

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 15)

16 Wednesday, October 5, 2005

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20 APPEARANCES: (See Page 2)

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

1 APPEARANCES:

2 For the Plaintiff:

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24 Also Present:

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

I N D E X

WITNESS:	Direct	Cross	Redirect	Recross	Further Exam/VD
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Government 's:

Kathryn Mead	3878I	3885C	3904I	3906C	3912I 3913C
Gail Loschen	3915I	3942C	3959I	3961C	--
Clint Lowder	3970N 4073N	4082C 4097S	--	--	4071C

EXHIBITS

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

259A	--	4077
260A, 261A, 263A, 264A, 265A, 266A	--	4082
288	--	4050
305 through 311	3879	--
305	--	3880
306	--	3883
307	--	3884
308	--	3918
309	--	3920
313	--	3991
320	--	4007
321	--	4034
322	--	4045
323	--	4032
324	--	4038
325	--	4074
334	--	3932

1 LAS VEGAS, NEVADA; WEDNESDAY, OCTOBER 5, 2005; 9:11 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 Items of business.

7 MR. IGNALL: Your Honor, we have one brief matter we'd
8 like to raise now. And that we hope we're gonna rest today. I
9 have gotten a witness list from Mr. Schiff that includes 20
10 names or so. Uh, given that we -- we've seen Mr. Schiff have
11 some difficulties with the concept of relevance, we would
12 request that the Court use its inherent authority and its broad
13 discretion to have Mr. Schiff proffer the relevance of each
14 witness's testimony before calling the witness. Because we're
15 concerned that if we rest today, we go on to tomorrow, we may
16 have, you know, no witnesses who are actually relevant and
17 actually get to testify and we wouldn't make any progress
18 tomorrow.

19 THE COURT: Okay.

20 MR. SCHIFF: I will --

21 THE COURT: Go ahead.

22 MR. SCHIFF: Well, first of all, I gave -- I told who
23 my first five witnesses are gonna be. These are witnesses
24 who've used my material and had problems. They can
25 cross-examine 'em. These are all individuals, uh, who have had

1 collection due process hearings; have used my material in one
2 form or another. The Government has put on witnesses showing
3 how people presumably use my material and get into trouble. I
4 have a right to put on witnesses who say they used my material
5 and they don't get into trouble.

6 But I have -- under the Constitution, I have a right to
7 call witnesses in my defense. Now, if they want to impeach my
8 witnesses once they are here, let 'em do it. I couldn't impeach
9 one Government witness. Now, the Government put on all kinds of
10 witnesses of people who allegedly used my material, some of 'em
11 who didn't even read the book --

12 THE COURT: Well, enough -- enough speeches.

13 MR. SCHIFF: All right.

14 THE COURT: The question is are you going to be
15 required to do a proffer so that the Court can determine whether
16 the testimony is relevant.

17 MR. SCHIFF: I --

18 THE COURT: And so I would -- I'd like your comments
19 addressed to whether you should have to do a proffer.

20 MR. SCHIFF: Pardon? Your Honor, what I'm saying is
21 this: Are you telling me I don't have a defense? I can't
22 discuss the law and I can't bring in witnesses? I will --

23 THE COURT: Did you not hear my statement?

24 MR. SCHIFF: No, I didn't hear it. I --

25 THE COURT: All right.

1 MR. SCHIFF: Something is wrong with my hearing aids.

2 THE COURT: Yeah.

3 MR. SCHIFF: I gotta go --

4 THE COURT: Apparently.

5 (Discussion between Mr. Leventhal and
6 Mr. Schiff.)

7 MR. SCHIFF: The relevance, they are coming in --

8 THE COURT: No. I'm -- no, that's not -- I'm not
9 asking you to tell me now. I'm asking you to -- to make a
10 proffer, that is, give me something written out --

11 MR. SCHIFF: The witnesses --

12 THE COURT: -- for each witness as what they will
13 testify to --

14 MR. SCHIFF: Okay.

15 THE COURT: -- what you anticipate they will testify
16 to.

17 MR. SCHIFF: Okay. The witnesses --

18 THE COURT: The only question is should you be required
19 to do that.

20 MR. SCHIFF: The witnesses that I have, if I heard you
21 correctly -- I'm gonna try to get my hearing aids straight. I
22 had the wax taken out before they were -- is that these are
23 people who have used my material and -- you know, used my
24 material and either solved problems with my material and -- and
25 did research based on my material.

1 THE COURT: Here's what I'm going to order you to do.
2 You're not responding.

3 MR. SCHIFF: I --

4 THE COURT: Mr. Leventhal, you will assist --

5 MR. SCHIFF: Well, ask me --

6 THE COURT: -- Mr. Schiff.

7 MR. SCHIFF: -- specific questions, your Honor.

8 Your Honor, can I ask you to ask me specific -- because
9 I'll tell you who these witnesses are. And another thing --

10 THE COURT: You will provide the Government and myself
11 with a list of each witness and what they -- what you anticipate
12 their testimony will concern. A short summary of everything
13 that you expect them to testify to. And then I will
14 determine --

15 MR. SCHIFF: Well, I -- I -- your Honor, a short
16 summary --

17 MR. LEVENTHAL: When do you want that? Do you want the
18 first five or do you want --

19 THE COURT: Well, it's gonna have to be sometime soon
20 and -- when are the witnesses subpoenaed for?

21 MR. LEVENTHAL: I believe you have five coming in
22 tomorrow.

23 MR. SCHIFF: Yeah.

24 Your Honor, let me tell you what the problem was. I
25 don't know when the Government is gonna finish their case. I

1 didn't wanna bring in witnesses from out of town who if they
2 don't testify would have to wait here Friday, Saturday, Sunday,
3 and Monday. So I have witnesses largely from Las Vegas.

4 THE COURT: Okay.

5 MR. SCHIFF: Most of these witnesses are people who
6 have filed zero returns or claimed exempt or have had collection
7 due process hearings, who've had experiences with the IRS, and
8 have used my material.

9 Now, the Government has put in all kinds of
10 witnesses --

11 THE COURT: I don't want to hear argument about --

12 MR. SCHIFF: Well, that's who my witnesses are, your
13 Honor. Who else can my witnesses be?

14 THE COURT: Well, I'm asking -- we're not addressing
15 that right now. What we're addressing is whether you'll be
16 required to do a proffer. And you will be required to do a
17 proffer as to the anticipated testimony of each witness.

18 MR. SCHIFF: Your Honor --

19 THE COURT: I'll then evaluate it. You'll have that to
20 me, uh, by tomorrow.

21 Now, has there been any agreement, Mr. Cristalli,
22 Mr. Bowers, as to who's going to go first with the defense?

23 MR. CRISTALLI: Your Honor, I would assume -- um, I
24 don't want to speak for Mr. Bowers -- I would assume
25 Mr. Schiff's gonna go first because I think the majority of the

1 case is going to lie with him.

2 THE COURT: Okay. All right.

3 Well, then we'll have to have that list, uh, uh,
4 probably before we, uh -- before we adjourn today at least so
5 that we can -- we can be ready for tomorrow.

6 MR. SCHIFF: Your Honor, can I ask you one question?

7 THE COURT: Yes.

8 MR. SCHIFF: I still don't know what you mean by --

9 THE COURT: Mr. Leventhal will explain --

10 MR. SCHIFF: -- how extensive?

11 THE COURT: -- your advisory counsel --

12 MR. SCHIFF: How extensive does it have to be? Every
13 question I'm gonna ask them?

14 THE COURT: It has to be a paragraph that is adequate
15 for me to determine the areas you intend to go in with -- into
16 with each witness --

17 MR. SCHIFF: Your Honor --

18 THE COURT: -- to determine whether it is relevant.

19 MR. SCHIFF: Can I just make an observation here?

20 I am on trial presumably from -- from [sic] life. I'm
21 defending myself. I can't -- you're telling me I can't, um,
22 discuss the law. I have witnesses in my defense. And now
23 you're trying to limit my own witnesses by whether you think
24 that they have relevant testimony.

25 THE COURT: There is always a limit on what can be done

1 in a trial, Mr. Schiff. I know you don't recognize that. But
2 relevance is one limit; there are other limits. And I'm -- I'm
3 telling you what you have to do --

4 MR. SCHIFF: All right.

5 THE COURT: -- right now.

6 MR. SCHIFF: When I -- when I raise relevance of
7 certain Government witnesses, even pointing out that they were
8 not even authorized, you ruled against me and allowed every
9 Government witness to come in.

10 THE COURT: That --

11 MR. SCHIFF: How can you limit my witnesses?

12 THE COURT: Well, the fact that I sustain the
13 Government's objection to relevance and don't sustain yours does
14 not mean that you're entitled to have all of your issues, uh,
15 determined to be relevant. So --

16 MR. SCHIFF: Well, if -- if my witnesses --

17 THE COURT: You chose to represent yourself, sir. You
18 have already pointed out you really don't know what you're
19 doing, but you insist on representing yourself. So these are
20 some of the things that you have to deal with. And whether you
21 agree with the Court's rulings or not is not the point. If you
22 disagree with any of the rulings of the Court, you have your
23 right of appeal.

24 MR. SCHIFF: And, your Honor, if I ask them a question
25 that's irrelevant, the Government can object on relevancy and

1 THE COURT: Please be seated.

2 Will the Government call its next witness, please?

3 MR. IGNALL: Yes. Government calls Kathy Mead.

4 (Kathryn Mead takes the witness stand.)

5 THE CLERK: Please raise your right hand.

6 You do solemnly swear that the testimony you shall give

7 in the cause now pending before this court shall be the truth,

8 the whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated.

11 THE COURT: Thank you.

12 Before we begin, will the parties stipulate to the

13 presence of the full jury?

14 MR. IGNALL: Yes, your Honor.

15 MR. CRISTALLI: Yes, your Honor.

16 MR. BOWERS: Yes, Judge.

17 THE COURT: Go ahead, Ms. Clerk.

18 THE CLERK: Please state your name -- or your full name

19 for the record and spell your last name.

20 THE WITNESS: My name is Kathryn, K-a-t-h-r-y-n, Mead,

21 M-e-a-d.

22

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1 KATHRYN MEAD,

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

4
5 DIRECT EXAMINATION

6 BY MR. IGNALL:

7 Q. Good morning.

8 A. Good morning.

9 Q. Uh, Ms. Mead, what do you do for a living?

10 A. I'm a special agent for the Office of the Inspector General
11 Social Security Administration.

12 Q. And what is your responsibilities as a special agent at the
13 Social Security Administration?

14 A. We investigate, uh, fraud, waste, and abuse within the
15 Social Security Administration and its programs as well as
16 Social Security number fraud.

17 Q. All right. Do your job responsibilities involve
18 investigating disability insurance fraud?

19 A. Yes. Yes, it does.

20 Q. Can you briefly describe to us what disability insurance is
21 within Social Security?

22 A. Uh, yes, briefly. Um, Social Security disability is a -- a
23 program that everybody who pays into the Social Security system,
24 who pays Social Security taxes, which are known as -- like the
25 OASDI, O-A-S-D-I, taxes are eligible to receive, uh, Social

1 Security disability benefits.

2 You have to have a minimum of what they call 40
3 quarters of coverage, which is a -- you earn a quarter of
4 coverage every three months. So at that time you become
5 eligible. It's the same thing if you cannot work for, um, any
6 kind of medical condition, under Social Security's rules, for a
7 period of 12 months or that it's expected to end in death you
8 are eligible for disability benefits.

9 Does that answer your question?

10 Q. I -- I think so.

11 How does someone apply for disability benefits?

12 A. They have to submit an application to the Social Security
13 Administration.

14 MR. IGNALL: May I approach, your Honor?

15 THE COURT: You may.

16 MR. IGNALL: Let the record reflect I'm approaching
17 with Exhibits 305 through 311.

18 (Government's Exhibit No. 305 through 311,
19 marked for identification.)

20 BY MR. IGNALL:

21 Q. And, Special Agent Mead, if you could try to speak up a
22 little bit or try to adjust the microphone.

23 A. Okay.

24 Q. It's a big courtroom and sometimes it's hard for everybody
25 to hear.

1 If I could turn your attention to what we've marked as
2 Exhibit 305, have you ever seen that document before?

3 A. Yes, I have.

4 Q. What is Exhibit 305?

5 A. It's an Application for Disability Insurance Benefits, uh,
6 completed by Cynthia L. Neun.

7 Q. And is this -- does this application come from the records
8 of the Social Security Administration?

9 A. Yes, it does.

10 Q. All right.

11 MR. IGNALL: At this point, the Government moves into
12 evidence Exhibit 305.

13 MR. CRISTALLI: No objection.

14 THE COURT: Hearing no objection, 305 is received.

15 MR. IGNALL: All right.

16 (Government's Exhibit No. 305, received into
17 evidence.)

18 MR. IGNALL: May we publish Exhibit 305, your Honor?

19 THE COURT: You may.

20 (Document displayed in open court.)

21 BY MR. IGNALL:

22 Q. Special Agent Mead, when was this application received by
23 the Social Security Administration?

24 A. Uh, January 13th, 1989.

25 Q. All right. Thank you.

1 If I could turn your attention to the last page.

2 A. (Complies.)

3 Q. If we could look at, say, the bottom half of the page
4 starting with item III, "REPORTING RESPONSIBILITIES" --

5 A. Yes.

6 Q. -- can you read what that says in that box there?

7 A. It states, "REPORTING RESPONSIBILITIES I agree to promptly
8 notify Social Security if

9 "My MEDICAL CONDITION IMPROVES so that I would be able
10 [to return] to work, even though I have not yet returned to work

11 "I GO TO WORK whether as an employee or a self-employed
12 person

13 "I apply for or begin to receive a workers'
14 compensation (including black lung benefits) or another public
15 disability benefit, or the amount that [I'm] receiving changes
16 or stops, or I receive a lump-sum settlement

17 "[Or] I am imprisoned for conviction of a felony

18 "The above events may affect my eligibility to
19 disability benefits as provided to the Social Security Act, as
20 amended."

21 Q. All right. And then if you could just read what it says
22 right above the signature box.

23 A. It states that "I know that anyone who makes or causes to be
24 made a false statement or [a] representation of material fact in
25 an application or for use in determining a right to payment

1 under the Social Security Act commits a crime punishable under
2 federal law by fine, imprisonment or both. I affirm that all
3 information I have given in this document is true.

4 Q. And is there a signature, uh, contained on Exhibit 305?

5 A. Yes, there is.

6 Q. All right.

7 A. It is that of Cynthia L. Neun.

8 Q. Thank you.

9 Have you reviewed Social Security Administration
10 records to determine whether Cynthia Neun, uh, has received
11 Social Security disability benefits?

12 A. Yes.

13 Q. If I could turn your attention to Exhibit 306.

14 A. (Complies.) Yes.

15 Q. What is Exhibit 306?

16 A. It is what the, uh, Social Security Administration refers to
17 as an MBR or a Master Beneficiary Record.

18 Q. And what does this show?

19 A. It's -- it's a very complicated computer printout that --
20 that discloses, uh, an individual's current entitlement to
21 benefits. If they have received, applied for, and been entitled
22 to benefits, one of these records will be created. Uh, when --
23 I can look into the computer system and -- and determine how
24 much has been paid; when they were entitled to benefits;
25 et cetera.

1 Q. Can you tell us from looking at Exhibit 306 for how long
2 Ms. Neun has been receiving benefits?

3 A. Um, well, I'm not an expert in reading these documents. I
4 always rely on the employees at the Social Security
5 Administration to help me decipher these. However, uh -- so to
6 be truthful at this particular point, it has the date of
7 entitlement of March of 1989. So that's the date that they
8 state that she started receiving benefits.

9 Q. And is Exhibit 306, uh, an accurate reflection of the
10 records maintained by the Social Security Administration in the
11 ordinary course of its business?

12 A. Yes.

13 MR. IGNALL: United States moves into evidence
14 Exhibit 306.

15 MR. CRISTALLI: No objection.

16 MR. BOWERS: No objection.

17 THE COURT: Hearing no objection, 306 is received.

18 (Government's Exhibit No. 306, received into
19 evidence.)

20 MR. SCHIFF: No objection.

21 BY MR. IGNALL:

22 Q. Special Agent Mead, did you do any research, other research
23 within Social Security Administration records, to determine, uh,
24 what payments Ms. Neun received?

25 A. Yes. I requested copies of the checks that she received

1 from the Social Security Administration.

2 Q. If I could turn your attention to Exhibit 307.

3 A. (Complies.)

4 Q. Do you recognize Exhibit 307?

5 A. Yes, I do.

6 Q. What is Exhibit 307?

7 A. These are copies of checks that I requested from the, uh,
8 Department of Treasury. They are actually microfilm copies.

9 Q. Reflecting what?

10 A. Reflecting payment -- uh, Social Security benefit payment to
11 Cynthia L. Neun for disability benefits.

12 MR. IGNALL: United States moving into evidence
13 Exhibit 307.

14 MR. CRISTALLI: No objection.

15 THE COURT: Hearing no objection, 307 is received.
16 (Government's Exhibit No. 307, received into
17 evidence.)

18 MR. IGNALL: One moment, your Honor.
19 (Discussion between Mr. Neiman and
20 Mr. Ignall.)

21 MR. IGNALL: No further questions of this witness, your
22 Honor.

23 THE COURT: Cross-examination?

24 MR. CRISTALLI: Thank you, your Honor.
25 (Pause in the proceedings.)

CROSS-EXAMINATION

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BY MR. CRISTALLI:

Q. Good morning, Ms. Mead.

A. Good morning.

Q. Uh, you have been a special agent for Social Security for how long?

A. Eight and a half years.

Q. Okay. Um, and in this particular, uh, case you did an investigation as it related to Cynthia Neun's file; correct?

A. That is correct.

Q. Okay. Um, and that is specific to disability claims; correct?

A. Uh, that was specific to her disability benefits, yes.

Q. Disability benefits. Okay.

And, um, just so that we're clear, on, disability, um, in terms of an individual receiving disability, um, they get a certain amount per month; correct?

A. The amount that the individual receives is based upon the amount of earnings that they have paid into the Social Security system or paid -- that have been reported to the Internal Revenue Service.

Q. Do you know how much, uh, Ms. Neun, uh, was getting every month?

A. Um, yes, I -- I do.

Q. Could you, uh -- could you tell me?

1 A. I'd have to refer to one of the exhibits.

2 Q. That's fine.

3 A. It's Exhibit 306, the Master Beneficiary Record.

4 At the, uh -- the date that this was ran, which was
5 November 13, 2002, she was receiving, uh, \$389.10 a month.
6 However, there was a certain amount of money that was being
7 paid -- uh, there was a garnishment for child support that was
8 being paid to her ex-husband.

9 Q. Okay. So absent, uh, whatever was going to her husband, um,
10 she was rearing 300 and what again?

11 A. \$89.10.

12 Q. Okay. And her, um, disability payments began in 1989?

13 A. Um, you know, to the best of my knowledge. I'd have to look
14 at my report to determine the exact date that she became
15 entitled to benefits. But I believe it was March of 1989.

16 Q. Okay. I think that's what the exhibit had indicated, if I'm
17 not mistaken.

18 Uh, now, the reason why she received disability was
19 because of a severe back injury that she sustained; correct?

20 A. Um, when she filed for the benefits, that's what she put on
21 the application was, uh, for back injury. However, I think that
22 was a secondary. I think the initial, um, coding that she had
23 for benefits was more of a -- what they called, uh, a affective,
24 I believe, disorder as it was a -- more of a preoccupation with
25 the back injury than the actual back injury itself.

1 Q. And what does that mean? "Preoccupation" meaning -- you
2 mean subsequent to like, for example, a back injury one has,
3 um -- one has problems in day-to-day activities? Things of that
4 nature? Is that what it means or...

5 A. Um, well, I'm not -- not a doctor and I'm not really --

6 Q. Right.

7 A. -- they have a lot of different names for the reason that
8 they give somebody benefits. And one of them is, like, an
9 affective disorder. Uh, but specifically I think they -- they
10 stated it was a -- a histrionic.

11 Q. In any event, your role was not, uh, to investigate nor was
12 it ever in dispute whether or not Ms. Neun had a disability;
13 correct?

14 A. No.

15 Q. Okay. Now, from time to time when an individual is
16 receiving disability, they would have a review; correct?

17 A. That's correct.

18 Q. Okay. And that happened in this particular case. True?

19 A. That's correct.

20 Q. All right. And I believe, um -- I believe Ms. Neun's first
21 review was approximately in June of 1994; correct?

22 A. That is correct.

23 Q. Okay. And then there was a, um, second review in 2001;
24 correct?

25 A. Yes. They actually sent the paperwork out in, uh, September

1 of 2000, but it wasn't completed until, uh, 2001, November 2001.

2 Q. Now, uh, prior -- now, in -- in 2001, uh, Ms. Neun indicated
3 to the Department of Social -- Social Security that she was
4 working part time; correct?

5 A. She did. She indicated that she was working. Yes, that's
6 correct.

7 Q. And -- and what she had stated to, um, the Department was
8 that she was working on and off for her boyfriend, Irwin Schiff,
9 at his bookstore and was a sidekick on his radio show; correct?

10 A. That's correct.

11 Q. Okay. So she did disclose to Social Security in 2001 that
12 she was working, uh, at Freedom Books; correct?

13 A. What Ms. Neun did was in response to the Social Security
14 sending out the -- what they call a Continuing Disability Review
15 Form -- she completed that in length I might add -- and made
16 those statements. That's correct.

17 Q. Okay. And, um, if -- if one -- if -- if somebody is
18 working -- if somebody is getting disability benefits, some --
19 they can also work; correct?

20 A. They have what is called "a trial work period." An
21 individual is -- is allowed to work, um, to determine if their
22 ability to return to work for up to nine months and receive pay
23 from Social Security or the benefits from Social Security.

24 Q. In fact, isn't that -- you said it was a nine-month period.
25 But doesn't --

1 A. Plus three months. It's actually 12 months.

2 Q. I'm --

3 A. It's actually a 12-month period altogether.

4 Q. 12 months. So another three months, um -- so basically

5 you're -- if you're working you get nine -- you get continued

6 nine months' disability and then you're granted an additional

7 three months; correct?

8 A. That is correct.

9 Q. Okay. Um, is -- is there situations wherein a person can,

10 uh, continuously receive disability and also receive, um,

11 payments for -- in exchange for work that they do?

12 A. Well, yes. But it would have to -- the work itself would

13 have to not meet the requirements of substantial gainful

14 activity, which means --

15 Q. Sub...

16 A. Substantial gainful activity.

17 Q. Okay.

18 A. And substantial gainful activity is determined by two

19 factors. One is the amount of -- of wages or pay that somebody

20 received for the work and also the amount of work that an

21 individual performs. If an individual works for more than 40

22 hours --

23 Q. More than? I'm sorry.

24 A. 40 hours in a -- in a month, then that would be considered

25 substantial gainful activity.

1 Q. Even if the work is, uh, not necessarily laborious? Is --
2 I'm trying to -- is there a flexibility in the criteria?

3 A. Um, I -- I do believe that there is. I think -- and I think
4 the Social Security Administration employee would be better able
5 to define it -- but I think that if it requires, um, any, uh,
6 mental, you know, or physical -- substantial mental or physical
7 work. But it doesn't necessarily have to be just physical.

8 Q. Okay. So it -- it -- it's kind of -- um, it's a
9 determination made by the agents or whoever's in the Social
10 Security office based on all the factors that they have;
11 correct?

12 A. That's correct.

13 Q. Okay. Now, at some particular time, um, it was determined
14 by Social Security that Ms. Neun, um, should not any longer
15 receive disability benefits; correct?

16 A. Yes.

17 Q. Okay. Do you recall when that was?

18 A. Um, in February of 2004. I think they terminated --
19 actually, uh, suspended the benefits in April of 2004. And then
20 they went to what they call a due process and eventually
21 terminated the benefits.

22 Q. And is the termination date of the disability consistent
23 with when Ms. Neun was indicted on this particular case, to the
24 best of your recollection?

25 A. Um, it's in the general same time frame, yes.

1 Q. Okay. And the determination made by Social Security in
2 terminating her disability benefits, um, um, was made based on
3 facts given to them by who?

4 A. By me.

5 Q. Okay. And you were working with who --

6 A. The --

7 Q. -- to get that information?

8 A. -- the Internal Revenue Service Criminal Investigation
9 Division.

10 Q. Agent Steiner?

11 A. Steiner and, uh, Holland, yes.

12 Q. Agent Holland and Steiner.

13 So basically the initiation of termination of
14 Ms. Neun's Social Security benefits, disability benefits, was
15 through the criminal investigation, correct, with regard to the
16 underlying charges?

17 A. During the course of their investigation of -- the IRS CID's
18 investigation into Freedom Books, apparently they discovered
19 some Social Security disability checks that had been deposited
20 into bank accounts and they believed that Ms. Neun was an
21 employee of this particular business. They then contacted the
22 office of the Inspector General and we can conducted --

23 Q. All right.

24 A. -- our investigation basically independently of that
25 particular information.

1 Q. Okay. Well, let me just stop you right there.

2 Um, you said that your investigation began as a result
3 of them telling you that they believed through the checks that
4 they had seen that Ms. Neun was working at Freedom Books;
5 correct?

6 A. Correct.

7 Q. But you already knew that she was working at Freedom Books
8 in 2001. True?

9 A. I personally did not know that, no.

10 Q. Well, the office did because she disclosed it; correct?

11 A. The -- the Social Security Administration had conducted a
12 continuing disability review.

13 Q. Right. In 19 --

14 A. And, at that particular time, she had advised in the written
15 report that she returned to Social Security in November 2001 --

16 Q. Right.

17 A. -- that she was working on and off at Freedom Books.

18 However, she was later contacted by an individual who worked
19 with the Social Security Administration and she stated that she
20 was not working. So -- so there was not --

21 Q. Well, she --

22 A. -- any specific --

23 Q. I'm sorry. Go ahead.

24 A. -- information that she was working under the rules and
25 regulations at Social Security when I started my investigation.

1 Social Security position was that she was not employed.

2 Q. Well, I'm a little confused.

3 Because in 2001 she disclosed to Social Security
4 through -- through their review that she was working three
5 out -- three weeks out of the month for Freedom Books; correct?

6 A. She -- that form was submitted to the Social Security
7 Administration dated November 6, 2001, I believe. On November
8 16th, 2001, an employee of the Social Security Administration
9 contacted Ms. Neun by telephone based upon those statements in
10 that form. When she -- when the Social Security employee talked
11 to Ms. Neun on November 16th, she denied any employment at
12 Freedom Books.

13 Q. Wait, ma'am. I'm confused.

14 Am I -- am I miss -- you testified at the Grand Jury;
15 correct?

16 A. Yes, I did.

17 Q. And in the Grand Jury you testified that Ms. Neun reported
18 in 2001 that she was working for Freedom Books three out of four
19 weeks a month; correct?

20 A. She did.

21 Q. Okay. So that's a disclosure that she's working at Freedom
22 Books; right?

23 A. And subsequently Ms. Neun then advised the Social Security
24 Administration that she was not working.

25 Q. Where is that document? Can you -- can you tell me where

1 that exists?

2 MR. IGNALL: Objection, your Honor. We're beyond the
3 scope of direct. And the Government's next witness is the one
4 who has firsthand knowledge of this. I mean, we --

5 MR. CRISTALLI: Well, she --

6 MR. IGNALL: -- don't object to this witness talking
7 about it, but...

8 MR. CRISTALLI: She testified at the Grand Jury. I
9 mean, if -- about all of this.

10 THE COURT: Well, the Government has given the
11 explanation, that is, this witness is not the one who spoke to
12 her; another witness did.

13 MR. CRISTALLI: Your Honor, this -- this witness is the
14 investigator who investigated the case and knows all of the
15 facts relating to Ms. Neun's file. She's certainly capable of
16 answering all of the questions that I present to her.

17 MR. IGNALL: All right. Your Honor, we'll withdraw the
18 objection. I'm just trying to clarify things, if we could speed
19 it up. But we'll -- we'll withdraw the objection.

20 MR. CRISTALLI: With all due respect in terms of
21 speeding it up, I sat here very patiently through a two-hour
22 direct examination yesterday, your Honor. And I don't think I'm
23 taking all that long. But I will get to the point as quickly as
24 I possibly can.

25

1 BY MR. CRISTALLI:

2 Q. Now, um, ma'am, the investigation, and correct me if I

3 wrong, was as a result of information you received from Agent

4 Holland and Agent Steiner with regard to their criminal

5 investigation. True?

6 A. I'm sorry. Can you repeat the question?

7 Q. Your investigation at Social Security in terms of Ms. Neun's

8 disability benefits was initiated as a result of information you

9 received from Agent Holland and Agent Steiner --

10 A. That's correct.

11 Q. -- in regard to their criminal investigation; correct?

12 A. Yes, that is correct.

13 Q. And that was in 2004; correct?

14 A. In 2002.

15 Q. Well, you didn't cease disability benefits until 2004;

16 correct?

17 A. However, the investigation started prior to that.

18 Q. Okay. And in -- the information that you used to support

19 your decision to terminate disability benefits came from the

20 criminal investigation; right? We're on the same page with

21 regard to that?

22 A. I do not have the authority to make a decision to terminate

23 Social Security benefits. The information --

24 Q. You're the investigator; right?

25 A. I am the investigator. However --

1 Q. Okay. I'm tryin' to figure out what you investigated.

2 A. If you let me finish, I'll tell you.

3 Q. I will.

4 A. The Social Security Administration itself makes the
5 determination whether or not to terminate the benefits. I have
6 no authority --

7 Q. Right.

8 A. -- to advise them how to -- how to handle that.

9 Q. Oh, okay.

10 A. I can only provide them with information. They review the
11 information and they make their own determination.

12 Q. Ma'am, did you do the investigation?

13 A. Yes --

14 Q. Did you --

15 A. -- I did.

16 Q. -- gather information to provide to Social Security in their
17 determination as to whether or not they should terminate or not
18 terminate Ms. Neun's disability?

19 A. I provided the information to the Social Security
20 Administration.

21 Q. Okay. Let's talk about what you did. All right? Your
22 investigation.

23 The information you received through -- in your
24 investigation came from Agent Holland and Agent Steiner with
25 regard to the underlying criminal investigation. True?

1 A. Correct.

2 Q. Okay. One piece of the investigation came through a
3 witness, uh, by the name of Michelle Degrosellier; correct?

4 A. Correct.

5 Q. Michelle Degrosellier is, uh, Cynthia Neun's daughter.
6 True?

7 A. Yes.

8 Q. Okay. Michelle Degrosellier told the investigators,
9 including yourself, that Ms. Neun was receiving compensation for
10 her work at Freedom Books; right?

11 A. Yes, sir, she did.

12 Q. That is not in contrar- -- contradiction to what Ms. Neun
13 had told Social Security in 2001; correct?

14 A. Correct.

15 Q. Thank you.

16 MR. CRISTALLI: Court's indulgence.

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

19 BY MR. CRISTALLI:

20 Q. Now, in terms of Ms. Neun's liability, it covers the years
21 from 2000 to 2004; correct?

22 A. Um, well, they had the -- the -- the -- the work period that
23 they defined was from May of 1999 through February of 2003.
24 However, correct, because of the trial work period, the period
25 of liability was from May of 2000 through the termination of

1 benefits.

