred to.

8 THE COURT: Well, which exhibit?

9 MR. SCHIFF: Document 118.

10 THE COURT: All right.

11 And you're referring to the --

12 MR. SCHIFF: Okay.

13 THE COURT: -- attached letter?

14 BY MR. SCHIFF:

15 Q. Document -- you can -- you can -- paragraph 7 --

16 THE COURT: Are you finding it?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 THE WITNESS: Thank you.

20 MR. SCHIFF: Can I give her the document?

21 THE WITNESS: I have it here.

22 THE COURT: She already has it.

23 BY MR. SCHIFF:

24 Q. Okay. Can you just read paragraph 7?

25 A. "I am also putting the IRS on notice that my 1999 tax return

1 and claim for refund can not be considered 'frivolous' on any
2 basis - pursuant to Code Section 6702 For one thing there is no
3 statute that requires me to make a 'self-assessment.'"

4 Q. What. Hold it. That's not what I have on mine.

5 THE COURT: Well, that's what I have on mine.

6 Are you referring to another exhibit?

7 MR. SCHIFF: Hold it. 118 I have, is that it?

8 THE COURT: That's 118. She's reading out of 118.

9 MR. SCHIFF: Well, maybe -- maybe they got misplaced.

10 BY MR. SCHIFF:

11 Q. All right. But it --

12 THE COURT: What is your question?

13 BY MR. SCHIFF:

14 Q. Okay. Well, read what you got. Did you --

15 THE COURT: She's read it. She read it already.

16 MR. SCHIFF: All right.

17 BY MR. SCHIFF:

18 Q. Does that refer to the frivolous penalty, what you're
19 reading from?

20 A. If I continue on, it talks about --

21 Q. Well, go ahead.

22 A. -- a penalty.

23 Q. Continue on.

24 A. "Therefore how can I be charged with a penalty for not doing
25 something - allegedly incorrectly - that no statute requires me

1 to do at all?"

2 Q. So there's something there about you might be subject to a
3 penalty if you file this return.

4 A. Well, it's saying that I shouldn't be subject to --

5 Q. Yeah. But --

6 A. -- a penalty.

7 Q. -- but you're not subject to a penalty. And I would have
8 disclosed that.

9 THE COURT: Are you testifying again --

10 MR. SCHIFF: Well, I'm saying --

11 THE COURT: -- or are you asking her a question?

12 MR. SCHIFF: -- I'm not testifying. All right.

13 THE COURT: Are you asking her whether you disclosed
14 she would be subject to a penalty if she filed this?

15 BY MR. SCHIFF:

16 Q. I mean, so there was something in the attachment that
17 referred to a possible penalty; is that right?

18 A. Yes.

19 Q. Okay. Did you understand it was my policy that I don't want
20 anybody to file a document unless they understood -- you
21 understood it was my policy not to help anybody do anything
22 unless they understood every --

23 A. No --

24 Q. -- paragraph?

25 A. -- I didn't understand that or I never would have filed the

1 first one.

2 Q. Okay. Now, but essentially -- oh, incidentally --

3 THE COURT: What -- Mr. Schiff --

4 BY MR. SCHIFF:

5 Q. -- essentially --

6 THE COURT: -- stay -- stay on --

7 MR. SCHIFF: Point.

8 THE COURT: -- the question.

9 MR. SCHIFF: Okay.

10 THE COURT: Quit jumping around.

11 MR. SCHIFF: Okay.

12 BY MR. SCHIFF:

13 Q. Were you aware that in going over all these documents, that

14 the Government did, they at no time pointed to any provision of

15 the -- my zero return or my reply letter that said anything I

16 said was in violation of law? Did you understand that? In

17 going over my zero return and your reply to the deficient -- to

18 the -- to the frivolous letter, at no point did he cite any line

19 or phrase that he claimed was a violation of law.

20 A. I honestly don't know.

21 Q. Well, he just --

22 A. I just -- pardon me?

23 Q. I'm sorry. Go ahead.

24 A. That's why I always took my mail in, showed it to someone,

25 and asked them, Is this normal? --

1 Q. Okay.

2 A. -- is this gonna be okay? --

3 Q. Okay.

4 A. -- what should I do next?

5 Q. Okay. When -- now, it -- it's true that these were

6 prepaid -- these documents were prepared -- prepaid --

7 prepared --

8 THE COURT: Both.

9 BY MR. SCHIFF:

10 Q. -- and you had to fill them in basically?

11 A. Right.

12 Q. But the assumption is that you agreed to these --

13 A. I signed my name --

14 Q. -- provisions?

15 A. -- to it.

16 Q. Right.

17 However, Document 126 was not a prepaid -- this
18 document had to be prepared based upon your disclosures to one
19 of my employees; isn't that correct?

20 A. Is that the --

21 Q. Turn to Document 126.

22 A. Yes.

23 Q. Now, this document was only prepared because you apparently
24 believed you didn't get a fair hearing at the collection due
25 process hearing; is that correct?

1 A. I believe -- I think so.

2 Q. So --

3 A. I'm not sure --

4 Q. -- you came in --

5 A. -- I'm following totally. Pardon me?

6 Q. So you came into our office and you told my employee what

7 had occurred --

8 A. Yes.

9 Q. -- and for which you were unhappy about.

10 A. Yes.

11 Q. And she simply had to type -- she tailor made a document

12 specifically for you.

13 A. Right.

14 Q. Okay. Now --

15 A. I was told that this was easy, that this was all paperwork;

16 you would never have to appear or anything.

17 Q. Pardon me?

18 A. I was told that this appeal with the District Court was the

19 simple part. I didn't have anything to worry about anymore.

20 This would be all paperwork mailed back and forth --

21 Q. Well --

22 A. -- and then it would be over.

23 Q. -- well, who told you that?

24 A. It was the general consensus of everybody I was talking with

25 in there. But I -- I believe Mr. Cohen, he --

1 Q. All right. All right.

2 A. -- he assured me often.

3 Q. All right. But, in any case, you knew that you were
4 eligible for a collection due process hearing. Let's -- you --
5 you -- when you went it was pointed out that the purpose of the
6 hearing was so that the IRS office would produce certain
7 documents for you. Was that your understanding?

8 A. Please ask that again.

9 Q. Well, you went to a collection due process hearing.

10 A. I believe that was my second hearing.

11 Q. Okay. Before you went to that collection due process
12 hearing, did either I or somebody point out to you what you
13 should expect and you had a right to certain documents?

14 A. I had a right to certain documents?

15 Q. Yes.

16 A. I'm not sure what you're referring to there.

17 Q. Well, okay. Let me just read, if I can, from this exhibit.
18 This is what you told my employee and which is what she wrote
19 up. This is why we appealed apparently.

20 Here's what you said: "The settlement officer issued
21 [a] lawless determination dated March 14[th], 202 [sic].... She
22 had no legal basis for making such a determination as she did
23 not disprove any of appellate's claims or provide any
24 documentation that supported the Government's position."

25 Is this what you told her?

1 A. Those are supposed to be my words?

2 Q. Well, yeah. She's typing up --

3 THE COURT: Let her answer the question.

4 Are those your words?

5 BY MR. SCHIFF:

6 Q. This document --

7 THE COURT: Wait a minute.

8 Are those your words?

9 THE WITNESS: I don't recall that. Listening to you, I

10 thought it was something coming from the IRS.

11 BY MR. SCHIFF:

12 Q. Well, let me just read something here. Here's -- here's

13 what we wrote up based upon presumably what you told my

14 employee.

15 MR. IGNALL: Objection, your Honor. It's now assuming

16 a fact that's not yet in evidence.

17 THE COURT: Sustained.

18 MR. IGNALL: He could ask a foundational question.

19 MR. SCHIFF: All right.

20 THE COURT: Did you tell them what to write?

21 THE WITNESS: No.

22 THE COURT: That's the answer. She didn't tell them

23 what to write.

24 BY MR. SCHIFF:

25 Q. When you --

1 MR. SCHIFF: Pardon me?

2 THE COURT: She didn't tell them what to write. That's
3 the answer.

4 BY MR. SCHIFF:

5 Q. So you're saying that my employee just made up what happened
6 at your collection due process hearing without you telling her
7 what actually occurred?

8 A. I never went to a hearing by myself and I never had to make
9 a report to Freedom Books.

10 Q. Well, you went, I think -- was Cindy with you but they
11 wouldn't let her talk?

12 A. The first time.

13 Q. When you file -- it says, "Appeal of the collection due
14 process hearing." This -- this document had to be prepared
15 based upon your telling my employee what occurred and she typed
16 it up --

17 MR. IGNALL: Objection, your Honor.

18 BY MR. SCHIFF:

19 Q. -- and you filed it. That's not --

20 MR. IGNALL: That's not a question.

21 BY MR. SCHIFF:

22 Q. -- what happened?

23 THE COURT: It's not a question. He's testifying. The
24 answer is she didn't tell the employee what to type on this
25 document.

1 MR. SCHIFF: Okay.

2 BY MR. SCHIFF:

3 Q. Now, would you say that the basis of my theory was that --

4 and you -- how many -- how many zero returns did you file?

5 Five?

6 A. Um, about that many.

7 Q. Okay.

8 A. I don't --

9 Q. On every --

10 A. -- know for sure.

11 Q. -- one of my zero returns, you claimed there was no law that

12 made you liable for income tax and no law that required you to

13 pay income tax. Did you make that claim?

14 A. Yes.

15 Q. Did the government ever show you a law that required you to

16 pay income taxes or make you liable for income taxes?

17 A. I don't know. They -- they --

18 Q. In any of the documents that they ever sent you, did they --

19 A. They never --

20 Q. -- ever tell you?

21 A. -- the IRS never said, "this is okay, Jackie. It's

22 finished." There was always a problem.

23 Q. My question to you is --

24 A. I don't know if they quoted a law to me or not.

25 Q. My question to you is --

1 THE COURT: She answered the question.

2 BY MR. SCHIFF:

3 Q. -- did the IRS --

4 THE COURT: She answered the question.

5 MR. SCHIFF: Okay.

6 THE COURT: Move on.

7 BY MR. SCHIFF:

8 Q. Do you still owe them -- all right. Do you -- is it my
9 understanding that you still owe the IRS some money?

10 A. Correct.

11 Q. Do you know approximately how much?

12 A. I think it was, um, either 17 or 19 thousand --

13 Q. Okay.

14 A. -- a couple years ago.

15 Q. Well, you can tell us. If they show you a law that requires
16 you to pay income taxes or makes you liable, I'll pay that bill.
17 Okay?

18 THE COURT: Strike. Testifying.

19 MR. SCHIFF: Well...

20 THE COURT: And I will show you law during the break.
21 I'm tired of you reciting --

22 MR. SCHIFF: Okay. I'll --

23 THE COURT: -- the law gratuitously here.

24 MR. SCHIFF: Well, just show me the law.

25 THE COURT: You are not the person who tells the jury

1 what the law is. And I'm --

2 MR. SCHIFF: I said --

3 THE COURT: -- gonna tell you --

4 MR. SCHIFF: -- I can't find it.

5 THE COURT: -- to stop it.

6 MR. SCHIFF: If you show me a law, I'll pay it.

7 THE COURT: We're having no more of these gratuitous

8 statements about what the law is --

9 MR. SCHIFF: I didn't say what --

10 THE COURT: -- or the absence of law.

11 MR. SCHIFF: I didn't say what the law was. Your

12 Honor, I didn't say. I said if they showed her the law.

13 THE COURT: And she said she doesn't remember whether

14 they showed her the law.

15 MR. SCHIFF: No further questions.

16 MR. IGNALL: No redirect, your Honor.

17 THE COURT: Mr. Cristalli?

18 MR. BOWERS: Wait. I'm sorry, Judge.

19 MR. CRISTALLI: I think --

20 MR. IGNALL: I'm sorry. Mr. Bowers didn't --

21 THE COURT: No redirect. So it's over.

22 MR. CRISTALLI: -- despite the fact --

23 MR. IGNALL: -- his chance. But...

24 MR. CRISTALLI: -- we may not want Chad to get up

25 there.