2 Q. Yeah.

3 So, in terms of the criminal investigation and
4 liability that Ms. Neun is exposed to with regard to this
5 particular case, it's 2000 to end of 2003; right?

6 A. Correct.

7 Q. All right. And, you know, ma'am, uh, that Michelle De- --
8 Desgrosellier's work at Freedom Books ceased in 1999; right?

9 A. I'm not aware of that.

10 Q. Okay. But that was, uh, one piece of evidence that you used
11 to present to your, um, superiors at the disability office;
12 correct?

13 A. Correct. I -- I -- I believe that Ms. Degrosellier told me
14 that she started working there in 1999; that's when she actually
15 started employment. I don't specifically recall when she said
16 that she resigned or quit.

17 Q. Other than Ms. Degrosellier, um, telling -- and you are,
18 um -- you are aware that she's a drug addict; correct?

19 MR. IGNALL: Objection, your Honor. Relevance.

20 MR. CRISTALLI: She's the investigator.

21 MR. IGNALL: We're way beyond the scope and --

22 MR. CRISTALLI: I want to know if she knows --

23 MR. IGNALL: Objection, your Honor.

24 MR. CRISTALLI: -- she's a drug addict.

25 MR. IGNALL: If we're gonna get into the specifics of

1 Agent Mead's investigation, this opens the door to Agent Mead
2 explaining everything else she did, which is not why we put her
3 on the stand. But we're more than happy to do that.

4 THE COURT: If you pursue the question, you do open the
5 door.

6 MR. CRISTALLI: Okay.

7 BY MR. CRISTALLI:

8 Q. Um, now, with regard to the investigation in addition to
9 Ms. Degrosellier -- in addition to Ms. Degrosellier, what other
10 information, um, that you -- were you given by Agent Steiner and
11 Agent Holland with regard to the criminal investigation as it
12 related to Ms. Neun's disability?

13 A. The, uh, documents that they obtained pursuant to the
14 federal search warrant executed February 11, 2003, from Freedom
15 Books.

16 Q. The documentation?

17 A. Documentation.

18 Q. Okay. Well, what -- what documentation?

19 A. There was, um, voluminous documentation regarding Ms. Neun's
20 activities with Freedom Books that was obtained.

21 Q. All right. Well, let me just stop you there.

22 But Ms. Neun told you in your office in 2001 in a
23 written disclosure that was presented in the Government's
24 exhibit that she was working three out of four weeks at Freedom
25 Books. Correct?

1 A. Ms. Neun told a Social Security employee in November 6th,
2 2001, that she was working three out of four weeks at Freedom
3 Books. Correct.

4 Q. Okay. So what -- what -- what was -- what was the
5 revelation that we received --

6 A. Ms. Neun --

7 Q. -- that caused this to --

8 A. -- had an obligation to advise the Social Security
9 Administration when she returned to work in -- whatever date
10 that was. Our documentation had at least an earlier date of May
11 of 1999. Earlier I stated that the reporting requirements
12 advised that she should tell Social Security when she returned
13 to work.

14 Um, the documentation that we obtained showed that she
15 was performing specific duties at Freedom Books as early as May
16 of 1999. She did not advise Social Security of that and she did
17 not advise them until November of 2001 --

18 Q. Oh, okay. So let me --

19 A. -- in the written --

20 Q. -- let me stop --

21 A. -- documentation.

22 Q. Okay. Let me stop you there then.

23 So it's your testimony now that the only failure to
24 disclose occurred between 1999 and 2001. Is that your testimony
25 here today?

1 A. Failure to disclose? Uh, that would be correct.

2 Q. Okay. And, um, Ms. Mead, I am correct in saying that it's
3 not illegal to receive, uh, disability benefits and to work;
4 correct?

5 A. If you have failed to report your employment to the Social
6 Security Administration and you are receiving disability
7 benefits past the time of your trial work period, yes, it is.

8 Q. Okay. And the trial work period would be the 12-month
9 period of time?

10 A. Based upon the documentation and evidence that we had, her
11 trial work period began in May of 1999 and would have ceased in
12 May of 2000. So the first month that she should, uh, not be
13 receiving any benefits would have been subsequent to that.

14 Q. Okay. Now, um, other than, uh, like, uh, documentation
15 recovered in the office of Freedom Books suggesting that
16 Ms. Neun participated in whatever was going on at Freedom Books,
17 um, in terms of hard numbers as to what she was receiving in
18 terms of money that exclusively came from Michelle Degrosellier
19 and some, uh -- and checks made to Ms. -- well, first of all,
20 number one, the infor- -- information came from
21 Ms. Degrosellier; correct?

22 A. She did make a statement regarding the amount of money that
23 her mother was receiving, yes.

24 Q. Okay. And we're all in agreement that she -- well, I don't
25 think you recalled. So I'll strike that.

1 Um, and in addition to that, I believed there were some
2 checks, uh, written from Freedom Books signed off by Mr. Irwin
3 Schiff for what appeared to be payment of rent and other
4 expenses; correct?

5 A. You know, I don't specifically recall all -- all those
6 checks.

7 Q. You don't -- you don't recall that; correct?

8 A. No. I'm -- I'm aware that -- that -- that, uh, Mr. Schiff
9 did pay her rent and some other utility bills. However, I don't
10 recall the specific checks.

11 Q. Now, is there anything -- is there a crime -- does somebody
12 commit a crime or is it a violation of disability benefits if
13 they receive disability because of a very viable disability and
14 somebody gifts them something?

15 A. Um, no.

16 Q. So you can do that; right?

17 A. No -- yes, you can do that.

18 Q. Okay. So if I'm disabled and, um, my girlfriend wants to
19 pay my rent --

20 MR. IGNALL: Objection to the hypothetical. I think --

21 MR. CRISTALLI: She's an agent --

22 MR. IGNALL: -- it assumes --

23 MR. CRISTALLI: -- expert in the disability --

24 MR. IGNALL: -- facts that are not in evidence.

25 THE COURT: Sorry. What is the objection?

1 MR. IGNALL: It's a hypothetical and I think it's
2 assuming facts that are not in evidence as well.

3 MR. BOWERS: Well, a hypothetical by its nature assumes
4 facts not in evidence. I'm sorry, your Honor. It's not my
5 witness.

6 MR. CRISTALLI: Your Honor, I think it's a completely
7 legitimate question.

8 THE COURT: I'll allow it. Go ahead.

9 BY MR. CRISTALLI:

10 Q. Okay. If I am receiving disability for a perfectly
11 legitimate disability, I am -- I'm not prevented from
12 receiving -- for example, if my girlfriend wanted to pay my
13 rent, she could do that; right?

14 A. That's correct.

15 Q. She could buy me groceries; right?

16 A. That's correct.

17 Q. She could pay for my car; right?

18 A. If she wanted to, that's correct.

19 Q. Okay. And I wouldn't have a obligation to specifically
20 report each and every time somebody did something like that for
21 me; correct?

22 A. No.

23 MR. CRISTALLI: Court's indulgence.

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

1 MR. CRISTALLI: Your Honor, I do not have any further
2 questions.

3 Thank you, ma'am.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Bowers, no questions?

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

7 THE COURT: Mr. Schiff? Mr. Schiff, do you wish to
8 examine the witness?

9 MR. LEVENTHAL: Do you have any questions?

10 MR. SCHIFF: No.

11 MR. LEVENTHAL: No questions.

12 THE COURT: Redirect?
13

14 REDIRECT EXAMINATION

15 BY MR. IGNALL:

16 Q. Agent Mead, I think you said that your investigation began
17 with evidence, uh, you got from the IRS; is that correct?

18 A. That's correct.

19 Q. Did you perform your own investigation --

20 A. Yes.

21 Q. -- once you got that evidence?

22 A. Yes.

23 Q. I believe Mr. Cristalli said something about the written
24 disclosure that, uh, Ms. Neun made to the Social Security
25 Administration.

1 A. Yes.

2 Q. Was that consistent with what she told an IRS [sic] employee
3 after that?

4 A. An IRS employee?

5 Q. I'm sorry. A Social Security Administration employee.

6 A. No.

7 Q. And, to your understanding, what did she tell that Social
8 Security Administration employee?

9 A. That she was not employed; that she did not receive any pay
10 or wages; that she went to the bookstore on occasion to hang out
11 with her boyfriend; and that, uh, she did not actually work on
12 the radio show. She only answered -- occasionally answered the
13 phone.

14 Q. Did your investigation indicate whether that -- those
15 statements to the Social Security Administration employee were
16 correct?

17 A. Yes, primarily through the documentation received through
18 the search warrant.

19 Q. Showed what? I'm sorry.

20 A. That it was not correct. I'm -- I'm sorry if I was
21 confusing.

22 Q. All right. And Mr. Cristalli mentioned earlier about a
23 hypothetical about someone getting gifts.

24 If someone's on disability and is performing work
25 functions and getting bills paid in return for that, does that

1 affect the person's eligibility to get Social Security?

2 MR. CRISTALLI: Objection. Assumes facts not in
3 evidence. Foundation.

4 THE COURT: Same hypothetical. Overruled.

5 THE WITNESS: Um, actually, as I stated earlier, the
6 disability can -- by amount of work -- if they perform
7 something, 40 hours of what Social Security terms to be work, it
8 doesn't matter how much they are actually paid.

9 BY MR. IGNALL:

10 Q. 40 hours --

11 A. A month.

12 Q. -- per what time period?

13 A. 40 hours a month.

14 Q. And we talked before about the continuing duty to inform
15 Social Security.

16 A. That's correct.

17 Q. Is there any record of Ms. Neun discussing her, uh, duties
18 at Freedom Books before she was contacted by the Social Security
19 Administration?

20 A. No.

21 MR. IGNALL: Nothing further, your Honor.

22

23 RE-CROSS-EXAMINATION

24 BY MR. CRISTALLI:

25 Q. I just want to be straight here.

1 Um, we're clear that Ms. Neun actually filed -- uh,
2 filled out her questionnaire in 2001 with Social Security and
3 specifically wrote to them and explained to them that she was
4 working three out of four weeks with Freedom Books; correct?
5 With her boyfriend; right?

6 A. Yes.

7 Q. Okay. So we're clear: We have documentation. Government
8 put it into evidence. It was up on the screen. We know that
9 for a fact. Right?

10 A. Correct.

11 Q. Okay. So now you testified that you received some
12 information from a agent, who wasn't specified, with regard to a
13 disclosure by Ms. Neun that she really wasn't working there.

14 Ma'am, do you have -- do you have any support for that
15 in terms of --

16 A. Yes, I do.

17 Q. Okay. Where -- where is the support for that?

18 A. It's actually listed as an exhibit.

19 Ms. Neun when she -- when she completed that form and
20 mailed it back to the Social Security Administration -- it went
21 back to the employee who had sent it out to her. The employee
22 of the Social Security Administration reviewed that form. Based
23 upon Ms. Neun's statements that she was performing work --

24 Q. Right.

25 A. -- the Social Security Administration employee contacted

1 Ms. Neun by telephone.

2 Q. Right.

3 A. At that particular time -- to question her regarding her
4 statements of work and employment --

5 Q. Okay.

6 A. -- specifically what she had told the Social Security
7 Administration in that document.

8 Q. Okay.

9 A. At that time, Ms. Neun denied any work or employment and
10 said, no, no, that's not true. Based upon those statements, the
11 Social Security Administration continued to pay her disability
12 benefits.

13 Q. Okay.

14 A. And that was on --

15 Q. But we have no --

16 A. -- November 16th.

17 Q. -- we are not confused, ma'am, that -- she disclosed that in
18 2001; correct?

19 A. No.

20 Q. Are we right about that? She disclosed it in 2001; right?

21 A. Yes.

22 Q. And -- and you continued to pay her benefits subsequent to
23 that despite the disclosure; correct?

24 A. The only reason they continued to pay her benefits was based
25 upon the telephone call that occurred --

1 Q. Ma'am --

2 A. -- after the disclosure.

3 Q. Okay. All right. Now -- and let's -- let's be completely,

4 um, clear here.

5 Um, if she had the telephone con- -- conversation with

6 some investigator, um, with regard to that and said that she

7 wasn't being paid for the work that she performed at -- at

8 Freedom Books, is that your position?

9 A. Yes.

10 Q. Okay. Um, and in terms of compensation, as we had discussed

11 previously, one is not required to -- to report, um, benefits

12 received from a third party, um, in term -- as a gift; correct?

13 A. The individual that she spoke with was actually a claims

14 representative who works --

15 Q. I don't --

16 A. -- who worked for the Social --

17 Q. -- I didn't --

18 A. -- Security Administration.

19 Q. -- I mean, I asked you a direct question. I mean, I don't

20 know --

21 A. You -- you referred to the individual as an investigator.

22 She is not an investigator.

23 Q. That was a --

24 A. She's a Social Security Administration employee.

25 Q. That was the question before, but...

1 A. That was all in the same question.

2 Q. Okay.

3 A. However, the -- could you repeat the whole entire question
4 back to me, please?

5 THE COURT: You did use the term "investigator" when
6 you asked her that question.

7 MR. CRISTALLI: Okay. I apologize.

8 BY MR. CRISTALLI:

9 Q. Um, I think I forgot the question.

10 Um, in terms of the, uh, disclosures, Ms. Neun would
11 not be required to disclose gifts received by a third party;
12 correct?

13 A. No.

14 Q. Okay.

15 MR. CRISTALLI: Court's indulgence.

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

18 BY MR. CRISTALLI:

19 Q. In terms of direct evidence, uh, that Ms. Neun was receiving
20 compensation that -- directly in exchange for work being
21 performed at Freedom Books, the only evidence that we have in
22 the particular case is from Michelle Degrosellier; correct?

23 MR. IGNALL: Objection.

24 THE COURT: Objection what? What is the bas- -- what's
25 your objection?

1 MR. IGNALL: The objection is, is this the only basis
2 for her investigation? What's the relevance to the evidence
3 that's before this Court, as the Court -- the jury will be
4 instructed by the Court on what the law is, what we have to
5 prove here?

6 THE COURT: Well, question was that's the only direct
7 evidence. I'm not sure the witness knows --

8 MR. CRISTALLI: In terms of her --

9 THE COURT: -- the difference between direct and
10 circumstantial. And --

11 MR. CRISTALLI: Well, any evidence.

12 THE COURT: -- and it may be a distinction that even
13 you can't make based on what she's testified to.

14 MR. CRISTALLI: Yeah, I'm not asking for a legal answer
15 with regard to that. And I'll rephrase it.

16 BY MR. CRISTALLI:

17 Q. In terms of -- I mean, let's -- let's be square -- let's be,
18 um, clear.

19 Compensation for employment is a salary; correct?

20 A. Correct. To the best of my --

21 Q. I do work --

22 A. -- to the best of my knowledge, correct. Yes.

23 Q. I do work; I get paid. Right?

24 A. Correct.

25 Q. In terms of your investigation as it relates to Ms. Cynthia

1 Neun, the only evidence that you have that she was being paid
2 for her services rendered at -- at Freedom Books was -- was the
3 statements of Ms. Degrosellier; correct?

4 A. The direct statement to myself, correct.

5 Q. Okay. Um, you don't have any, uh, checks that says paid to
6 Ms. Cynthia Neun for services rendered at Freedom Books;
7 correct?

8 A. Not to my -- best of my knowledge, no.

9 Q. Thank you.

10 MR. CRISTALLI: No further questions, your Honor.

11 MR. IGNALL: Briefly, your Honor.

12

13 FURTHER REDIRECT EXAMINATION

14 BY MR. IGNALL:

15 Q. Special Agent Mead --

16 A. Yes.

17 Q. -- do you have any what we might call indirect evidence of
18 Ms. Neun's employment?

19 A. Well, the -- there was numerous -- again, voluminous
20 documents that were obtained pursuant to the federal search
21 warrant that was executed by IRS that indicated by her own
22 statements that she was working.

23 Q. And you -- you reviewed those statements?

24 A. I reviewed those, yes.

25 Q. Working -- and did they say -- did she say in her own

1 statements what she was doing?

2 A. Um, the one that I specifically recall, um, was, uh, working
3 for Mr. Schiff. She -- she stated, uh, I've been working for --
4 in -- in a letter to the Supreme Court, she wrote that she'd
5 been working for, uh, Mr. Schiff at his bookstore since 1999.

6 MR. IGNALL: No further questions.

7 MR. CRISTALLI: I'm sorry, your Honor. I know we can
8 go on forever with this.

9

10 FURTHER RECROSS-EXAMINATION

11 BY MR. CRISTALLI:

12 Q. But I don't want to get caught up in semantics. One could,
13 um, go and perform services at an organization 80 hours a
14 week -- 80 hours a month if one wanted to. Um, as long as they
15 are not compensated for that particular service, they, um, are
16 not obligated to disclose that to disability. Correct?

17 A. No, that's not correct.

18 Q. Okay. So, if you're volunteering your services to an
19 organization, you still have to disclose that to, um,
20 disability?

21 A. Well, I wouldn't characterize the activities that
22 Ms. Neun --

23 Q. I'm asking --

24 A. -- as volunteerism.

25 Q. -- I'm not asking you -- ma'am, with all due respect, I'm

1 not asking you to categorize anything. I'm asking you a direct
2 question.

3 If somebody is volunteering their service at an --

4 A. If an individual is volunteering --

5 Q. Yeah.

6 A. -- as a volunteer --

7 Q. Right.

8 A. -- no, they do not need to report being a volunteer.

9 Q. Right. Okay. Thank you.

10 THE COURT: Any further? (No response.)

11 The witness is excused.

12 MR. IGNALL: No further questions, your Honor.

13 THE WITNESS: Do you wish me to...

14 THE COURT: Please leave those there and the clerk will
15 retrieve them.

16 THE WITNESS: Thank you.

17 MR. IGNALL: Government calls Gail Loschen.

18 (Gail Loschen takes the witness stand.)

19 THE CLERK: Please raise your -- remain standing.

20 Raise your right hand.

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

24 THE WITNESS: I do.

25 THE CLERK: Please be seated.

1 THE WITNESS: Thank you.

2 THE CLERK: Please state for the record your full name
3 and spell your last name.

4 THE WITNESS: Gail Denise Loschen, L-o-s-c-h-e-n.

5

6 GAIL LOSCHEN,
7 called as a witness on behalf of the Government, having been
8 first duly sworn, was examined and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. IGNALL:

12 Q. And I think I've been mispronouncing your name. I
13 apologize.

14 Ms. Loschen, what do you do for a living?

15 A. I work for the Social Security Administration as a technical
16 expert.

17 Q. And how long have you had that job?

18 A. Approximately three years.

19 Q. Before you became a technical expert, did you have another
20 job at Social Security?

21 A. I was a claims representative.

22 Q. What were your responsibilities as a claims representative?

23 A. I interviewed claimants who were applying for retirement,
24 survivor, disability, and/or Medicare benefits. Um, I processed
25 claims to payment or denial.

1 Q. Did you have any responsibility with respect to disability
2 benefits? I think you mentioned that.

3 A. Yes.

4 Uh, there's also what Social Security terms as a
5 postadjudicative workload, which is reviewing entitlement
6 factors for people who are already receiving benefits. So, for
7 disability benefits, this includes continuing disability
8 reviews.

9 Q. What is a continuing disability review?

10 A. It's a review that's done periodically on every person who
11 receives disability benefits. It's a review to update medical
12 information and to capture any work that -- that the disability
13 beneficiary might be doing.

14 Q. And what -- why does this review try to capture any work
15 that the employee [sic] might be doing?

16 A. Well, a disability beneficiary is required to report
17 immediately to Social Security if they engage in any work,
18 whether or not a medical review is due.

19 Q. And what happens if this review determines that a
20 beneficiary is working? I'm trying to find out what the purpose
21 of this review is.

22 A. Okay. The purpose of the review for the work portion of it
23 is to determine if a person's engaging in substantial gainful
24 activity which is one of the reasons why disability benefits are
25 suspended or terminated.

1 Q. So what is substantial gainful activity?

2 A. Substantial gainful activity is the ability to engage in
3 employment that requires significant mental or physical activity
4 and that's done for -- for pay or profit.

5 Q. Did you do a continuing disability review for Cynthia Neun?

6 A. Yes.

7 Q. All right. And how was that review assigned to you?

8 A. Over the course of each year, the office in Baltimore, which
9 is the Office of Disability Operations, releases hundreds of
10 cases to each field office to conduct a continuing disability
11 review. So in the course of that release of those cases,
12 Ms. Neun's case was included in those.

13 Q. And what's the first thing you did when you got this, uh,
14 continuing disability review assigned to you from Ms. Neun?

15 A. Well, routinely we -- we send out letters -- we send out a
16 packet called a "continuing disability review packet" that asks
17 for updated medical information; uh, medical sources; and also
18 asks about any work activity.

19 MR. IGNALL: If I could ask the clerk to, uh, hand you
20 what we've identified as Exhibits 308 through 311, please.

21 THE CLERK: Yes.

22 MR. IGNALL: Thank you, Ms. Vannozzi.

23 THE WITNESS: Thank you.

24 (Documents handed to the witness by the
25 clerk.)

1 BY MR. IGNALL:

2 Q. If I could turn your attention to Exhibits 308. Do you

3 recognize that document?

4 A. Yes, sir. This is the routine cover letter that's sent out

5 with all medical continuing disability reviews.

6 Q. And who is this letter sent to?

7 A. This letter was sent to Cynthia Neun.

8 Q. On what date?

9 A. September 7th, 2000.

10 Q. And is this a letter that -- that notifies her of this

11 review?

12 A. Yes, it is.

13 Q. All right.

14 MR. IGNALL: Government moves into evidence

15 Exhibit 308.

16 MR. CRISTALLI: No objection.

17 MR. BOWERS: Nothing, Judge.

18 MR. SCHIFF: No objection.

19 THE COURT: 308 is received.

20 (Government's Exhibit No. 308, received into

21 evidence.)

22 MR. IGNALL: If we could publish Exhibit 308, your

23 Honor?

24 THE COURT: You may.

25 MR. IGNALL: Thank you.

1 (Document displayed in open court.)

2 BY MR. IGNALL:

3 Q. If we could look at, uh, maybe the middle third -- middle of
4 the page, starting with "How We Start The Review."

5 Does this letter include any forms for Ms. Neun to fill
6 out?

7 A. Yes, sir, it does.

8 Q. What -- what form or forms are included?

9 A. It would be a Social Security Form No. 454, which is called
10 a Continuing Disability Report, and it would also have included
11 medical releases to be signed so that Social Security could
12 gather medical information from the sources that were listed on
13 the form.

14 Q. And, if we go down to -- under "What Information You Will
15 Need," could you read the third item from the bottom?

16 A. "If you have worked since we last reviewed your case, each
17 employer's name and address, the dates worked, and the amount
18 earned."

19 Q. All right. Did you receive any -- any form back from
20 Ms. Neun in response to this letter?

21 A. Yes. The -- the Continuing Disability Review Form?

22 Q. Yes. Did you receive one back --

23 A. Yes.

24 Q. -- from Ms. Neun?

25 A. Yes, one was received.

1 Q. If I could turn your attention to Exhibit 309. Do you
2 recognize this document?

3 A. Yes, I do.

4 Q. What is Exhibit 309?

5 A. That's a Report of Continuing Disability Interview, which
6 would have been included in the packet that was sent.

7 Q. And you got this back from Ms. Neun; is that correct?

8 A. Yes.

9 MR. IGNALL: Government moves into evidence
10 Exhibit 309.

11 MR. CRISTALLI: No objection.

12 MR. BOWERS: Nothing.

13 MR. SCHIFF: No objection.

14 THE COURT: 309 is received.

15 (Government's Exhibit No. 309, received into
16 evidence.)

17 BY MR. IGNALL:

18 Q. Does this document, uh, request any information about
19 employment?

20 A. Yes, sir, it does.

21 Q. Could you point us to where in the document --

22 A. Sure.

23 Q. -- there are questions about employment?

24 A. Um, specifically Question No. 11.

25 Q. All right. What page is that so...

1 A. I'm sorry. Page 5.

2 Q. Page 5. Okay.

3 MR. IGNALL: If we could blow up Question No. 11 on
4 page 5.

5 (Document displayed in open court.)

6 BY MR. IGNALL:

7 Q. All right, in Question No. 11, page 5, what is the last date
8 of employment listed here?

9 A. 1998.

10 Q. Was there any information you saw when you -- did you review
11 this Exhibit 309 when you got it?

12 A. Yes, sir, I did.

13 Q. -- as part of your continuing review?

14 A. Yes.

15 Q. Did you see any information in Exhibit 309 that was
16 inconsistent with the answer to Question 11?

17 A. Yes, sir. From what I recall and now looking at the form,
18 in the body of the remarks --

19 Q. Could you tell us which page?

20 A. I'm sorry. Page 7.

21 Q. Okay.

22 A. -- there was an indication that Ms. Neun was working.

23 Q. All right. Is that on the bottom half of page 7?

24 A. Yes, it is.

25 Q. All right. As a result of reading that, uh -- those remarks

1 on page 7, did you take any other action as part of this
2 continuing review?

3 A. Yes. Um, I --

4 Q. And --

5 A. I'm sorry.

6 Q. I'm sorry. What action did you take?

7 A. I called Ms. Neun to discuss --

8 Q. I'm sorry. And I'm sorry. I -- I think I skipped a
9 question there.

10 A. Okay.

11 Q. And I apologize.

12 A. That's okay.

13 Q. During your review, did you do an investigation as to
14 whether -- independent investigation as to whether Ms. Neun was
15 working?

16 A. No.

17 Q. Did you review any records as to whether she was getting
18 paid -- okay. I apologize then.

19 So, after reading this -- this information written on
20 page 7, what did you do?

21 A. Then I called Ms. Neun.

22 Q. All right. Now, why did you call Ms. Neun?

23 A. To clarify that -- the conflict between the date that was
24 shown on page 5 as the date she last worked and the information
25 that she put on page 7 in the body of the form that indicated

1 working again.

2 Q. And why did it make a difference?

3 A. Work needs to be investigated to determine whether or not a
4 beneficiary is due continuing disability benefits.

5 Q. So did you speak to Ms. Neun, uh, by telephone?

6 A. Yes, sir, I did.

7 MR. CRISTALLI: Foundation, time.

8 BY MR. IGNALL:

9 Q. When did you speak to her? If you don't recall --

10 A. No --

11 Q. Is there --

12 A. -- I don't.

13 Q. -- something that might refresh your recollection?

14 A. Yes, sir. Claims documentation.

15 Q. All right. If I could turn your attention to Exhibit 310.
16 If you want to read that over.

17 Can you tell me if that refreshes your recollection?

18 A. (Reviewing exhibit.)

19 Yes. This is a summary of my telephone conversation
20 with Ms. Neun.

21 Q. But does this refreshes your recollection --

22 A. Yes.

23 Q. -- as to what the date was that you spoke to her?

24 A. Yes.

25 Q. What is the date?

1 A. November 16th, 2001.

2 Q. And, when you spoke -- called Ms. Neun, what did you tell
3 her the purpose of your phone call was?

4 A. Based on reading my notes here, I would have called to
5 discuss the -- the current work she was doing or that she
6 mentioned in her Continuing Disability Review.

7 Q. And did you discuss with her why that was relevant to your
8 review?

9 A. I can't specifically say I recall discussing that exact
10 reason with her. But, um --

11 Q. Did you discuss --

12 A. -- I --

13 Q. -- that it was part of this Continuing Disability Review?

14 A. Right. Yes --

15 Q. Okay.

16 A. I'm sorry. Yes.

17 Q. And did you -- what did you ask her?

18 A. I would have asked her about the, um, work that she
19 indicated in the body of the form and would have discussed the
20 nature of that work and...

21 Q. And what did Ms. Neun tell you about her work at Freedom
22 Books or not?

23 A. Based on my report, um, we -- we went through several
24 dif- -- different aspects of items that she had mentioned in the
25 report.

1 Q. Did she say whether she was actually working at Freedom
2 Books?

3 A. No.

4 Q. Maybe I asked that poorly.

5 What did she say about whether she was working at
6 Freedom Books?

7 A. She said that -- generally we -- we talked about an
8 employer-employee relationship, um, which means that an employee
9 does, uh, work in expectation of wages. And, um, she explained
10 to me that this wasn't actually work; that she went up to the
11 bookstore a few hours a week to be with her boyfriend.

12 Q. Did she tell you whether she was getting paid for going to,
13 uh, Freedom Books?

14 A. She told me that she received no pay.

15 Q. Did she talk about what -- how often she went to the
16 bookstore?

17 A. I don't recall. I'm sorry.

18 Q. If you could --

19 A. Okay. Now yes.

20 Q. -- Exhibit 310 --

21 A. Now yes.

22 Q. -- does that refresh your recollection --

23 A. At this time --

24 Q. Okay.

25 A. -- yes.

1 MR. CRISTALLI: Your Honor, I apologize.

2 With regard to 310, I have no opposition to the
3 Government, uh, using it to refresh her recollection. I -- I
4 just realized it is a report of this particular agent. It's not
5 admissible under the rules of evidence. Certainly she could
6 review it. But I would object to its admission. It's just
7 as -- it's the same thing as a police report.

8 THE COURT: It hasn't been offered yet. But --

9 MR. CRISTALLI: That's fine.

10 THE COURT: -- your objection is noted.

11 MR. CRISTALLI: Thank you.

12 THE COURT: We're going to take -- we're going to take
13 our mid-morning recess for 15 minutes. We'll be in recess.

14 MR. IGNALL: Thank you.

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

16 THE COURT: Any matters of business before we take our
17 break?

18 MR. IGNALL: Your Honor --

19 THE COURT: Yes.

20 MR. IGNALL: -- just for clarification -- I don't want
21 to be coaching the witness, but I think we do it here -- is it
22 all right if Ms. Loschen takes some time to look over 310 more
23 carefully to perhaps refresh her recollection? Because if she
24 doesn't -- well, maybe I should say this in front of the
25 witness. So I'll leave the next part.

1 THE COURT: Well, does anyone have any objection to her
2 looking at a report?

3 MR. CRISTALLI: It's her report.

4 MR. IGNALL: Okay.

5 MR. CRISTALLI: She can look --

6 MR. IGNALL: All right.

7 MR. CRISTALLI: -- at it.

8 MR. IGNALL: Just wanted to make sure that...

9 THE COURT: All right. You may do that.

10 MR. IGNALL: All right.

11 THE COURT: Take your time.

12 MR. IGNALL: During the course of --

13 THE COURT: Yes.

14 MR. IGNALL: -- the recess.

15 THE COURT: Anything else?

16 MR. IGNALL: Pardon?

17 THE COURT: Any other items of business?

18 MR. IGNALL: No, thank you, your Honor.

19 THE COURT: All right.

20 (Recess from 10:25 a.m. to 10:49 a.m.)

21 THE CLERK: All rise.

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

23 MR. IGNALL: Your Honor, we have two things briefly.

24 THE COURT: Please be seated.

25 MR. IGNALL: One is we've reached a stipulation with

1 Mr. Cristalli to introduce what we've marked as Exhibit 334.
2 And I'm not sure -- I know -- Mr. Bowers -- I think we should
3 give Mr. Bowers and Mr. Schiff had an opportunity to object --
4 but it concerns Ms. Neun.

5 THE COURT: Is this it?

6 MR. IGNALL: Yes. It's before the Court right now.

7 MR. CRISTALLI: And, your Honor, just so everybody is
8 aware, I'm doing this because I'm so cooperative to the
9 Government so they don't have to call Agent Holland back onto
10 the witness stand.

11 MR. IGNALL: We appreciate that.

12 THE COURT: Judicially noticed. Okay.

13 MR. IGNALL: And we appreciate that.

14 So we'd like to introduce that if there's no objection.

15 THE COURT: 334. Okay.

16 MR. IGNALL: And, secondarily --

17 THE COURT: 334 is --

18 MR. BOWERS: Judge, I -- I didn't -- I knew they were
19 gonna admit it. I didn't -- I'm reading it now. I don't
20 anticipate an objection. Can I go ahead and keep going and...

21 THE COURT: Okay.

22 MR. IGNALL: The other brief matter I have, your Honor,
23 is that Special Agent Mead would like to be excused from the
24 rules so that she can come back into the courtroom.

25 MR. CRISTALLI: As long as she's not gonna be called

1 back as a witness.

2 MR. BOWERS: Well, that's why she wants --

3 MR. IGNALL: She's probably --

4 MR. BOWERS: -- to be excused from the rule.

5 MR. IGNALL: -- specifically excluded as an agent under
6 615. But I don't anticipate calling her back absent some sort
7 of extraordinary circumstances.

8 MR. BOWERS: I don't have any --

9 MR. CRISTALLI: I don't care.

10 MR. BOWERS: -- objection to that, your Honor.

11 MR. CRISTALLI: That's fine.

12 THE COURT: Okay.

13 MR. CRISTALLI: That's fine. She can stay in here.

14 THE COURT: Mead, no objection? Okay.

15 MR. IGNALL: All right. Thank you, your Honor.

16 MR. BOWERS: Judge, I don't -- I don't see that I have
17 any objection to this search warrant document coming in.

18 THE COURT: Okay.

19 MR. BOWERS: Um, yesterday I had requested and I think
20 the Court granted my request to make arrangements for a hard
21 copy of Exhibit 236 which are the contents of Larry's briefcase.
22 Um, I don't -- I was just following up with the Court. I don't
23 know, um, how to make arrangements to get that done.

24 THE COURT: Um, it's in evidence now?

25 MR. BOWERS: Yeah.

1 THE COURT: How voluminous is it?

2 MR. BOWERS: I think -- Mr. Holland would know
3 better -- but I think it's about fifty, a hundred pages.

4 Is that right, Sam?

5 AGENT HOLLAND: Yeah. And probably more than that. Or
6 I'd say 200.

7 MR. BOWERS: You know, the -- the other thing that
8 could happen -- Judge, the -- the Government has this stuff on
9 a -- they've cataloged it through a program called "iView,"
10 which is like 300 bucks for me to buy. But, in the other cases
11 I have where the Government has used iView, they have the
12 ability to give me a disk that has a limited version of iView
13 that works only with the file. I think the Government has the
14 capability of giving me a CD that has just that folder on it
15 that can be --

16 AGENT HOLLAND: If I know the numbers.

17 MR. BOWERS: What's that?

18 AGENT HOLLAND: I need to look at it to get the
19 numbers.

20 MR. IGNALL: We -- I think we could --

21 MR. BOWERS: That's fine.

22 MR. IGNALL: -- probably do that.

23 THE COURT: Okay.

24 MR. BOWERS: I -- I don't need a hard copy if the
25 Government can arrange that.

1 THE COURT: They are going to try to do that. And, if
2 they don't, let me know. We will consider copying as a last
3 resort.

4 MR. BOWERS: Thank you, your Honor.

5 MR. CRISTALLI: The only other issue, your Honor --
6 well, Court's indulgence.

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

9 MR. CRISTALLI: The only, uh, remaining issue I think
10 we have to resolve in regard, uh, to the stipulation, um, is how
11 it's gonna be presented to the jury.

12 THE COURT: This is 334?

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

14 First of all, obviously we -- we would request to
15 preserve any and all Fourth Amendment issues as related to the
16 search of, uh, Freedom Books. But, um, the reading of it is the
17 concern that I have. Um, I believe it's the Government's intent
18 to just read a portion of it; it's my intent to read the
19 entirety of it. And then it's not very long. It's one, two,
20 three, three -- three pages. Um, and then finally who will read
21 it. Ms. Cynthia Neun wrote it. I don't have an objection to
22 her reading it to the jury.

23 MR. NEIMAN: Well --

24 MR. IGNALL: Well, your Honor, we don't object to that
25 either. The only reason we want to put this in, the relevance,

1 is the statement, "I am promoting awareness and participation in
2 this case on a full-time basis in the bookstore where I work."

3 So this is something that Agent Mead mentioned in her
4 cross-examination.

5 (Telephone ringing.)

6 MR. NEIMAN: It was my, um -- I was hoping to just
7 publish and read the two first paragraphs to the jury. It's the
8 same as a, uh -- as a clip on the -- on the tape. If we want to
9 play a portion, the defense is free to refer to whatever portion
10 or read the rest of it in their case if they so chose.

11 THE COURT: Okay. So it's -- it's in. 334 is
12 received.

13 (Government's Exhibit No. 334, received into
14 evidence.)

15 MR. IGNALL: All right.

16 THE COURT: And that will be the --

17 MR. IGNALL: Hand this to clerk.

18 THE COURT: -- the stipulation is that the Government
19 may read portions; the defendant reserves the right to read the
20 entire document.

21 MR. IGNALL: Thank you, your Honor.

22 MR. CRISTALLI: I'm sorry, your Honor. I didn't hear
23 that.

24 THE COURT: The defendant reserves the right to read
25 the entire document --

1 MR. CRISTALLI: Okay.

2 THE COURT: -- if it wishes or any other portion.

3 MR. CRISTALLI: In my case in chief?

4 THE COURT: Yes.

5 MR. CRISTALLI: Okay. Not -- not during, um, like --

6 in terms -- I can't do it right now though. Is that what you're

7 saying? That even though it's a stipulation -- because we're

8 stipulating to the entire document comin' in.

9 MR. IGNALL: Your Honor, just to be clear, we were

10 gonna read it after this witness's testimony is done. So we

11 can --

12 THE COURT: Okay.

13 MR. CRISTALLI: Okay.

14 THE COURT: So it's not coming in through a witness;

15 it's coming in by stipulation.

16 MR. CRISTALLI: Yeah, that's my -- that's my point.

17 THE COURT: Okay.

18 Will you bring in the jury, please?

19 THE CLERK: Yes, sir.

20 (Jury enters the courtroom at 10:56 a.m.)

21 THE COURT: Please be seated.

22 Will counsel stipulate to the presence of the jury?

23 MR. CRISTALLI: Yes, your Honor.

24 MR. BOWERS: Absolutely, your Honor.

25 MR. IGNALL: Yes, your Honor.

1 THE COURT: You may resume your examination of the
2 witness.

3 MR. IGNALL: Thank you, your Honor.

4 BY MR. IGNALL:

5 Q. Ms. Loschen, during the break, did you have time to review
6 Exhibit 310?

7 A. Yes, sir, I did.

8 Q. Has that now refreshed your recollection more about your
9 conversation with Ms. Neun?

10 A. Yes, it has.

11 Q. If I could, uh, turn your attention, uh, back to Exhibit 309
12 and go to page 7 at the bottom.

13 MR. IGNALL: If we could publish that part to the jury.

14 (Document displayed in open court.)

15 BY MR. IGNALL:

16 Q. Ms. Loschen, is that the -- the -- the part of the
17 application or the -- the report you got from Ms. Neun that you
18 wanted to clarify when you called her?

19 A. Yes.

20 Q. All right. And could you read to us what it is there that
21 you in particular wanted to clarify?

22 A. "I am now" -- I'm sorry -- "I am working now again. I am
23 working off and on for my boyfriend, Irwin Schiff. He has a
24 bookstore, Freedom Books, at 444 East Sahara, here in Las Vegas.
25 I am his 'sidekick' on his radio show every Thursday for 2

1 hours. Sometimes I represent taxpayers in audits & hearings at
2 the I.R.S. The pay is lousy. But, I have not been able to find
3 another situation where absences are tolerated. There is
4 something wrong with my back, and as I have been betrayed by the
5 whole community of 'care-givers' on my case - I really don't
6 know where to turn."

7 Q. And why -- why did you want to clarify that in a phone call
8 with Ms. Neun?

9 A. It indicated that Ms. Neun was working and that's a
10 consideration for determining whether or not someone is going to
11 continue to receive --

12 Q. All right.

13 A. -- disability benefits.

14 Q. And, when you spoke to Ms. Neun about that, did she say
15 whether she was working?

16 A. She said she was not working.

17 Q. Did she say whether she was getting paid?

18 A. She said she was not getting paid.

19 Q. Did she say how often she went into the bookstore?

20 A. A few times a week.

21 Q. All right. Did she say how many hours?

22 A. I don't recall that. A few hours a week, um...

23 Q. Okay. Did she say what other things she did? Did you ask
24 her -- I'm sorry -- about the radio sidekick?

25 A. Yes.

1 Q. What did she say about that in the telephone call?

2 A. She referred callers to her boyfriend who did the radio --
3 who did the talk show.

4 Q. Did she say how often she did that?

5 MR. CRISTALLI: Your Honor, um, I have to assert an
6 objection. The witness is reading from the document after
7 Government counsel is questioning her. If she cannot recollect
8 what is in the report, she can refresh her recollection. But
9 it's almost as if she's reading from the document.

10 THE COURT: Sustained.

11 She has closed the exhibit.

12 MR. CRISTALLI: Thank you.

13 BY MR. IGNALL:

14 Q. Ms. Loschen --

15 A. Yes, sir.

16 Q. -- do -- do you recall if she said how often she did
17 anything on the radio show?

18 A. No, I don't recall.

19 Q. Would looking at Exhibit 310 refresh your recollection?

20 A. Yes, it would.

21 Q. Please.

22 A. Thank you.

23 (Reviewing exhibit.)

24 No, sir, I don't see in the report where I put the
25 frequency of that.

1 Q. Okay. Did she tell you how often she -- did you ask her
2 about her going to IRS audits and hearings?

3 A. Yes.

4 Q. Did she tell you how often she did that?

5 A. She said that was on an infrequent basis.

6 Q. All right. Now, what was the date that Social Security
7 Administration received the, uh, report that Ms. Neun filled
8 out?

9 A. I don't recall that.

10 Q. The questionnaire.

11 A. May I?

12 Q. If you could look at Exhibit 309, does that -- tell me if
13 that refreshes your recollection.

14 A. (Complies.)

15 Ms. Neun signed it on November 5th, 2001. There would
16 have been mail time for it to get to the local office.

17 Q. And when did you make your phone call to Ms. Neun?

18 A. On November 16th.

19 Q. All right. As a result of your conversation with Ms. Neun,
20 what was the result of this Continuing Disability Review?

21 A. That she was not working --

22 Q. And what --

23 A. -- and --

24 Q. -- what impact did that have on your review?

25 A. That would have happened on the day that I spoke with her on

1 the telephone.

2 Q. I'm saying that -- that -- after that telephone call did
3 that make any difference to you how the review turned out?

4 A. Yes. Benefits would have continued.

5 Q. All right. And did you, uh, send anything to Ms. Neun to
6 indicate the result of this disability review? Is there a
7 letter that goes out --

8 A. Yes.

9 Q. -- or anything that --

10 A. After the -- the work issue was closed and then the case is
11 sent to a disability determination service for a medical review.

12 After that medical review is completed, based on the
13 fact that a medical condition still exists and no work activity
14 precludes payment, then benefits would have been continued and a
15 letter would have been sent.

16 Q. So if Ms. Neun had been working, what -- what happens?

17 A. If the level of work was at the substantial gainful activity
18 level, then benefits would have been suspended or terminated.

19 Q. Ms. Loschen, if I could turn your attention to Exhibit 306.
20 I don't know if -- that may or may not be in front of you. If
21 not, I apologize --

22 THE CLERK: That's okay.

23 MR. IGNALL: -- to you and to the courtroom deputy.

24 THE CLERK: That's okay.

25

1 (Pause in the proceedings.)

2 (Document placed before the witness by the
3 clerk.)

4 THE WITNESS: Thank you.

5 BY MR. IGNALL:

6 Q. Let me back up a second to your telephone conversation with
7 Ms. Neun.

8 Was she straightforward in answering all of your
9 questions when you called?

10 A. I don't recall. Um, based on my report of contact that I've
11 referred to that I reviewed earlier, I had written down that it
12 was a lengthy telephone conversation. Um, so normally the
13 reviews don't require that much time.

14 Q. All right.

15 A. So I'm -- my recollection, you know, would be that it took
16 me longer than usual --

17 Q. All right.

18 A. -- to conduct the review.

19 Q. All right. Thank you.

20 If I could turn your attention back to 306.

21 A. Okay.

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. What is this document?

25 A. It's a Master Beneficiary Record, which is an internal

1 Social Security record of a beneficiary's benefits.

2 Q. For whom?

3 A. Cynthia Neun.

4 Q. From this can you identify how much Ms. Neun was being paid
5 in benefits?

6 A. \$389.

7 Q. Was that the total amount of her benefit, if you can tell
8 from reading this document?

9 A. That's the total amount that she was receiving.

10 Q. Was there more that Social Security Administration was
11 paying on her behalf? Do you know?

12 A. Her primary insurance amount is \$650.30 but deductions that
13 are made from her check reduce that amount to a monthly benefit
14 payment of -- let me just look --

15 Q. Do you know --

16 A. -- \$389.

17 Q. -- what those deductions were? Were they deductions with --
18 that Social Security kept? I'm asking a terrible question.

19 MR. CRISTALLI: Your Honor, I don't know what the
20 relevancy of -- I object on relevancy grounds. She got paid
21 \$389 a month.

22 MR. IGNALL: Well, that's actually --

23 THE COURT: That's net. Ask another question.

24 MR. IGNALL: I asked the question poorly, and I
25 apologize.

1 BY MR. IGNALL:

2 Q. What were the total benefits that Social Security was
3 paying --

4 MR. BOWERS: Objection. Relevancy.

5 THE COURT: Well, it's relevant.

6 Go ahead.

7 BY MR. IGNALL:

8 Q. You said there were some deductions. What were the total
9 benefits she was getting every month?

10 A. \$389.10.

11 Q. I'm sorry. Again, I think I've --

12 MR. CRISTALLI: Asked and answered.

13 BY MR. IGNALL:

14 Q. How much money was Social Security paying out as a result of
15 Ms. Neun's disability coverage every month?

16 A. \$650.

17 Q. All right. And do you know where the difference between 650
18 and 389 comes from?

19 MR. CRISTALLI: Objection. Relevancy.

20 THE COURT: I've already overruled the objection.

21 You may answer.

22 THE WITNESS: It appears from -- from looking at the
23 form that there was a garnishment.

24 BY MR. IGNALL:

25 Q. Okay. We don't have to go into the details of that.

1 But that was something unique to Ms. Neun and what she
2 may or may not have owed somebody else; is that correct?

3 A. Yes, sir.

4 Q. All right.

5 A. Right.

6 MR. IGNALL: No further questions, your Honor.

7 THE COURT: Cross-examination?

8

9 CROSS-EXAMINATION

10 BY MR. CRISTALLI:

11 Q. I mean, we'll just start off where we left off, garnishment.

12 I guess there is some monies that -- from the
13 disability went to her ex-husband; right? That's what it says;
14 correct?

15 A. All I see, sir, is garnishment. I...

16 Q. All right.

17 A. I don't know the reason.

18 Q. Um, now, when we talk about -- we talked about work, work,
19 work. I heard this. Now, it would be safe to say in terms of,
20 uh, your activity in the, uh, Social Security department work --
21 and I think you testified specifically to this point -- work is
22 um, defined as for pay or profit; correct?

23 A. Yes.

24 Q. Okay. So we're on the same page with regard to that;
25 correct?

1 A. Yes.

2 Q. All right. Now --

3 MR. CRISTALLI: Could you -- um, Agent, could you pull
4 up 309?

5 (Document displayed in open court.)

6 BY MR. CRISTALLI:

7 Q. Now, I'm gonna -- if you could just look at, uh, uh,
8 Government's Exhibit 309. Um, that's a Report of Continuing
9 Disability Interview; correct?

10 A. Yes.

11 Q. And a person who receives disability must, um, provide
12 information to the disability, um, department, um, and answer
13 all the questions outlined in this interview; correct?

14 A. Yes.

15 Q. Okay.

16 MR. CRISTALLI: Now, um, if we could, uh, blow up
17 the -- Section 1 for me.

18 (Document displayed in open court.)

19 BY MR. CRISTALLI:

20 Q. And would it be safe to say that that particular section is,
21 uh -- is a question regarding what type of disability and what
22 type of disability benefits one is receiving; correct?

23 A. Yes.

24 Q. Could you read, uh, what Ms. Cynthia Neun had put in there
25 under 1?

1 A. "I am continuing to suffer severe chronic back pain and
2 neurological symptoms involving my right hip, legs, feet, and
3 persistent bladder incontinence.

4 "I am also battling with posttraumatic stress disorder
5 from the unresolved problem where I was sexually assaulted by a
6 doctor, Manuel Gamazo-" --

7 Q. Okay.

8 A. -- S.I.I.S. referred."

9 Q. Okay. Um, could we go to page 2 --

10 A. (Complies.)

11 Q. -- uh, specifically Section 3?

12 Where it says "Reasons for visit," I assume that's the
13 area where it talks about, uh, doctors' appointments and visits
14 and so forth and so on. Could you read specifically what
15 Ms. Cynthia Neun put there under "Reasons for visits"?

16 A. "I am now scheduled for an appointment with Dr. Michael
17 Krieger on November 14[th], 2001. He is reviewing my case."

18 Q. Okay. And, uh, page 4, um, No. 8, uh, it describes your
19 daily activities and state what and how -- how much, uh, you do
20 of each.

21 Could you, um -- could you put -- could you read, uh,
22 what Ms. Cynthia Neun had written on -- on that section, please?

23 A. "PERSONAL MOBILITY

24 "I am up walking around most days now. I have about 3
25 weeks out of every month [where] I am able to work part time in

1 an office/bookstore. For exercise, I use a small trampoline -
2 I am still very limited in what my back and hip will tolerate as
3 far as exercising is concerned, but I push myself to do as much
4 as possible. I am able to take care of my own dressing and
5 grooming activities, except for that (about) one week each month
6 [where] I can hardly walk at all."

7 Q. Okay. Um, uh, page, uh, 5, Section 8, um, specifically
8 where it, uh, talks about, uh, recreation activities and
9 hobbies, could you read that?

10 A. "About once every couple of months I go out to a show of
11 some kind. I attend seminar" -- "seminars hosted by my
12 boyfriend and sometimes I travel with him when he goes to other
13 cities. I read and listen to the radio."

14 Q. And then, uh, on -- on -- on -- on -- down here on, uh,
15 Section 11 on page 5, uh, that section, uh, is "Information
16 About The Work You [Do]"; correct?

17 A. Yes.

18 Q. And then it says, "Since you['ve became] disabled, have you
19 done ... work?" And then there's a checkmark; correct?

20 A. Yes.

21 Q. And it does say -- and it's checked "yes"; correct?

22 A. Yes.

23 Q. Okay. Yes. Right there.

24 MR. CRISTALLI: If we could just blow that section up.

25 I don't know if we can, Agent, or not. No. Where the checkmark

1 is. Oh, yes. Thank you.

2 (Document displayed in open court.)

3 BY MR. CRISTALLI:

4 Q. And it does indicate wherein -- it asks you if you work. It
5 says yes; correct?

6 A. Yes.

7 Q. All right. And then under the job titles, uh, area it, uh,
8 it lists, uh, some of, uh, the work; correct?

9 A. Yes.

10 Q. Okay. And the dates, uh, wherein Ms. Cynthia Neun was
11 employed; right?

12 A. Yes.

13 Q. And how much money she was making; correct?

14 A. Yes.

15 Q. Okay.

16 (Discussion between Mr. Cristalli and

17 Mr. Modafferi.)

18 BY MR. CRISTALLI:

19 Q. Okay. If we could go to, uh, page 6, PART VI under REMARKS,
20 basically that -- that states, "Use this section for additional
21 space to answer any previous questions. Also, use this space to
22 give any additional information that you think will be helpful
23 in the review of ... continuing entitlement to Social Security
24 disability benefits." Correct?

25 A. Yes.

1 Q. All right. Okay. If you could, please, ma'am, um, read,
2 uh, PART I -- it says "I. 2e)" -- if you could.

3 A. "Andrea Pernell released me to return to work at my in home
4 art business. She did this at the insistence of Bill
5 Mulholland, S.I.I.S. nurse who pushed me to be released
6 prematurely because I reported Dr. Gamazo for raping me. When
7 my doctor, James Thomas, refused Mr. Mulholland's request to
8 release me, Mulholland scheduled an appointment for me the next
9 week with Dr. Perneu at JEAN HANNA CLARK."

10 Q. Okay. If you could continue part IV, Section 12, it says --
11 I don't know what that means -- but if you could continue.

12 A. "More 'secure'. (I'm still looking). The Art & Frame shop
13 should have been perfect - But the owner pulled a 'power play',
14 mistakenly assuming that he could get away with it because I am
15 sick alot and struggling financially."

16 Q. And, on page 7, if we can continue.

17 A. "I was very frightened when I did it - but, I left him
18 holding his ultimatum. He was so stupid. My son and I were
19 bright, talented, eager and productive employees. He was old
20 and practically deaf. One day, he became jealous and insecure,
21 and he irretrievably 'blew' the whole opportunity! My son went
22 to work for a security company - and I looked for work. I put
23 blisters on my feet looking for work. But, I shouldn't have
24 been working. My back was not well enough. I was forced into a
25 whirlwind of survival activities: employment seeking, doing an

1 occasional art job, borrowing money from friends, going
2 hungry, - unbelievable - There's not enough space to describe
3 what I have been doing and what I" -- "and what I have to
4 tolerate to establish myself in my new life. The job with
5 George S May was simply too much work - [and] I could not
6 tolerate that much activity. (I think it's a flaky company
7 too.)"

8 Q. And if you could -- I know we've already went over this
9 part. But if we can just go -- continue on.

10 MR. IGNALL: Objection, your Honor. The witness read
11 this on direct.

12 MR. CRISTALLI: It's not -- it wasn't in the entirety,
13 your Honor. I'd like just to continue through because, um, it
14 defines the entire document.

15 THE COURT: Well, I'll allow it.

16 MR. CRISTALLI: It's the last -- that's the section.
17 I'm not quite sure what the prejudice is to read it again.

18 THE COURT: I'm allowing it. So go ahead.

19 THE WITNESS: "I am working now again. I am working
20 off and on for my boyfriend, Irwin Schiff. He has a bookstore,
21 Freedom Books, at 444 East Sahara, here in Las Vegas. I am his
22 'sidekick' on his radio show every Thursday for 2 hours.
23 Sometimes I represent taxpayers in audits & hearings at the
24 I.R.S. the pay is lousy. But, I have been" -- "But, I have not
25 been able to find another situation where absences are

1 tolerated. There is something wrong with my back, and as I have
2 been betrayed by the whole community of 'care-givers' on my
3 case - I really don't know where to turn."

4 BY MR. CRISTALLI:

5 Q. Okay. Thank you.

6 And then, um, that was submitted -- and let's go to
7 page 8 where it says Ms. Cynthia Neun's signature.

8 A. Yes.

9 Q. And could you -- could you read to us when that was signed?

10 A. Yes. That was signed by Ms. Neun November 5th, 2001. And
11 that was received through the mail at the local -- at the West
12 Sahara Social Security office.

13 Q. Okay. Now, let's talk about the subsequent telephone call
14 that you had with Ms. Neun. I think that was, uh, on the 16th
15 of, uh, November; correct?

16 A. Yes.

17 Q. Okay. So that was some, uh -- how long ago? -- that was
18 like, what? 11 days after --

19 A. Right.

20 Q. -- she submitted that; correct?

21 Now, you said, I think, on direct examination that --
22 that in the course of the interview she stated that she was not
23 working; correct?

24 A. Yes.

25 Q. And that was inconsistent with what she had stated in her,

1 um -- in her interview sheet, correct, that was submitted on the
2 5th; right?

3 A. Yes.

4 Q. Okay. Uh, but didn't you, ma'am, say specifically, uh, in
5 your report that she -- she states, "I am now working again"?

6 A. Yes.

7 Q. So she -- she -- so that -- what you said on direct
8 examination is that she -- she told you she wasn't working. So
9 that's -- that's not accurate; correct? She told you she was
10 working.

11 A. It was stated on the form that she was now working.

12 Q. Right.

13 A. And, when I called her to discuss that, then she indicated
14 that it was not working -- that she was not working.

15 THE COURT: The --

16 BY MR. CRISTALLI:

17 Q. Right.

18 THE COURT: -- the section, Counsel, is a quote -- is
19 in quotes --

20 MR. CRISTALLI: Okay. I got it.

21 THE COURT: -- referring to the --

22 MR. CRISTALLI: Oh, I'm sorry. I apologize.

23 THE COURT: -- from the previous form.

24 MR. CRISTALLI: Okay.

25

1 BY MR. CRISTALLI:

2 Q. So I'm lookin' at your report where it says -- okay. So you
3 refer to -- to when she states "I am now working again," um, and
4 states that she works off and on for her boyfriend at his
5 bookstore that was -- you were referring to what she stated in
6 her interview -- in her interview sheet?

7 A. Yes.

8 Q. Okay. But, during the course of your conversation with her,
9 she stated that she didn't work; correct?

10 A. Yes.

11 Q. And she clarified that. And -- and we've -- we've discussed
12 work as being, um, paid, uh, for -- or given profits in exchange
13 for services rendered; correct?

14 A. Yes.

15 Q. She -- she didn't -- she told you she was doing services for
16 Freedom Books, correct, during your interview? Right?

17 A. No.

18 Q. She didn't -- she didn't tell ya that she was doing anything
19 at Freedom Books when you talked to her?

20 A. She said that she was visiting her boyfriend or she went up
21 to the bookstore a few hours or a few times a week to visit her
22 boyfriend.

23 Q. Okay. Didn't she say, though, um, she -- she is not paid
24 and doesn't actually work. She goes up to the bookstore a few
25 hours a week to be with him but isn't considered an employee?

1 That would be consistent with your discussions with her;
2 correct?

3 A. Yes.

4 Q. All right. She draws no salary and doesn't have assigned
5 duties. True?

6 A. Yes.

7 Q. Okay. The same is true for her advocacy for IRS audits and
8 hearings. She doesn't get paid for this. She simply helps
9 people on a very infrequent basis, on a voluntary basis.
10 Correct?

11 A. Yes.

12 Q. Okay. And, as far as being a radio show sidekick, she also
13 stated that she was unpaid for that work; correct?

14 A. Yes.

15 Q. And she -- she stated that she refers phone calls -- she --
16 she refers phone calls from listeners to her boyfriend, who is
17 the show host. True?

18 A. Yes.

19 Q. This is done as a favor to him and not as an employment;
20 correct?

21 A. Yes.

22 Q. And she stated, uh, through your interview with her on the
23 telephone that she wants to stay busy in that vein; correct?

24 A. Yes.

25 Q. Okay. And that's why you believed that she, uh, stated that

1 her -- her various pastime -- pastimes were work; correct?

2 A. Yes.

3 Q. And she also told you that she is, uh -- she is continuously
4 seeking -- actively seeking work but has not had any success;
5 correct?

6 A. Correct.

7 Q. And we're agreeable on the term "work" as in exchange --
8 work being, uh, profits and/or pay in exchange for services
9 rendered; correct?

10 A. Yes.

11 Q. And if, um -- if, for example, I am disabled and I am in a
12 relationship with my girlfriend, for example -- she wants to pay
13 my rent. She wants to pay my grocery bills. She wants to pay
14 for my car -- um, I would have no legal liability to report that
15 to the disability, uh, department. Correct?

16 A. Correct.

17 Q. Now, you testified that you had a relatively lengthy
18 conversation with her. Um, somewhat unusual, uh, during the
19 course of your interviews with someone, um, that is getting --
20 is -- is being reviewed for their disability benefits. Correct?

21 A. Yes.

22 Q. And that's -- that's because she was pretty forthright with
23 you in discussing her current, um, life, uh, um, day-to-day
24 activities with you; correct? She engaged you in a conversation
25 about what she was doing in life; right?

1 A. Based on my review of my report, I can't specifically say
2 why the conversation was lengthy except that based on my report
3 we did talk about a number of areas of, um, information that she
4 had put on the continuing disability form with regard to
5 possible work or what would be considered work.

6 Q. Okay. And isn't it true, ma'am, that she, uh, engaged you
7 in a discussion about her acting as a volunteer advocate in
8 helping her, uh, boyfriend at Freedom Books? She talked to you
9 about that; correct? She -- she -- she identified herself as a
10 volunteer acti- -- advocate for persons; correct?

11 A. Yes, for IRS audits and hearings.

12 Q. Okay.

13 A. Yes.

14 Q. Um, she also told you that the money that she was given by
15 Mr. Irwin Schiff, uh, uh, for what she did to help people in the
16 bookstore was support and domestic allowance -- allowances for
17 food, cleaning supplies, dry cleaning, laundry expenses,
18 et cetera, et cetera. Correct?

19 A. No.

20 Q. You don't -- you don't recall that as part of the
21 conversation?

22 A. No.

23 Q. Okay. Now, um, in the normal course of things when somebody
24 is -- disability benefits are -- are terminated for whatever
25 reason, that person is entitled to a hearing to review the cause

1 behind the termination; correct?

2 A. Yes.

3 Q. And in this case Ms. Neun was not afforded an opportunity to
4 present her case as to why she should not have had her benefits
5 terminated, did she?

6 MR. IGNALL: Objection as to the time that we're
7 talking about.

8 THE COURT: It's foundational. Sustained.

9 MR. CRISTALLI: Uh, a time? Well, okay.

10 BY MR. CRISTALLI:

11 Q. There came a point in time when her dis- -- when her
12 disability benefits were terminated, were ceased; correct?

13 A. Correct.

14 Q. And that was around sometime in 2004; right?

15 A. Yes.

16 Q. Around the same time that she was indicted criminally on
17 this case; correct?

18 A. I don't know.

19 Q. Okay. Um, but it's safe to say that it was in -- around
20 2004; right?

21 A. Yes.

22 Q. Okay. She was never afforded an opportunity at -- at an
23 administrative hearing before the Social Security Department or
24 Disability Department to, uh -- to re- -- request the
25 continuation of her disability benefits. They were just ceased

1 without a due process hearing. Correct?