1 MR. BOWERS: I didn't intend my opportunity to waive
2 cross-examination --

3 MR. IGNALL: I apologize, Mr. Bowers.

4 MR. BOWERS: -- if that's what was done. But I won't
5 be long.

6 THE COURT: All right. Go ahead. I just can't
7 remember which order you're going in. You keep flipping on us.

8 MR. BOWERS: You know, we wanna keep you interested.

9

10 CROSS-EXAMINATION

11 BY MR. BOWERS:

12 Q. Ms. Eller, my name is Chad Bowers. How are you this --

13 A. Hello.

14 Q. -- afternoon?

15 A. Fine, thank you.

16 Q. Good. I'm Larry Cohen's attorney. And we'll be real quick.

17 I just wanna clarify some points.

18 Um, do you recall -- or let me ask it a different way.

19 Is it fair to say that one of the factors that led you to your

20 involvement with Mr. Schiff's program was a radio broadcast

21 where you heard the success or alleged success of a United

22 States soldier who had received a refund?

23 A. That's correct.

24 Q. Was that kind of a big factor in --

25 A. That was a huge factor.

1 Q. Okay. And -- and I assume and, correct me if I'm wrong,
2 that you felt like somebody that tied to the government, who was
3 a soldier, wouldn't commit a crime and the fact the refund was
4 given to him meant that there was nothing illegal about this; is
5 that right?

6 A. I think he was a Marine.

7 Q. A Marine.

8 A. Now, that was -- that was a tape that I was given. It could
9 have been a radio program. I'm not sure. It was either a radio
10 program or a tape of a radio program. But that impressed me a
11 lot.

12 Q. In either event, that led you to believe or -- or lended an
13 air of legitimacy to everything; is that right?

14 A. That and the way all the people in the office appealed to me
15 I -- I just thought they seemed like good people.

16 Q. Um, along those lines, correct me if I'm wrong, but Larry
17 Cohen never asked you for money for anything; is that correct?

18 A. No, he didn't. Um, Larry went to a hearing with me.

19 Q. And I don't want to cut you off. We'll talk about that --

20 A. Okay. I'm sorry.

21 Q. -- in a minute. It's okay. I don't -- I just wanna keep
22 things as concise as possible.

23 So Larry never asked you for money; right?

24 A. Right.

25 Q. Okay. Um, you mentioned that you had some understanding

1 that, uh, the teachings of Irwin Schiff from somewhere, uh,
2 involved straightening this notion of illegal taxation out, uh,
3 through, uh, people filing zero returns; is that correct? Is
4 that what I understood you to have said?

5 A. What is the question?

6 Q. That -- that there was an overall purpose that you gathered
7 from your exposure to Freedom Books that --

8 A. A purpose I gathered? I -- I'm having trouble hearing you.

9 Q. I'm sorry. Uh, does -- does that help?

10 A. That helps.

11 Q. Okay. I apologize. Um --

12 THE CLERK: You can hit the button and make it higher.

13 There's a button there, Mr. Bowers.

14 BY MR. BOWERS:

15 Q. I usually just yell. So I'm sorry. Anyway, back to the
16 question.

17 Did you believe that there was some understanding
18 associated with Irwin's programs that people should file, uh,
19 returns and that would somehow resolve the illegal taxation
20 issue?

21 A. Yes. You mean over the long haul --

22 Q. Yeah, absolutely.

23 A. -- like for the future? Yes, I did.

24 Q. The big picture.

25 A. Yes.

1 Q. Okay. And, uh, there -- there was nothing else involved
2 with that that we haven't talked about already today; right? No
3 other course of action that you haven't discussed?

4 A. I don't know what you mean. That sounds like a huge black
5 hole.

6 Q. All right.

7 A. What do you mean there's nothing else we didn't discuss?

8 Q. I mean, is your understanding of how this program was to
9 work in -- in the big picture didn't involve anything we haven't
10 already talked about?

11 A. I was told repeatedly that the IRS lied to citizens and did
12 illegal practices. And I felt like I was like a pioneer or a
13 trailblazer tryin' to get things straight.

14 And can I make a statement --

15 Q. Well --

16 A. -- without you asking or...

17 Q. I'd rather you not.

18 A. Okay.

19 Q. Um, you went to a collection due process hearing with Larry
20 Cohen; is that right?

21 A. Yes.

22 Q. And that was at the building at Oakey and Decatur where the
23 IRS is located?

24 A. Yes. I don't know if they are there anymore.

25 Q. Well, was at the time.

1 Do you recall driving there with Mr. Cohen?

2 A. I think we drove together.

3 Q. Do you -- do you recall a conversation in the vehicle before
4 that where Larry indicated to you that this wasn't something he
5 generally did and was going as a witness on your behalf?

6 A. I'm not sayin' he didn't say that. But I don't remember.

7 Q. Fair answer.

8 Uh, do you -- is it fair to say that at that hearing,
9 um, you had kind of a tough time? I mean, you were visibly
10 shaken by that process?

11 A. Yes.

12 Q. Do you recall a conversation between yourself and Mr. Cohen
13 after that, uh, where Larry said, hey, I can see you're having a
14 tough time, more or less, or that was difficult for you?
15 Afterwards.

16 A. I don't know if he said that afterwards just as you're
17 saying -- proposing. But Larry was always supportive and
18 helpful to me.

19 Q. Well, and along those lines, is it -- is it fair to say or
20 do you recall Larry saying afterwards that, um, your decisions
21 as a taxpayer, uh, need to be based on your beliefs?

22 A. I don't remember him saying that. I remember -- no.

23 Q. Do -- do you recall Mr. Cohen at any point in time telling
24 you that if you didn't understand Mr. Schiff's teachings or
25 believe in the program that you should contact the tax advocate?

1 A. No, no. I don't -- I never heard the word "tax advocate"
2 there from anybody in Freedom Books.

3 Q. Or contact the IRS?

4 A. No.

5 Q. So you don't believe --

6 A. I didn't --

7 Q. -- he ever said that to you?

8 A. No.

9 Q. Did -- in fact, you did call the tax advocate, though, at
10 some point; right?

11 A. I don't think so. What -- you sound like you're referring
12 to something, but I don't remember doing that. You mean after I
13 stopped doin' the program?

14 Q. Yeah. At some point, you reached out to the IRS; said I
15 wanna get square on this. Right?

16 A. When I stopped --

17 Q. Okay. Well --

18 A. -- right.

19 Q. -- let me ask --

20 A. But that wasn't at somebody's suggestion.

21 Q. So Larry never said that to you? He never said: You're
22 havin' a tough time. If this isn't your understanding, this is
23 what you should do?

24 A. After the hearing in this building, I just quit cold turkey.

25 Q. No. I --

1 A. I didn't talk to anybody; I didn't tell them I was quitting.
2 I didn't -- I just didn't show up. I didn't call. I didn't
3 anything.

4 Q. I understand that.

5 I'm talking about: After the collection due process
6 hearing prior to your hearing in this building, Larry never said
7 that to you?

8 A. I don't recall that, no.

9 Q. You don't recall him saying it or you're sure he never said
10 it to you? I don't mean to split --

11 A. I don't think --

12 Q. -- hairs with you.

13 A. -- I don't believe he said that because I remember going in
14 there saying, I can't do this anymore. And they saying, didn't
15 you hear about this last case that just went real well? Things
16 are gonna get better. They always wanted me to keep going.

17 Q. Did Larry ever try to sell you anything? Larry, not -- not
18 the people at --

19 A. I don't think he did.

20 Q. Okay. And did he ever say anything to you indicating that
21 he didn't believe in Mr. Schiff's teachings?

22 A. No.

23 Q. Did he ever do anything?

24 A. No. The presumption was we were all there for the same
25 purpose --

1 Q. Okay. So --

2 A. -- in different capacities --

3 Q. Did he -- I'm sorry.

4 A. -- whatever their position was in the office and me as -- as

5 a little bitty part of it.

6 Q. So he never said or did anything that led you to believe to

7 the contrary; is that right?

8 A. To make sure I know what I'm answering, to the contrary of

9 what? That he believed in Mr. Schiff's program?

10 Q. Yeah. That your statement everybody was --

11 A. I assumed he did, yes.

12 Q. -- as part of Mr. Schiff's teachings. Right?

13 A. I assume he believed it the same way I did. Only he knew a

14 lot more about it.

15 Q. Okay. And not to nip it but just so we're clear: He never

16 said or did anything that led you to believe otherwise?

17 A. To lead me to believe that he doubted --

18 Q. Yeah.

19 A. -- Mr. Schiff?

20 Q. Yeah, exactly.

21 A. No.

22 Q. Okay. Thank you, Ms. Eller. Have a nice day.

23 MR. IGNALL: No redirect, your Honor.

24 THE COURT: All right.

25 MR. CRISTALLI: Nothing, your Honor.

1 THE COURT: I have a question for the witness.
2 The documents that you prepared that were submitted to
3 the United States District Court, did you prepare those or did
4 someone else prepare those?

5 THE WITNESS: Someone in the office did.

6 THE COURT: At Freedom Books?

7 THE WITNESS: Yes.

8 THE COURT: Was it a lawyer?

9 THE WITNESS: I don't think so.

10 THE COURT: Do you remember who prepared them?

11 THE WITNESS: I can't be positive. But I think a lady
12 named Melissa -- I don't know her last name -- her daughter
13 was --

14 MR. SCHIFF: Your Honor, can I hear what is being said?
15 I can't...

16 THE COURT: Thank you.

17 MR. SCHIFF: Your Honor, can I hear what she just said?
18 I can't hear what's being said.

19 THE COURT: She said that she believes someone named
20 Melissa did the legal documents.

21 MR. SCHIFF: I still --

22 THE COURT: Thank you. The witness is excused.

23 THE WITNESS: You know what? If I may, I could have
24 that name wrong. I always got confused about her name. But it
25 was somethin' like Melissa or Melinda or -- you know, it was

1 Toni's mother.

2 THE COURT: All right. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: The witness is excused.

5 MR. IGNALL: Thank you, your Honor.

6 MR. SCHIFF: Just want to hear what's being said. I
7 can't hear.

8 THE COURT: Mr. Bowers, why are you standing?

9 MR. BOWERS: Uh, I was going to request to the Court if
10 now is an opportune time to take a break or to reference some
11 legal principles --

12 THE COURT: We're going to take a break.

13 MR. BOWERS: -- we could address.

14 THE COURT: We're going to take a break.

15 THE WITNESS: Do I leave these here?

16 THE COURT: Leave those there, please. And you are
17 excused. Watch your step, particularly over here --

18 THE WITNESS: Thank you.

19 THE COURT: -- where the step down is.

20 (Jury leaves the courtroom at 3:05 p.m.)

21 (Witness leaves the courtroom.)

22 THE COURT: Go ahead, Mr. Bowers.

23 MR. BOWERS: Your Honor indicated during Mr. Schiff's,
24 uh, cross-examination that some remedial measure was gonna be
25 made over this notion that you can't show me the law. Um, I

1 just need to be -- the Court -- the Court can obviously -- I
2 guess I can't stop the Court from doin' what it needs to do and
3 I'm not supporting whatever it is Mr. Schiff has done that's
4 caused the Court a problem. But, as the Court is well aware, a
5 fundamental element of our defense is -- or, at least my
6 defense, is that -- this notion of show me the law and the IRS's
7 response or nonresponse to it affected people's actions.
8 That's -- that's core to what I'm doing here.

9 Now, I'm -- I'm not trying to instruct the jury that
10 there is no law. I'm not arguing that some position should or
11 shouldn't be adopted. I -- I've never made a contention that
12 there's not a law that requires you to pay taxes.

13 But that is quite different than this notion that that
14 phrase is -- is part of the reason we're here. And I don't -- I
15 just wanna -- I don't know what the Court's gonna do. But I
16 wanted the Court to understand that that's critical to me and I
17 don't think it's instructing the jury. And I'll do what the
18 Court says or try to work something out. But I can't have that
19 cut off from me.

20 THE COURT: It is instructing the jury through a
21 negative and that is, uh, there is no law -- that's what he's
22 suggesting -- that requires a person to pay income tax. He
23 further, in commentary yesterday, another, uh, negative
24 inference to the witness Morgan said that there's no law that
25 allows -- or implied there's no law that allows the IRS to

1 prepare a substitute return and another false statement by
2 Mr. Schiff.

3 And these -- these are tantamount to instructing the
4 jury on the law with -- over the authority of the Court. The
5 prerogative of the Court to do so. And I do want to -- to at
6 some point address a remedial instruction that overcomes these
7 gratuitous statements by Mr. Schiff that are completely false
8 statements of the law.