2 MR. IGNALL: Objection, your Honor. Relevance. This
3 took place after the crime was already committed that's alleged
4 in the Indictment. I don't see what the relevance to that is.

5 THE COURT: What is the relevance, Counsel?

6 MR. CRISTALLI: I'm sorry. I didn't hear the --

7 THE COURT: What is the relevance? He said it happened
8 after the -- the --

9 MR. CRISTALLI: What happened after?

10 THE COURT: -- the termination.

11 MR. CRISTALLI: I'm sorry. I don't understand. What
12 happened after?

13 THE COURT: The -- Mr. Ignall can restate the
14 objection.

15 MR. IGNALL: The objection is --

16 THE COURT: It had to do with --

17 MR. IGNALL: -- I think whatever Mr. Cristalli is
18 getting into took place after the offenses alleged in the
19 Indictment are complete, if indeed it happened after she was
20 indicted. So I'm not sure what the relevance is to anything
21 that's alleged in the final two counts of this Indictment.

22 MR. CRISTALLI: What -- her disability benefits were
23 ceased at the time of indict -- at the time of indictment. I
24 don't know what that has to do --

25 THE COURT: Well, he's saying that it's an event that

1 happened after the crimes alleged in the Indictment.

2 Therefore --

3 MR. CRISTALLI: Okay.

4 THE COURT: -- it's not relevant.

5 MR. CRISTALLI: Okay. Well, let me ask it a different
6 way then.

7 BY MR. CRISTALLI:

8 Q. You had the interview with her -- well, she -- she -- she
9 filled out her interview form on November 5th, 2001; correct?

10 A. Yes.

11 Q. You conducted your interview on the telephone with her on
12 November 16th, 2001; right?

13 A. Yes.

14 Q. You felt that there was inconsistencies between the
15 interview sheet that she filled out and the interview you
16 conducted with her on the telephone; correct?

17 A. Yes.

18 Q. Yet you did nothing from 2001, in terms of your office,
19 until 2004 where the Indictment came down in terms of
20 terminating her disability benefits; correct?

21 A. I don't have any information, specific information, about
22 that --

23 Q. Okay.

24 A. -- about the interim period.

25 Q. Do you have any, uh, knowledge about the underlying

1 investigation as it related to, uh, the charges against Ms. Neun
2 for, uh, the disability fraud, or whatever, ma'am? Were you
3 involved in that investigation?

4 A. I knew of the investigation, but I wasn't involved in making
5 the decision.

6 Q. Did you participate in any capacity in the investigation?

7 A. No. It was given to another employee in the office because
8 my workload was, um, at that time, um, too large to be able to
9 spend time on --

10 Q. Okay.

11 A. -- a case like this.

12 Q. Okay. That's fair.

13 So, basically, it's safe to say, though, as a result of
14 your interview with Ms. Cynthia Neun there was nothing, um, that
15 caused you yourself to believe, uh, that her disability benefits
16 should be ceased; correct?

17 A. That's correct.

18 MR. CRISTALLI: I have no further questions, your
19 Honor.

20 THE COURT: Mr. Bowers?

21 MR. BOWERS: No. Nothing, Judge.

22 THE COURT: Mr. Schiff?

23 MR. SCHIFF: No questions.

24 THE COURT: Redirect?

25

REDIRECT EXAMINATION

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BY MR. IGNALL:

Q. Ms. Loschen, is it correct that your determination had to do with, uh, Ms. Neun's work status, not her medical condition?

A. Yes, that's right.

Q. And the information that you used to base your decision did that all come from Ms. Neun herself?

A. Yes, it did.

Q. And the only verification you did was to make this phone call after you looked at the disability review interview note -- or questionnaire she sent in; is that correct?

A. Yes.

Q. I think Mr. Cristalli talked about an inconsistency between that document, which I think is Exhibit 309, and what Ms. Neun told you on the phone. Do you remember that discussion --

A. Yes.

Q. -- like three minutes ago?

Did you take Ms. Neun at her word in the phone call?

Is that why you -- you continued her benefits?

A. Yes, sir, that telephone call and also routinely we review a beneficiary's record of earnings. So, um, based on my phone call with Ms. Neun and that there was no earnings information --

Q. What do you mean by "earnings information"?

A. Um, a master earnings file record of self-employment earnings or Social Security wages, um, are posted to a person's

1 master earnings filed with Social Security.

2 Q. If they are reported by the employer?

3 A. Yes.

4 Q. Okay. And, just to clarify the inconsistency, in
5 Exhibit 309, was there any -- did Ms. Neun say anything about
6 pay?

7 MR. CRISTALLI: About what?

8 MR. IGNALL: Pay.

9 MR. CRISTALLI: Pay?

10 MR. IGNALL: I'm thinking about page 7 in particular.

11 THE WITNESS: With regard to the audits and hearings
12 uh, she stated, "The pay is lousy."

13 BY MR. IGNALL:

14 Q. All right. Did you -- but your conversation with her on the
15 phone, did she say whether she was getting paid at all?

16 A. No, she was not getting paid. It was on a voluntary [sic]
17 basis --

18 Q. And was that --

19 A. -- volunteer basis.

20 Q. -- why you made the recommendation that her benefits
21 continue?

22 A. Yes.

23 MR. IGNALL: No further questions.

24 MR. CRISTALLI: Just one follow-up, your Honor.

25

1 RE-CROSS-EXAMINATION

2 BY MR. CRISTALLI:

3 Q. But we're -- we're both -- we're on the same page here that
4 specifically in her Report of Continuing Disability Interview
5 that she sent to the office on November 5th, 2001, specifically
6 on page 7, she said that she was working three out of four weeks
7 in -- for her boyfriend at, uh -- at Freedom Books; correct?

8 A. Yes.

9 Q. Okay. She wrote this herself; right?

10 A. Yes. I --

11 Q. Well --

12 A. -- I don't know.

13 Q. She signed off on it?

14 A. Yes.

15 Q. Correct. All right.

16 MR. CRISTALLI: No further questions.

17 MR. IGNALL: Nothing further from the Government, your
18 Honor.

19 THE COURT: The witness is excused. Thank you.

20 MR. NEIMAN: Your Honor, prior to calling the next
21 witness, the Government would like to publish what is being
22 admitted pursuant to stipulation as Government's Exhibit 334.

23 THE COURT: You may.

24 MR. NEIMAN: Thank you.

25 MR. CRISTALLI: No, no, no. I don't think we -- I

1 don't think we've finalized that, if I'm not mistaken, in terms
2 of how it was gonna be presented.

3 THE COURT: Yeah. It's going to be presented with --
4 by stipulation --

5 MR. CRISTALLI: Okay.

6 THE COURT: -- with, uh, the Government excerpting its
7 portion and then you having the right to present whatever
8 portions you wish.

9 MR. CRISTALLI: Right now; correct?

10 THE COURT: Right now.

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

12 MR. NEIMAN: Government Exhibit 334, uh, letter dated
13 September 24th, 2000, on stationary of Cynthia Smith-Neun
14 addressed to the "Clerks of the Court, United States Supreme
15 Court."

16 Focusing in on the first sentence of the second
17 paragraph, it reads, "I am promoting awareness and participation
18 in this case on a full-time basis in the bookstore where I
19 work ... wherever I go" -- "and wherever I go away from the
20 store during the course of daily routines."

21 The letter signed, on the last page by,
22 "Constitutionally Yours, Cynthia Smith-Neun."

23 Do you want me to leave it there, Mr. Cristalli?

24 MR. CRISTALLI: Yeah. I'll stay -- I'll stay up there.

25 Um, your Honor, if, um -- if we may, pursuant to our

1 discussion, we're going to request that the Court allow Ms. Neun
2 sent to read the letter --

3 THE COURT: Well --

4 MR. CRISTALLI: -- for which she sent --

5 THE COURT: -- I didn't --

6 MR. CRISTALLI: -- to the Supreme Court.

7 THE COURT: -- I didn't agree to that.

8 MR. CRISTALLI: Oh, no?

9 THE COURT: I don't think -- I don't know the
10 Government agreed to it. That was --

11 MR. CRISTALLI: Thought that's what it was.

12 THE COURT: -- not part of -- you can -- you can read
13 it or have Mr. --

14 MR. CRISTALLI: Okay.

15 THE COURT: -- Modafferi read it.

16 MR. CRISTALLI: Yeah, I'll have Mr. Modafferi read it.
17 That's fine.

18 I'm sorry. I apologize. I thought that's what we had
19 discussed. I -- I did not try to do anything that I didn't
20 understand.

21 Thank you, your Honor.

22 THE COURT: You may -- you're welcome. Thank you.

23 Mr. Modafferi, do you wish to take the stand or --

24 MR. MODAFFERI: Do I have to, Judge?

25 THE COURT: Do you want to go to the podium?

1 MR. CRISTALLI: If he could take the podium.

2 MR. BOWERS: I'll answer that for him --

3 MR. CRISTALLI: I don't want --

4 MR. BOWERS: -- your Honor.

5 MR. CRISTALLI: -- to scare him outta the place.

6 MR. BOWERS: He'd prefer not to.

7 MR. MODAFFERI: "Cynthia Smith-Neun, Artist, 2756
8 Heritage Circle, Las Vegas, Nevada 89121.
9 "Clerks of the Court, The United States Supreme Court,
10 1 First Street, Northeast, Washington, D.C. 20541 [sic]
11 "In re: Robert A. Brown et al., v United States, Docket
12 No.: 99-2066
13 "Dear Clerks of the Supreme Court,
14 "Greetings! My name is Cindy Neun, ... I am one of the
15 leaders in the letter-writing campaign launched to help
16 encourage the Court Justices to grant Certiorari in the case
17 captioned above, 'Brown v. U.S.'.
18 "I am promoting awareness and participation in this
19 case on a full-time basis in the bookstore where I work and
20 wherever I go" -- "and wherever I go away from the store during
21 the course of daily routines. Every day I speak with forty to
22 fifty people about the importance of this case. Since June,
23 when the Petition for Writ of Certiorari was filed with your
24 Court, several thousand flyers, press releases, news articles,
25 radio show tapes, and actual copies of the Petition and its

1 Appendix have been distributed through my bookstore" --
2 "throughout" -- "through my bookstore. I am praying that the
3 Court Justices are receiving many letters of encouragement to
4 hear this case.

5 "You see, there are thousands of American workers who
6 have been following this case in the Courts for the past two
7 years. We have been discussing the merits of this case, (and,
8 other cases raising the same issues of law in the various Court
9 Circuits across the country), ..., as we have thoroughly
10 researched, analyzed and scrutinized the legal Motions, Briefs,
11 and Rulings, we['ve] come to recognize the Brown Case as OUR
12 case. When you read this Petition and its Appendix you'll be
13 drawn in too as we are. At some point you'll realize that this
14 case is perhaps the most important case to come before The
15 Supreme Court in the history of [the Court]!

16 "Think very carefully about The Reasons For Granting
17 the Writ of Certiorari as presented by Robert Brown, page 8 of
18 the Petition. Thousands and thousands of American wage earners
19 have been thinking about them, reading about them again and
20 again, and, talking about them now for several months. Whether
21 or not you are concerned about the topic of this case - (when
22 everybody is) - you cannot deny about the Courts are ruling
23 every which way on the issue of these wage tax refund lawsuits,
24 while the I.R.S. has distributed" -- "disbursed thousands of
25 refund checks to people across the country who have made

1 some" -- "the same 'return' that the Browns filed.

2 "The Supreme Court got this case because the lower
3 Courts got stuck - At one time, in the Ninth Circuit alone,
4 there were three or four other cases before the Courts raising
5 the same questions of law. All the Judge" -- "All [of] the
6 Judges ducked. Finally, it came down to what [the] Judges
7 surmised, or, the rulings read like, 'Because I said so - Let it
8 be adjudged...'!

9 "Judges guessing? Judges - laying down [the] laws that
10 they refuse to justify - to explain - and to, publish?! Based
11 upon the fact that the Judges are ducking every which way; the
12 fact there are [so] many cases like this one pending in the
13 Courts; the fact that the word is out about the wage tax; and,
14 that the American wage earners are watching the Judges and the
15 role they have been playing in all of this, it is time for the
16 Supreme Court to save what integrity may be left in the judicial
17 branch" -- "branch of our government.

18 "The Brown case wouldn't have found its way to you if
19 the Government could find a law that justified the fact that it
20 was keeping the refund of Credits due Robert and Elana Brown.
21 (Yes, they are recorded as a 'Credit' on the Government's own
22 documents!) The Government hasn't produced a law that requires
23 the Browns to pay income taxes either. Yet, the Government has
24 spent as much as two hundred thousand dollars litigating this
25 one case, which are the earnings of other American workers and,

1 the money generated by '[the] countless numbers of liens, levies
2 and seizures executed each year in open violation of the law',
3 [quote-unquote] from Senator Roth's book, The Power to Destroy.

4 "The I.R.S. admitted their crimes! Senator Roth wrote
5 about it! And, here, in the Brown Case we see that the
6 Government is still up to their old tricks, because the decision
7 to keep the refund of credits has no basis in law - it is,
8 therefore, extortion and it is being committed under the 'color
9 of law' [quote-unquote]. The Government has handed this case to
10 your Court. The Government is turning itself in for the crimes
11 it is committing against the wage earners of America!

12 "The integrity of The Supreme Court of the United
13 States is on the line in this case, and I think you want to know
14 all of this. I hope that you, The Clerks of the Court, will
15 help to urge the Justices to grant the Writ of Certiorari in
16 this Brown v. U.S.

17 "If the Supreme Court Justices hear the case of Brown,
18 and uphold the law the way that it is written, they will render
19 a decision that will facilitate the rebirth of America.

20 "We, the American workers will be free to produce
21 again. We will cut down the National Trade Deficit by producing
22 products in our own country.

23 "Many parents will be able to go back home to raise
24 their own children. They may home-school their children or,
25 they will become active in the Public School System:

1 "Our young people will have job opportunities where
2 they are able to learn a trade, craft or profession, rather than
3 looking to the Government for gifts or loans to learn these
4 things. Our college graduates won't be starting their first
5 jobs indebted to the Government for tens of thousands of
6 dollars.

7 "Absent the Governments intrusion, the families will
8 enjoy a stronger and healthier bond. Children won't be standing
9 in line at the doors of the Family Court Justice" -- "Court
10 System waiting to swing on the Scales of Justice. And, we
11 foresee alot of relief for all the Courts once Americans working
12 for wages are allowed to take home what they have earned.
13 Americans will find a new faith in our Nation's Courts in the
14 decision because it will tell us that the laws passed by
15 Congress still mean something, as we have noticed that
16 procedural law has been taking precedence and making a mess of
17 our Courts.

18 "Thank you for your interest and consideration of my
19 thoughts as I have brought them to you in hope that you can see
20 the potential benefits for our country if the Justices will hear
21 it... And, I hope that you will help us encourage the Court
22 Justices to hear it.

23 "We can change the world with this simple little case.

24 "Constitutionally Yours,

25 "Cynthia Smith-Neun."

1 THE COURT: Government's next witness?

2 MR. NEIMAN: Thank you, your Honor.

3 The United States would call Revenue Agent Clinton

4 Lowder to the stand.

5 Your Honor, we have...

6 JUROR NO. 8: Can you turn the light off?

7 JUROR NO. 1: (Hand raised.)

8 THE COURT: You need to go for a minute?

9 JUROR NO. 1: Yes.

10 THE COURT: Yeah. Go ahead.

11 THE CLERK: Mr. Neiman, turn the light off --

12 MR. NEIMAN: I'm sorry.

13 THE CLERK: -- on the ELMO, please. Go ahead and go on

14 up.

15 THE COURT: Go ahead and be seated. She may be a

16 couple minutes.

17 (Pause in the proceedings.)

18 (Juror No. 1 returns to the courtroom.)

19 (Clint Lowder takes the witness stand.)

20 THE CLERK: Sir, please stand and raise your right

21 hand.

22 You do solemnly swear that the testimony you shall give

23 in the cause now pending before this court shall be the truth,

24 the whole truth, and nothing but the truth, so help you God?

25 THE WITNESS: Yes, I do.

1 THE CLERK: Please be seated.

2 Please state for the record your full name and spell
3 your last name.

4 THE WITNESS: My name is Clint Lowder. Spelled
5 L-o-w-d-e-r.

6 THE COURT: Go ahead.

7 MR. NEIMAN: Thank you very much, your Honor.

8

9 CLINT LOWDER,

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

12

13 DIRECT EXAMINATION

14 BY MR. NEIMAN:

15 Q. Good morning, Mr. Lowder.

16 A. Good morning.

17 Q. Mr. Lowder, who are you employed with?

18 A. I'm employed by the Internal Revenue Service.

19 Q. What is your position with the Internal Revenue Service?

20 A. I'm a Revenue agent.

21 Q. What does it mean to be a Revenue agent?

22 A. A Revenue agent, uh, conducts examinations of individuals'
23 returns, corporations' returns, and partnership returns.

24 Q. How long have you been employed with the IRS as a Revenue
25 agent?

1 A. 30 years.

2 Q. Are you an accountant?

3 A. Yes, I am.

4 Q. Are you a certified publish accountant as well?

5 A. Yes. I'm a certified publish accountant in the State of
6 Nevada.

7 Q. Where did you go to school?

8 A. I have -- I went to, uh, school at the University of Nevada,
9 Las Vegas. I have a four-year accounting degree.

10 Q. Currently in which group are you assigned to within the IRS
11 as a Revenue agent?

12 A. I'm assigned to a group in Las Vegas which is designated the
13 Special Enforcement Group.

14 Q. What does that mean in English?

15 A. In English, it means that our group has -- is assigned
16 cases, uh, in which we assist criminal -- uh, or special agents
17 in criminal investigations.

18 Q. What type of training have you had with the Internal Revenue
19 Service as far as, uh, your duties?

20 A. I've had substantial training. Uh, initial training and,
21 uh, training -- subsequent training on an annual basis with the
22 Internal Revenue Service.

23 Q. Explain in more details what the types -- what specifically
24 the training you've received in?

25 A. Uh, in this particular group, I have specialized training in

1 expert witness and in summary witness training, which meant that
2 I attended a class for a week of each in which we were, uh,
3 prepared in assisting special agents in examinations and in
4 testifying.

5 MR. SCHIFF: Uh, excuse me. Your Honor, did I hear --
6 understand him to say he's being offered as an expert in the
7 law?

8 THE COURT: I don't know what you understood, but that
9 isn't what happened.

10 MR. SCHIFF: Is he an expert in the law?

11 THE COURT: Well, he is --

12 MR. SCHIFF: Pardon me?

13 THE COURT: -- he is not being offered -- has not yet
14 been offered as an expert in the law. He has discussed his
15 training as an expert witness.

16 MR. SCHIFF: Well, wait. Wait a minute. I don't
17 understand. He's not --

18 THE COURT: There's a difference. A person --

19 MR. SCHIFF: If he's being offered --

20 THE COURT: -- a person can discuss training and be
21 trained as an expert witness and not be offered as an expert
22 witness.

23 MR. NEIMAN: Your Honor, it is the Government's
24 intention to ask the Court recognize Mr. Lowder as an expert in
25 tax computations, which we'll get to, I guess, in a few more

1 minutes once I lay -- if they want to stipulate -- the parties
2 want to stipulate to him being an expert in tax computations
3 now, we could go ahead and move along with the --

4 MR. SCHIFF: No, no.

5 Your Honor, I want to know the difference between being
6 an expert in the law and an expert in tax computations.

7 MR. NEIMAN: Your Honor --

8 MR. SCHIFF: In other words, does somebody determine
9 the law and then he takes an adding machine?

10 MR. NEIMAN: Your Honor --

11 MR. SCHIFF: Because if he's an expert in --

12 MR. NEIMAN: -- it's obviously within the province of
13 this Court to instruct as to what the law is. Mr. Lowder will
14 take general accounting principles as defined in the law and
15 apply them to the facts of the case in order to show what
16 Defendant Schiff's business income was --

17 MR. SCHIFF: No, no. Objection.

18 MR. NEIMAN: -- for the years charged in the
19 Indictment.

20 MR. SCHIFF: The use of the word "income" is a legal
21 conclusion. Now, if he's gonna use the word "income" -- well,
22 income is a legal conclusion. There's a hundred pages of words
23 and phrases on the meaning of income.

24 The point is: If he wants to testify that I made
25 certain deposits, that's okay with me. But whether those

1 deposits constitute income within the meaning of the law is a
2 legal conclusion and he doesn't have the background and training
3 of a lawyer to be able to --

4 THE COURT: Well --

5 MR. SCHIFF: -- testify as --

6 THE COURT: -- you're --

7 MR. SCHIFF: -- to what constitutes income within the
8 meaning of the law.

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

10 MR. SCHIFF: If he does, I wanna cross-examine him on
11 his understanding of the word "income."

12 THE COURT: Your -- your objection is premature. Uh,
13 you have interrupted before he even has testified as to what he
14 is an expert in and, uh, you can raise your objection again when
15 it's timely.

16 MR. SCHIFF: I thought it was time.

17 THE COURT: It's premature.

18 MR. SCHIFF: I raised it when he said he was an expert
19 in the law.

20 THE COURT: No, he didn't say he was an expert in the
21 law. Watch your screen. Read the questions off your screen.

22 BY MR. NEIMAN:

23 Q. Mr. Lowder, are you a lawyer?

24 A. No, I'm not.

25 Q. What are you?

1 A. I'm a certified public accountant.

2 Q. And, as an accountant, do you conduct investigations with
3 the I- -- for the I- -- on behalf of the Internal Revenue
4 Service?

5 A. I have conducted examinations and audits on behalf of the
6 Internal Revenue Service.

7 Q. When I say "examination," is that a nice word for "audit"?

8 A. Yes, it is.

9 Q. Okay. Approximately how many examinations, or audits, have
10 you conducted with your career at the IRS?

11 A. I would estimate between 1500 and 2000 examinations in my
12 career.

13 Q. How many of them have been personal examinations -- uh,
14 individual examinations as opposed to corporations or
15 partnerships?

16 A. I'm estimating, but I would estimate in the neighborhood of
17 a thousand.

18 Q. And, of those thousand, do some of those include, uh, sole
19 proprietorship, or Schedule C businesses?

20 A. A lot of those would -- would have -- would have been sole
21 proprietorship examinations.

22 Q. Approximately how many corporate examinations have you
23 conducted?

24 A. Again, I'm estimating. But I would say in the neighborhood
25 of 500.

1 Q. In, uh, conducting an examination, I guess, what's the
2 ultimate goal of an examination -- or what's the ultimate
3 conclusion or -- that's drawn at the end of an examination?

4 A. The ultimate conclusion is whether the proper tax was paid
5 and whether there is additional tax owing or a refund owing.

6 Q. And in these, uh, 1500 or so examinations you've conducted,
7 have you had to make determinations as to what constitutes
8 income?

9 A. Almost each and every examination would -- I would have to
10 determine what constitutes income.

11 Q. All right. And --

12 MR. SCHIFF: Well, I -- I -- I object to that. He --
13 he -- he -- he's -- he's determining it in the ordinary sense,
14 your Honor. Well, he can't use the word "income" unless the
15 Government puts on a witness --

16 MR. NEIMAN: Your Honor --

17 MR. SCHIFF: -- to determine the term "income," the
18 meaning of income. Income is not defined in the Internal
19 Revenue Code.

20 MR. NEIMAN: Your Honor, you've already instructed the
21 jury as to what income is. Mr. Schiff may disagree with the
22 definition this Court has given as to income, but that's not
23 a --

24 MR. SCHIFF: Well --

25 MR. NEIMAN: -- that's not the proper time or the place

1 for that to be lodged at this time.

2 THE COURT: The Court has -- has given the jury a
3 definition of income and an interim instruction. That is the
4 law of this case.

5 Your objection's overruled.

6 BY MR. NEIMAN:

7 Q. Mr. Lowder, in the 1500 or so examinations which you
8 conducted, do you need to look at deductions that are taken on
9 certain returns or by individuals?

10 A. Yes. In an examination, you look at income as well as
11 deductions.

12 Q. What's a deduction?

13 A. A deduction is an item that's permitted -- a taxpayer's
14 permitted to use to offset the income that he's reporting, he or
15 she's reporting.

16 Q. So after you determine income, you determine deductions,
17 what's the next -- the next step?

18 A. Taxable income.

19 Q. Approximately how many, uh, corporate -- or partnership
20 returns have you, uh, reviewed in your days with the IRS?

21 A. Again, I'm estimating. But I'd say in the neighborhood of
22 500.

23 Q. Is it part of your duties and responsibilities in conducting
24 these examinations to review financial documents?

25 A. Absolutely. That's -- that -- that's quite common to review

1 financial documents and financial statements.

2 Q. What type of financial documents do you look at when
3 conducting examinations?

4 A. Probably the most common ones are bank records or brokerage
5 statements or invoices.

6 Q. And is it part of your duties, uh, to summarize the
7 financial information or the bank records which you've reviewed?

8 A. Yes, it is. Once you review the documents, you have to
9 reach a conclusion by the analysis of those records.

10 Q. How about business records? Do you ever review and
11 summarize business records?

12 A. Yes, I have.

13 Q. What types of business records have you looked at?

14 A. Uh, similar items: bank deposits; brokerage statements;
15 invoices; um, expense vouchers; um, anything documenting income
16 or expenses of that particular business.

17 Q. Have you been present throughout this entire trial?

18 A. Yes, I have.

19 Q. Have you been sittin' in this chair back here?

20 A. Yes, I have. The whole trial.

21 Q. And have you heard the testimony of all the witnesses which
22 have come and testified at this trial?

23 A. Yes, I have.

24 Q. Prior to trial, were you given the opportunity to review
25 exhibits which the Government anticipated introducing as

1 evidence?

2 A. Yes, I have.

3 Q. And have you in fact reviewed the exhibits which have come
4 in to evidence throughout this trial?

5 A. Yes, I have.

6 Q. Have you reviewed bank records associated with Freedom
7 Books?

8 A. Yes, I have.

9 Q. Have you reviewed bank records associated with Irwin Schiff?

10 A. Yes, I have.

11 Q. Have you reviewed other documents pertaining to Defendant
12 Neun?

13 A. Yes, I have.

14 MR. NEIMAN: Your Honor, at this time the United States
15 would offer Revenue Agent Clinton Lowder as an expert in tax
16 computations.

17 MR. SCHIFF: I simply want it noted that he's an expert
18 in tax calculations, not in the subject of taxes in general and
19 the meaning of income and whether the income tax is a direct or
20 an excise tax, and on what basis it was held unconstitutional
21 and on what basis the Sixteenth Amendment applies as a matter of
22 law. He's -- he's not an expert in taxes.

23 MR. BOWERS: My objection is not that involved.

24 Mr. Lowder's testified that he is a certified public
25 accountant licensed in the State of Nevada. He's testified he

1 has substantial training in, uh, taxation, uh, examining
2 individuals as to legitimacy of various taxation issues. I have
3 no idea what the distinction is that the Government is trying to
4 make by offering him as an expert in tax calculations --

5 THE COURT: Computations.

6 MR. BOWERS: Oh, I'm sorry.

7 -- computations versus as an expert in taxation. Uh, I
8 don't know where that basis comes from. I don't know what that
9 is. I think Mr. Lowder is certainly a qualified expert as to
10 taxation, included in that would be, uh, whatever calculations
11 he made in this case. He's already testified, uh, he
12 understands what income is; he's made conclusions about income.
13 I don't think the Government can offer him for this limited
14 purpose they are intending to offer him for. Uh, but I -- I
15 don't understand the distinction moreover.

16 MR. SCHIFF: You know, I would make one further
17 observation.

18 I, who have written -- the Government wouldn't qualify
19 me as an expert, even though I've written four books on the
20 subject that has sold close to 400,000. I think I'm a much
21 greater expert on income tax than is the Government's witness.
22 And, if I can't testify as an expert, how can he testify as an
23 expert?

24 THE COURT: Well, we'll wait until we see if you're
25 offered as an expert.

1 Mr. Cristalli, do you have any objection to --

2 MR. CRISTALLI: No, sir.

3 THE COURT: All right.

4 The witness is recognized as an expert in tax
5 computations.

6 BY MR. NEIMAN:

7 Q. What does it mean to be a -- to conduct tax computations?

8 You determined -- do you determine income?

9 MR. BOWERS: Objection. Leading.

10 THE WITNESS: Could you restate the question?

11 BY MR. NEIMAN:

12 Q. What does it mean to conduct or complete a tax computation?

13 A. In a tax computation, you're -- it's -- you're arriving at a
14 tax due or a tax refund.

15 Q. And that involve -- does that involve looking at income?

16 A. Yes, it does. It involves --

17 Q. Does that involve --

18 A. -- looking at income and expenses and in some cases credits
19 against the tax.

20 Q. Did you make a determination as to Defendant Schiff's
21 business income for years 1997 through 2002?

22 A. Yes, I did.

23 Q. Was it in excess of zero?

24 A. Yes, it was.

25 Q. Approximately, um, off the top of your head, ballpark

1 figures, what was the income figure for the years -- business
2 income for years '97 through 2002?

3 A. On average, the income was around a hundred thousand dollars
4 of business income in each of those years.

5 Q. And is that -- how would you characterize that estimate?

6 A. That estimate is very conservative based on the analysis
7 that I did.

8 Q. Can you explain how it's conservative without getting into
9 too much detail of the analysis which we'll get to in a minute?

10 A. I'll try to put it in simple terms.

11 Basically when I did the analysis of the bank deposits,
12 which is the primary item that I, uh, examined, if there was any
13 question as to whether a deposit item was income or if an
14 expenditure was a business item, I erred in the favor of Freedom
15 Books and Mr. Schiff.

16 Q. What method did you use in order to arrive at what Freedom
17 Books or Defendant Schiff's business income was for years '97
18 through 2002?

19 A. Since there weren't any books that were maintained in which
20 I could examine or verify, I used an indirect method in
21 determining the business income. That indirect method is the
22 bank deposit method.

23 Q. And what does that mean, uh, to use the bank deposit method
24 to determine income?

25 A. Again, in simple terms, the bank deposit method is used when

1 there aren't any records that you can examine. And basically,
2 with the bank deposit method, you total up gross deposits; you
3 total up total expenditures out of those accounts; you net the
4 two to arrive at a net business income.

5 Q. Did you find any -- did you review any bank accounts in the
6 name of Defendant Schiff or Freedom Books?

7 A. Yes, I did.

8 Q. Approximately how many bank accounts did you look at?

9 A. There were eight bank accounts.

10 Q. Did you look at all these deposits going into these eight
11 bank accounts?

12 A. Yes, I did. I looked at all the deposits.

13 Q. Did you look at all the checks coming out of the these eight
14 bank accounts?

15 A. Yes, I did.

16 Q. Did you review all monthly statements associated with these
17 eight bank accounts?

18 A. Yes, I did.

19 Q. What type of business, uh, was Freedom Books?

20 A. Freedom Books was in the business of selling products, uh,
21 tax-related products which included tax books, tapes,
22 periodicals, packages, T-shirts, bumper stickers, and
23 consultations.