9 MR. SCHIFF: Your Honor, can I make a comment on that?

10 THE COURT: And he further -- he reinforces it by
11 offering to pay penalties or, uh, in -- in the case of this
12 afternoon, or yesterday offering to plead guilty if someone can
13 show him. And I just about took him up on that. But I can't do
14 it in front of the jury and he wouldn't plead guilty anyway.
15 So --

16 MR. BOWERS: Well, you never know, Judge.

17 THE COURT: -- these are false statements of the law.

18 MR. BOWERS: Well, your Honor, I just -- and here's my
19 concern. I don't know if the Court perceives that I'm doing
20 whatever this is that's upsetting the Court. But I am not
21 intending -- for example, during my cross-examination of
22 Ms. Morgan when the Court ended up -- ended up commenting to the
23 jury, I never said or implied to Ms. Morgan that there was a law
24 that obligated her to do something she didn't do. I simply
25 pointed out that the IRS hadn't done that.

1 Likewise, I -- I don't intend to do something to
2 instruct this jury that there's not a law or that the IRS didn't
3 do something they should do. But what they did or didn't do or
4 what is or isn't there as it relates to these defendants'
5 perceptions as well as the -- the litany of walks of life that
6 the Government brings in as witnesses is very relevant to what's
7 happened. So I just -- whatever the remedial instruction is
8 I -- I need to emphasize to the Court that there's a difference
9 between what I am intending to do and why I'm doing it and what
10 the Court's perceives Mr. Schiff doing.

11 THE COURT: Well, the discussion -- the discussion
12 about -- while Ms. Morgan was on the stand related to some
13 implied duty which you were attempting to insinuate that the IRS
14 has a duty to give legal advice to people who are --

15 MR. SCHIFF: Your Honor --

16 THE COURT: -- in an adversarial relationship.

17 MR. BOWERS: But I guess --

18 THE COURT: That's the reality of it.

19 MR. BOWERS: -- that's exactly my point, Judge, is that
20 I'm not trying to insinuate --

21 THE COURT: Well, you're doing it --

22 MR. BOWERS: -- that the IRS --

23 THE COURT: -- whether you're trying to do it or not.

24 You did it.

25 MR. SCHIFF: Your Honor?

1 THE COURT: The effect is the same.

2 MR. SCHIFF: Now, I'm being tried here on the grounds
3 that I'm misleading the public. Now, I didn't say there's no
4 law; I said I couldn't find one.

5 Now, if there is such a law, then what you're telling
6 me is that I'm a fraud and a liar and for 30 years I can't
7 something. I did not instruct them in the law I said -- and on
8 my zero return I said there is no law. And to tell you the
9 truth, your Honor, I can't find it in the Code book.

10 THE COURT: Well, you haven't looked very far.

11 MR. SCHIFF: We're subject --

12 THE COURT: Look in Section 1.

13 MR. SCHIFF: It imposes a tax.

14 THE COURT: Look in Section 1. We're in recess.

15 MR. SCHIFF: It imposes a tax. It doesn't say required
16 to file anything.

17 THE COURT: You're playing games of semantics, and
18 that's what it's all based on.

19 MR. SCHIFF: Your Honor, if I could be so -- if
20 Section 1 required the payment, it would have to be in the
21 Privacy Act. How would anybody know that Section 1 requires
22 them to pay it? It only mentions Section 6001 because --

23 THE COURT: Because Section 1 says a tax is assessed.
24 That's enough.

25 MR. SCHIFF: It says "impose."

1 THE COURT: I'm not going to argue with you.

2 MR. SCHIFF: Well --

3 THE COURT: The courts have disagreed with you. You
4 know it --

5 MR. SCHIFF: I'm not --

6 THE COURT: -- you've ignored it.

7 MR. IGNALL: Your Honor, I talked to Mr. Bowers about
8 this before. Would it be helpful for the Court if we got
9 together to come up with some sort of proposed remedial
10 instruction?

11 THE COURT: I would suggest you do it. It is --

12 MR. IGNALL: Because I think the issue here is --

13 THE COURT: -- it is time for it.

14 MR. IGNALL: Yeah. And it seems like there's a twofold
15 issue here. I just wanna make sure that I'm on the same page as
16 the Court is.

17 One is making sure the jury is not incorrectly
18 instructed on what the law is and that we all, except perhaps
19 Mr. Schiff, agree on what the law is but figure out a way to
20 instruct the jury to -- that they have to follow the Court's
21 instructions on what the law is but leave open what good faith
22 belief any of the defendants may or may not have had.

23 THE COURT: That's the issue in the case.

24 MR. CRISTALLI: Yes, sir.

25 THE COURT: And --

1 MR. CRISTALLI: That's right.

2 MR. IGNALL: So maybe we can --

3 THE COURT: -- I've always recognized that. But --

4 MR. IGNALL: We can try and hopefully work somethin'
5 out.

6 THE COURT: We're gonna have a problem if we continue
7 to have gratuitous misstatements of the law.

8 MR. IGNALL: But, your Honor, are there particular
9 areas of the law that you'd like us to address? I'm just
10 wondering.

11 THE COURT: Well, only ones he raised. I'm just
12 responding to the --

13 MR. SCHIFF: Your Honor --

14 THE COURT: -- the stuff that's been --

15 MR. SCHIFF: It's my belief in what the law is. I
16 could be wrong. I'm not saying I'm right.

17 MR. IGNALL: All right. Thank you, your Honor.

18 THE COURT: Your time to talk about your belief in the
19 law will be when you are on the stand, not when you are up
20 asking questions. You have abused the -- the status of pro se
21 litigant. And you have -- and it is apparent why you did not
22 want an attorney because an attorney would not have conducted
23 himself or put in some of the questions that you have.

24 MR. SCHIFF: Well, attorneys have told me that they
25 cannot -- they cannot, um, allege the validity of my beliefs.

1 They've told me that.

2 THE COURT: You have done it. That's why you're
3 self-represented is because an attorney wouldn't do what you
4 have done.

5 MR. SCHIFF: All right.

6 THE COURT: We'll be in recess for 15 minutes.

7 MR. IGNALL: Thank you, your Honor.

8 (Recess from 3:13 p.m. to 3:29 p.m.)

9 THE CLERK: Mr. Cristalli --

10 MR. CRISTALLI: Yes.

11 THE CLERK: -- could someone go find Ms. Neun?

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

13 THE CLERK: Thank you.

14 MR. MODAFERRI: She's on her way.

15 MR. CRISTALLI: There she is.

16 THE CLERK: Here she is.

17 MR. SCHIFF: Um, your Honor --

18 THE COURT: Wait a minute. We don't -- all right. Go
19 ahead.

20 MR. SCHIFF: Your Honor, I -- I think in all fairness
21 I'm gonna file a motion that you recuse yourself. I take
22 exception. I mean, I believe that you were putting words in the
23 jury's mouth deliberately that I couldn't hear. I think it's
24 very unfair. Um, it shows a rank partiality. I mean, it's -- I
25 don't understand. But, um, I think based on that you really

1 should recuse yourself, your Honor.

2 THE COURT: No, I'm not going to. The fact that you --

3 MR. SCHIFF: Pardon me?

4 THE COURT: -- the fact that you disregard my orders
5 and continue to make statements to the jury is the reason for my
6 response to you. And I -- I will inform you again to stop
7 instructing the jury on your beliefs while you're questioning,
8 to state the -- the absence of law, or any such thing.

9 MR. SCHIFF: Let me just say this. But that document,
10 that document that we were talkin' about had to be prepared
11 based on her statements. She had to come into my office. That
12 wasn't a prepared document. That document was prepared based on
13 her representations to somebody in our office. And it was typed
14 out --

15 THE COURT: Well, you don't -- you don't like her
16 testimony. I didn't put any -- any words in her mouth. She
17 said she didn't dictate the document.

18 MR. SCHIFF: Well, she had to. We didn't make it up,
19 your Honor. We --

20 THE COURT: Well, why are you arguing with me about her
21 testimony? You don't like it. That's just too bad. That's
22 what she said.

23 MR. SCHIFF: But that's not believable, your Honor. Do
24 we have people in my office typing up lawsuits, making up -- she
25 signed that document.

1 THE COURT: Well...

2 MR. SCHIFF: It's obvious that that was not a canned
3 document.

4 THE COURT: It wasn't canned in the sense that you
5 Xeroxed it off. But she obviously doesn't have the ability to
6 type a legal document.

7 MR. SCHIFF: Exactly. That's why we had the people in
8 the office do it for them. The average person couldn't do it.
9 Do you know how much a lawyer would charge for a document like
10 that? They can't afford it. So we do it for them.

11 THE COURT: You're -- you're just shootin' yourself in
12 the foot.

13 MR. SCHIFF: All right. Well, I still -- my motion
14 still stands.

15 THE COURT: We'll deal with the unauthorized practice
16 of law later.

17 MR. SCHIFF: Well...

18 THE COURT: That's what it was.

19 MR. SCHIFF: Well...

20 THE COURT: All right. Bring in the jury.

21 MR. NEIMAN: Your Honor, may we bring in the next
22 witness?

23 THE COURT: Yes, please.

24 Right up here, please. Right here.

25 (Carol Branigan takes the witness stand.)

1 THE CLERK: Come on in.

2 (Jury enters the courtroom at 3:33 p.m.)

3 THE COURT: Please be seated.

4 Will counsel stipulate to the presence of the jury?

5 MR. NEIMAN: Yes, your Honor.

6 MR. CRISTALLI: Yes, your Honor.

7 MR. BOWERS: Yes, your Honor.

8 THE COURT: Thank you.

9 THE CLERK: Will the witness please stand and raise
10 your hand?

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

14 THE WITNESS: Yes.

15 THE CLERK: Please be seated.

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

18 THE WITNESS: Carol Branigan, B-r-a-n-i-g-a-n.

19

20 CAROL BRANIGAN,
21 called as a witness on behalf of the Government, having been
22 first duly sworn, was examined and testified as follows:
23

24 THE COURT: Go ahead.

25 MR. NEIMAN: Thank you, your Honor.

1 DIRECT EXAMINATION

2 BY MR. NEIMAN:

3 Q. Good afternoon, Ms. Branigan.

4 A. Good afternoon.

5 Q. I'm gonna ask you -- I know that you're soft spoken -- if
6 you could please make sure that you speak as close to the
7 microphone as possible so that everybody in the courtroom can
8 hear you.

9 Ms. Branigan, where do you reside?

10 A. I reside, uh, in a house. But I'm not at liberty to divulge
11 that.

12 THE COURT: Just the area of Las Vegas.

13 THE WITNESS: Las Vegas --

14 THE COURT: Thank you.

15 THE WITNESS: -- Nevada.

16 BY MR. NEIMAN:

17 Q. How long have you lived in Las Vegas?

18 A. Um, since 1993.

19 Q. And at some point did you follow the advice of Mr. Irwin
20 Schiff?

21 A. Um-hum. Yes.

22 Q. How did you first hear of Mr. Schiff?

23 A. Uh, my husband came home; turned on the radio show.

24 Q. And did --

25 A. He was --

1 Q. -- you listen to --

2 A. -- being interviewed by some show. I don't know who it was.

3 Q. Was this Mr. Schiff's own show or was he a guest on

4 somebody's show?

5 A. He was a guest.

6 Q. And, also, if we cannot talk over each other just for the

7 court reporter's sake. If you could just wait till I finish the

8 questions. Thank you.

9 Do you remember approximately what year this was when

10 you heard Mr. Schiff appear as a guest?

11 A. I believe it was 1995, maybe 1996.

12 Q. And what was Mr. Schiff saying on this radio show?

13 A. He was talking about his book, The Federal Mafia.

14 Q. And what was he saying, uh, the purpose of this book was

15 about?

16 A. That you don't have to pay income taxes.

17 Q. Did this pique your interest?

18 A. Very much.

19 Q. And did you act upon that interest?

20 A. Yes. I went to his store and I bought some of his

21 materials.

22 Q. What was the name of his store?

23 A. Freedom Books.

24 Q. And where was Freedom Books located?

25 A. It was off of, uh, Maryland and Charleston at that time.

1 Q. And can you please describe what the premises -- or what the
2 office looked like at Freedom Books?

3 A. It was very, very small and it was like in one of those
4 strip kind of office spaces.

5 Q. And during your -- how long were you affiliated with, uh,
6 Freedom Books and the, uh, theories of Mr. Schiff?

7 A. Um, till I left in 2000 --

8 Q. Did --

9 A. -- but --

10 Q. -- Mr. Schiff move into a different office building during
11 that time frame?

12 A. Yes.

13 Q. What was -- when did he move into another premise [sic] or a
14 different building?

15 A. I can't remember the year. That's just where I went to work
16 for him.

17 Q. Was the new place smaller or bigger than the initial place
18 that you went --

19 A. Larger.

20 Q. How much larger?

21 A. Not too much, but it was larger.

22 Q. If I could direct your attention back to when you first
23 heard Mr. Schiff on the radio and you went to Freedom Books, did
24 you -- were you approach by anyone when you entered into the
25 store?

1 A. No.

2 Q. What did you do when you went into the store?

3 A. I looked at the book shelves --

4 Q. Well --

5 A. -- and I found his book. His secretary, Linda, at that time

6 was sitting at the front desk. She wrote up the, uh, receipt

7 and I paid her.

8 Q. Do you remember -- do you remember approximately how much --

9 MR. SCHIFF: Can you speak a little louder? I --

10 BY MR. NEIMAN:

11 Q. Ms. Branigan, if you could please speak a little louder so

12 that we can hear you.

13 Do you remember how much approximately you paid for the

14 book?

15 A. Not right off the top of my head, no.

16 Q. Do you know approximately how much you paid for the book?

17 A. I don't recall at this time.

18 Q. All right. Did you see anything else on display or any

19 other books available for purchase --

20 A. Yes.

21 Q. -- when you went to --

22 What else was up on display?

23 A. The Great Income Tax Hoax, I think. There was a book on

24 Social Security. These were all things I went back later and

25 purchased. He also had tapes and things for his little

1 packages.

2 Q. And was everything sold separately or was it for free?

3 How -- how did this...

4 A. It was sold separately.

5 Q. All right. Did you make any purchases besides this Federal

6 Mafia on your first visit to Freedom Books?

7 A. If I did, I don't recall.

8 Q. Okay. Did you read the book?

9 A. Yes, I did.

10 Q. Did you read the entire book?

11 A. Yes, I did.

12 Q. And, after reading the book, did you return to Freedom

13 Books?

14 A. Yes.

15 Q. And what did you do when you -- what was the purpose of your

16 second visit to Freedom Books?

17 A. To buy more materials.

18 Q. Do you remember what materials you bought on this second

19 visit?

20 A. Not off the top of my head.

21 Q. Did you buy tapes or books or...

22 A. I could have; I don't recall.

23 Q. Okay. Did you follow any of the advice contained within The

24 Federal Mafia?

25 A. Yes.

1 Q. All right. What advice did The Federal Mafia discuss with
2 regards to W-4's?

3 A. Filing an exempt.

4 Q. What does it mean to file an exempt W-4?

5 A. Where you fill in on the line "exempt" as opposed to filling
6 in a number of exceptions.

7 Q. And who were you working for at this time period or when you
8 began to -- when you filed your first exempt W-4?

9 A. Torrey Pines Care Center.

10 Q. And what did you do at Torrey Pine [sic] Care Center?

11 A. Data entry.

12 Q. And were you making -- being paid for that employment?

13 A. Um-hum. Yes.

14 Q. When you -- did you file an exempt W-4 with, uh, the -- the
15 health center?

16 A. Yes.

17 Q. What was -- and did your employer accept the exempt W-4?

18 A. Yes.

19 Q. What was the effect to your weekly paycheck or when you
20 filed the exempt W-4?

21 A. It got larger.

22 Q. How much larger?

23 A. Not much. I wasn't making that much then.

24 Q. All right. And was -- who gave you have the advice to file
25 the exempt W-4?

1 A. No one. I just read it in his book.

2 Q. "His book" being...

3 A. The Federal Mafia.

4 Q. And that book is written by who?

5 A. Irwin Schiff.

6 Q. Did The Federal Mafia also give you any advice with regards
7 to what to do with the tax return?

8 A. How to file a zero return, yes.

9 Q. What is a zero return?

10 A. It's where you fill it out with zeroes in the income
11 sections.

12 Q. And are you -- does The Federal Mafia instruct you to put
13 zeroes on the income section even if you have wages or earned
14 income --

15 MR. SCHIFF: Objection.

16 BY MR. NEIMAN:

17 Q. -- during that year?

18 MR. SCHIFF: Objection, your Honor. That's a
19 mischaracterization of what's in my book.

20 THE COURT: It's a question. It's a question, does the
21 book instruct you to do that?

22 You can answer.

23 THE WITNESS: It just tells how to fill one out.

24 BY MR. NEIMAN:

25 Q. All right. And what is the advice in The Federal Mafia with

1 regards --

2 MR. SCHIFF: Objection, your Honor.

3 BY MR. NEIMAN:

4 Q. -- with regard to how to fill out a zero return?

5 MR. SCHIFF: Objection. Objection.

6 THE COURT: What is the objection?

7 MR. SCHIFF: Where in my book do I give this advice?

8 THE COURT: Well, you can ask her on cross.

9 MR. SCHIFF: All right. Sorry.

10 THE WITNESS: Can you repeat that?

11 BY MR. NEIMAN:

12 Q. Does The Federal Mafia give advice or explain how to fill
13 out a zero return?

14 A. Advice, no. It just says how to explain -- or explains how.

15 Q. And is there a sample zero return in The Federal Mafia?

16 A. In the later versions there was; in his first, no.

17 Q. Did you file zero returns?

18 A. Yes.

19 Q. For which years did you file zero returns? If --

20 A. I believe it was '96/'97.

21 Q. Maybe if I approach you with some of your returns --

22 A. Okay.

23 Q. -- it will refresh your memory.

24 MR. NEIMAN: Your Honor --

25 THE COURT: You may.

1 MR. NEIMAN: -- may I approach the witness?

2 THE COURT: You may.

3 MR. NEIMAN: For the record I'm approaching with
4 Government's Exhibit 80 through 85.

5 BY MR. NEIMAN:

6 Q. If I could direct your attention to Government's Exhibit 80,
7 81, and 82, does that refresh your memory as to -- for what
8 years you filed zero returns?

9 A. Well, here's '97.

10 (Reviewing documents.) '98.

11 (Reviewing documents.) '99.

12 And there would have been one for 2000, (reviewing
13 documents) I believe. Maybe not.

14 Q. For what years did you file a zero return?

15 A. I thought it was '96, but you're showing me '97, '98, '99.

16 Q. And are those returns the zero returns contained within
17 Government's Exhibit 80, 81, and 82?

18 A. Yes.

19 MR. NEIMAN: Your Honor, at this time the Government
20 would move into evidence Exhibits 80, 81 and 82.

21 MR. CRISTALLI: No objection.

22 MR. BOWERS: No objection.

23 MR. SCHIFF: No objection.

24 BY MR. NEIMAN:

25 Q. If I could direct --

1 THE COURT: Received.

2 MR. NEIMAN: I'm sorry, your Honor.

3 THE COURT: Go ahead.

4 (Government's Exhibit Nos. 80, 81, and 82,
5 received into evidence.)

6 BY MR. NEIMAN:

7 Q. If I could direct your attention to Government Exhibit 80,
8 which I believe is your '97 return --

9 A. Uh-hum.

10 MR. NEIMAN: If you could put that on the screen.

11 (Document displayed in open court.)

12 BY MR. NEIMAN:

13 Q. If we could go to the next page of the return, is that your
14 signature at the bottom of the second page?

15 A. It appears to be.

16 Q. And what is the date of that signature?

17 A. 4-14-98.

18 Q. And whose signature is that beneath your signature?

19 A. My husband's.

20 Q. All right.

21 MR. NEIMAN: If we could go back to the first page of
22 the return. Uh, if we blow up the top portion.

23 (Document displayed in open court.)

24 BY MR. NEIMAN:

25 Q. Is that you and your husband's information at the time in

1 1997?

2 A. Yes.

3 Q. All right. If we could look at line 7 of the return. What
4 is the amount you put in there?

5 A. Zero.

6 Q. Were you earning wages from your employee -- employer at the
7 time you filed the zero return?

8 A. Yes.

9 Q. Was this return prepared upon anyone's -- information you
10 received from anywhere?

11 A. Just from The Federal Mafia.

12 Q. Could that be said for Government's Exhibits 81 and 82 as
13 well?

14 A. Yes.

15 Q. And do Government's Exhibits 81 and 82, which are the tax
16 returns for years '98 and '99, report identical income
17 information as zero --

18 A. Yes.

19 Q. -- on line 7?

20 A. Yes.

21 Q. And did you earn wages or did you have income from your
22 employer in each of those years as well?

23 A. Uh, not for '99. I left my job in '98 and I didn't go back
24 to work for a number of years.

25 Q. All right. So for '97 and '98 you did?

1 A. Yes.

2 MR. SCHIFF: Can I have the answer to that? The
3 question and answer I didn't hear.

4 BY MR. NEIMAN:

5 Q. If -- if you could repeat your answer to my previous
6 question, Ms. Branigan.

7 A. I said '98 and '97 are correct; 1999, uh, I didn't work.

8 Q. You actually had zero income.

9 A. Yes.

10 Q. Okay. Did you attach anything to your returns for the years
11 '97, '98, and '99?

12 A. The letter.

13 Q. What letter are you referring to?

14 A. Uh, the letter that came with Irwin's material.

15 Q. If we can look at page 3 of your tax return in Government's
16 Exhibit 80.

17 A. 80.

18 Q. Is this...

19 A. That looks like the one.

20 Q. That looks like the letter. Is that a "yes"?

21 A. Yes.

22 Q. Okay. And where did you get this letter from?

23 A. Irwin's office.

24 Q. Was it -- was a sample letter included within The Federal
25 Mafia?

1 A. I don't believe this was. I think this was like a separate
2 handout that when you bought the book you got the letter.

3 Q. Did you have to pay anything for this additional letter or
4 was that included with the price of The Federal Mafia?

5 A. I don't recall.

6 Q. Did you attach similar attachments to your '98 and '99
7 returns?

8 A. Yes.

9 Q. In year 1997, if we can go back to the second page of the
10 return -- I'm sorry -- third page of the return, if we can --
11 did you seek a refund in year 1997?

12 A. It does appear.

13 Q. How much was the refund that you sought?

14 A. 2,134.24.

15 Q. And why did you seek a refund?

16 A. That was what was withheld from our paychecks.

17 Q. And did anyone instruct you or did you receive instructions
18 to seek a refund?

19 A. Just what we read in the book.

20 Q. And, after reading the book, did you expect a refund?

21 A. Actually, yes.

22 Q. Did you receive a refund?

23 A. No.

24 Q. Did the book warn you about being fined for filing a zero
25 return?

- 1 A. No.
- 2 Q. Did the book warn you or anybody about being penalized for
3 filing a zero return?
- 4 A. Not that I recall.
- 5 Q. Did the book talk about anyone being prosecuted for filing a
6 zero return?
- 7 A. Not that I recall.
- 8 Q. Did you receive a refund?
- 9 A. No.
- 10 Q. Did you receive anything from the IRS?
- 11 A. Sure did.
- 12 Q. What did you receive?
- 13 A. Letters.
- 14 Q. What types of letters?
- 15 A. Uh, mostly frivolous and -- frivolous penalty letters.
- 16 Q. And what did you do once you received these letters?
- 17 A. I replied to them with other information from Irwin's
18 office.
- 19 Q. What -- how did you get this other information from Irwin's
20 office?
- 21 A. I went down there, showed them the letter. They said you
22 need this package and I bought the package.
- 23 Q. Do you remember approximately how much that package cost?
- 24 A. No, I don't.
- 25 Q. Did this -- how many times did you go to Freedom Books with

1 a letter and buy an additional package?

2 A. I really can't recall at this time.

3 Q. More than once?

4 A. Oh, yeah.

5 Q. More than twice?

6 A. It could have been.

7 Q. More than three or -- three or four times?

8 A. I didn't go down there very often.

9 Q. Okay. If I could direct your attention to Government
10 Exhibit, uh, 83, do you recognize Government Exhibit 83?

11 A. (Reviewing document.)

12 Oh, yeah. That's the frivolous letter.

13 Q. And is this the letter that you brought down with you to
14 Freedom Books --

15 A. It may have been.

16 Q. -- when they recommended a different package?

17 A. It could have been.

18 MR. NEIMAN: Your Honor, at this time the Government
19 would move Exhibit 83 into evidence.

20 THE COURT: 83, any objection?

21 MR. CRISTALLI: No objection.

22 MR. BOWERS: I don't have any objection.

23 THE COURT: Schiff?

24 MR. SCHIFF: No objection.

25 THE COURT: 83 is received.

1 (Government's Exhibit No. 83, received into
2 evidence.)

3 MR. NEIMAN: If we could just display Government
4 Exhibit 83.

5 (Document displayed in open court.)