24 Q. Uh, was it incorporated as a corporation?

25 A. No. Freedom Books, uh, based upon Mr. Schiff's own

1 representations to third parties and to the banks, was that he
2 was a sole proprietor and not a corporation.

3 Q. And these are representations you saw within documents
4 pertained in evidence here?

5 A. Yes. The primary records, I would say, were the signature
6 cards for each of the bank accounts in which Mr. Schiff
7 indicated he was a sole proprietor.

8 Q. What are the tax consequences of having a sole
9 proprietorship business or being -- in this case?

10 A. A sole proprietor basically reports as an individual. There
11 is an attachment to the 1040 which, for lack of -- of -- I can't
12 simplify it any more than to say that it's a Schedule C -- but a
13 taxpayer with a sole proprietorship attaches a Form Schedule C
14 listing the income and listing the expenses and netting it out
15 to a net business income.

16 Q. Is income earned by the Schedule C business attributable to
17 the taxpayer?

18 A. Yes, 100 percent.

19 Q. Did you look at sales or documents pertaining to the sales
20 at Freedom Books?

21 A. Yes, I did.

22 Q. Are sale of products income to Freedom Books and Defendant
23 Schiff?

24 A. Yes, they are.

25 Q. Does it matter whether or not a sale was taken over the

1 phone or the Internet or whether it was walk-in to determine
2 whether or not it was income to Defendant Schiff?

3 A. No. Either of those transactions would have been income to
4 Mr. Schiff or Freedom Books.

5 Q. And the sale of all books at Freedom Books, would that be
6 income -- is that income --

7 A. Yes.

8 Q. -- to Freedom Books --

9 A. Yes, it is.

10 Q. -- and Mr. Schiff?

11 How about the preparation of documents at Freedom
12 Books? Would the money coming into the business for the
13 preparation of documents be income to Mr. Schiff?

14 A. Yes, it would.

15 Q. How about consultations?

16 A. Yes, they would be income as well.

17 Q. How about the proceeds of a 900 number? Would that be
18 income to Mr. Schiff?

19 A. Yes, it would.

20 Q. How about seminars, if Mr. Schiff charged for seminars?

21 A. That would be income as well.

22 Q. Does it matter whether or not the sales are paid for with
23 cash, credit card, or check? Are those all income as well?

24 A. They are all income as well. And those were deposited into
25 the bank accounts for the most part.

1 Q. Do you remember which bank accounts -- what the names of the
2 eight bank accounts that you looked at were?

3 A. There were, um -- there was three primary banks that were
4 involved. One was Citizens Bank which was the, uh, Bill Thomas
5 account, uh, Back East. There was two local banks that had
6 multiple accounts in 'em. There were multiple accounts in Bank
7 of America and multiple accounts in Nevada State Bank.

8 MR. NEIMAN: Your Honor, if I may approach the
9 witness --

10 THE COURT: You may.

11 MR. NEIMAN: -- with some exhibits or ask Ms. Vannozzi?
12 Government's Exhibit 86, I believe, and 87. 87 may be...

13 (Pause in the proceedings.)

14 MR. IGNALL: Your Honor, can Agent Holland assist --

15 THE COURT: He may. Yes.

16 MR. IGNALL: -- in the moving of evidence?

17 (Pause in the proceedings.)

18 BY MR. NEIMAN:

19 Q. Mr. Lowder, looking at Government Exhibit 87, which I
20 believe is the big box in front of you --

21 A. Okay.

22 Q. -- what is Government Exhibit 87?

23 A. That's the Citizens National Bank account that I mentioned
24 Bill Thomas, uh, as -- as he testified, deposited money into on
25 behalf of Mr. Schiff and wrote checks out of it on behalf of

1 Mr. Schiff. That account goes through [sic] 10 of '98 through
2 12 of 2000.

3 Q. All right. And does that -- what's contained within that
4 box, if you know, or...

5 A. Yes, I do know.

6 This account -- this box contains, uh, folders that are
7 arranged in monthly order. Each folder has the, uh, monthly
8 summary of activity and then also it has the specific deposits
9 with the individual deposit items and cancelled checks that were
10 paid out of that account.

11 Q. Is that exhibit multiple boxes if you recall?

12 A. Yes. Each of the boxes are organized in that manner.

13 Q. And is that how it's done for all eight bank accounts?

14 A. Yes, it is.

15 Q. Did you review the -- these are the checks, the statements,
16 and the deposits which you alluded to earlier that you reviewed?

17 A. Yes, I did.

18 Q. For all eight bank accounts?

19 A. For all eight bank accounts.

20 Q. Do you know approximately -- or do you know the number of
21 bank accounts that Mr. Schiff had at Bank of America?

22 A. I believe there were five accounts at Bank of America.

23 Q. And if I could direct your attention, I guess, to
24 Government's Exhibits -- uh, I'll withdraw the question.

25 Those are exhibits -- or exhibited as well which have

1 come in through this trial, the bank records associated with
2 Bank of America?

3 A. Yes.

4 Q. And you reviewed those as well?

5 A. Yes, I have.

6 Q. How about the Nevada State Bank? Do you know how many
7 accounts he had there?

8 A. Two accounts.

9 Q. And did you review the bank records?

10 A. Yes, I did.

11 Q. And those are also admitted into evidence?

12 A. Yes.

13 Q. After reviewing all these records, did you come up with a
14 summary or a calculation as to what Defendant Schiff's business
15 income was?

16 A. Yes, I did.

17 Q. Where is business income supposed to be reported on a 1040?

18 A. Business income is -- is reported on the front of the tax
19 return on line 12.

20 MR. NEIMAN: Your Honor, if I may approach the witness?

21 THE COURT: You may.

22 MR. NEIMAN: I'm approaching with what's been marked
23 for identification as Government's Exhibits 313, 320, 321, 322,
24 323, and 324.

25 THE COURT: 320 through '24 --

1 MR. NEIMAN: And --

2 THE COURT: -- and 313?

3 MR. NEIMAN: -- 313 as well, your Honor.

4 THE COURT: All right. Thank you.

5 MR. BOWERS: What was the last number, your Honor?

6 THE COURT: '24.

7 MR. BOWERS: 324?

8 BY MR. NEIMAN:

9 Q. Starting with Government's Exhibit 313, did you prepare this
10 schedule? Help if I hand it to you.

11 A. I don't have it.

12 THE COURT: 313.

13 MR. NEIMAN: I apologize. I didn't...

14 BY MR. NEIMAN:

15 Q. Did you prepare, uh, Government Exhibit 313?

16 A. Yes, I did.

17 Q. Generally speaking, what is Government Exhibit 313?

18 A. It's a summation of the bank deposit method that I utilized
19 to reconstruct income and expenses, in other words, to
20 reconstruct the net business income.

21 Q. Would the use of Government's Exhibit 313 assist you in
22 explaining to the jury what -- what your calculations were?

23 A. Yes, it would.

24 MR. NEIMAN: Your Honor, at this time the United States
25 would move into evidence Government Exhibit 313.

1 THE COURT: Any objection to 313?

2 MR. SCHIFF: Yeah. Number one, it's inaccurate. It

3 says "net profit." Isn't it a fact that only corporation --

4 THE COURT: No. You --

5 MR. SCHIFF: Oh.

6 THE COURT: No. You don't ask questions of the

7 witness.

8 MR. SCHIFF: Well --

9 THE COURT: That's your objection is it's --

10 MR. SCHIFF: Well, yeah.

11 THE COURT: -- inaccurate?

12 MR. SCHIFF: I don't have a problem.

13 THE COURT: Okay. You don't have a problem with it?

14 MR. SCHIFF: No.

15 THE COURT: Okay. I thought you did.

16 MR. SCHIFF: He testified I'm a sole proprietorship.

17 THE COURT: Any objection to 313?

18 MR. CRISTALLI: Just Court's indulgence.

19 MR. BOWERS: Court's indulgence two seconds, Judge.

20 MR. SCHIFF: And also I --

21 (Discussion among counsel.)

22 MR. BOWERS: No, nothin'. Thanks.

23 MR. CRISTALLI: No objection, your Honor.

24 THE COURT: Thank you. 313 is received.

25

1 (Government's Exhibit No. 313, received into
2 evidence.)

3 MR. NEIMAN: Thank you.

4 May we publish Exhibit 313 --

5 THE COURT: You may.

6 MR. NEIMAN: -- your Honor?

7 If we could, I guess, just blow up the top very
8 portion.

9 (Document displayed in open court.)

10 BY MR. NEIMAN:

11 Q. What's the title of this schedule?

12 A. "Irwin Schiff - Business Income."

13 Q. And right underneath that, what are the years for which you
14 made this schedule?

15 A. 1997, 1998, 1999, 2000, 2001, and 2002.

16 Q. And looking at the bottom line -- we'll go through the rest
17 of it in a second -- business income, that's what you said
18 should belong on line --

19 A. 12.

20 Q. -- 12?

21 What was the -- what was your calculation as to
22 business income for year 1997?

23 A. My business income for the year of 1997 was one hundred
24 forty-one thousand dollars nine hundred sixteen dollars and
25 fifty-six cents [sic].

1 MR. NEIMAN: Actually, Peggie, I'm sorry. It looks
2 like Agent Steiner is gonna be all right with this.

3 BY MR. NEIMAN:

4 Q. How about for year 1998?

5 A. 136,177.41.

6 Q. How about for year 1998 [sic]?

7 A. 100,855.31.

8 Q. For year 2000?

9 THE COURT: I think you misspoke. You said "1998."
10 It's 1999.

11 MR. NEIMAN: 1999. I apologize.

12 THE COURT: Thank you.

13 BY MR. NEIMAN:

14 Q. 1999?

15 A. 1999 is 100,855.31.

16 Q. How about for year --

17 A. 2000 is one hundred three thousand dollars four hundred --
18 103,418.72.

19 Q. For year 2001?

20 A. 2001 was 101,823.07.

21 Q. And 2002?

22 A. 2002 was 74,201.53.

23 Q. All right. If we could go back to the -- I guess the top of
24 this chart, Government Exhibit 313, what's the first item up
25 there?

- 1 A. The first item up there is the Gross Bank Deposits.
- 2 Q. Explain what that means, what gross bank deposits are.
- 3 A. Gross bank deposits is simply adding up each and every item
4 that was deposited into the bank account.
- 5 Q. And did you do that for all eight accounts?
- 6 A. I did that for all eight accounts for each of the years.
- 7 Q. Did you prepare a summary in addition to this detailing all
8 deposits, withdrawals, and -- and withdrawals coming out of the
9 eight bank accounts?
- 10 MR. SCHIFF: Can I have -- can I interrupt for
11 something? Because I don't remember.
- 12 Are any of these accounts for the Freedom Foundation?
- 13 THE COURT: You can ask that question on cross.
- 14 BY MR. NEIMAN:
- 15 Q. Are any of the accounts for Freedom Foundation?
- 16 A. No. They are all for Freedom Books or Irwin Schiff.
- 17 MR. SCHIFF: None of them are Freedom Foundation?
- 18 THE WITNESS: None.
- 19 MR. SCHIFF: Okay.
- 20 BY MR. NEIMAN:
- 21 Q. Uh, looking at gross bank deposits, did you -- did you
22 prepare a summary of the transactions going on within these
23 eight bank accounts in addition to this real general summary we
24 have here at 313?
- 25 A. Yes. I prepared a detailed supporting summary.

1 Q. And is that contained within Government Exhibit 320, the --
2 the binder?

3 A. Yes, it is.

4 Q. Can you explain what exactly Government Exhibit 320 is?

5 A. 320 is a binder that I set up, uh -- broken up by accounts
6 and in each -- each account I list out the gross deposits,
7 detail deposits as well as listing out the specific expenditures
8 paid out of each of those accounts.

9 Q. And is that done by month?

10 A. It's...

11 Q. By bank account and then by month?

12 A. It's actually even more detailed than by month. It's done,
13 uh, at -- prob- -- on a daily basis.

14 MR. NEIMAN: Your Honor, at this time the United States
15 would move into evidence Government Exhibit 320.

16 MR. BOWERS: Just a moment, your Honor.

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

19 MR. NEIMAN: Your Honor, if I may approach the witness.

20 THE COURT: You may.

21 MR. NEIMAN: This was provided to counsel on CD-ROM.

22 MR. CRISTALLI: If I could please just take a brief
23 look at it.

24 THE COURT: You may.

25 I think we'll go ahead and take our -- we'll take our

1 break for lunch.

2 We'll be in recess until 1:30 p.m. The standard
3 admonition continues.

4 (Jury leaves the courtroom at 12:12 p.m.)

5 THE COURT: Okay.

6 (Lunch break, 12:12 p.m. to 1:42 p.m.)

7 THE COURT: Matters of business before we bring in the
8 jury?

9 MR. SCHIFF: Yes.

10 MR. IGNALL: One -- one thing, your Honor, I don't know
11 if the Court wants to address, perhaps briefly. We've spoken to
12 Mr. Schiff and Mr. Leventhal about his proposed witnesses for
13 tomorrow. I don't know if we wanna --

14 MR. SCHIFF: Yes.

15 MR. IGNALL: -- address that briefly now.

16 THE COURT: Okay.

17 MR. SCHIFF: The Government has agreed that there's
18 relevancy to each of these witnesses. Minimal or maximal, I
19 don't know. But the fact of the matter is I believe I have a
20 right to bring in witnesses in my defense pursuant to the
21 Constitution. The Government can cross-examine them.

22 If you want to rule that what they are testifying to is
23 irrelevant, fine. But I don't think -- I can't understand how
24 you can in a criminal trial, uh, try to approve of who my
25 witnesses are gonna be, especially in a tax fraud where -- where

1 it's very hard to say that a judge in a tax trial is completely
2 objective. Uh, but the Government has agreed that these
3 witnesses that I intend to call tomorrow are relevant to my good
4 faith defense.

5 Now, if you want I'll give you what I've written up.
6 But I must object that this is very -- what's the word I
7 want? -- very unusual. I spoke to one or two lawyers; they
8 never heard of this in a criminal trial. That's number one.

9 If you want, I'll give it to you.

10 THE COURT: Finish.

11 MR. SCHIFF: Pardon me?

12 THE COURT: Go ahead with --

13 MR. SCHIFF: Now, the second thing --

14 THE COURT: -- what you're saying.

15 MR. SCHIFF: -- the second thing, uh, I wanna say is in
16 connection with my bank accounts. Now, I was preoccupied with
17 doing something and I understand that the witness talked to me
18 [sic] about having six or eight bank accounts. I never had at
19 one time more than four bank account [sic]. Two bank accounts
20 had to do with the Freedom Foundation, which I never took a
21 penny personally out of the Freedom Foundation. That was a -- a
22 Freedom Foundation where people could donate money so that we
23 could use to publicize my views. And we used it to also pay --

24 THE COURT: So what is your point? What is your point?

25 MR. SCHIFF: Well, I only had two bank accounts.

1 Apparently for some reason --

2 THE COURT: Well, you can cross-examine him and --

3 MR. SCHIFF: Pardon me?

4 THE COURT: -- and show that you only had two.

5 MR. SCHIFF: Pardon me?

6 THE COURT: You may cross-examine him and show that he

7 only -- that you only had two.

8 MR. SCHIFF: But I understand -- look, Judge, I can't

9 follow all this so easily -- I understand that in -- in -- on

10 the CD or in -- he prepared something that shows I have six to

11 eight bank accounts. So the jury's gonna get the impression I

12 have bank accounts all over.

13 THE COURT: Well, then cross-examine if it's -- if it's

14 wrong.

15 MR. SCHIFF: Well, before -- does it show I -- is he

16 claiming had I more than two bank accounts --

17 THE COURT: You don't --

18 MR. SCHIFF: -- at any one time?

19 THE COURT: -- address counsel. You address me.

20 MR. SCHIFF: Well, can I understand [sic] something,

21 your Honor? And this'll save a lot of time with me in front of

22 the jury.

23 Is he claiming that I had more than two bank accounts

24 at any one time? I'll -- I'll admit that I had the P.I.L.L.

25 account. That's the third account.

1 MR. NEIMAN: Your Honor, for sakes of simplicity,
2 Mr. Lowder's testimony was that Mr. Schiff from years '97 to
3 2000 utilized eight bank accounts.

4 MR. SCHIFF: That's not true.

5 THE COURT: Well, then you can --

6 MR. NEIMAN: He can cross-examine --

7 THE COURT: -- you can show it on cross-examination or
8 in your case --

9 MR. SCHIFF: Well, your Honor --

10 THE COURT: -- in chief.

11 MR. SCHIFF: But, your Honor, the implication is --

12 THE COURT: Well, what do you want me to do about it?

13 MR. SCHIFF: Well, I only have two bank accounts in --

14 THE COURT: Well, what do you want me to do about it?

15 You're out of order. You don't even know the procedure.

16 (Discussion between Mr. Leventhal and
17 Mr. Schiff.)

18 MR. IGNALL: Your Honor, if I may briefly address the
19 witnesses -- the witness issue.

20 I believe the witnesses that Mr. Schiff intends to call
21 tomorrow are customers -- I don't know exactly the date of when
22 these customers, you know, bought products or did things
23 pursuant to Freedom Books's advice -- who I understand may have,
24 you know, followed the advice; filed zero returns; and then
25 gotten refunds or nothing bad happened to them as of what date

1 I'm not sure.

2 I'd -- I'd say that that's minimally relevant to
3 Mr. Schiff's state of mind only insofar as one of these clients
4 come back and tells Mr. Schiff -- and we have to have a date on
5 that, obviously -- wow, I just got a \$41,000 refund or I filed
6 my zero return and nothing's happened to me yet.

7 I think anything beyond that certainly goes -- is not
8 relevant and even that testimony, I think, has the possibility
9 to confuse the jury and -- but I think we'd leave it to the
10 discretion of the Court as to whether any of those witnesses
11 really add anything, uh, to make any fact in evidence here more
12 or less likely.

13 MR. BOWERS: Your Honor, if I may before Mr. Schiff --
14 I'm sure he'll address this issue -- but just very briefly.

15 We -- we have -- I apologize -- I have referenced these
16 litany of these village people that have testified again, again,
17 again, you know, the doctor, the fireman, the lawyer, every walk
18 of life, every circumstance has come in here and said: It
19 worked. It didn't work. I believe this. I don't believe it
20 anymore. Whatever the situation is. Again, again, again,
21 again, again. And, if there's any objection to those, it's
22 either, well, it's been pled in the Indictment; it's an act in
23 furtherance of the conspiracy; it's not cumulative; or it
24 provides notice. We've had a number of things come in because
25 they provide notice.

1 Any effort on our -- or Mr. Schiff's behalf, that I may
2 use a witness on direct of my own, or whatever the case may be,
3 how a former client who has any success that he's reported to
4 Freedom Books at any time that any of these defendants had a
5 reasonable basis to come across that information, uh, should be
6 admissible on the same grounds as it goes to notice.

7 I -- I know the Court has made a number of rulings with
8 respect to how you're gonna get in somebody's head and there has
9 to be reliance and all of these other things. But, for example,
10 the congressional record that was -- or Research Service Report
11 that was introduced through Mr. Holland yesterday was introduced
12 not only limited to Mr. Schiff but against all defendants as and
13 for notice simply because it was in the building. Likewise, if
14 there's any evidence that success by any of those clients was in
15 the building that same logic as to notice should apply that
16 suggest that these -- any one of these defendants could have had
17 the opportunity to come across that material and -- and be
18 notice in the opposite direction.

19 THE COURT: Well, the -- the reason that the witnesses
20 who have testified so far testified was not -- not for the --
21 for the purpose that Mr. Schiff has -- has presented, which is
22 evidence of satisfied customers. It was to establish that
23 notices were coming from the IRS to Freedom Books and the people
24 employed there that the claims were being rejected by the IRS.

25 So it is -- it is minimally relevant. Happy campers,

1 uh, is a phrase that was used in another Circuit Court case and
2 the Circuit Court has ruled that happy campers', uh, testimony
3 is -- is not -- not relevant to the defendant's intent.

4 So there is -- always a reason for asking for the
5 proffer and that is to -- to make sure that we have enough
6 witnesses lined up because if the testimony is restricted, uh,
7 to very narrow issues, uh, and Mr. Schiff runs out of witnesses,
8 then we have unnecessarily delayed the jury, uh, on a case that
9 has -- has gone on very long already. So I do expect that you
10 will provide, uh -- you will provide a summary.

11 What you told me earlier, Mr. Schiff, in your oral
12 proffer was not sufficient to -- to get the testimony in. Uh,
13 and that's why I've asked for the written -- written proffer
14 because five witnesses are -- are -- in my belief, are not going
15 to be enough to -- to occupy the entire day unless you're
16 prepared to take the stand --

17 MR. SCHIFF: I'll get more.

18 THE COURT: -- on your own.

19 One more thing. And I hope -- I hope -- I understand
20 that this -- this has been, uh, communicated earlier but I want
21 to make sure that you and Mr. Leventhal have the same, uh,
22 understanding -- and that is that during your testimony it will
23 be by question and answer only. I will not allow rambling
24 diatribes from you, uh, rambling narratives, without -- without,
25 uh, a question preceding it. And -- and the question -- the

1 response to the question will have to be direct and not -- not
2 an excuse to engage in a dissertation.

3 Do you understand that, Mr. Leventhal? That's --

4 MR. LEVENTHAL: I do, your Honor.

5 THE COURT: -- the procedure that is going to be
6 permitted and -- and required.

7 MR. SCHIFF: Well --

8 THE COURT: All right.

9 MR. SCHIFF: -- well, the reason I lined up -- I lined
10 up five for the first day. I didn't wanna bring people from out
11 of town for Thursday and then if he don't go on they gotta stay
12 here for Friday, Saturday, Sunday, Monday.

13 THE COURT: I'm --

14 MR. SCHIFF: But I'll try to get others. I thought
15 five --

16 THE COURT: I'm just telling you right now that I do
17 not want to excuse this jury, uh, short of a full day because
18 you have, uh, misjudged the -- the amount of time that you're
19 going to have with each one.

20 MR. SCHIFF: Well, I'll -- I'll -- I'll get some more
21 witnesses, your Honor.

22 But the thing I want to say is, um, I was never
23 intending to testify in the narrative. Uh, I could ask and
24 answer my own questions.

25 THE COURT: I'm just making it clear. And so I'm glad

1 you agree.

2 MR. SCHIFF: No, I'm not gonna testify -- but the thing
3 is one of the reasons why I -- I have to have time is I wanted
4 to give Mr. Rosenthal [sic] an under -- time to understand what
5 my beliefs are and what my --

6 THE COURT: We don't have that much --

7 MR. SCHIFF: -- how he can question me.

8 THE COURT: I don't know that -- he can speak for
9 himself on that.

10 MR. SCHIFF: And so --

11 THE COURT: So we're going to go ahead. I'll expect a
12 full day tomorrow. You are advised of that. And you bring in
13 as many as you feel necessary to occupy the entire day.

14 MR. SCHIFF: Okay.

15 THE COURT: And if you fail --

16 MR. SCHIFF: Well, I had five --

17 THE COURT: -- to do so and the jury's excused early,
18 that's gonna be -- that's gonna reflect on you, I think.

19 MR. BOWERS: I'm sorry, your Honor. Just very briefly.

20 I understand your position to me that -- that happy
21 campers or satisfied clients or people that have demonstrated,
22 uh, this program's success or that it's not a sales pitch or --
23 or whatever the case may be you're declaring irrelevant
24 including as for purposes of notice?

25 THE COURT: The -- the, uh -- as I pointed out earlier,

1 there are cases from the Ninth Circuit that have excluded the
2 testimony of the so-called happy campers or satisfied customers.
3 And that -- that -- to that extent it will not come in.

4 It may be relevant to the defendants' state of mind,
5 marginally relevant. I'll consider that on a case-by-case
6 basis.

7 MR. IGNALL: Your Honor, just two things. One I want
8 to clarify.

9 A lot of witnesses we put on were not just for notice
10 but also for overt acts in furtherance of the Klein conspiracy
11 charged in Count One. And I don't know -- and I don't want to
12 put defense counsel in a spot, which is my way of saying I'm
13 about to do it -- but I don't know -- we certainly don't object
14 to defendants calling witnesses in whatever order they want if
15 that'll help, you know, fill up the trial day.

16 THE COURT: Thank you.

17 Anything further?

18 MR. CRISTALLI: Your Honor, just so that -- I'm just a
19 little bit confused. I know the Court is relying on certain
20 case law precedent to support the ruling. Um, is it safe to
21 say, because I am familiar from past dealings, that those cases
22 are not Title 26 cases but rather issues in terms of wire fraud
23 and/or mail fraud cases? I think -- because I've dealt with
24 numerous telemarketing cases in the past for which I've gone to
25 trial on. And it seems, uh, vaguely familiar anyway. And I'm

1 just trying to get some clarification on the Court's reliance in
2 terms of the precedent.

3 THE COURT: Well, they did involve securities and mail
4 fraud --

5 MR. CRISTALLI: Okay.

6 THE COURT: -- relating to misrepresentations made to
7 customers and regarding the safety and performance of
8 investments that had been offered. And the defendants sought to
9 introduce, uh, testimony of people who had been satisfied with
10 the performance. So it is pretty closely related; same
11 principle.

12 MR. CRISTALLI: And my only concern with that is, um,
13 as we all are aware that we have a different standard in terms
14 of intent in a mail fraud or wire fraud case, uh, versus a --

15 THE COURT: I understand that.

16 MR. CRISTALLI: -- Title 26 case.

17 THE COURT: I understand. I said, Mr. Cristalli --

18 MR. CRISTALLI: Yes, sir.

19 THE COURT: -- I will make the determination, uh,
20 witness by witness.

21 MR. CRISTALLI: Yes, sir.

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

23 THE CLERK: Yes, sir.

24 (Jury enters the courtroom at 1:56 p.m.)

25 THE COURT: Please be seated.

1 Will counsel stipulate to the presence of the jury?

2 MR. BOWERS: Absolutely, your Honor.

3 MR. NEIMAN: Yes, your Honor.

4 MR. CRISTALLI: Yes, your Honor.

5 THE COURT: Thank you.

6 You may resume your examination of the witness.

7 MR. NEIMAN: Thank you very much.

8 BY MR. NEIMAN:

9 Q. Uh, Mr. Lowder, I think before we left we were talking about

10 Government Exhibit 320.

11 MR. NEIMAN: I'm not sure, your Honor, if that was

12 actually admitted or if we were in the process of --

13 THE COURT: I think counsel was looking at it

14 preliminary to raising --

15 MR. CRISTALLI: Yes, your Honor. We have no objection.

16 THE COURT: -- any objections.

17 MR. BOWERS: The Government and I had a discussion.

18 Based on their representations, no objection.

19 THE COURT: Any objection to 320, Mr. Schiff?

20 MR. SCHIFF: What? What's the -- is this the -- is

21 this the -- what's 320?

22 MR. LEVENTHAL: Is that the CD?

23 MR. SCHIFF: This?

24 MR. NEIMAN: It's --

25 THE COURT: 320 is the detailed summary that is --

1 MR. SCHIFF: Well --

2 THE COURT: -- contained on --

3 MR. SCHIFF: Well, I have --

4 THE COURT: -- on the disk.

5 MR. SCHIFF: -- an objection, your Honor. That's -- I

6 told you what the objection is.

7 THE COURT: All right.

8 MR. SCHIFF: Because -- I have an objection.

9 THE COURT: Well, you can cross-examine the witness

10 relative to the objection that was made earlier.

11 The -- number 320 is received.

12 (Government's Exhibit No. 320, received into

13 evidence.)

14 BY MR. NEIMAN:

15 Q. Special Agent Lowder, just -- or I'm sorry -- Revenue Agent

16 Lowder, Government Exhibit 320 you prepared; is that correct?

17 A. Yes, I did.

18 Q. Just generally, real quickly, what is Government

19 Exhibit 320?

20 A. That is a detailed analysis of the eight bank accounts for

21 Freedom Books reflecting gross deposits and gross expenditures.

22 Q. And is that broken down by account by day?

23 A. Yes, yes, it is.

24 Q. And did you take the -- did you add up the total deposits

25 from all eight bank accounts for each year?

1 A. Yes, I did.

2 Q. If we can go back to Government Exhibit 313.

3 A. (Complies.)

4 Q. Looking at, I guess, the first line, "Gross Bank Deposits,"

5 is this where the sum of all deposits is represented?

6 A. Yes, it is.

7 Q. What were the total deposits going into Mr. Schiff's eight

8 accounts for year 1997?

9 A. \$564,104.10.

10 Q. How about for the next year, 1998?

11 A. '98 was 684,343.85.

12 Q. For the next year.

13 A. '99, 857,932.07.

14 Q. The next year, which I believe is 2000?

15 A. 2000 was 1,120,224.43.

16 Q. The next year, 2001?

17 A. 2001 was 1,110,169.15.

18 Q. And 2002?

19 A. 2002 was 891,145.17.

20 Q. Having reviewed all the bank accounts, what primarily were

21 the deposits into these accounts?

22 A. Most of the deposits in the account were sales of product

23 from Freedom Books.

24 Q. And how do you know that they were for sale of products at

25 Freedom Books?

1 A. There were detailed -- the deposits into each of these
2 accounts had detailed activity attached to each deposit slip. I
3 was able to identify specific attachments to each deposit and I
4 could, uh, match those up to invoices that I had that were
5 obtained from the search warrant that reflected product sales.

6 Q. So you could trace a specific invoice and see the payment
7 for that invoice going into a bank account?

8 A. In most situations, I could.

9 Q. Uh, by way of example, if we could look at an invoice that's
10 been pulled from Government Exhibit 2 -- Mr. Lowder, what --
11 what is Government Exhibit 2, if you recall? Do you want me to
12 approach?

13 A. Those -- those -- that box reflects invoices that were
14 obtained, uh, during a search warrant from Freedom Books.

15 Q. And, as indicated on the box, can you see how many boxes --

16 MR. NEIMAN: May I approach, your Honor?

17 THE COURT: You may.

18 BY MR. NEIMAN:

19 Q. -- there are of invoices, Government's Exhibit 2?

20 A. Four of four boxes.

21 Q. And you reviewed the invoices contained within Government
22 Exhibit 2?

23 A. Yes, I did.

24 MR. NEIMAN: If we can look at one invoice for
25 identification purposes, can we, C101, page 1?

1 (Document displayed in open court.)

2 BY MR. NEIMAN:

3 Q. Is this an invoice that you pulled from Government
4 Exhibit 2?

5 A. Yes, it is.

6 Q. All right. And what's the date of this invoice?

7 A. 9-28 of 2001.

8 MR. NEIMAN: I'm sorry. It's 101.

9 (Document displayed in open court.)

10 BY MR. NEIMAN:

11 Q. Is this pulled from Government Exhibit 2, what -- what's on
12 the screen here?

13 A. That was also pulled from that exhibit.

14 Q. Okay. What is the invoice number according to this
15 document?

16 A. 19088.

17 Q. And who is the name of the purchaser on this order form?

18 A. Dennis Klein.

19 Q. What was the total sale?

20 A. I believe \$315.

21 Q. And, looking at where it says "Visa MC," what's written on
22 this invoice?

23 A. It's written "Check No. 110."

24 Q. And what was purchased according to this invoice?

25 A. Uh, I believe one case of The Federal Mafia.

1 Q. And that was for the price of \$315?

2 A. Yes.

3 Q. Now, do you see Check No. 110 for \$315 ever being deposited
4 into Freedom Books's bank accounts?

5 A. I did see that. I don't have the exhibit in front of me.

6 Q. All right. Um, I guess let's first look at the bank
7 statement, um, within Government Exhibit 249 if we can go to, I
8 believe, the next page.

9 MR. NEIMAN: If I may I approach, your Honor?

10 THE COURT: You may.

11 (Document displayed in open court.)

12 BY MR. NEIMAN:

13 Q. I guess, um, looking at this bank statement, Mr. Lowder, on
14 the screen which comes from Govern- -- do you know whether this
15 comes from -- which bank this comes from?

16 A. If you highlight the top, I can tell you, on the right-hand
17 side.

18 (Pause in the proceedings.)

19 THE WITNESS: That's a Nevada State bank account.

20 BY MR. NEIMAN:

21 Q. And what are the last four digits of the Nevada State bank
22 account?

23 A. 7588.

24 Q. And do you know whether or not that's contained -- this
25 statement's contained within Government Exhibit 245?

1 A. Yes, it is.

2 Q. All right. What month is this statement for?

3 A. 8-30 of 2002.

4 Q. Okay. If we can look at the face of the statement we see

5 uh, in the -- if we could blow up the middle portion, there

6 should be a deposit of August 29th of 2002. Do you see a

7 deposit on the date of August 29th, 2002?

8 A. Yes, a deposit in an amount -- that's the next item up --

9 it's -- it's a deposit in the amount of \$2,225.01.

10 Q. All right. And within Government Exhibit 249 do you see the

11 actual deposit slip associated with this deposit in, uh -- in

12 the amount of \$2,225 on August 29th?

13 A. I did see that in analyzing the bank account.

14 Q. All right.

15 MR. NEIMAN: If we can go to the next...

16 (Document displayed in open court.)

17 BY MR. NEIMAN:

18 Q. Is this the deposit slip you looked at with regard to this

19 deposit?

20 A. Yes, it is.

21 Q. And what's the date on the deposit slip?

22 A. 8-29 of 2002.

23 Q. And do you see the reference to the check in the amount of

24 \$315 from Mr. Klein related to the invoice that we just looked

25 at?

1 A. The fourth item down reflects a check from a Klein in the
2 amount of \$315.

3 Q. Within Government Exhibit 249, did you actually see the
4 check referenced as the fourth item on this deposit slip?

5 A. Yes, I did.

6 MR. NEIMAN: If we can go to the next page of the
7 exhibit.

8 (Document displayed in open court.)

9 BY MR. NEIMAN:

10 Q. Is this the check you saw within Government Exhibit 249?

11 A. Yes, Check No. 110.

12 Q. Made payable to who?

13 A. Freedom Books.

14 Q. What's written in the memo section if you see?

15 A. "Federal Mafia books."

16 Q. And the check number?

17 A. 110.

18 Q. And was that what was --

19 MR. NEIMAN: If we can put back up the first page of
20 101. Sorry.

21 (Document displayed in open court.)

22 BY MR. NEIMAN:

23 Q. Is this how you were able to corroborate what this
24 invoice -- what the deposit was for?

25 A. Yes, it is.

1 Q. Were you able to do this for all the deposits related to,
2 uh, the bank -- going into the bank accounts associated with
3 Freedom Books for years '97 through 2002?

4 A. Not all of 'em, but a great majority of 'em.

5 Q. And is this \$315 from the purchase of The Federal Mafia
6 income to Defendant Schiff?

7 A. Yes, it is.

8 Q. In addition to seeing -- in addition to seeing, um, checks
9 being deposited to these bank accounts, did you see the receipts
10 from credit card sales?

11 A. Yes, I did.

12 Q. Primarily where did you see these credit card sales going
13 into, which bank account? If you know.

14 A. The Citizens Bank account in Indiana had a merchant account
15 in which credit cards [sic] were deposited into it. The Nevada
16 State Bank account in Las Vegas also had a merchant account in
17 which credit card sales were deposited into this bank account as
18 well.

19 Q. Have you reviewed exhibits which have been previously
20 admitted relating to credit card processing agreements at -- at
21 Freedom Books?

22 A. Yes, I have.

23 MR. BOWERS: I just ask for foundation as to what
24 exhibits those were.

25 MR. NEIMAN: I -- I'm getting to them right now.

1 BY MR. NEIMAN:

2 Q. If I could direct your attention --

3 MR. NEIMAN: And I'm sorry, Ms. Vannozzi, if you could
4 grab 251, 252A and B, 253, 254.

5 Your Honor, just for the record, these were exhibits
6 that were dumped in with a bunch of other exhibits pursuant to
7 certification.

8 BY MR. NEIMAN:

9 Q. If I could direct your attention to Government Exhibit 251,
10 is this one of the, uh, credit card processing agreements you
11 looked at?

12 A. Yes. Universal Merchant Processing Agreement.

13 MR. NEIMAN: If we could, please, bring 251 up. Could
14 you blow up the top portion?

15 (Document displayed in open court.)

16 BY MR. NEIMAN:

17 Q. What is the name of the business for this, uh, Merchant
18 Processing Agreement?

19 A. Universal -- Universal Savings Bank.

20 Q. And what is the name of the business that this specific
21 agreement is for?

22 A. Freedom Books.

23 Q. Okay. Looking down at the bottom of what's been blown up
24 where it says "Length of Current Ownership," what does it say
25 there? If you could see on the...

1 A. "6 years."

2 Q. And looking, uh, to the right-hand side where --

3 MR. NEIMAN: If we could maybe just blow up that one

4 box, the -- the current processing. If we can blow up that one

5 portion. I'm sorry.

6 MR. SCHIFF: What's the date of this document?

7 (Document displayed in open court.)

8 BY MR. NEIMAN:

9 Q. What was the average ticket according to this Merchant

10 Processing Agreement?

11 A. The average ticket is reported to be a hundred and forty

12 dollars.

13 Q. And what is the high ticket?

14 A. It's reported to be \$600.

15 Q. And what is the monthly volume associated with Freedom Books

16 according to, uh, this Merchant Processing Agreement?

17 A. \$10,000.

18 MR. NEIMAN: If we could blow up the bottom portion.

19 MR. SCHIFF: This is a guess. This an estimate.

20 MR. NEIMAN: The signature -- if we could blow up the

21 signature.

22 MR. SCHIFF: Can I --

23 MR. LEVENTHAL: Not now.

24 (Document displayed in open court.)

25

- 1 BY MR. NEIMAN:
- 2 Q. Who signed this document?
- 3 A. Irwin Schiff signed this document.
- 4 Q. And how did he sign it?
- 5 A. As owner.
- 6 Q. And did you see deposits from Universal Merchant Processing
- 7 Agreement going into any of the eight bank accounts associated
- 8 with Freedom Books?
- 9 A. Yes, I did.
- 10 Q. If I could direct your attention to 252B.
- 11 A. (Complies.)
- 12 Q. Do you know what this document is or have you reviewed this
- 13 document before?
- 14 A. Yes, I've reviewed this document before.
- 15 Q. What is this document?
- 16 A. It's a summary of, um, uh, credit card activity that is
- 17 processed by this merchant on behalf of Freedom Books.
- 18 Q. And for what dates does this summary go -- go until? Or
- 19 what's the first date on the first page?
- 20 A. The first date is 1-31-2001.
- 21 Q. And going to the last page --
- 22 MR. NEIMAN: We can go to the last page.
- 23 (Document displayed in open court.)
- 24 BY MR. NEIMAN:
- 25 Q. -- what is the final date on this?

1 A. 4-24-2002.

2 Q. It's page 9. I'm sorry.

3 MR. SCHIFF: Uh, can I ask a question again?

4 MR. LEVENTHAL: No. Objection. Relevancy.

5 MR. SCHIFF: Objection. Relevancy. What is the
6 relevance of this document? Does this show money laundering?
7 drug sales? What? I'm --

8 MR. NEIMAN: Your Honor, do you want me to or...

9 THE COURT: Yeah. You address your question -- if you
10 have an objection on relevance, I'll ask --

11 MR. SCHIFF: Yes, relevance.

12 THE COURT: -- the Government to state the relevance.
13 Go ahead.

14 MR. SCHIFF: What is the relevance?

15 MR. NEIMAN: Your Honor, these documents corroborate
16 the findings of Special -- or Revenue Agent Lowder that
17 Defendant Schiff indeed was generating significant income into
18 his business at Freedom Books.

19 MR. SCHIFF: That -- again, I wanna say that
20 illustrates significant deposits. Whether or not that
21 constitutes income is another question entirely. And I -- I
22 suggest it's not a crime to deposit money in a bank account.

23 THE COURT: Objection's overruled.

24 You may proceed.

25

1 BY MR. NEIMAN:

2 Q. Looking at the total amount deposited pursuant to credit
3 cards on this document -- or total amount of credit cards -- I
4 guess it says "total deposits" and "total amount." What was the
5 total amount?

6 A. The total amount was \$734,400.08.

7 Q. Do you know what this, uh, subtraction is on --

8 A. Yes, I do.

9 Q. What is -- what is the subtraction?

10 A. That's what the merchant charged Freedom Books to process
11 the credit cards on their behalf.

12 Q. And so what was the total amount actually received by
13 Freedom Books according to this document?

14 A. 6,000 -- or excuse me -- \$673,070.55.

15 Q. In addition to this credit card, uh, processing company, did
16 Mr. Schiff -- or have you seen documents relating to additional
17 credit card processing agreements?

18 A. Yes, I have, one additional --

19 Q. If I --

20 A. -- merchant account.

21 Q. If I could direct your attention to Government Exhibit 253.

22 A. (Complies.)

23 MR. NEIMAN: Again, if we could blow up just the top
24 portion.

25

1 (Document displayed in open court.)

2 BY MR. NEIMAN:

3 Q. Whose merchant application is this?

4 A. The business name is Freedom Books.

5 Q. And whose name does it have on the left-hand side under --

6 A. "Irwin A. Schiff."

7 Q. And what does it say -- right above Mr. Schiff's name, what
8 does it say?

9 A. "BUSINESS NAME[]."

10 Q. Looking at the very bottom of what's blown up, do we have --
11 do you see a bank account number listed there?

12 A. Yes, I do.

13 Q. Uh, what is checked on that box or what is the significance
14 of having that bank account number there, if you know?

15 A. That's a, uh, checking account. And that is one of the
16 accounts with Nevada State Bank that I did analyze as far as
17 deposits and expenses.

18 Q. And did you see credit card sales associated with United
19 Bank Card going into this bank account with the last four digits
20 7596?

21 A. Yes, I did.

22 MR. SCHIFF: What bank is that?

23 BY MR. NEIMAN:

24 Q. Looking at, um -- what bank is it?

25 A. It's Nevada State Bank and the last -- the account number

1 ending, last four digits, is 7596.

2 Q. All right. Looking at, uh, the section that says "MERCHANT
3 PROFILE," I guess.

4 MR. NEIMAN: Blow up the -- the entire thing's fine.

5 (Document displayed in open court.)

6 BY MR. NEIMAN:

7 Q. Does this document indicate what the monthly volume is of
8 credit card sales according to, uh, this document?

9 A. "Monthly Volume, 60,000 to 65,000."

10 Q. And what is the "Average Ticket Amount"?

11 A. \$100 to \$499.

12 Q. If I could direct your attention to Government Exhibit 254.

13 A. (Complies.)

14 Q. By way of example, I guess, what is Government Exhibit 254?

15 A. This is a summary of monthly activity for the United Bank
16 merchant account.

17 Q. If we can go to page 4 of this exhibit.

18 (Document displayed in open court.)

19 BY MR. NEIMAN:

20 Q. When you say a "monthly statement," what -- what -- what's
21 reflected -- and I realize that it's impossible to read on the
22 screen -- what's reflected on these documents -- or in this
23 exhibit?

24 A. Basically it shows for a particular month how many credit
25 card sales were processed through this, uh, merchant account and

1 the volume, uh, of the credit cards that were processed.

2 Q. And what was the credit card volume for the statement we're

3 looking at of July of which year?

4 A. This is for July 31st of 2002.

5 Q. Okay. And what was the total amount of credit card sales at

6 Freedom Books during that year [sic]?

7 A. The gross amount for that month was \$34,005.74.

8 Q. And was there some processing fees subtracted out of that?

9 A. Yes, there were. There were settlement fees and discount

10 fees that were taken out of those proceeds to arrive at a net

11 amount that was deposited into the bank account.

12 Q. And what was that net amount?

13 A. \$30,329.86.

14 Q. And is that income to Mr. Schiff?

15 A. Yes, it is.

16 Q. Getting back to Government Exhibit 313, your summary

17 schedule --

18 MR. NEIMAN: If we could blow up the top two lines of

19 the schedule. Never mind.

20 BY MR. NEIMAN:

21 Q. Uh, we've discussed the first line, "Gross Bank Deposits."

22 Are -- are all deposits going into this bank account income to

23 Mr. Schiff?

24 A. No, there [sic] aren't. There are items that are deposited

25 into the account that are not income.

1 Q. And, looking at what's subtracted from "Gross Bank Deposits"
2 on your schedule, are these the items that you're referring to
3 that may not be income, in fact, to Mr. Schiff?

4 A. These are the categories of items that are not income that
5 are deposited into the bank account.

6 Q. If we could start with the first one, "Checks Written to
7 Cash," can you please explain why a check written to cash may
8 not in fact be income to Mr. Schiff?

9 A. Checks written to cash aren't income under the premise that
10 if -- if a business writes a check to cash they -- the
11 possibility exists that that person could use that cash to, uh,
12 pay for additional business expenses and, therefore, we treat it
13 as a nonincome item.

14 MR. SCHIFF: I gotta...

15 BY MR. NEIMAN:

16 Q. Do you know what Mr. Schiff in fact did with the checks
17 written to cash?

18 A. No, I do not.

19 MR. SCHIFF: Can I -- I'm -- I'm getting confused here.

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

22 MR. SCHIFF: I don't -- can I --

23 THE COURT: Wait until cross --

24 MR. SCHIFF: If a check --

25 THE COURT: -- examination.

1 MR. SCHIFF: -- if a check's written to cash, how could
2 if be income anyway? It's an expense.

3 THE COURT: He's deducting it from income.

4 MR. SCHIFF: All right. I don't understand.

5 THE COURT: Overruled.

6 MR. NEIMAN: Thank you.

7 MR. SCHIFF: I object. I don't know.

8 BY MR. NEIMAN:

9 Q. Mr. Lowder, every check written to cash, did you deduct from
10 income?

11 A. Every check written to cash I allowed as a reduction to
12 income.

13 MR. SCHIFF: Can I ask a question here?

14 How can a check written to cash, which is an outgoing
15 item, how could that be income under any basis?

16 THE COURT: He didn't say it was. He didn't say it
17 was. He said he took it out of income. Do you want it to be
18 included? What's your objection?

19 MR. SCHIFF: My -- first of all, I don't know how an
20 expenditure can be income under any circumstances.

21 THE COURT: He -- he just said that he took it out.
22 What are you arguing about?

23 BY MR. NEIMAN:

24 Q. If, in fact, a check written to cash didn't pay for a
25 business expense and instead paid for a vacation of Mr. Schiff,

1 would that be -- should that be deducted out of your calculation
2 here?

3 A. If I knew that that check written to cash was used for
4 something other than business, I wouldn't allow the expense.
5 But, since I cannot tell what these checks were used for, I
6 assume that they were used for business expenses and I back them
7 out a hundred percent.

8 Q. All right. And looking at your -- your entire schedule --
9 the numbers are hard to read -- but for years '97 to 2002, did
10 you total the checks written to cash?

11 A. This schedule doesn't reflect that.

12 By individual year or in total?

13 Q. In total by year.

14 A. By year they are totalled --

15 Q. Okay.

16 A. -- yes.

17 Q. And is that -- does that come from Government Exhibit 320,
18 your summary of all activity of the eight bank accounts?

19 A. Yes, it does.

20 Q. All right. The next item that you reduce or subtract from
21 "Gross Bank Deposits" is "Checks Redeposited." Did you include
22 checks redeposited as income to Mr. Schiff?

23 A. The bank -- when, uh -- when a person writes a check that
24 bounces, the bank notes that check as an expenditure and then
25 they redeposit the check back into gross deposits. Since they

1 have redeposited it back in and it's not income, it has to be
2 backed out.

3 Q. I'm sorry to jump back up to checks written to cash. If we
4 can go year by year starting with 1997, what was the amount of
5 checks written to cash from the eight bank accounts associated
6 with Mr. Schiff and Freedom Books?

7 A. In the year 1997, there was \$9,100 written to cash.

8 Q. How about in the next year?

9 A. In '98, there was 3,900 written to cash.

10 Q. And the next year?

11 A. There were none written to cash in the next year, '99.

12 Q. There were zero written to cash?

13 A. Zero.

14 Q. All right. How about year 2000?

15 A. 2000 had \$32,243.59.

16 Q. And 2001?

17 A. 2001 had \$178,327.26.

18 Q. And you don't know what happened to all those checks written
19 to cash; right?

20 A. No, I don't.

21 Q. All right. And how about for your 2002? What was the
22 amount of checks written to cash?

23 A. The checks written to cash for the year of 2002 were
24 \$353,069.17.

25 Q. Is the fact that these last two years the amounts are in

1 excess of a hundred and fifty thousand dollars did that have any
2 play in your conservative calculation of, uh, Mr. Schiff's
3 business income?

4 A. By taking out the checks to cash in the years of 2001 and
5 2002, it substantially reduces the net business income.

6 Q. All right. Uh, back to "Checks Redeposited." Did you total
7 up those for each year like you did for years, uh, '97 -- like
8 you did for the checks written to cash?

9 A. Yes, I did.

10 Q. And are those -- is that summarized -- or does your summary
11 come from what's been marked as Government's Exhibit 320?

12 A. Yes.

13 Q. All right. Looking at the next line on the -- did you --
14 when you backed out "Non-Taxable Deposits," what's that mean?

15 A. It means that there were funds placed in the bank account
16 and gross deposits that weren't in fact sales of product.

17 Q. All right. Can you give us an example of what some
18 nontaxable deposits you saw coming into the eight bank accounts
19 were?

20 A. Uh, a good example would be there were personal expenses
21 from, uh, friends or -- or followers of Mr. Schiff's where the
22 check in the memo section would indicate either "happy birthday"
23 or "wishing you the best" or it would say "a donation." Uh,
24 there were a couple of checks from, I believe, Social Security
25 and Medicare. Um, but they were items where I could look at the

1 check and say with certainty that it was not a sale of product,
2 that it was a personal item that was deposited into the bank
3 account.

4 Q. Are these items that didn't have an invoice to match up to
5 the deposits?

6 A. No. No, they are not.

7 Q. Okay. And did you subtract those for each year from your
8 gross bank deposit amount?

9 A. Yes, I did.

10 Q. All right. What's the next thing that you backed out of
11 your "Gross Bank Deposits"?

12 A. The next item I backed out were "Transfers Between
13 Accounts."

14 Q. And can you explain why those need to be backed out and not
15 included as income?

16 A. Yes. Mr. -- Mr. Schiff had multiple banking accounts at any
17 given time. In total, from '97 to 2002, he had a total of eight
18 bank accounts, not all at the same time. The -- the accounts
19 changed during those years. Um, and, during those years, there
20 was money transferred from one account to another account. And,
21 when you transfer money from one account to another account,
22 it's shown as a deposit in the second account. But, in fact,
23 it's not income; it's merely a transfer of money from one
24 account to another account.

25 Q. And is that why you backed all those -- some of all the

1 transfers for each year out of your gross bank deposit method --

2 A. Yes --

3 Q. -- that amount?

4 A. -- it is.

5 Q. After you come up with the gross bank deposits and back out
6 everything that was not taxable income, what's the figure that
7 you come up with?

8 A. It's -- the -- the term is "Gross Business Receipts."

9 Q. All right. What's -- and what's that mean just generally?

10 A. I would -- I would generally say it's probably an item I
11 would call a "clean deposit item." In other words, it's all the
12 gross deposits with everything taken out to get down to a number
13 that reflects product sales from the business.

14 Q. All right. Well, looking at product sales, what were the
15 product sales at Freedom Books for year 1997?

16 A. \$534,109.63.

17 Q. How about for year '98?

18 A. Six -- \$636,669.78.

19 Q. And year '99?

20 A. '99 was \$713,718.07.

21 Q. What were the gross product sales for year 2000?

22 A. 2000 was \$848,477.27.

23 Q. And the product sales for year 2001?

24 A. \$621,858.16.

25 Q. And the product sales for 2002?

- 1 A. 358,383.41.
- 2 Q. And that last number is -- is that the year that you had the
3 large checks written to cash?
- 4 A. That's the year that there were checks in excess of 350,000
5 written to cash.
- 6 Q. Did you corroborate your -- this figure comes strictly from
7 your analysis. Does this come from your analysis of the eight
8 bank accounts?
- 9 A. It comes strictly from the analysis of the bank accounts.
- 10 Q. Did you look at any other documents to corroborate or, uh,
11 see whether or not these figures were within the ballpark?
- 12 A. Yes, I did.
- 13 Q. What did you look at?
- 14 A. I looked at a summary of invoices that was prepared that
15 reflected all invoices from 1997 to 2002 that we had in our
16 possession either from the search warrant or from Bill Thomas in
17 Indiana.
- 18 Q. And are those invoices included as the binders that I held
19 up in Government Exhibit 2?
- 20 A. Yes.
- 21 Q. And how about all the boxes of invoices that Mr. Thomas
22 brought at trial marked as Government's Exhibit 91?
- 23 A. Yes. There was a total of, I believe, 16 boxes that we
24 analyzed.
- 25 Q. Was a summary of all those invoices prepared?

1 A. Yes, it was.

2 Q. Did you actually prepare that summary?

3 A. No, I did not. There's --

4 Q. Who did?

5 A. Since there were so many records, 16 boxes of records, we
6 sent those records back to Tennessee to a specialized group that
7 does nothing but input. And we sent the records back to them
8 and they did the input; returned the records to us with a CD
9 which reflected the, uh, input of the documents that they had
10 done on our behalf.

11 Q. Did you verify the accuracy of -- of this CD?

12 A. Yes, I did.

13 Q. How did you verify it?

14 A. I took a sample of invoices for each year and compared 'em
15 to the, uh, summary that was reflected on the CD that they sent
16 back to us.

17 Q. If I could direct your attention to Government Exhibit 323,
18 is this the summary that we were just discussing?

19 A. Yes, it is.

20 MR. NEIMAN: Your Honor, at this time the United States
21 would move into evidence Government's Exhibit 323.

22 MR. CRISTALLI: 323?

23 MR. NEIMAN: Yeah. It's the other side of the CD
24 that --

25 MR. CRISTALLI: Oh.

1 MR. NEIMAN: -- we provided. Sales invoice analysis
2 CD.

3 MR. BOWERS: No objection.

4 MR. CRISTALLI: No objection.

5 MR. SCHIFF: 323?

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

8 MR. SCHIFF: Well, is there a picture of it in here
9 somewhere?

10 MR. NEIMAN: No. It's voluminous.

11 MR. SCHIFF: Well, I object to it in general because
12 it's not income.

13 THE COURT: 323 will be --

14 MR. SCHIFF: It's just deposits --

15 THE COURT: -- received.

16 MR. SCHIFF: -- in the bank.

17 (Government's Exhibit No. 323, received into
18 evidence.)

19 MR. SCHIFF: I'll just object to it.

20 THE COURT: 323 is received.

21 MR. NEIMAN: Thank you, your Honor.

22 BY MR. NEIMAN:

23 Q. Mr. Lowder, in Government Exhibit 323 are the total in --
24 in -- total amount of invoices, the dollar amount on all the
25 invoices, totalled up per year?

1 A. Yes, they are.

2 Q. That was a terrible question. I apologize.

3 Did you compare the total dollar amount on the invoices
4 to the total dollar amount being deposited in the bank account
5 as product sales at some point?

6 A. I compared the total invoices to my net, uh, bank deposit
7 number.

8 Q. And if I could direct your attention to what's been marked
9 as Government's Exhibit 320- -- I'm sorry -- 321. Do you have
10 that in front of you?

11 MR. NEIMAN: Or if I may approach the witness, your
12 Honor?

13 THE COURT: You may.

14 (Document placed before the witness.)

15 BY MR. NEIMAN:

16 Q. Mr. Lowder, is this the analysis that we just discussed
17 referencing Government Exhibit 321?

18 A. Yes, it is.

19 MR. NEIMAN: Your Honor, at this time the United States
20 would move Exhibit 321 into evidence.

21 MR. BOWERS: No objection.

22 MR. CRISTALLI: No objection.

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

25 MR. SCHIFF: Um, let's see. Uh, I wouldn't have an

1 objection because there's -- on the right-hand side, it says
2 "GROSS BUSINESS RECEIPTS." I have no objection to that.
3 However, on the left hand, it says "INCOME."

4 Now, if you change the "INCOME" to "RECEIPTS," I'd have
5 no objection to this document. In one side, it's referring to
6 income and the other side, business receipts. There's a
7 distinction. There's a legal distinction between the two terms.
8 So if you change "INCOME" to "RECEIPTS," I have no objection to
9 the document.

10 THE COURT: The --

11 MR. SCHIFF: Otherwise I have an objection.

12 THE COURT: 321 is received.

13 (Government's Exhibit No. 321, received into
14 evidence.)

15 MR. NEIMAN: If we may publish Government Exhibit 3- --

16 THE COURT: You may.

17 MR. NEIMAN: -- -21?

18 (Document displayed in open court.)

19 BY MR. NEIMAN:

20 Q. Mr. Lowder, if you can, I guess, explain what this chart is.

21 A. Basically it's a comparative chart. I took -- I -- I took
22 the number from this exhibit, um, 323, which shows total
23 invoices by year and I compared that number to my net business
24 income to --

25 Q. And that would --

1 A. -- to give me an idea if I was -- if -- if I was in the
2 ballpark, uh, as far as my bank deposit method. This was a
3 means of confirming that my bank deposit method was accurate.

4 Q. The left side comes from the summary of invoices?

5 A. The left side comes from this -- this document.

6 Q. And the right side, does that come from your chart which
7 comes from your analysis of the eight bank accounts?

8 A. Yes.

9 MR. NEIMAN: Uh, if we could maybe blow up by year,
10 starting with year '97. If we could -- is it impossible to blow
11 up both lines -- or both columns? I don't know. Uh, yeah.

12 BY MR. NEIMAN:

13 Q. If you could testify, I guess, as to what the total -- total
14 dollar amount reflected on the invoices for the year 1997 was.

15 A. The invoices reflected \$489,267.54.

16 Q. And what was your calculation as to the product sales at
17 Freedom Books?

18 A. \$534,109.63.

19 Q. All right. How about for year '98?

20 A. '98 had income from the invoices of \$614,164.76. The income
21 per the bank deposit analysis was \$636,669.78.

22 Q. All right. How about for year '98 -- or '99?

23 A. Nine.

24 Q. I'm sorry.

25 A. For the year '99, the income per the invoices was

1 \$721,646.55 and the income per the bank deposit analysis was
2 \$713,718.07.

3 Q. All right. For year 2000?

4 A. For 2000, the income per the invoices was \$831,816.41. The
5 income for the bank deposits was \$848,477.27.

6 Q. How about for 2001?

7 A. 2001, income per invoices, \$786,616.08; income per bank
8 deposits, \$621,858.16.

9 Q. And how about for 2002?

10 A. For 2002, income per invoices, \$723,602.19; income per bank
11 deposit analysis, 358,383.41.

12 Q. The numbers are relative -- would you say that the numbers
13 are relatively close for all the years but the final year?

14 A. The numbers are relative -- relatively close for '97, '98,
15 '99, and 2000.

16 Q. And can you explain, based upon what you saw and the
17 activity of the bank accounts, for what the discrepancy is for
18 years 2001 and 2002?

19 A. The discrepancy for 2001 and 2002 is very close to the
20 checks that were written to cash that I backed out since I
21 didn't know what -- how those checks were used.

22 Q. Mr. Lowder, in the summary of invoices, Government's
23 Exhibit, uh, 323, the -- the big binder --

24 A. Um-hum.

25 Q. -- do you -- from reading that document or looking at the

1 document can you tell how much -- how many sales for cash were
2 sold at Freedom Books?

3 A. Yes, I can. Because the input that we had done in Tennessee
4 broke the sales down between checks, credit cards, and cash
5 per -- per invoice that they looked at.

6 Q. And, in your review of the bank records, the eight bank
7 accounts, did you see cash being deposited into Freedom Books's
8 bank accounts?

9 A. Very little.

10 Q. Did you prepare a chart comparing the amount of cash sales
11 per invoice versus the amount of cash that was actually
12 deposited into the bank accounts?

13 A. Yes, I did.

14 Q. Uh, if I could direct your attention to Government
15 Exhibit 324. I may have it again. I apologize.

16 Do you have it or not?

17 A. I do have it.

18 Q. You have it? Okay.

19 A. Yeah.

20 Q. Is that the chart that we just referenced -- that we just
21 referenced?

22 A. Yes, it is.

23 MR. NEIMAN: Your Honor, at this time the United States
24 would move into evidence Government Exhibit 324.

25 MR. BOWERS: Is this the cash chart?

1 MR. NEIMAN: Yes.

2 MR. BOWERS: No objection.

3 MR. CRISTALLI: No objection.

4 MR. SCHIFF: Well, I have my standard objection, but...

5 THE COURT: Standard objection is what?

6 MR. SCHIFF: Well, number one, the -- depositing money
7 into a bank accounts is not evidence of any crime and depositing
8 money to a bank account is not evidence of income, taxable
9 income.

10 THE COURT: No --

11 MR. SCHIFF: That's all.

12 THE COURT: -- that's -- 324 is received.

13 (Government's Exhibit No. 324, received into
14 evidence.)

15 MR. NEIMAN: Thank you.

16 May we publish Government Exhibit, uh, 324?

17 THE COURT: Yes.

18 (Document displayed in open court.)