6 BY MR. NEIMAN:

7 Q. If you could just read the -- if you can blow up the first
8 paragraph -- if you can just read the first sentence.

9 A. "We have determined that the documents referred to above are
10 frivolous documents."

11 Q. And how did you respond when you received this letter?

12 A. I went down. I got the information. I responded. I don't
13 recall exactly.

14 Q. And you responded with a letter -- did you prepare the
15 letter or did somebody else prepare the letter?

16 A. No. It was prepared by Irwin's office. It was just a -- an
17 example.

18 Q. Okay. You mentioned you got additional correspondences from
19 the IRS after getting the frivolous letter.

20 A. Um-hum. Yes.

21 Q. And the only reason I pause after the "um-hum" is for the
22 court reporter. Just to let you know.

23 I -- and did you respond in a similar manner as you did
24 with the frivolous letter?

25 A. I don't recall.

1 Q. Did Mr. Schiff offer for sale a response to every letter you
2 received from the IRS?

3 A. I don't recall paying for every response. But -- I don't
4 know.

5 Q. Do you remember approximately how many responses you paid
6 for?

7 A. Usually when I went down there I would purchase something
8 and I would get what I needed.

9 Q. If I could direct your attention to Government Exhibit 84.

10 A. I remember that one too.

11 Q. You -- you recognize that document --

12 A. Um-hum.

13 Q. -- I take it?

14 Is this another correspondence that you took down to
15 Freedom Books?

16 A. Yes, it is.

17 MR. NEIMAN: Your Honor, at this time the Government
18 would move Exhibit 84 into evidence.

19 MR. CRISTALLI: No objection.

20 MR. BOWERS: I don't have any objection.

21 MR. SCHIFF: Well, again, I must start with the same
22 objection. It's an incomplete document.

23 THE COURT: 84 is --

24 MR. SCHIFF: The supporting documents are not included.

25 THE COURT: 84 is received.

1 (Government's Exhibit No. 84, received into
2 evidence.)

3 MR. NEIMAN: If we could show just Government's
4 Exhibit 84.

5 (Document displayed in open court.)

6 BY MR. NEIMAN:

7 Q. What type of response is Government's Exhibit 84?

8 A. It's entitled "Notice of Deficiency."

9 Q. And who is it addressed to?

10 A. To me and my husband.

11 Q. And what is the date, if you see the date, up in the top
12 right-hand corner or...

13 A. Looks like November 9, 1999.

14 Q. If I could -- did you -- this letter, I believe, is
15 assessing a tax in the amount of \$6,000, is it not?

16 A. Where is that?

17 Q. If you look --

18 A. Oh.

19 Q. -- on your screen, it may be able to direct you to it as
20 well. For year '97.

21 A. It appears to be.

22 Q. Okay. Did you pay that \$6,000 --

23 A. No.

24 Q. -- immediately upon receiving this letter?

25 A. No.

1 Q. Did anyone give you advice whether or not to pay that tax?

2 A. No.

3 Q. If I could direct your attention to Government Exhibit 85.

4 Do you recognize this document?

5 A. Yes.

6 Q. And is this another document you brought down to Freedom

7 Books after having received it?

8 A. Yes.

9 MR. NEIMAN: Your Honor, at this time the Government
10 would move into evidence Exhibit 85.

11 MR. CRISTALLI: No objection.

12 MR. BOWERS: I don't have any objection.

13 MR. SCHIFF: No objection.

14 THE COURT: 85 is received.

15 (Government's Exhibit No. 85, received into
16 evidence.)

17 BY MR. NEIMAN:

18 Q. What is Government's Exhibit 85, Mrs. Branigan?

19 A. It's entitled "Notice of Intent to Levy."

20 Q. Do you know what a levy is?

21 A. Not really.

22 Q. Did there come a time when --

23 MR. SCHIFF: I can have -- what was the answer?

24 THE COURT: Not really.

25 THE WITNESS: Not really.

1 BY MR. NEIMAN:

2 Q. Did there come a time when the IRS tried to collect that tax

3 that was owed, \$8,000 for year '97?

4 A. Yes. They closed our bank accounts.

5 Q. How did they collect -- how did they try to collect?

6 A. They closed our bank accounts.

7 Q. And did you receive this notice prior to them closing your

8 bank accounts?

9 A. Oh, yes.

10 Q. Did the employees -- or the people at Freedom Books know

11 that you received this Notice of Levy?

12 A. Yes.

13 Q. Did they know that the IRS had closed your bank accounts?

14 A. I don't recall.

15 Q. Did there come a time when you began working at Freedom

16 Books?

17 A. Yes.

18 Q. When did you begin working there?

19 A. It was late 1999 thereabouts.

20 Q. And what were you hired to do there?

21 A. To follow up on customer service.

22 Q. And what additional responsibilities were included in

23 following up with service?

24 A. Answering the phones, directing callers.

25 Q. And did you receive instructions as to how to answer phones

1 and direct callers?

2 A. From Michelle, yes.

3 Q. Do you remember what Michelle's last name was?

4 A. No.

5 Q. Did Ms. Neun, uh, work there at that time?

6 A. Yes.

7 Q. What --

8 MR. CRISTALLI: Objection. Foundation.

9 THE COURT: Well, the foundation is late 1999. That's

10 when --

11 BY MR. NEIMAN:

12 Q. What were -- what did you observe Ms. Neun -- or what was

13 Ms. Neun's role at the office?

14 A. Uh, she sat at the front desk.

15 Q. And what did she do at the front desk?

16 A. I don't know. She answered phones just like the rest of us.

17 Q. Did she work normal business hours or regular business

18 hours?

19 A. Yes.

20 Q. Were part of your duties -- were part of your

21 responsibilities at Freedom Books to prepare tax returns?

22 A. It wasn't really part of my responsibility, no. People

23 would come in and ask me to show them how to fill it out or ask

24 me if I would fill it out, so I filled out the zeroes.

25 Q. And --

1 MR. SCHIFF: Can I -- I didn't hear. I'm sorry, Carol.
2 I -- can I hear the answer question?

3 THE COURT: Give the answer again, please, if you
4 remember.

5 MR. SCHIFF: What was the answer to that question?

6 THE WITNESS: I don't believe it was part of my job
7 duties to fill out zero returns. But, if people came in and
8 asked for a zero return, I would show them how to do it or I
9 would fill it out for them.

10 BY MR. NEIMAN:

11 Q. Are you an accountant?

12 A. I was.

13 Q. Okay. And are you an attorney?

14 A. No.

15 Q. Are you -- are you a practicing accountant?

16 A. Not now, no.

17 Q. Were you at the time you worked at Freedom Books?

18 A. No.

19 Q. Did they know that you were an accountant when you worked at
20 Freedom Books?

21 A. Who?

22 Q. The people you worked with.

23 A. I don't know.

24 Q. Did you ever tell them?

25 A. I don't recall.

1 Q. Did you charge for the preparation of these zero returns?
2 A. Just what the office charged as a fee.
3 Q. What was the fee?
4 A. I think the fee was \$50 at the time.
5 Q. Approximately how many of these zero returns did you
6 prepare?
7 A. Approximately 10 or less.
8 Q. And is that -- how -- how long were you employed at Freedom
9 Books?
10 A. Six months or -- give or take.
11 Q. Were other people preparing documents like you were?
12 A. Yes.
13 Q. Do you remember the names of the other people who were
14 preparing documents?
15 A. Wayne was one, Charity, Cheryl. I believe Cindy also did it
16 for people.
17 Q. And did everybody charge for the preparation of documents?
18 A. Yes. It went into the office fund.
19 Q. Where would you take those funds when you were -- when you
20 were done with them?
21 A. To the front desk.
22 Q. And who was sitting at the front desk?
23 A. Cindy.
24 Q. Were part of your responsibilities or -- at Freedom Books,
25 did you answer telephone calls?

1 A. Yes.

2 Q. Approximately how many telephone calls would you receive --
3 or did you answer a day?

4 A. A lot.

5 Q. Define -- if you could try to quantify "a lot" to some
6 extent.

7 A. I can't even begin to guess.

8 Q. More than --

9 A. The phones never stopped ringing.

10 Q. And how many people did they have help answering phones?

11 A. Six, five or six.

12 Q. And you -- I think you just said that the phones never
13 stopped ringing. Were you busy answering telephones?

14 A. Yes.

15 Q. What types of calls would you receive while working at
16 Freedom Books?

17 A. Uh, a lot of them were orders for his books or his tapes and
18 materials.

19 Q. Did people ever call and ask questions about what to do
20 after receiving a specific letter from the IRS?

21 A. Occasionally.

22 Q. And how would you direct them or what would you tell them to
23 do?

24 A. Uh, Irwin would want to sell a package.

25 MR. SCHIFF: What's the answer? Can I hear the answer

1 to that again?

2 THE WITNESS: Irwin would want us to sell a package.

3 BY MR. NEIMAN:

4 Q. Were you paid for your employment at Freedom Books?

5 A. I received an envelope every week.

6 Q. All right. What was in the envelope?

7 A. Uh, approximately 250 cash.

8 Q. Who handed you the envelope?

9 A. Michelle usually.

10 Q. Who else besides Michelle would give you the envelope?

11 A. I can only recall one other time where Irwin did.

12 Q. Did you see other employees receive envelopes?

13 A. Yes.

14 Q. Who did you see receive envelopes?

15 A. Everyone in the office.

16 Q. Does that include Ms. Neun?

17 A. I don't recall. She spent a lot of time in Michelle's
18 office, so I never really paid much attention.

19 Q. Do you know what, if anything, about the relationship
20 between Ms. Neun and Mr. Schiff?

21 A. I heard rumors, but I didn't witness --

22 Q. Don't want --

23 A. -- anything.

24 Q. -- you to comment on rumors. Okay.

25 When you were paid each week, were taxes taken out of

1 your paycheck --

2 A. No.

3 Q. -- or out of your envelope?

4 A. No.

5 Q. Did you receive a W-2?

6 A. No.

7 Q. Did you ever have any problems getting paid?

8 A. I can only recall one hiccup and that was just it took a

9 couple of days.

10 Q. And you eventually were compensated?

11 A. Yes.

12 Q. If I could, uh, change gears a bit.

13 Do you know what P.I.L.L. is?

14 A. I believe it was an offshore trust --

15 Q. Did you --

16 A. -- or some kind of banking thing.

17 Q. Did you use P.I.L.L.?

18 A. No.

19 Q. Do you know of anyone in the office who used P.I.L.L.?

20 A. Irwin may have.

21 Q. Why do you say he may have?

22 A. He had a -- like a flyer for it and said anyone who is

23 interested just give them this.

24 Q. When did you leave Freedom Books?

25 A. It was early 2000.

- 1 Q. How early, if you recall?
- 2 A. February/March.
- 3 Q. Why did you stop working at Freedom Books?
- 4 A. I was tired.
- 5 MR. SCHIFF: Pardon me?
- 6 THE WITNESS: I was tired.
- 7 BY MR. NEIMAN:
- 8 Q. What were you tired of?
- 9 A. Mostly working for a living.
- 10 Q. All right. Did -- did -- I can understand that -- did
- 11 there's come a time when you were working at Freedom Books that
- 12 you would get people complaining about Irwin Schiff's, uh,
- 13 product?
- 14 A. Occasionally.
- 15 Q. Did the fact that people said -- did people say whether or
- 16 not they were receiving refunds for these checks -- for these
- 17 zero returns?
- 18 A. Um, I don't recall that.
- 19 Q. You don't recall anyone ever coming and saying they got a
- 20 refund?
- 21 A. Actually, I do. I remember one.
- 22 Q. Out of how many people that came into the store received an
- 23 actual refund?
- 24 A. He's the only one I remember.
- 25 Q. How many people came into the store that you're aware of?

1 A. I couldn't give you a figure. Honestly.

2 Q. Were you -- when you were preparing these zero returns for
3 people who would come in, did you tell them that only one person
4 had received a refund for filing these?

5 A. No.

6 Q. Did you tell them whether or not people were being fined for
7 filing these zero returns?

8 A. Most of them already knew it. They -- this was not the
9 first time they filed a zero return.

10 MR. SCHIFF: Can I -- can I hear the answer again,
11 Carol?

12 THE WITNESS: I said --

13 MR. SCHIFF: I'm a little hard of hearing.

14 THE WITNESS: -- most of them already knew it. This
15 was not their first zero return.

16 MR. SCHIFF: What? Can I hear that again? What's the
17 answer?

18 THE WITNESS: Can --

19 MR. SCHIFF: I'm sorry.

20 THE WITNESS: Most of them already knew. This was not
21 the first time they filed zero returns.

22 MR. SCHIFF: Okay.

23 BY MR. NEIMAN:

24 Q. So they were similar to you, where they filed a couple years
25 and received the frivolous penalty several times?

1 A. Yes.

2 Q. Did you tell Mr. Schiff that people were getting fined or
3 was Mr. Schiff aware that people were getting fined?

4 A. Uh, he knew it.

5 Q. Did Ms. Neun know whether or not people were being fined?

6 A. She dealt with a lot of people who would bring their letters
7 in, yes.

8 Q. Did you ever meet Mr. Cohen or do you know who Mr. Cohen is,
9 Larry Cohen?

10 A. Who is he? No.

11 MR. BOWERS: I'm sorry. She just said she has no idea
12 who Larry Cohen is.

13 MR. NEIMAN: Right.

14 If I may have a moment.

15 (Discussion between Mr. Neiman and
16 Mr. Ignall.)