19 BY MR. NEIMAN:

20 Q. Mr. Lowder, if you could explain, I guess, what this chart
21 is.

22 A. This chart is just an analysis between the cash that was
23 indicated on the invoices, uh, and the actual cash that was
24 deposited into the bank accounts, the eight bank accounts,
25 for --

1 Q. And that's -- I'm sorry.

2 A. -- for the periods of 1997 through 2002.

3 Q. And that's broken down by year?

4 A. Yes, it is.

5 Q. Uh, if we did look just at the totals for the, uh -- for the
6 three, what was the total amount of cash, product sales for cash
7 according to the invoices for the --

8 A. The total?

9 Q. Yeah, the total for the --

10 A. The --

11 Q. -- six years.

12 A. -- the total sales that were cash per the invoices was
13 \$199,949.47.

14 Q. And what was the total amount of cash that you actually saw
15 being deposited into the bank accounts?

16 A. It was a total of \$13,780 deposited into the bank accounts.

17 Q. Did you hear any testimony here at trial regarding whether
18 or not an invoice was written up every time a cash sale was
19 made?

20 A. No. I heard testimony that invoices were not written up
21 every time a cash sale was made.

22 Q. And whose testimony was that?

23 A. That was Toni Mitchell's testimony. And I believe Michelle
24 also mentioned that, Michelle Degrosellier.

25 Q. Mr. Lowder, did you hear the testimony of IRS Special Agents

1 Lynn Rose and Sara Brana regarding the Christian Patriot
2 Association?

3 A. Yes, I did.

4 Q. And what is -- what was the Christian Patriot Association
5 primarily?

6 A. It was a -- it was a -- I believe it was labeled a -- a
7 banking -- a bank account -- a private banking institution.

8 Q. Have you heard the term "warehouse bank" before?

9 A. Yes, I have.

10 Q. Okay. Was Christian Patriot Association a warehouse bank?

11 A. I believe that was what it was called.

12 Q. Did you hear the testimony regarding the checks that were
13 written to Freedom Books actually being sent directly to the
14 Christian Patriot Association?

15 A. Yes. I -- I heard testimony that the checks that were
16 obtained by Freedom Books for sales of products were sent to the
17 warehouse bank.

18 Q. If those checks went to the warehouse bank instead of these
19 bank accounts which you analyzed, would you know about them in
20 computing what your income amount is?

21 MR. SCHIFF: Objection, because the objection is
22 confusion here. When I used the CPA, I didn't have an office.
23 There was no Freedom -- I did that when I was in New York. If
24 you look at the dates --

25

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

3 MR. SCHIFF: Foundation. What are the dates when I
4 used the CPA checking account? That was before I had Freedom
5 Books; that's before I had bank accounts in Las Vegas. What was
6 the dates of those CPA checks?

7 THE COURT: Well, that's -- that's not the question.
8 That's not the question that is pending. You can ask that on
9 cross-examination --

10 MR. NEIMAN: I could --

11 THE COURT: -- if you wish.

12 MR. NEIMAN: -- simplify the question possibly. Maybe.

13 BY MR. NEIMAN:

14 Q. Mr. Lowder, did you include any deposits or did you see any
15 deposits in your analysis where -- the bank -- which may have
16 been sent to a warehouse bank?

17 A. No, I did not.

18 Q. And why is that? Did you know about 'em?

19 A. No, I did not.

20 Q. You also -- did you hear testimony, Mr. Lowder, about
21 Prosper International Limited or P.I.L.L.?

22 A. Yes, I did.

23 Q. What -- what was P.I.L.L.?

24 A. P.I.L.L. was a -- an offshore, um, savings account, I
25 believe, is what it was labeled. But, basically, people sent --

1 people could send money there, offshore, where the IRS could
2 not, uh, reach that money. They were then giving -- given a
3 credit card that they could use for, uh, payments of items to --

4 MR. SCHIFF: Objection.

5 THE WITNESS: -- to purchase items.

6 MR. SCHIFF: Objection. Was that illegal to have an
7 offshore account?

8 THE COURT: That's not the point of the question --

9 MR. SCHIFF: Well, the implication, your Honor --

10 THE COURT: -- Mr. Schiff. I suspect that he's going
11 to testify on this as well that he did not include those moneys.
12 If you want them included, then your objection may be good.

13 MR. SCHIFF: Well, the point is when I -- when I did
14 send money there, I wrote a check from my bank accounts which is
15 easily traceable. But that's not doing anything illegal.

16 MR. NEIMAN: Your Honor --

17 MR. SCHIFF: I didn't take --

18 MR. NEIMAN: -- I could address this with a couple
19 questions actually.

20 THE COURT: Go ahead.

21 BY MR. NEIMAN:

22 Q. Mr. Lowder, did every time Mr. Schiff sent a check -- sent
23 money to P.I.L.L. did he write a check directly to P.I.L.L.?

24 A. Not every time. There were times when he did, but there
25 were other times that Bill Thomas would send a cashier's check,

1 uh, to Freedom Books in Las Vegas that would be forwarded on to
2 the P.I.L.L. account.

3 Q. And is that more difficult for you to see the trace or see
4 how it was sent to P.I.L.L. if used through a cashier's check?

5 A. Yes, it was very difficult to trace because what happened is
6 Bill Thomas would write a check to Citizens Bank and then he
7 would get a cashier's check in lieu of that check and send that
8 to Freedom Books in Las Vegas. So all you would see on the
9 initial check was simply a check written to Citizens Bank which
10 didn't tell you, uh, the final source -- or the final
11 destination of those funds.

12 Q. Did you -- did you summarize all the checks or cashier's
13 checks associated with Mr. Schiff that were sent to P.I.L.L.?

14 A. Yes, I did.

15 Q. And is that summary reflected in Government Exhibit 322,
16 which you may or may not have?

17 MR. NEIMAN: Your Honor, if I may approach?

18 THE COURT: You may.

19 (Discussion between Mr. Neiman and

20 Mr. Ignall.)

21 BY MR. NEIMAN:

22 Q. Now, Mr. Lowder, did you include any P.I.L.L. deposits in
23 your bank deposit analysis that we've been looking at?

24 A. No. I considered them transfers from another bank.

25 Q. And -- and -- okay. Did you happen to see -- do you know

1 whether or not you saw all money orders that were sent to
2 P.I.L.L.? Would you have seen them through the bank records?

3 A. I wouldn't have seen money orders, no.

4 Q. How about if Mr. Schiff directly sent cash to P.I.L.L.?
5 Would you have seen that reflected somehow?

6 A. No, I wouldn't have been able to trace the cash if it was
7 sent to P.I.L.L. either.

8 MR. SCHIFF: Objection, your Honor. He's making -- he
9 didn't see anything like that. I mean, his -- his suggestion is
10 that I did send cash to P.I.L.L. and I did send money orders to
11 P.I.L.L. when it's obviously [sic] that all the money orders
12 were deposited to my account. I mean, there's an inference here
13 that I did certain things --

14 THE COURT: Well, look --

15 MR. SCHIFF: -- because he didn't see it.

16 THE COURT: He said he didn't see any. So that was the
17 answer to the question.

18 MR. SCHIFF: Did he say he saw cash sent --

19 THE COURT: No. He said he didn't see any.

20 MR. SCHIFF: But the --

21 THE COURT: He wouldn't see anything like that.

22 BY MR. NEIMAN:

23 Q. And you didn't see money orders -- did you see money orders
24 to P.I.L.L.?

25 A. No, I did not.

1 Q. What were the only payments to P.I.L.L. that you saw?

2 A. The only payments I saw going to P.I.L.L. were cashier's
3 checks or checks specifically out of a bank account.

4 Q. And is a summary of those checks reflected in Government
5 Exhibit 322?

6 A. Yes, it is.

7 MR. NEIMAN: Your Honor, at this time, the United
8 States would move into evidence Exhibit 322.

9 THE COURT: Any objection to 322?

10 MR. CRISTALLI: No objection.

11 THE COURT: Bowers?

12 MR. BOWERS: No, that's fine, Judge.

13 THE COURT: Schiff?

14 MR. SCHIFF: No. Go ahead put it in.

15 THE COURT: 322 is received.

16 (Government's Exhibit No. 322, received into
17 evidence.)

18 MR. NEIMAN: Thank you.

19 May we publish --

20 THE COURT: You may.

21 MR. NEIMAN: -- Government Exhibit 322.

22 (Document displayed in open court.)

23 BY MR. NEIMAN:

24 Q. Again, a difficult schedule to read. But, Mr. Lowder, if
25 you could, I guess, briefly summarize what's going on in this

1 chart.

2 A. This is a chart summarizing the payments that I could trace
3 going to Prosper International Trust in the years of 1997
4 through 2001.

5 Q. And, I guess, what information is contained for each entry?

6 A. Each entry contains the source of the funds, whether it be,
7 uh, the bank; it shows the date that, uh -- that it went out; it
8 shows the check number; it shows the payee and the amount; and
9 then any remarks that was on the check or the cashier's check.

10 Q. All right. I guess -- and that all came from the
11 Government's exhibits of the eight bank accounts? These checks
12 all came from within these accounts?

13 A. Yes, either the cashier's checks or the specific checks did.

14 Q. What were the total payments to P.I.L.L. that you found, uh,
15 for years '97 and 2001?

16 A. A total of \$148,400.

17 Q. If we could get back to your, uh, summary chart, Government
18 Exhibit 313, I think we had left off -- almost done there.

19 MR. NEIMAN: If we could blow up just the bottom three
20 lines or so, from "Business Gross Receipts."

21 (Document displayed in open court.)

22 BY MR. NEIMAN:

23 Q. What's the next calculation you had to make in order to
24 determine what the taxable income to Mr. Schiff was for years
25 '97 through 2002?

1 A. The next calculation I had to do was to determine the
2 business expenses that were paid out of these eight checking
3 accounts.

4 Q. And how did you determine what the business expenses were?

5 A. I analyzed each and every check out of those accounts.

6 Q. And did you total those up for each year?

7 A. Yes, I did.

8 Q. What types of expenses did you see?

9 A. What I would seem to be normal reoccurring utilities;
10 purchase of product; books; uh, publishing costs; light; power;
11 water; um, norm- -- what I would deem to be normal operating
12 expenses of a business.

13 Q. And, after you reduced gross business receipts or product
14 sales from business expenses, what's the final number you get?

15 A. The final number is the business income from Freedom Books.

16 Q. And where is business income supposed to be reported on the
17 1040?

18 A. Line 12.

19 Q. I -- I -- I think we went through the numbers earlier. I
20 guess real -- real quickly if you could read off what they were
21 for year '97?

22 A. '97 was -- was business income of \$141,916.56.

23 Q. And how about 1998?

24 A. '98 was 136,177.41.

25 Q. And the next year?

1 A. '99 was 100,855.31.

2 Q. And the next year?

3 A. 2000 was 103,418.72.

4 Q. And 2001?

5 A. 2001 was 101,823.07.

6 Q. And 2002?

7 A. 2002 was 74,201.53.

8 Q. And this is taking into consideration the conservative
9 decisions that you made for each year?

10 A. Yes. In fact, on the businesses expenses, if there was some
11 uncertainty as to whether the expense was a allowable business
12 expenses -- expense or not, I would allow that expense as a
13 business expense.

14 MR. NEIMAN: Ms. Vannozzi, would you please provide the
15 witness with Government's Exhibits 286 through 288?

16 THE CLERK: 286 and 287, I don't seem to have.

17 MR. NEIMAN: 288. Is 288 admitted? Do you know?

18 There was a certification for this one as well.

19 THE CLERK: It was not mentioned --

20 MR. NEIMAN: All right.

21 THE CLERK: -- as stipulated in.

22 MR. NEIMAN: Your Honor, pursuant to the certification
23 under 902(11), the United States would move for the admission of
24 Government Exhibit 288.

25 THE COURT: Any objection?

1 MR. BOWERS: I'm sorry. What was that, your Honor?

2 THE COURT: 288?

3 MR. CRISTALLI: No objection.

4 MR. SCHIFF: What's 288?

5 MR. BOWERS: And I -- that's fine, your Honor.

6 THE COURT: Thank you.

7 MR. SCHIFF: What is this? Let me see. What is this?

8 MR. NEIMAN: 288. It's in there.

9 MR. SCHIFF: You got to put all these together on
10 cross-exam.

11 THE COURT: Any objection to 288?

12 MR. BOWERS: I have none, your Honor. Mr. Schiff --

13 THE COURT: Yes.

14 MR. BOWERS: -- is still considering it I think.

15 THE COURT: Thank you.

16 MR. SCHIFF: 280- -- what is 288? Yeah, 288. Yeah,
17 object to it. Yeah, I object. It's nothin'.

18 MR. NEIMAN: Your Honor --

19 MR. SCHIFF: Why is 288 going in?

20 MR. NEIMAN: Your Honor, in Government Exhibit 288,
21 Mr. Schiff makes an admission as to what his annual income is.
22 It's different from what he reported on his 1040.

23 MR. SCHIFF: First of all, this -- this -- this thing
24 is not -- this is an application where I could put any amount in
25 for whatever reason I want. That doesn't mean it's accurate if

1 I wanna put any amount in.

2 THE COURT: Okay. 288 is received.

3 MR. NEIMAN: Thank you.

4 If I may --

5 MR. SCHIFF: This --

6 MR. NEIMAN: -- approach the witness --

7 MR. SCHIFF: -- this does not --

8 MR. NEIMAN: -- with it?

9 MR. SCHIFF: -- mean that I have income in a taxable
10 sense. This does not mean I believe I have taxable income.

11 THE COURT: Okay. I allowed the --

12 MR. SCHIFF: Pardon me?

13 THE COURT: -- I've allowed the exhibit to be received
14 into evidence. That is the ruling.

15 (Government's Exhibit No. 288, received into
16 evidence.)

17 MR. NEIMAN: Your Honor, if we could begin with
18 Government Exhibit 286 and if we may publish that?

19 THE COURT: You may.

20 MR. NEIMAN: Thank you.

21 (Document displayed in open court.)

22 BY MR. NEIMAN:

23 Q. What is Government Exhibit 286?

24 A. I believe it's an application form for Great Expectations.

25 Q. On the 286.

1 A. Oh, 286. Oh, I'm sorry.

2 286 is a application for The Men's Wearhouse Credit
3 Card Application.

4 Q. And does the amount listed on this application corroborate
5 what you determined to be Mr. Schiff's income based upon the
6 bank deposit analysis?

7 A. It's pretty close.

8 Q. Uh, what's the amount of income Mr. Schiff puts down for --
9 on his Credit credit card application?

10 A. He puts down \$75,000.

11 Q. All right. If we can look at the signature.

12 MR. SCHIFF: Did -- did -- was there a question whether
13 this can go in or not?

14 THE COURT: It's admitted.

15 MR. SCHIFF: It is admitted? Okay.

16 BY MR. NEIMAN:

17 Q. Do -- do you recognize that signature?

18 A. Yes, I do. It's Mr. -- it's Irwin Schiff.

19 Q. And what is the date?

20 A. 7-7 of 1999.

21 (Document displayed in open court.)

22 BY MR. NEIMAN:

23 Q. Looking at Government Exhibit 288, what is Government's
24 Exhibit 288?

25 A. This document is the, uh, application for Great

1 Expectations.

2 Q. Whose application is it?

3 A. Irwin Schiff.

4 Q. And where do you see it, down at the bottom?

5 A. Yes, I do.

6 MR. NEIMAN: If we could highlight or open the box that
7 says "My Annual Income Is."

8 BY MR. NEIMAN:

9 Q. What -- what box was did -- checked for Mr. Schiff's annual
10 income?

11 A. A hundred thousand plus.

12 Q. And is that corroborated with -- does that corroborate what
13 your determination was --

14 A. That's very --

15 Q. -- for Mr. Schiff's --

16 A. -- close to my numbers.

17 MR. NEIMAN: If I may have a moment, your Honor?

18 THE COURT: You may.

19 (Pause in the proceedings.)

20 BY MR. NEIMAN:

21 Q. Mr. Lowder, I'm gonna change gears and move to Defendant
22 Neun. Do you know how much money Defendant Neun made for
23 working at Freedom Books?

24 MR. CRISTALLI: Objection. Foundation. Calls for
25 speculation.

1 THE COURT: Sustained.

2 MR. NEIMAN: On what basis, your Honor?

3 THE COURT: Foundation.

4 BY MR. NEIMAN:

5 Q. Did you -- did you hear testimony here about Defendant Neun,
6 uh, participating or working at Freedom Books?

7 A. Yes, I did.

8 Q. And did you hear testimony about Defendant Neun being paid
9 for her employment at Freedom Books?

10 A. Yes, I did.

11 Q. Have you seen any documents or records to substantiate or
12 say how much Defendant Neun made for working at Freedom Books?

13 A. I've seen records that indicate payment, but I can't tell
14 you the total amount.

15 Q. Have you found any W-2's associated with Defendant Neun?

16 A. No, I haven't.

17 Q. How about any 1099's?

18 A. No.

19 Q. Have you reviewed any bank accounts associated with
20 Defendant Neun?

21 A. No.

22 Q. What testimony do you recall hearing about the amount of
23 money Defendant Neun was paid for working at Freedom Books?

24 A. I heard testimony from Michelle Degrosellier that Cindy was
25 paid \$600 per week in cash.

1 Q. And for what years?

2 A. Michelle worked at Freedom Books from 19- -- April of --
3 approximately 18 -- April of 1999 until April of 2000.

4 Q. And if Ms., um, Neun actually received \$600 a week in cash,
5 would that be income to her for her employment?

6 A. Yes, it would.

7 MR. CRISTALLI: Your Honor, I'm gonna object. I
8 believe it misstates the evidence. I think the correct
9 testimony was that it was periodic payments. I do not believe
10 that it was regular payments.

11 THE COURT: Your objection is noted. The jury will,
12 uh, use its own recollection of the testimony.

13 MR. CRISTALLI: Thank you.

14 BY MR. NEIMAN:

15 Q. In addition to, uh, hearing testimony that she was paid by
16 Michelle Degrosellier for her employment, did you see any
17 records that would show other income to Defendant Neun?

18 MR. CRISTALLI: Objection.

19 BY MR. NEIMAN:

20 Q. Potentially other income --

21 MR. CRISTALLI: Objection.

22 BY MR. NEIMAN:

23 Q. -- to Defendant Neun?

24 MR. CRISTALLI: Foundation. It's gonna call for
25 speculation.

1 THE COURT: Well, he can answer the question either
2 "yes" or "no" and a foundational question will follow.

3 THE WITNESS: Yes, I did.

4 BY MR. NEIMAN:

5 Q. What types of records did you see?

6 A. I -- I saw checks written out of the Freedom Books's Nevada
7 State Bank accounts for the expenses of Cindy Neun, including
8 utility bills, uh, such as gas, power, water, um, cable. Those
9 types of items.

10 MR. CRISTALLI: Objection. Move to strike as a -- as a
11 classification of income based on that, uh, evidence.

12 MR. NEIMAN: I -- I can ask one more foundation -- or
13 one more, I guess, question about accounting principles which
14 may establish...

15 THE COURT: You may.

16 BY MR. NEIMAN:

17 Q. Mr. Lowder, if an employee or somebody works at a business
18 and instead of getting -- drawing a salary each week but instead
19 had bills paid on their behalf, is that considered income to
20 that employee?

21 MR. CRISTALLI: Objection. Misstates the evidence.

22 THE COURT: The jury will -- will use its own
23 recollection of the prior testimony.

24 You may ask -- answer the question.

25 THE WITNESS: That -- that could be income to that

1 individual.

2 BY MR. NEIMAN:

3 Q. Can you give me maybe a better example than the one I
4 just --

5 A. Probably a better example -- first, I should clarify that
6 income to an employee doesn't have to be in the form of a check
7 written to that employee. It could be in -- in the -- another
8 form, either a payment on their behalf or a payment to a third
9 party on their behalf.

10 And a good example would be an employee that's provided
11 with an automobile by an employer. If that employer pays for
12 that automobile, pays the monthly lease payment or the purchase
13 payment on behalf of that employee, that employee is still
14 compensated and still has to pick up the value or a portion of
15 that value of that automobile. It's compensation to 'em.

16 Q. And did you see bills being paid by Defendant -- Defendant
17 Neun's bills being paid out of Freedom Books's bank accounts?

18 A. Yes, I did.

19 Q. Are Social Security benefits normally taxable to an
20 individual?

21 A. When -- when you use the word "normally," no.

22 Q. When are Social Security benefits taxable?

23 A. If Social Security benefits are received fraudulently, they
24 would be includable in income.

25 MR. SCHIFF: Pardon me? What was the answer? Oh, I'm

1 sorry.

2 BY MR. NEIMAN:

3 Q. And -- so if the determination is made that benefits --

4 MR. CRISTALLI: Your Honor, I'm gonna object. This is
5 outside the scope of this particular, uh, witness's, uh,
6 expertise. He's a computation expert. Now you're gettin' into
7 his, uh, determinations on disability and Social Security?

8 MR. NEIMAN: Not at all, your Honor. The witness is
9 simply stating that if these benefits were obtained through
10 fraudulent means, they are taxable income which, therefore,
11 would have triggered the filing requirements and required
12 Defendant Neun to pay -- or required Defendant Neun to file a
13 tax return.

14 MR. CRISTALLI: Yeah, and that means -- I object to any
15 testimony from this witness that calls for speculation in terms
16 of the ultimate issue for the trier of fact in this particular
17 case.

18 MR. NEIMAN: I'm not going to elicit any testimony
19 regarding the ultimate issue. I'm just trying to explain the
20 principle.

21 THE COURT: The witness is capable of testifying based
22 on his expertise as a tax computation expert and I will allow
23 the, uh, question. Objection's overruled.

24 Go ahead.

25

1 BY MR. NEIMAN:

2 Q. Now I got to remember the question.

3 I think the question was: If -- if benefits were
4 obtained through fraudulent means, are they taxable to the
5 recipient?

6 A. Yes, they are.

7 Q. Looking -- or taking into consideration the testimony about,
8 uh, Ms. Neun being paid by Michelle Degrosellier in year -- for
9 years '99 and 2000, the bills being paid on her behalf, and
10 these Social Security benefits if -- if they were all added
11 together would that be -- would that amount be high enough to
12 require Defendant Neun to file a tax return?

13 MR. CRISTALLI: Objection. Foundation. Calls for
14 speculation. Do we have a particular number? Did we do a
15 calculation --

16 MR. NEIMAN: This is a --

17 MR. CRISTALLI: -- with regard to that?

18 MR. NEIMAN: -- hypothetical, your Honor. He's an
19 expert.

20 MR. CRISTALLI: It's not a hypothet- --

21 THE COURT: You can cross-examine him on the
22 hypothetical.

23 MR. CRISTALLI: We --

24 THE COURT: Overruled.

25 MR. CRISTALLI: -- don't we have to have the numbers

1 though?

2 MR. NEIMAN: We're gettin' -- we're gettin' to that.

3 THE WITNESS: If the summation of those items was --
4 exceeded the threshold for filing a tax return, that person
5 would be required to file a tax return.

6 BY MR. NEIMAN:

7 Q. And what are -- do you know what those thresholds are for
8 each year in which someone has to file a tax return?

9 A. I do know what they are.

10 Q. Do you know 'em off the top of your head or do you want to
11 be referred to a specific --

12 A. I don't know off the top of my head.

13 Q. If I could refer you to what's been marked as Government's
14 Exhibit 325, what are the filing requirements -- or what are the
15 income tax requirements that require an individual to file a tax
16 return for year 1999?

17 A. For 1999, an individual's income would have to exceed
18 7,050 --

19 MR. SCHIFF: Objection.

20 THE WITNESS: -- dollars.

21 MR. SCHIFF: Objection. He's testifying -- that's --
22 he's testifying as to the law; he's not testifying about
23 calculations. He's making representations as to the law.
24 Therefore, I reserve my right to cross-examine him on the law.

25 MR. CRISTALLI: Your Honor, um, I'd have to agree with

1 Mr. Schiff on this one. He is a expert on computation, not an
2 expert in terms of the threshold law as required by Social
3 Security and/or Disability.

4 MR. NEIMAN: Your Honor, if the Court wants to take
5 judicial notice as to the minimum threshold filing for years '99
6 through 2000.

7 THE COURT: Do you have it?

8 MR. NEIMAN: I -- I believe it is located in Government
9 Exhibit 325.

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

11 MR. NEIMAN: Down at the bottom.

12 MR. CRISTALLI: This is not generated by the Office of
13 the Disability or Social Security; it's generated by the
14 government.

15 MR. NEIMAN: No. The minimum income threshold filing
16 requirement.

17 THE COURT: Minimum income threshold doesn't -- isn't
18 Social Security; it's the Code.

19 MR. CRISTALLI: Oh, the Code. But there's -- this is
20 not -- I don't know where it's comin' from, these numbers are
21 comin' from.

22 MR. NEIMAN: Your Honor, if we take our afternoon
23 break, I could --

24 THE COURT: We'll take our --

25 MR. NEIMAN: -- we could pull it for you.

1 THE COURT: -- afternoon break and go year by year.

2 We'll be in recess for 15 minutes.

3 (Jury leaves the courtroom at 3:05 p.m.)

4 MR. IGNALL: Your Honor --

5 THE COURT: Yes.

6 MR. IGNALL: -- is everyone still here? May I address
7 one issue?

8 THE COURT: You may.

9 MR. IGNALL: Truth be told, I'm not sure if this is
10 Jencks or not, but Revenue Agent Lowder -- Mr. Schiff, you might
11 want to pay attention to this -- Revenue Agent Lowder has been
12 taking notes during the course of the trial in preparing for his
13 summary testimony. We've made copies of that. We'll make them
14 available. Like I said, I'm not sure if that really is Jencks
15 Act material, but...

16 THE COURT: I doubt it. But, if anyone wants them,
17 they'll be available.

18 MR. BOWERS: Your Honor, before we break, may I ask a
19 quick question? The Court made some reference to happy campers,
20 uh, doctrine in a Ninth Circuit case considering, um, the
21 relevance of various witnesses, was -- was that --

22 THE COURT: Well, I talked about satisfied customers,
23 sometimes referred to as "happy campers" in other cases. I'm
24 not sure the Ninth Circuit used it. But it was the same -- it's
25 the same principle.

1 MR. BOWERS: Right. And I -- I guess I was just
2 wondering -- the Court doesn't have to tell me, but I thought it
3 might be helpful in preparing -- was that in reference to, like,
4 the Fletcher case in the Ninth Circuit or...

5 THE COURT: What?

6 MR. BOWERS: Was that from the Fletcher case in the
7 Ninth Circuit or... You don't have to tell me I don't think. I
8 was just --

9 THE COURT: The what? Where they used the term "happy
10 campers" or where they --

11 MR. BOWERS: Yeah, where --

12 THE COURT: -- where they enunciated the principle?

13 MR. BOWERS: Where the -- that the Court was relying on
14 for the principle, was that that case?

15 THE COURT: No, it was -- it was not Fletcher.

16 MR. BOWERS: Okay. Thank you, your Honor.

17 MR. NEIMAN: Your Honor, in Government's Proposed Jury
18 Instruction 34, the requirements are laid out citing Section
19 6012, I guess, of Title 26. We could pull the specific, uh,
20 dollar amounts from the actual IRS publications right now in
21 order to...

22 THE COURT: Unless you want to withdraw the objection,
23 that's what's gonna happen. We'll --

24 MR. CRISTALLI: Well, Judge, I just got --

25 THE COURT: -- we can do it --

1 MR. CRISTALLI: -- I have to validate it. I don't -- I
2 mean, I can't just guess and say that's the correct number. I
3 mean, we have to make sure that that is -- that is the threshold
4 number.

5 MR. IGNALL: Right. We'll get that --

6 MR. CRISTALLI: I mean --

7 MR. IGNALL: -- during the break.

8 MR. CRISTALLI: -- I would love to stipulate. But, I
9 mean, I -- I have to know the real number.

10 MR. IGNALL: We'll get that during the break, your
11 Honor.

12 THE COURT: All right.

13 MR. CRISTALLI: I'm not trying to be -- you know, be
14 difficult here. I just think it's important that we have the
15 correct number.

16 THE COURT: He's gonna show you during the break.

17 MR. CRISTALLI: Okay.

18 (Recess from 3:09 p.m. to 3:22 p.m.)

19 THE CLERK: All rise.

20 THE COURT: Thank you. Please be seated.

21 THE CLERK: We need Mr. Cohen and Ms. Neun.

22 THE COURT: They are here.

23 Now, do we have that matter resolved?

24 MR. BOWERS: Well, no. I don't know about that.

25 THE COURT: All right. Hand them up.

1 (Document handed to the Court.)

2 (Pause in the proceedings.)

3 MR. BOWERS: Judge, can I have a moment?

4 THE COURT: Go ahead.

5 (Discussion among counsel.)

6 THE COURT: Ready to bring the jury?

7 (Pause in the proceedings.)

8 MR. CRISTALLI: Does the judge have a copy of this?

9 MR. NEIMAN: Yes.

10 MR. CRISTALLI: Your Honor, should we address some of
11 this right now or -- I have one issue with regard to it that I
12 don't -- I'm just confused about a little bit.

13 THE COURT: Okay.

14 MR. CRISTALLI: I'm looking at, um -- well, I'll start
15 out -- start with 2002 and go backwards.

16 It appears that it says -- under, um, the 2002 filing
17 requirements for taxpayers, it says single, parentheses,
18 including divorced and legally separated; single under 65, 65
19 years or older; under 65 would be \$7700. But then it says head
20 of household under 65, 99 -- \$9900.

21 So I'm not quite sure what the difference is between
22 single and head of household, the distinction between the two.
23 I don't know what "head of household" means versus "single."
24 And I don't -- and there's a two -- it's a little bit more than
25 a -- it's a \$2200 discrepancy.

1 And that's pretty much consistent with 2001. It's 7450
2 compared to 9550. And then 1999 -- no. 2000, it's 7200 versus;
3 9250. And, then again, it's 7050 versus 9100 for 1999. I'm not
4 sure what the difference between single and head of household is
5 and whether or not Ms. Neun would apply to head of household
6 versus single.

7 THE COURT: Okay.

8 MR. NEIMAN: Your Honor, head of household would
9 require the taxpayer to have dependents living with her under
10 the age of --

11 MR. IGNALL: I don't know. It's in the publication.

12 MR. NEIMAN: These are questions well beyond my area of
13 expertise.

14 Bottom line is what we could do is we could avoid
15 having discussion with, uh, the Revenue agent about the
16 requirements. At the end -- if evidence is presented that she
17 may be entitled to the head of household, the judge -- your
18 Honor, you could instruct the jury as to what the requirement
19 is.

20 THE COURT: Okay.

21 MR. NEIMAN: And we'll --

22 MR. CRISTALLI: Okay.

23 MR. NEIMAN: We'll redact it if our...

24 THE COURT: All right.

25 MR. CRISTALLI: Okay.

1 MR. SCHIFF: You're talking about Section 1? Are they
2 talking about Section 1, the Code?

3 MR. CRISTALLI: Well -- and so we're not going to then
4 discuss or admit Government's Exhibit 325 or publish 325 --

5 MR. NEIMAN: A redacted --

6 MR. CRISTALLI: -- correct?

7 MR. NEIMAN: -- a redacted copy of 325 will be
8 published and admitted into evidence.

9 MR. IGNALL: We'll take out the bottom line.

10 MR. CRISTALLI: Right.

11 MR. BOWERS: Judge, just for the record before the jury
12 comes in, we're getting close to the close of the Government's
13 case. And, for the record, I wanna make sure that the motions
14 to renew I've made I -- I would like to renew again so that
15 there's no doubt that I -- I think I'm still being affected by
16 those issues.