17 MR. NEIMAN: Your Honor, I have no further questions of
18 this witness.

19 THE COURT: Cross-examination.

20 MR. CRISTALLI: Thank you, your Honor.

21

22 CROSS-EXAMINATION

23 BY MR. CRISTALLI:

24 Q. Good afternoon, Ms. Branigan.

25 A. Good afternoon.

1 Q. How are you? I represent Cindy.

2 I just want to talk to you about -- a little bit about,
3 first of all, the fact that you're here today. Um, you're
4 testifying under a grant of immunity; correct?

5 A. Um, not that I know of.

6 Q. The Government hasn't promised you in exchange for your
7 testimony that they would not prosecute you criminally?

8 A. No.

9 Q. Okay. Um, you began working at Freedom Books approximately
10 1999?

11 A. Late 1999.

12 Q. And the Government asked you if you, um, recalled Cindy
13 working there. Is that an accurate assessment of what they
14 asked you?

15 A. Yes.

16 Q. I'm just hung up on the term "working." Um, you -- you
17 observed her performing certain duties and tasks at Freedom
18 Books; correct?

19 A. Yes.

20 Q. But you never received [sic] her specifically being
21 compensated for the services that she performed.

22 A. No.

23 Q. True? Okay.

24 Um, they also asked you about the time that you saw her
25 spending in the office. And you testified that, well, in

1 response to their question, it appeared that she was working,
2 um, regular work hours.

3 Is that an accurate statement of what you testified to?

4 A. Well, actually she was usually there before I was.

5 Q. Okay.

6 A. I was never on time.

7 Q. Okay. Me neither.

8 You were aware also, though, occasion- -- she -- she
9 was disabled and occasionally she had to leave the office
10 because of her discomfort at times?

11 A. Her back, yeah.

12 Q. Okay. Now, during the period of time that you were filing
13 your zero returns, Ms. Branigan, you did not believe that you
14 were violating any laws, did you?

15 A. No, I did not.

16 Q. During the period of time that you were working at Freedom
17 Books and assisting clients and customers when they were coming
18 in, you did not believe that you were violating laws. True?

19 A. No, I did not.

20 Q. Okay. You have no information today, um, to suggest that
21 any other, uh, people at Freedom Books believed that they were
22 violating laws.

23 A. No.

24 Q. True?

25 MR. CRISTALLI: I have no further questions, your

1 Honor.

2 THE COURT: Mr. -- who is going next?

3 MR. BOWERS: I have no questions for this witness, your

4 Honor.

5 THE COURT: You have no questions?

6 MR. BOWERS: I have no questions --

7 THE COURT: Okay.

8 MR. BOWERS: -- for this witness.

9

10 CROSS-EXAMINATION

11 BY MR. SCHIFF:

12 Q. Okay. Hi, Carol.

13 A. Hi, Irwin.

14 Q. Um, when -- when -- apparently you heard me on the radio; is
15 that correct?

16 A. Yes.

17 Q. About how many radio shows did you hear at that time?

18 A. Well, just the first time and then I started listening to
19 you every week.

20 Q. Then you started listening to me.

21 A. Um-hum.

22 Q. You heard a lot of people call my show?

23 A. Yes.

24 Q. Did you hear anybody ever com- -- who called my show and
25 complained that they got material from us and it wasn't working?

1 A. No.

2 Q. You didn't hear one complaint?

3 A. No, not --

4 Q. But we didn't screen our calls?

5 THE COURT: Wait a minute. Let her finisher her
6 answer.

7 MR. SCHIFF: I'm sorry.

8 THE COURT: What was the answer?

9 THE WITNESS: No, not on the radio.

10 BY MR. SCHIFF:

11 Q. Did, um -- did you hear me call the U.S. Attorney's Office?

12 A. Yes.

13 Q. You did hear me?

14 A. Yes, I did.

15 Q. And what happened when I called the U.S. Attorney's Office?

16 A. They hung up on you.

17 Q. They hung up on me.

18 Do you recall me saying -- do you recall what I said at
19 the U.S. Attorney?

20 A. Not right off the top of my head, no.

21 Q. Okay. Did you hear me call the IRS office?

22 A. Yes.

23 Q. And what did they do when I called?

24 A. They hung up on you.

25 Q. They hung up on me too.

1 And all I was asking them was to what?

2 A. To show you the law or tell you what the law requiring --

3 Q. That said you had to pay income taxes.

4 A. -- payment of income taxes. Right.

5 Q. Because I said I didn't want to mislead anybody.

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

7 THE COURT: Sustained. Strike.

8 BY MR. SCHIFF:

9 Q. Do you recall me saying that, Carol?

10 A. Recall...

11 Q. Do you recall me saying that I just wanted them to recite

12 the law that required you to pay income taxes?

13 A. Yes.

14 Q. Because I didn't want to mislead anybody. And I kept

15 repeating -- were you listening --

16 THE COURT: Testifying again.

17 MR. SCHIFF: I'm sorry.

18 BY MR. SCHIFF:

19 Q. Were you listening to the show when --

20 THE COURT: Strike.

21 MR. SCHIFF: I'm sorry.

22 THE COURT: Your last comment is stricken.

23 MR. SCHIFF: Okay.

24 BY MR. SCHIFF:

25 Q. Were you listening to the show when John Alizando (phonetic)

1 was on with me?

2 A. Yes.

3 Q. Do you recall any of the comments he would continually make
4 on this subject?

5 A. Not right now, no.

6 Q. Okay. So you went down to Freedom Books and you bought The
7 Federal Mafia.

8 A. Yes.

9 Q. And you read it?

10 A. Yes.

11 Q. And, based upon what you read, the first question the
12 Government asked of you, is that you claimed exempt on a W-4?

13 A. Yes.

14 Q. Now, nobody at Freedom Books told you to do that?

15 A. No.

16 Q. We -- we didn't advise you to do anything, as a matter of
17 fact.

18 A. No.

19 Q. Apparently what you read in The Federal Mafia persuaded you
20 that you could legally claim exempt and stop the withholding of
21 taxes from you pay --

22 A. Correct.

23 Q. -- is that correct?

24 Now, do you recall -- pardon me -- do you recall
25 specifically why you thought you could claim exempt? What was

1 the basis of your claim?

2 A. Not right at this time.

3 Q. What was your answer? You can't recall?

4 A. Not right at this time.

5 Q. If I showed you the page in the book, would that help your
6 recollection?

7 A. No, because I can't see it.

8 Q. Because this is apparently what persuaded you.

9 THE COURT: Do you wish to approach?

10 MR. SCHIFF: May I approach the witness?

11 THE COURT: You may.

12 THE CLERK: Your Honor, that's been marked as --

13 MR. SCHIFF: Well, it's in evidence, yeah. I have an
14 extra copy.

15 THE CLERK: -- 2004A.

16 THE COURT: Are you showing her something that is not
17 marked? Are you showing her something that is not marked?

18 MR. SCHIFF: Pardon me.

19 THE CLERK: No, your Honor, it has been.

20 THE COURT: This has been marked?

21 THE CLERK: 2004A.

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

23 THE COURT: No. I'm asking of the specific document.
24 I'm not asking if it's the same. Show her the marked document
25 not one that's --

1 MR. SCHIFF: Well, we can give --

2 THE COURT: -- not marked.

3 MR. SCHIFF: -- her that book. If you wanna give her

4 that book, it's fine with me.

5 THE CLERK: I have the book but not this specific page.

6 THE COURT: Well, let him use the exhibits. I don't

7 want him handing her something that's not marked.

8 MR. SCHIFF: Okay.

9 BY MR. SCHIFF:

10 Q. Well, Carol --

11 A. Page 154.

12 Q. -- you -- all right.

13 Now, did I reproduce on that book -- on that page did I

14 reproduce Section 3402(n) --

15 A. (Reviewing document.)

16 Q. -- on page 155?

17 A. Yes.

18 Q. And that is the statute that governs the claiming of exempt;

19 is that correct?

20 A. That's the code section.

21 MR. NEIMAN: Objection, your Honor. She can use it to

22 refresh her recollection.

23 THE COURT: Correct.

24 MR. NEIMAN: I -- I don't think she can use it to

25 testify from.

1 BY MR. SCHIFF:

2 Q. Carol, when you came into my office, did you buy a Code

3 book?

4 A. Not until --

5 Q. An Internal --

6 A. -- about a year later.

7 Q. -- Revenue Code?

8 A. -- not until about a year later.

9 Q. Not until...

10 A. A year --

11 Q. Later.

12 A. -- or so later. Yes.

13 Q. But the Code books were there in case you wanted to check

14 that section against the Code itself?

15 A. I saw them, I couldn't afford them.

16 Q. Do you recall doing that? Do you recall checking to make

17 sure I reproduced the statute correctly?

18 A. Oh, we checked the Internet, yes.

19 Q. Okay. And, also, on that page is a copy of a W-4.

20 A. Correct.

21 Q. Okay. Now, what did the statute say that persuaded you you

22 could claim exempt? Can you --

23 A. Not right off the top of my head.

24 Q. Well, can you read the statute? Can you read the statute?

25 A. "Notwithstanding" --

1 MR. NEIMAN: I'm gonna object, your Honor, that she
2 hasn't testified that the statute is what it was that persuaded
3 her.

4 THE COURT: Sustained.

5 MR. SCHIFF: Well, all right.

6 BY MR. SCHIFF:

7 Q. What persuaded you that you could claim exempt?

8 A. I read your book. I believed what you said.

9 Q. But -- but the statute was in the book?

10 A. Yes.

11 Q. It's because you believed you were complying with the law as
12 reproduced in Section 3402(n)?

13 A. Correct.

14 Q. Okay. What was there in Section 3402(n) that persuaded you
15 you could claim exempt and stop the withholding of taxes from
16 your pay?

17 A. I don't remember.

18 Q. But it's in -- can you --

19 A. I...

20 THE COURT: Mr. Schiff, she has --

21 BY MR. SCHIFF:

22 Q. Well, can you read the law?

23 THE COURT: -- answered the question.

24 BY MR. SCHIFF:

25 Q. Okay. Can you please read the statute?

1 THE COURT: Mr. Schiff, she doesn't remember. That's
2 the answer.

3 BY MR. SCHIFF:

4 Q. Well, would it refresh your recollection if you read the
5 statute?

6 A. (Reviewing the document.)

7 Q. Would you need glasses to read, Carol? Is that the --

8 A. No.

9 Q. -- problem?

10 A. -- I just read it.

11 Q. And what is there in the statute --

12 A. I can't remember your question now.

13 Q. What is there in the statute that persuaded you that you can
14 claim exempt?

15 A. "Incurred no liability" and "anticipates ... no
16 [further]" --

17 Q. Okay.

18 A. -- "liability."

19 Q. So the statute makes the ability to claim exempt if you're
20 liable. If you believe you're not liable, the statute
21 authorizes you to claim exempt --

22 MR. NEIMAN: Objection. He's --

23 BY MR. SCHIFF:

24 Q. -- is that correct?

25 MR. NEIMAN: -- he's, one, mischaracterizing the law

1 and, two, he's testifying as well.

2 THE COURT: Sustained. Strike.

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

5 BY MR. SCHIFF:

6 Q. Okay. So, based upon that, you claimed exempt; is that
7 right?

8 A. Correct.

9 Q. Not because I told you to claim exempt?

10 A. No.

11 Q. But I brought what I thought was the statute, which you
12 could read, and to make up your own mind; is that correct?

13 A. Correct.

14 Q. And, because you did that, you stopped the withholding of
15 wages [sic] --

16 A. Correct.

17 Q. -- from your pay?

18 And you thought that was perfectly legal?

19 A. Correct.

20 Q. Okay. Incidentally, you said you read --

21 THE COURT: No.

22 BY MR. SCHIFF:

23 Q. -- the whole book.

24 THE COURT: No.

25

1 BY MR. SCHIFF:

2 Q. Is that right?

3 THE COURT: No, no. We're not going to have any more
4 of these incidentallies. Ask a question.

5 MR. SCHIFF: Okay.

6 BY MR. SCHIFF:

7 Q. And you read -- you read the entire -- that entire chapter,
8 I take it?

9 A. I read the entire book.

10 Q. Okay. At the end of that chapter, uh, you can go to page
11 167, Carol.

12 A. (Complies.)

13 Q. Do you recall reading that paragraph? It says, "NOTES TO
14 CHAPTER 8."

15 A. What paragraph?

16 Q. Pardon me?

17 A. What paragraph?

18 Q. The first paragraph, 1, "Unfortunately."

19 A. I read the whole book, Irwin. But it's been so long I
20 cannot --

21 Q. Could you just read --

22 A. -- I don't have it --

23 Q. I know.

24 A. -- totally memorized.

25 Q. I know. It's hard to remember what you read. Could you

1 just read a little of that paragraph?

2 MR. NEIMAN: I'm gonna object, your Honor.

3 THE COURT: Sustained.

4 The question is: Do you remember reading it?

5 THE WITNESS: I remember reading the entire book.

6 THE COURT: No. That specific -- that specific
7 section.

8 THE WITNESS: It looks familiar.

9 BY MR. SCHIFF:

10 Q. Yes. Can you just read it, Carol, please?

11 THE COURT: No. She's not going to read it.

12 MR. SCHIFF: Well, your Honor --

13 THE COURT: You can ask --

14 MR. SCHIFF: -- it's a little --

15 THE COURT: -- your next question. What is your
16 question?

17 MR. SCHIFF: But she said she read it.

18 THE WITNESS: I read the --

19 THE COURT: It doesn't matter.

20 THE WITNESS: -- whole book.

21 THE COURT: I've read the Bible. That doesn't mean I'm
22 gonna sit here and recite it.

23 MR. SCHIFF: Exactly. She -- but that's only a
24 paragraph.

25 THE COURT: No.

1 BY MR. SCHIFF:

2 Q. Well --

3 THE COURT: The answer is no.

4 BY MR. SCHIFF:

5 Q. -- summarizing that, did it warn people that there was
6 danger to claim exempt?

7 A. I don't recall. I haven't read the whole thing yet.

8 Q. Okay. So I didn't persuade you, it was the law that
9 persuaded you to claim exempt -- that led you to believe you can
10 claim exempt?

11 A. I believed --

12 Q. Okay.

13 A. -- what you said --

14 Q. Okay.

15 A. -- what I looked up and researched with what you said. I
16 believed --

17 Q. Okay.

18 A. -- your book.

19 Q. Now, you testified -- and it's very perceptive. Very few
20 people remember -- you said the earlier editions of The Federal
21 Mafia didn't refer to getting a refund.

22 A. No.

23 Q. Only the later editions.

24 A. Yes.

25 Q. Very good.

1 Did you happen to know why I put the claim for refund
2 in the later editions and not in the earlier editions?

3 MR. NEIMAN: Objection. Speculation --

4 MR. SCHIFF: Well, I --

5 MR. NEIMAN: -- and hearsay.

6 MR. SCHIFF: -- said maybe she knew. There was a
7 reason. I asked if she knew. If she didn't know, she doesn't
8 know.

9 THE COURT: Do you know?

10 BY MR. SCHIFF:

11 Q. Do you happen to know how that occurred?

12 A. You had copies of refund checks from various --

13 Q. Does the word --

14 A. -- individuals.

15 Q. -- Tim Deaton (phonetic) make any -- the name of Tim Deaton
16 have any significance to you?

17 A. No. I don't recall.

18 Q. You don't. All right.

19 But the fact is --

20 THE COURT: No.

21 BY MR. SCHIFF:

22 Q. -- the reason --

23 THE COURT: You're not testifying.

24 MR. SCHIFF: All right.

25

1 BY MR. SCHIFF:

2 Q. The fact is there was no --

3 THE COURT: Ask a question.

4 BY MR. SCHIFF:

5 Q. The fact is you know --

6 THE COURT: No, no. You don't start it out "the fact
7 is." You ask a question.

8 BY MR. SCHIFF:

9 Q. So you knew that in the earlier editions of The Federal
10 Mafia there was no talk about a refund?

11 A. No --

12 Q. Okay.

13 A. -- not that I recall.

14 Q. So there wouldn't have been any discussion about frivolous
15 penalties or what have you because we weren't doing anything
16 like that --

17 A. No.

18 Q. -- initially.

19 I had a radio show; is that correct?

20 A. Yes, you did.

21 Q. And people called in with all kinds of information?

22 A. Yes.

23 Q. You were not aware that somebody called in and said, hey, I
24 got a refund and that was a surprise to me?

25 A. I don't recall right now.

1 Q. And people were calling the show?

2 A. A lot of people called your show.

3 Q. Okay. Now -- now, when the Government told you that your
4 zero return was frivolous, right, did you believe your zero
5 return was frivolous?

6 A. No.

7 Q. Well, but the letter --

8 MR. SCHIFF: Can I have the Government's response? Let
9 me see that --

10 BY MR. SCHIFF:

11 Q. Your response to the frivo... was about six pages long,
12 wasn't it?

13 A. Correct.

14 Q. Was -- wasn't it easier to adopt my letter than to write a
15 letter on your own?

16 A. Yes.

17 Q. It saved you a lot of time; is that...

18 A. Yes.

19 Q. When you sent in that response --

20 MR. SCHIFF: Can I have her response letter?

21 MR. MODAFFERI: Which one?

22 MR. NEIMAN: Your Honor, the Government --

23 BY MR. SCHIFF:

24 Q. When you sent in the response letter --

25 MR. NEIMAN: -- Ms. Branigan's response letter to that

1 frivolous --

2 BY MR. SCHIFF:

3 Q. Well, you sent in a response about six and a half pages.

4 MR. SCHIFF: The Government put it in as an exhibit.

5 (Discussion between Mr. Cristalli and

6 Mr. Schiff.)

7 BY MR. SCHIFF:

8 Q. Well, in any case, it was simpler for you to just adopt a
9 response letter that we had already prepared --

10 A. True.

11 Q. -- rather than starting from scratch.

12 A. Yes.

13 Q. Is it true to say that you adopted and believed all the
14 reasons in that response letter that you believed why your
15 return wasn't frivolous?

16 A. I believed them, yes.

17 Q. When the Government threatened you with a frivolous penalty
18 in that letter, did they say why any statement on your return
19 was false or did they -- or mis- -- or -- or fraudulent or
20 misleading?

21 A. Not that I recall.

22 Q. As a matter of fact, as the Government put in your zero
23 return letters and your response letters, did you happen to
24 notice he did not indicate where anything on any of those
25 letters advocated violations of law? Did -- did you happen to

1 notice that?

2 MR. NEIMAN: Objection, your Honor. Argumentative and
3 improper --

4 MR. SCHIFF: Okay.

5 MR. NEIMAN: -- question.

6 THE COURT: Sustained.

7 BY MR. SCHIFF:

8 Q. In -- in your letter -- in your zero returns that you filed
9 every year for three years, one of the claims you made -- well,
10 what was the -- what was -- wasn't one of the primary claims you
11 made was that you couldn't find a law that made you liable --

12 A. I --

13 MR. NEIMAN: Objection.

14 BY MR. SCHIFF:

15 Q. -- for income tax?

16 MR. NEIMAN: Characterization of claims she made.

17 She's testified --

18 MR. SCHIFF: All right.

19 BY MR. SCHIFF:

20 Q. What was the claim --

21 MR. NEIMAN: She took the response from a handout that
22 was given to her at Freedom Books. These are --

23 MR. SCHIFF: All right.

24 MR. NEIMAN: -- Mr. Schiff's --

25 THE COURT: Sustained.

1 MR. NEIMAN: -- claims.

2 BY MR. SCHIFF:

3 Q. But did you adopt the statements in your zero return as your
4 statements?

5 A. Yes.

6 Q. In other words, let's assume you read my book and you had to
7 prepare your own statement.

8 A. I wouldn't have.

9 Q. It would have been easier to use the one we had already
10 prepared.

11 A. Correct.

12 Q. But, when you sent it in, you believed all those statements.

13 A. Correct.

14 Q. So, in fact, when you signed it under penalty of perjury it
15 became your statement?

16 A. Correct.

17 MR. SCHIFF: Can I -- can I have one of those zero
18 returns that she filed? Just -- just give me one. All right.
19 80. You can put it up.

20 MR. IGNALL: Do you want --

21 BY MR. SCHIFF:

22 Q. Now, one of the things -- one of the things you said three
23 times on -- can you have... It was even in that edition.
24 (Pause.)

25 One of the reasons -- what was -- what was the reason

1 why you believed that legally you could claim you had zero
2 income?

3 A. I read your book. And I don't remember everything I read in
4 your book. But, at the time, I --

5 Q. But did the --

6 A. -- believed it.

7 Q. -- book make a distinction, as you recall --

8 A. I don't recall.

9 Q. -- between sources of -- I'm sorry.

10 Would it refresh your recollection if I showed you...

11 (pause.)

12 Can I ask you to go to page 42 of the book, Carol?

13 A. (Complies.)

14 Q. Now, on page 42, there is a caption in the middle of the
15 page. What does that caption say?

16 A. "The Income Tax Law Does Not Even Define What It Purports To
17 Tax."

18 Q. Okay. And, continuing with that, I cite a case of United
19 States v. Ballard; is that right?

20 A. Correct.

21 Q. And what do I cite the court saying in that case about the
22 general term "income"?

23 A. "'The general term 'income'" --

24 MR. NEIMAN: I'm gonna object, your Honor, to this
25 reading of the law. It's invading upon the province of this

1 Court --

2 THE COURT: It is.

3 MR. NEIMAN: -- as to what the law is.

4 THE COURT: Sustained.

5 MR. SCHIFF: That -- that -- that's a court decision,
6 not necessarily the law.

7 THE COURT: Wrong.

8 MR. SCHIFF: Okay.

9 THE COURT: Sustained.

10 BY MR. SCHIFF:

11 Q. In any case, without citing any decisions, does that try to
12 establish that fact that income in the ordinary sense is not
13 exactly income in the tax sense.

14 THE COURT: Well, the question was would looking at
15 that refresh her recollection.

16 MR. SCHIFF: Yeah.

17 THE COURT: That was the question.

18 BY MR. SCHIFF:

19 Q. Does that rec- --

20 THE COURT: That is the one that is pending.
21 Does looking at that refresh your recollection?

22 MR. SCHIFF: Well, there's a number of cases cited
23 there, your Honor. I'm sorry. All right.

24 THE COURT: You had a question pending. And you were
25 using this book to refresh her recollection.

1 BY MR. SCHIFF:

2 Q. Okay. How many court decisions are cited just on that page
3 alone?

4 THE COURT: Now, that's not the question.

5 THE WITNESS: I don't recall.

6 BY MR. SCHIFF:

7 Q. Okay. Can I -- can I ask you to look at the top of page 43?
8 There's a paragraph there. Could you read it to yourself and
9 see if that rings a bell?

10 A. (Reading document.)

11 Not at this time.

12 Q. In any case, without citing any court decisions or what have
13 you, the book does make a distinction, whether it's correct or
14 incorrect, between income in the ordinary sense and income in
15 the taxable sense; is that correct?

16 MR. NEIMAN: I'm gonna object that he's commenting on
17 the book.

18 THE COURT: He is.

19 MR. NEIMAN: It's --

20 THE COURT: You're continuing to violate my order.

21 MR. SCHIFF: I -- I don't know.

22 BY MR. SCHIFF:

23 Q. I'm trying to say that when -- when you file a zero
24 return --

25 THE COURT: You're trying to testify and --

1 MR. SCHIFF: All right.

2 THE COURT: -- and I'm not going to allow it.

3 MR. SCHIFF: All right.

4 BY MR. SCHIFF:

5 Q. When you filed your -- when you filed a zero return, didn't
6 you make a comment --

7 MR. SCHIFF: Let me see that. Can I see that? Can I
8 see that zero return? All right. Can I see that? She has a
9 copy of the zero return.

10 BY MR. SCHIFF:

11 Q. Is that correct, Carol?

12 A. Yes.

13 THE COURT: '97.

14 MR. NEIMAN: For the record --

15 MR. SCHIFF: Can I see the --

16 MR. NEIMAN: -- it's Government Exhibit 80.

17 THE COURT: Pardon?

18 MR. SCHIFF: Can I see the next page?

19 MR. NEIMAN: For the record, it's Government Exhibit
20 80.

21 MR. SCHIFF: Can I see the next page?

22 (Pause in the proceedings.)

23 MR. SCHIFF: The reason I'm doing this, your Honor, is
24 the Government is trying to create the impression that people
25 just wrote zeroes without any basis for just writing zeroes.

1 Just wrote zeroes. And that's the impression the Government is
2 trying to create as if --

3 THE COURT: Well, don't tell --

4 MR. SCHIFF: -- there was no basis --

5 THE COURT: -- what impression they are trying to
6 create.

7 MR. SCHIFF: I'm just trying to create that there's a
8 legal basis for -- right or wrong.

9 THE COURT: Well, you're not gonna --

10 MR. SCHIFF: All right.

11 THE COURT: -- you're not gonna present the law to the
12 jury --

13 MR. SCHIFF: Okay.

14 BY MR. SCHIFF:

15 Q. Can you read --

16 THE COURT: -- or a legal basis.

17 BY MR. SCHIFF:

18 Q. -- can you read paragraph 7 from your zero return?

19 A. "It should also be noted that we" --

20 THE COURT: No, don't read it out loud. Just read it
21 to yourself.

22 THE WITNESS: (Reading document.)

23 BY MR. SCHIFF:

24 Q. Did that refresh your recollection?

25 A. Irwin, it's been over five years. I forgot all this stuff.

1 Q. Okay. Then let me say this: When you -- when you wrote
2 that paragraph -- and that was 1997. That was what? Eight
3 years ago.

4 THE COURT: Did you write the paragraph or did he write
5 the paragraph?

6 BY MR. SCHIFF:

7 Q. Paragraph 7 -- I mean, when you wrote in paragraph 7 --

8 THE COURT: Wait a minute.

9 Did you write the paragraph, that paragraph, or did you
10 get it from some --

11 THE WITNESS: I copied it.

12 THE COURT: All right.

13 BY MR. SCHIFF:

14 Q. Well, when you copied it, Carol, did you believe what you
15 wrote?

16 A. At the time I believed everything --

17 Q. At the time you believed --

18 A. -- and I still --

19 Q. -- it.

20 A. -- believe you're correct. Just...

21 Q. And you checked the cases that we referenced?

22 A. Yes.

23 Q. So, when you sent it in, you adopted this attachment?

24 A. I believe it.

25 Q. Would -- assuming you believe -- would it be easier to adopt

1 my attachment or write one on your own? What would have been
2 easier?

3 MR. NEIMAN: Objection. Asked and answered.

4 THE COURT: Sustained.

5 MR. SCHIFF: I'm asking her -- I didn't -- I never
6 asked her that question before.

7 BY MR. SCHIFF:

8 Q. Would it have been easier --

9 A. Yes.

10 Q. -- would it have been easier to adopt what I had prepared or
11 prepared for yourself?

12 A. Yes.

13 Q. And what's your answer?

14 A. Yes.

15 Q. It was easier to adopt mine?

16 A. Yes.

17 Q. But, once you believed it, it became yours when you signed
18 it. Now --

19 A. I don't know.

20 Q. -- when you signed it --

21 A. I was --

22 Q. -- you didn't believe it?

23 A. Yes, I did --

24 Q. Okay.

25 A. -- at the time.

1 Q. So you adopted all of these --

2 A. Correct.

3 Q. -- paragraphs as your belief. Okay.

4 Now -- now, the -- you, um -- you testified that you

5 didn't know what a levy was.

6 A. Well, I know what they did. They --

7 Q. What did they do --

8 A. -- levied my --

9 Q. -- in a levy?

10 A. -- husband's paycheck.

11 Q. Did you know what a levy was at one time?

12 A. At one time, yes.

13 Q. Well, what exactly -- or what approximately is a levy?

14 A. A levy is where they take property.

15 Q. They take your property. The IRS takes your property; is

16 that right?

17 A. It was at that time.

18 Q. Were you aware that I sold a Lien and Levy Packet?

19 A. Oh, yeah, we got it.

20 Q. What was the essence of that packet?

21 A. I don't recall.

22 Q. Pardon me?

23 A. I don't remember at this time.

24 Q. But if someone came in and said, hey, they are trying to

25 take my bank account or my wages, what might you recommend that

1 they buy?

2 A. The Lien and Levy Package.

3 Q. All right. And what would that attempt to do for them?

4 A. I don't remember.

5 Q. Does the word "missing paragraph" strike a bell?

6 A. Oh, paragraph A, yeah.

7 Q. Pardon me?

8 A. Paragraph A.

9 Q. Paragraph A?

10 A. (Nods head.)

11 Q. In other words, what is -- what is the significance of

12 paragraph A?

13 A. Deals --

14 MR. NEIMAN: I'm gonna object to the relevance of the

15 question --

16 MR. SCHIFF: Well, you -- you -- all right. The

17 relevance is, your Honor, he asked -- he brought up the subject

18 of levies and did you know people getting levied. So he brought

19 up the subject of levy. And, at the time, she said she didn't

20 know and I'm --

21 MR. NEIMAN: Mr. Schiff is trying to, uh, infer --

22 present testimony through this witness that the IRS was acting

23 outside of its authority which is a contradiction and misleading

24 the jury.

25 THE COURT: Sustained.

1 The purpose --

2 BY MR. SCHIFF:

3 Q. Carol, you --

4 THE COURT: -- the purpose of the Government

5 bringing --

6 MR. SCHIFF: Pardon me?

7 THE COURT: -- the purpose of the Government bringing

8 in that exhibit was to show notice that the actions taken were

9 not valid --

10 BY MR. SCHIFF:

11 Q. Uh, when -- when the IRS --

12 THE COURT: -- and that repercussions would follow.

13 BY MR. SCHIFF:

14 Q. -- when the IRS takes property pursuant to a levy, was there

15 a court order involved?

16 A. No.

17 Q. No.

18 Were there hearings involved in many cases?

19 A. No.

20 Q. No. They just walked in; take the property.

21 And we tried to prevent that with the Lien and Levy

22 Pack; is that correct?

23 A. As I recall.

24 Q. Okay. I'll get to that when I -- all right.

25 Now, the, uh, prosecutor said when you fill out a W --

1 or zero return on occasion -- were you an accountant? He asked
2 you a series of questions. Were you a lawyer? Do you have to
3 know much to fill out a zero return?

4 A. No.

5 Q. When you filled out a zero return, it's not like the people
6 didn't know what you were gonna do. They knew what it was gonna
7 look like. Isn't that right?

8 A. I don't know about them. I know what --

9 Q. Well, they could --

10 A. -- what mine looked like.

11 Q. -- they could have filled out the zero return on their own.

12 A. Yes, they could have.

13 Q. There was no trick.

14 A. No.

15 Q. And, when they asked you to do it, they already knew what
16 the tax liability was gonna be.

17 A. True.

18 Q. Is that right?

19 A. Yes.

20 Q. We didn't really like to do it, as a matter of fact, did we?

21 A. No.

22 Q. But sometimes they couldn't figure out where the zeroes
23 went.

24 A. I don't know.

25 Q. Well, why would they ask you to fill out a zero return when

1 a copy of the zero return is already in my book?

2 A. I have no idea.

3 Q. In other words, they knew you weren't gonna take any
4 deductions.

5 A. No.

6 Q. You know that you didn't have to be a lawyer.

7 A. True.

8 Q. They already knew what it was gonna look like.

9 A. They should have.

10 Q. But, for some reason, they wanted to us fill it out. Now,
11 since we had to take time to do it, we had to charge 'em
12 something.

13 THE COURT: Are you testifying again?

14 BY MR. SCHIFF:

15 Q. But in a --

16 THE COURT: Wait a minute.

17 BY MR. SCHIFF:

18 Q. -- lot of the cases --

19 THE COURT: Wait a minute.

20 BY MR. SCHIFF:

21 Q. -- didn't we recommend --

22 THE COURT: You're testifying again.

23 BY MR. SCHIFF:

24 Q. Well, wasn't this our policy?

25 A. Yes.

1 Q. Okay. Secondly, as far as refunds are concerned, everybody
2 in the office knew that relatively few zero returns generated
3 refunds; isn't that correct?

4 A. Yes.

5 Q. But we did get them.

6 A. Yes.

7 Q. And some were sizeable.

8 A. Yes.

9 Q. So, if anybody asked anybody in the office am I gonna get a
10 refund, what would they be told?

11 A. It's possible.

12 Q. Pardon me?

13 A. It's possible.

14 Q. It's possible.

15 Would I ever let anybody, as you recall, in my office
16 tell people that they are gonna file a return because they are
17 gonna get a refund?

18 A. Not that I recall.

19 Q. Did you ever hear me ever say that?

20 A. No.

21 Q. I said sometimes it's --

22 THE COURT: No testifying.

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

24 BY MR. SCHIFF:

25 Q. Didn't I make it clear that we don't prom- -- but we simply

1 said you could request a refund. We believed -- did we believe
2 that they were entitled to the refund as a matter of law?

3 A. Yes.

4 Q. Yes. But we suggested to no one, as you recall.

5 Now, when you worked with me there were a number of
6 other employees; is that correct?

7 A. Correct.

8 Q. And you talked among yourselves.

9 A. Yes.

10 Q. Based upon your perceptions, did you think anybody who
11 worked for me selling this material believed that we were
12 involved in encouraging people to break the law?

13 A. No.

14 Q. No. No one.

15 Did you ever hear me even suggest for a moment that I
16 believed that any of this material involved violations of law?

17 A. No.

18 Q. Did anybody ever call my radio show and cite one phrase of
19 this book that they claimed violated the law?

20 A. No.

21 Q. Now, in knowing me -- and I forgot the circumstances under
22 which you left -- but did I ever give you any cause to believe
23 that I did not believe all the information in my book and in my
24 packets?

25 A. No.

1 Q. To this day, do you believe that I believe everything I
2 wrote in these books?

3 MR. NEIMAN: I object to speculation.

4 THE COURT: Sustained. Improper.

5 BY MR. SCHIFF:

6 Q. Have you formed an opinion concerning --

7 THE COURT: Improper. She is not allowed to testify as
8 to her opinion of your mental state.

9 BY MR. SCHIFF:

10 Q. But I have given you no grounds to believe that I believe
11 people are required to pay income taxes; is that correct?

12 A. No.

13 Q. And there's no doubt about that in your mind is there?

14 MR. NEIMAN: I'm gonna object.

15 THE COURT: Sustained.

16 MR. SCHIFF: No further questions, I don't think.

17

18 REDIRECT EXAMINATION

19 BY MR. NEIMAN:

20 Q. Ms. Branigan, you testified that you would charge \$50 for
21 the preparation of a zero return?

22 A. That was what we were told --

23 Q. How long --

24 A. To charge.

25 Q. -- would it take you to prepare a zero return?

1 A. About five minutes.

2 Q. All right.

3 MR. NEIMAN: Nothing further.

4 THE WITNESS: But that didn't include the letter.

5 THE COURT: Any -- any recross?

6 MR. SCHIFF: One other thing, if I may.

7 THE COURT: No. Wait a minute. Recross. We're on

8 recross.

9 Anything, Mr. Bowers?

10 MR. BOWERS: No, no.

11 THE COURT: Mr. Schiff, any recross?

12 MR. SCHIFF: Okay. Nothing further.

13 THE COURT: All right. Jury will be excused for the

14 evening.

15 What -- we're Monday; right?

16 THE CLERK: Free on Monday.

17 THE COURT: We'll start at 9:00 a.m. on Monday.

18 The Court reminds you of the admonition not to

19 discussion the case among yourselves or with others or to allow,

20 uh, any others to discuss it in your presence or attempt to

21 influence you in any way and to not form any conclusions until

22 all of the evidence has been received. We'll be in recess until

23 9:00 a.m. Monday morning.

24 (Jury leaves the courtroom at 4:37 a.m.)

25 THE COURT: Anything before we recess for the weekend?

1 MR. BOWERS: May we neatly stack our materials like
2 last week?

3 THE COURT: Yes.

4 MR. BOWERS: Thank you, your Honor.

5 MR. CRISTALLI: No, your Honor.

6 MR. IGNALL: Nothing from the Government, your Honor.

7 THE COURT: All right. We're in recess until Monday.

8 (Proceedings adjourned at 4:38 p.m.)

9 --oOo--

10 I hereby certify that pursuant to Section 753, Title 28, United
11 States Code, the foregoing is a true and correct transcript of
12 the stenographically reported proceedings held in the
13 above-entitled matter.

14

15 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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