17 THE COURT: Ms. Clerk, would you bring in the jury,
18 please?

19 THE CLERK: Yes.

20 (Jury enters the courtroom at 3:30 p.m.)

21 THE COURT: Please be seated.

22 Will counsel stipulate to the presence of the jury?

23 MR. CRISTALLI: Yes, your Honor.

24 MR. NEIMAN: Yes, your Honor.

25 THE COURT: Thank you.

1 You may resume.

2 MR. NEIMAN: Thank you very much.

3 BY MR. NEIMAN:

4 Q. Mr. Lowder, I think before we went on a break we -- we were
5 shifting gears to Defendant Neun.

6 Did you look -- or did you make a determination as to
7 what expenses Defendant Neun had for tax years 1993 -- 1999
8 through 2002?

9 A. Yes, I did.

10 Q. Can you explain, um, I guess, the significance of looking at
11 her expenses and determining what income, if any, Defendant Neun
12 had in the years '99 through 2002?

13 A. Well, to reconstruct Cindy Neun's income from 1999 through
14 2002, since she didn't have books or records and she didn't
15 maintain bank accounts or savings accounts, I had to use an
16 indirect method, uh, similar to -- just as I did on the bank
17 deposit method only this method that I used to reconstruct
18 Cindy's income is called "the expenditures method."

19 The theory behind that method is that if an individual
20 has expenditures in any given year they have to have at least a
21 like amount of income for that year.

22 MR. CRISTALLI: Objection, your Honor. I think that is
23 an incorrect statement. That's not true. I think through the
24 other witnesses it established one does not have to receive
25 income -- I mean, one can receive it from a number of sources.

1 It doesn't have to be income. It could be --

2 THE COURT: Well, he's explaining the method --

3 MR. CRISTALLI: -- it could be gifts. It could --

4 THE COURT: He's explaining the method. If you wish to
5 cross-examine him on it --

6 MR. CRISTALLI: Thank you.

7 THE COURT: -- you may.

8 BY MR. NEIMAN:

9 Q. Mr. Lowder, what income-producing activity could Ms. Neun
10 have been involved in?

11 MR. CRISTALLI: Objection. Calls for speculation.

12 BY MR. NEIMAN:

13 Q. Based upon the testimony you heard at trial with regards to
14 establishing this method of proof.

15 A. Based upon the testimony that I heard during this trial,
16 there were witnesses -- such as Toni Mitchell, Michelle
17 Degrosellier, um, Bill Thomas -- that indicated Cindy Neun was
18 an employee of Freedom Books. There were representations that
19 Cindy made to Sunshine Realty indicating she worked at Freedom
20 Books and there were representations made to Sprint on an
21 application indicating that she was the office manager working
22 at Freedom Books.

23 Q. And this expenditure method of proof, if an individual's
24 involved in an income-producing activity and incurs expenses
25 that year, what's the inference that could be drawn?

1 A. Would you say that again?

2 Q. If an individual's engaged in income-producing activity, or
3 working, and they have expenses in that certain year, what's the
4 inference that can be drawn with regards to what that
5 individual's income was for a certain period of time?

6 MR. CRISTALLI: I think it calls for speculation, your
7 Honor.

8 THE COURT: Well, he is testifying to an inference that
9 could be drawn. You have a right to cross-examine him.
10 Overruled.

11 THE WITNESS: The inference is that there's at least
12 that amount of income available to pay for those expenditures.

13 BY MR. NEIMAN:

14 Q. And did you look at specific expenditures of Defendant Neun?

15 A. Yes, I did.

16 Q. Specifically, if I could direct your attention, I guess, to
17 what's been marked as Government Exhibit 325.

18 A. Okay.

19 MR. CRISTALLI: Your Honor, before we, um, uh, have the
20 witness discuss 325, can I take him on voir dire just briefly?

21 THE COURT: For what purpose?

22 MR. CRISTALLI: Uh, just goes to an item, uh, in 2000
23 that I have a concern with.

24 THE COURT: When we get there, you may.

25 MR. CRISTALLI: Okay.

1 BY MR. NEIMAN:

2 Q. Looking at Government Exhibit 325, uh, briefly explain what
3 Government Exhibit 325 is.

4 A. 325 is a compilation of expenditures for the years of 1999
5 through 2002 to specific companies for expenditures in those
6 years.

7 Q. And the inference that could be drawn is what then?

8 A. The inference that could be drawn is that Cindy Neun had at
9 least a like amount of income based upon these expenditures.

10 Q. Are your totals in Government Exhibit 325 the total amount
11 of income Defendant Neun earned during these years?

12 A. No, I -- I don't believe so. And the reason I say that is
13 because these expenditures that are reflected on this schedule
14 are what I would term to be hard costs. And that is that I
15 could trace these costs. They were, uh -- there was evidence of
16 payments being made to these companies through search warrant
17 material; there were checks that were paid to these companies
18 out of Nevada State Bank of Freedom Books. However, I was not
19 able to trace any items that might be paid for with cash or
20 money orders. And I was not able to trace any expenditures that
21 I would term to be soft costs. And, by those, I mean costs that
22 you or I would incur such as living expenses, food, automobile
23 expenses, insurance, uh, gifts, entertainment. Anything of that
24 nature I was not able to trace.

25 Q. But were you able to look at and see bills in the name of

1 the Defendant Neun for these years '99 through 2000 and the
2 amount of those bills?

3 A. Yes, I was.

4 MR. NEIMAN: Your Honor, at this time the United States
5 would move the redacted version of Government Exhibit 325.

6 MR. CRISTALLI: I have an objection. I would like to
7 take him on voir dire.

8 THE COURT: You may.

9 MR. CRISTALLI: And I'd like to see the redacted
10 version if I could.

11 (Discussion between Mr. Cristalli and
12 Mr. Neiman.)

13

14 VOIR DIRE EXAMINATION

15 BY MR. CRISTALLI:

16 Q. Um, Mr. Lowder, point -- directing your attention to
17 Government Exhibit 325, specifically, um, in the year 2000 under
18 the Sprint, uh, item, it indicates an -- an amount of \$5,622.90;
19 correct?

20 A. That's not correct. That's -- that's a prior schedule. I
21 did give you an updated schedule.

22 Q. Well, I'm lookin' at the Government's and that's what it
23 says right here.

24 A. That is not a correct schedule.

25 MR. CRISTALLI: So you got the wrong schedule.

1 MR. NEIMAN: Yeah, they were -- I gave it to you this
2 morning.

3 MR. CRISTALLI: That's my concern. Okay. Well, that's
4 not right.

5 MR. NEIMAN: Well, use the one up there, the redacted
6 version.

7 MR. CRISTALLI: Okay.

8 BY MR. CRISTALLI:

9 Q. Well, okay. Let's -- if I may, just so we're clear, the
10 original, um -- the original, uh, expenditures and calculation
11 of income for Cynthia Neun, um, was not correct; right?

12 A. The working copy was not correct.

13 Q. Right.

14 In fact, the, um, 2000, um, Sprint for \$5,622.90 was,
15 um -- was wrong -- was over -- was wrong in the amount of
16 \$4,000; correct?

17 MR. NEIMAN: Your Honor, I would object. This is
18 improper voir dire.

19 THE COURT: It is.

20 MR. NEIMAN: And the Revenue agent has testimony
21 that --

22 THE COURT: That's not the exhibit that --

23 MR. NEIMAN: -- there was a correction made.

24 THE COURT: -- I have in front of me. So it --

25 MR. CRISTALLI: Well, I -- but, your Honor, with all

1 due respect, that's the one the Government was using --

2 THE COURT: Well, you can cross-examine --

3 MR. CRISTALLI: -- and showed me.

4 THE COURT: -- him on it. They said they gave you the
5 corrected copy. I -- I have a completely different number.

6 MR. CRISTALLI: Your Honor, they just showed me the
7 redacted one, which is the wrong one.

8 MR. NEIMAN: I -- I -- I -- that's my error. I
9 provided you a correct copy this morning.

10 THE COURT: Is that -- is that resolved? Is that the
11 end of the voir dire?

12 (Discussion between counsel.)

13 THE COURT: Go ahead.

14

15 DIRECT EXAMINATION (Continued)

16 MR. NEIMAN: Your Honor, if I may approach the witness?

17 THE COURT: You may.

18 MR. NEIMAN: Can I get 325, please?

19 (Document shown to Mr. Cristalli.)

20 MR. NEIMAN: Your Honor, if I could move for the
21 admission of Government Exhibit 325.

22 THE COURT: Any objection?

23 MR. CRISTALLI: Uh, no objection, your Honor.

24 MR. BOWERS: I don't have anything.

25 THE COURT: Thank you. 325 --

1 MR. NEIMAN: If I may publish Government Exhibit 325?

2 THE COURT: Hearing no objection, 325 is received.

3 MR. SCHIFF: No objection.

4 (Government's Exhibit No. 325, received into
5 evidence.)

6 (Document displayed in open court.)

7 BY MR. NEIMAN:

8 Q. Mr. -- Mr. Lowder, what -- I realize I just took your copy.
9 Can you see that all right up there?

10 A. Yeah, I can see it.

11 Q. Okay. What is Government Exhibit 325?

12 A. Exhibit 325 is a summation of -- of expenditures paid to
13 specific vendors either by Cindy Neun or on her behalf.

14 Q. And what are those specific vendors that you're referring
15 to?

16 A. The first one is Sunshine Realty, the second one is Sprint,
17 the third one is Southwest Gas, the fourth is Cox
18 Communications, the fifth is Nevada Power, the seventh is
19 Republic Services, the eighth is Las Vegas Water District, the
20 ninth is Capital One credit card, and the tenth is
21 miscellaneous.

22 Q. And, Mr. Lowder, these expenditures referenced here, have
23 you reviewed bills associated with these various expenditures?

24 A. Yes, I have.

25 Q. And are those bills reflected in Government's Exhibits 359,

1 360 -- or I'm sorry -- 259, 260, 261, 263, 264, 265, 266, and
2 267?

3 A. I believe they are.

4 Q. The exhibits should be in front of you.

5 (Pause in the proceedings.)

6 MR. CRISTALLI: Your Honor, just so I'm clear, I didn't
7 want to -- I didn't agree to the introduction of 325, did I?

8 THE COURT: Yes.

9 MR. CRISTALLI: I did? Can I undue that?

10 MR. BOWERS: Do over.

11 MR. CRISTALLI: I know it's comin' in. But I'm just
12 concerned that I just agreed --

13 MR. NEIMAN: It's coming in today.

14 MR. CRISTALLI: Well, no. I understand it's gonna come
15 in. I just -- I don't think I can agree to it only because I
16 just saw "gross income" here on the bottom. I do have --
17 obviously through my discussions with the Court and through my
18 cross-examination, it's apparent that I have an issue in terms
19 of the gross -- the designation of gross income. I just want to
20 be clear on that.

21 BY MR. NEIMAN:

22 Q. Mr. Lowder, are those the bills associated with these
23 various entities?

24 A. Yes, they are.

25 Q. By way of example, if you could look at Government

1 Exhibit 259.

2 A. (Complies.) Okay.

3 Q. What's Government Exhibit 259?

4 A. It's, uh, invoices -- or a statement of accounts from Nevada
5 Power Company.

6 Q. And did you review all those invoices?

7 A. Yes, I did.

8 MR. NEIMAN: If I may approach, your Honor?

9 THE COURT: You may.

10 MR. NEIMAN: I'm approaching with what's been marked as
11 Government's Exhibit 259A, 260A, 263A, 264A, 265A, and 266A.

12 (Exhibits placed before the witness.)

13 BY MR. NEIMAN:

14 Q. Did you prepare a summary explaining or totalling up the
15 total number of expenditure, the total amount of bills, for
16 Nevada Power?

17 A. Yes, I did.

18 Q. Uh, and is that reflected in 259A?

19 A. Yes, it is.

20 MR. NEIMAN: Your Honor, at this time, the United
21 States would move for the admission of 259A.

22 MR. CRISTALLI: Your Honor, I'm gonna have the same
23 objection to all of these exhibits, I believe. It's not
24 necessarily the -- the content of the, uh, exhibits; it's the
25 designation of gross income is what my objection is.

1 THE COURT: Continuing objection.
2 259A will be received.

3 (Government's Exhibit No. 259A, received into
4 evidence.)

5 MR. NEIMAN: Your Honor, if we may publish 259A?

6 THE COURT: You may.

7 THE CLERK: Mr. Neiman, turn off the lights.

8 MR. NEIMAN: I'm sorry.

9 THE CLERK: Yes.

10 (Document displayed in open court.)

11 BY MR. NEIMAN:

12 Q. Is this your summary of the invoices for --

13 A. Yes, yes, it is.

14 Q. All right. How is it broken down?

15 A. It's broken down by month and totalled by year.

16 Q. And those are all the bills for each month that you have
17 in -- in Exhibit 259?

18 A. Yes.

19 Q. All right. What are the, I guess -- the totals for each
20 year? Are they reflected on your final or your summary
21 schedule, which is marked as Government's Exhibit 325?

22 A. Yes, they are.

23 Q. By way of example, let's look at the total of -- for 2002 of
24 Nevada Power. What was the amount?

25 A. The amount was \$2,383.95.

- 1 Q. All right.
- 2 MR. NEIMAN: I'm sorry, Ms. Vannozzi, by making you go
3 back and forth. If you can...
- 4 THE CLERK: That's okay.
- 5 BY MR. NEIMAN:
- 6 Q. Going to your schedule, Government's Exhibit 325, looking at
7 the line for Nevada Power for year 2002, does that amount match
8 up to the total of your summary of 259A?
- 9 A. Yes, it does.
- 10 Q. Did you do the same type of analysis for all the
11 expenditures listed here?
- 12 A. I did a similar analysis for each of these items.
- 13 Q. All right. Look -- looking at, uh, the line for Sunshine
14 Realty, who is Sunshine Realty?
- 15 A. Sunshine Realty was the management company that owned the
16 property that Cindy rented or leased.
- 17 Q. And do you remember hearing testimony about how much Cindy
18 paid in rent each month?
- 19 A. I believe it was \$760.
- 20 Q. And is that -- are those figures reflected on the first line
21 under Sunshine Realty for those --
- 22 A. Yes, they are with the exception of the year 1999 which is a
23 reduced amount.
- 24 Q. And why is it reduced?
- 25 A. There was testimony from Michelle Degrosellier that, uh,

1 rent was paid on behalf of Cindy and Cindy worked -- or -- or
2 she worked at Freedom Books to pay back that payment on her
3 behalf. So I did not include that. I only included 11 months
4 instead of 12 months in the year of 1999.

5 Q. And, looking at the other expenses, these other hard
6 expenses as you call them, what were the totals, I guess, for
7 years '99 through 2002?

8 A. The total expenses for the year of 1999 was \$11,079.98, the
9 total for 2000 was \$13,342.07, the total for 2001 was
10 \$16,750.69, and the total for 2002 was \$20,333.90.

11 Q. Was this her -- was this the total of her income earned for
12 those years?

13 A. No, I don't believe it was.

14 MR. CRISTALLI: Foundation.

15 BY MR. NEIMAN:

16 Q. Why?

17 A. The reason, again, I was only able to trace what I termed
18 hard copies; I wasn't able to trace what I termed before as soft
19 items, that being --

20 MR. CRISTALLI: Calls for --

21 THE WITNESS: -- items that were paid for --

22 MR. CRISTALLI: -- calls for -- objection. Calls for
23 speculation. Move to strike.

24 THE COURT: What calls -- what is speculative about it?

25 MR. CRISTALLI: He's gonna speculate as to soft -- soft

1 costs? I mean, how do you do that?

2 THE COURT: He's expecting that she had to eat and
3 that's not speculating. So the objection's overruled.

4 MR. CRISTALLI: How is he gonna testify as to any of
5 that? I don't understand.

6 THE COURT: Because he did not include any of it. He
7 just said he didn't think it was all because there are those
8 expenses that are soft costs, including food, that he
9 couldn't -- couldn't trace.

10 MR. CRISTALLI: Okay.

11 BY MR. NEIMAN:

12 Q. If you could finish your answer, please, Mr. Lowder.

13 Was that the only income that Ms. Neun earned in those
14 years?

15 A. No, I don't believe it was.

16 Q. Why not?

17 A. Because, as I said, I wasn't able to trace soft costs -- uh,
18 such as food, entertainment, transportation, sundry items,
19 gifts. Um, items that each of us incur every day to simply
20 survive.

21 Q. Getting back to your expenditures and calculation of income,
22 we looked at the summary chart with regards to the Nevada Power,
23 which was 259A.

24 Are Government's Exhibit 260A, 261A, 262A, 263A, 264A,
25 265A, and 266A similar summaries?

1 A. They are similar summaries.

2 Q. And they relate to the additional expenditures listed here?

3 A. And they do -- each of those summaries are brought forward
4 to the, uh, Exhibit 325, which is the summary of expenses by
5 payee or entity and by year.

6 Q. And this summary relates to the actual bills, which are the
7 nonaid number, which are in evidence?

8 A. Yes.

9 MR. NEIMAN: Your Honor, at this time, the United
10 States would move for the admission of Government's
11 Exhibits 260A through 265A.

12 MR. CRISTALLI: Same objection, your Honor.

13 MR. NEIMAN: Your Honor, I don't believe these have the
14 word "income" on them. But we'll --

15 MR. CRISTALLI: It's still the same objection.

16 MR. NEIMAN: Okay.

17 THE COURT: You have not designated all the numbers
18 between 260 and 265. Let's go over those again just so the
19 record is clear. 260A.

20 MR. NEIMAN: 261A. I will remove my asking for 262A.
21 I apologize. 263A.

22 THE COURT: Yes.

23 MR. NEIMAN: 264A --

24 THE COURT: Yes.

25 MR. NEIMAN: -- which is Sprint. 265A for Republic

1 Services. 266A for Capital One. And I believe that's it.

2 THE COURT: That's it. The same are received.

3 MR. NEIMAN: Thank you.

4 (Government's Exhibit Nos. 260A, 261A, 263A,
5 264A, 265A, and 266A, received into
6 evidence.)

7 MR. NEIMAN: Your Honor, the Government has nothing
8 further.

9 THE COURT: Cross-examination?

10 MR. CRISTALLI: Thank you, your Honor.

11 THE CLERK: Mr. Cristalli, could you turn off the
12 lights?

13 MR. CRISTALLI: Yes.

14 THE CLERK: Thank you.

15

16 CROSS-EXAMINATION

17 BY MR. CRISTALLI:

18 Q. Good afternoon, Mr. Lowder.

19 A. Good afternoon.

20 Q. Um, let's, um, start off with the fact that you are an
21 expert in computations; correct?

22 A. Correct.

23 Q. An experienced accountant that crunches numbers for a
24 livin'; right?

25 A. A bean counter.

1 Q. Okay. Um, and, um, it -- it'd be safe to say then that
2 we -- we -- we -- through the Government we looked at
3 expenditures and calculations of income on behalf of Cindy Neun;
4 correct?

5 A. Yes, I did.

6 Q. And you calculated that; right?

7 A. Yes.

8 Q. Through, um -- obviously, through years of experience as a
9 bean counter and, uh, through your review of all the
10 documentation in this particular case; right?

11 A. Yes.

12 Q. Okay. And, um, the -- the original calculation of source of
13 expenditures for the Sprint bill in 2000 was \$4,000 incorrect;
14 correct?

15 A. The original working copy was incorrect.

16 Q. And we actually -- we were in court together and we kind of,
17 um, found that out almost sim- -- simultaneously. True?

18 A. I knew of that error before I knew that you knew of that
19 error.

20 Q. Okay. But you saw me pick it out.

21 A. When I brought it to the attention of the Government counsel
22 and told him that I had made an error, he told me that you had
23 mentioned that earlier that morning that you had found an error
24 as well.

25 Q. Okay. So it would be safe to say that we both found the

1 error of \$4,000; correct?

2 A. Correct.

3 Q. And we corrected it; right?

4 A. Yes, we did.

5 Q. Okay. So you made a mistake?

6 A. I'm human. I did make a mistake.

7 Q. Okay. Um, now, let's talk about, um, this a little bit in
8 terms of, uh, how you gathered your information with regard to,
9 uh, the income. First of all, the only, uh, evidence in --
10 in -- is it safe to say, as you testified previously, that you
11 were here throughout the whole entire trial; correct?

12 A. Correct.

13 Q. You heard all the witnesses; right?

14 A. Yes, I did.

15 Q. The only witness that testified that, uh, Cynthia Neun
16 received any compensation for services rendered at Freedom Books
17 was Michelle Degrosellier; correct?

18 A. Not -- not quite. Toni Mitchell was able to say that Cindy
19 did receive an envelope. She didn't know what that envelope
20 was.

21 Q. Right.

22 A. However, other employees received similar envelopes on a
23 Friday, which was normally a payday.

24 Q. But are you sure that she said it was on a Friday that she
25 received that envelope or she saw Cindy receive an envelope?

1 A. I would say that she saw Cindy receive an envelope.

2 Q. Okay. But we, um -- you would agree with me, sir, would you
3 not, that you didn't know what, if anything, was in that
4 envelope; correct?

5 A. I would be speculating if I --

6 Q. Right.

7 A. -- said what was in that envelope.

8 Q. Right.

9 So we're speculating on that particular, um, witness's
10 testimony, correct, in terms of what was in the envelope?
11 Right?

12 A. But -- but not -- not -- not quite clear -- that clear.
13 Because I believe that she testified that -- her testimony was
14 that she believed that payments in the envelopes were in fact,
15 um, payment for services rendered.

16 Q. Well, don't you recall her testimony -- what -- what that
17 was -- it was specific that she never saw nor did she know how
18 Ms. Cynthia Neun was compensated or if she was compensated?
19 Because I know I asked her that on cross-examination. You don't
20 recall that?

21 A. Only that she got the, uh, envelope.

22 Q. But she did not connect that envelope with compensation
23 during her testimony. You're -- you're making the assumption
24 that that was the case. But her testimony did not suggest that.
25 True?

1 A. That's true.

2 Q. Okay. Um, now you also heard me, uh, question -- let me
3 just get these up here -- Kathy Mead, correct, who was a special
4 agent for Social Security? Right?

5 A. Correct.

6 Q. And, um, you heard, um, me talk about the hypothetical, um,
7 that I discussed with Ms. Mead; right?

8 A. Would you refresh my memory --

9 Q. Sure.

10 A. -- as to that hypothetical?

11 Q. I basically said that if I'm collecting disability because I
12 am disabled and a third party wants to pay my bills -- wants to
13 pay for my car, wants to pay for my rent, wants to do a number
14 of things for me -- um, that I am not liable to disclose that to
15 Social Security. Would you agree with me on that?

16 A. I think she agreed with you on that.

17 Q. Would you disagree with that?

18 MR. NEIMAN: Just objection. This witness is not a
19 Social Security employee --

20 THE WITNESS: It's outside of my scope.

21 MR. NEIMAN: -- and he doesn't --

22 THE COURT: Sustained.

23 MR. NEIMAN: -- know anything about social security.
24 Other than the tax consequences of it.

25 THE COURT: Sustained.

1 BY MR. CRISTALLI:

2 Q. All right. Well, let's talk about tax consequences of that
3 then.

4 Um, if a third person is paying for somebody's bills,
5 um, in a gratuitous manner, um, that person is not required to
6 file and/or report that, on -- to the Internal Revenue Service;
7 correct?

8 A. Under your hypothetical, if it is gratuitous -- gratuitous
9 and not for compensation for services, it wouldn't be
10 includable.

11 Q. Correct.

12 So if, um, I was receiving some benefits from my, uh,
13 girlfriend, um, in some type of domestic-type compensation, I
14 would not have to report that to the Internal Revenue Service,
15 would I?

16 A. Under that hypothetical, no.

17 Q. And, um, if there was evidence that my girlfriend was living
18 with me and sharing some of the responsibilities inside of the
19 household, that would further go, uh, to support a position that
20 I would not be responsible to pay, uh, or to report anything to,
21 um, the Internal Revenue Service as income; correct?

22 A. Again, this is a hypothetical --

23 Q. Right.

24 A. -- and I would say no.

25 Q. Okay. And the Government did also give you a hypothetical

1 on direct examination; right?

2 A. Um, I believe he gave me a couple.

3 Q. Okay. Now, in terms of, um -- in terms of the -- the hard
4 payments -- or -- or the hard expenditures, as, uh, you
5 calculated, um, that would have been the rent paid, the Sprint,
6 Southwest Gas, Cox Communication, Nevada Power, Republic
7 Services, Las Vegas Water District, Capital One, and Other
8 Miscellaneous that you did some computations for; correct?

9 A. Correct.

10 Q. And that's, um -- that's tangible stuff. That's stuff that
11 you were able to trace because -- well, let's talk about that.

12 Specifically, for example, um, the payments made to
13 Sun- -- Sunshine Realty came from, uh -- and that was for
14 Ms. Neun's rent; correct?

15 A. Those payments were money orders paid to Sunshine Realty --

16 Q. Right.

17 A. -- on behalf of Mrs. Neun.

18 Q. Right.

19 And, um, they were paid -- a large portion of those
20 were paid from Freedom Books and signed off by Mr. Irwin Schiff;
21 correct?

22 A. No, I -- I wouldn't agree with that. As I said, most of
23 them were money orders that I looked at.

24 Q. Money order --

25 A. And, rather than checks, they were money orders.

1 Q. Money orders executed by Mr. Irwin Schiff?

2 A. No.

3 Q. Money orders executed by Cynthia Neun?

4 A. Um-hum. Yes.

5 Q. And was there -- then was there also checks written from
6 Freedom Books signed off by Irwin Schiff to Sunshine Realty?

7 A. I -- I believe there might have been a few, but the majority
8 were money order payments.

9 Q. Okay. But there were payments made by Freedom Books to
10 Sunshine Realty signed off by Mr. Irwin Schiff; correct?

11 A. I'm saying it's possible. I'm not saying that -- it with --
12 with certainty unless I looked at that Nevada State bank
13 account.

14 Q. Um, and would that also be consistent with the other
15 expenditures that you were able to look into: Sprint, Southwest
16 Gas, Cox Communication, Nevada Power, Republic Service,
17 Las Vegas Water District, Capital One, Other Miscellaneous?

18 A. Most of those companies, even though they -- they were able
19 to provide us with payments -- with billing information and
20 payments, they did not provide us with the method of payment.

21 So I was --

22 Q. So you don't know how they received the payment; correct?

23 A. In some instances, I know that payments were made from
24 Nevada -- Freedom Books's Nevada State bank account on behalf of
25 Cindy Neun to some of these entities only because I was able to

1 look at the bank accounts. The payments from the actual
2 companies did not show the type of payment.

3 Q. Okay. Now, with regard to the soft costs, you -- you said
4 that -- that you believe through, um, the information that you
5 reviewed that there were soft costs that were not able to be
6 traced; correct?

7 A. Correct.

8 Q. Um, and that would be because, um, you think that there
9 would have been additional expenditures for food or -- or other
10 things of that nature; correct?

11 A. Well, I actually think two reasons: that -- that
12 individuals have certain costs -- or certain expenditures that
13 are necessary to simply survive and I believe most of those
14 expenditures, or some of those expenditures, were paid for in
15 cash, which I was not able to trace.

16 Q. Right.

17 But you don't know that for certain, correct, as you
18 sit here today?

19 A. I do know that each of us has certain requirements, certain
20 expenditures that we need to survive --

21 Q. Sir, everybody --

22 A. -- that I couldn't document.

23 Q. -- everybody's expenditures are different. Some people go
24 to McDonald's; some people go to, um, the Bellagio at their
25 high-end, uh, restaurants; correct?

1 A. That's correct.

2 Q. Everybody has different expenditures. True?

3 A. I will agree with that.

4 Q. Okay. And this investigation with regard to, uh, Ms. Neun's
5 criminal liability, um, extended from 1999 up and through 2004.
6 True?

7 A. Yes, it did.

8 Q. There was, uh, lots of agents on this particular case;
9 correct?

10 A. Not correct. There was two agents, two special agents and
11 myself.

12 Q. Okay. There was -- there was -- it would be safe to say
13 there was an expensive investigation at the very least? It was
14 a four-year investigation. True?

15 A. I believe --

16 Q. If --

17 A. -- it was extensive.

18 Q. -- if you wanted to try to, um, find out or evidence soft
19 costs, as you defined them, you could have easily followed
20 Ms. Neun around and -- and determined whether or not there was
21 any other expenditures being, um -- anything being purchased. I
22 mean, you could have found out if she was buying expensive cars.
23 Right?

24 A. As I said, there was two specials and myself on this case.
25 This case did not occupy a hundred percent of -- of any of our

1 time. We have multiple cases we were working at the same time.

2 Q. Right.

3 A. To follow somebody around and monitor their activities, is
4 not -- not within our scope or our time constraints.

5 Q. I'm getting -- you know, I don't know. I was making --
6 stand up here; I'm hearing some, you know, chuckles behind me.
7 I think the Government's amused by my questioning.

8 But, I mean, if we could continue, um, it -- it would
9 be safe to say, based on the evidence you heard here today that
10 Ms. Neun wasn't driving around an expensive car, was she?

11 A. No, I would agree that she was not.

12 Q. In fact, you know for a fact, don't you, sir, through what
13 you've reviewed and learned, that she was driving around in a
14 pretty beat-up, uh, wagon, a 1995 wagon of some sort. Correct?

15 A. Correct. But I do know that an operation of any vehicle,
16 uh, in- -- incurs costs in simple gas, oil, repairs, and
17 maintenance on that vehicle.

18 Q. Right.

19 She could have went to --

20 A. Which I could not trace.

21 Q. She could have went to Irwin and said, listen, I need some
22 money for gas this week; right?

23 A. She could have.

24 Q. And you know that Irwin was living with her for a period of
25 time; correct?

1 A. Uh, I believe the Sunshine Realty, Susan, um, Griteek
2 (phonetic), said that he was there for a short period after he
3 had a heart attack. That's the only testimony that I recall of
4 Irwin actually living with her. And as -- and, while I was
5 looking at expenses out of Nevada State Bank, Mr. Schiff also
6 had similar expenses he was paying for him out of Nevada State
7 Bank -- such as rent, utilities, water, gas, power -- at the
8 same time, the same period, as the expenses that I was looking
9 for for Cindy.

10 Q. Doesn't mean he couldn't have been taking care of two
11 households, does it?

12 A. No, it doesn't. But I looked at -- specifically at some of
13 the utility bills and water bills that would tell me whether a
14 person was -- was residing there or not. And those utility
15 bills if you -- if I -- if you looked at 'em over the extended
16 period it appeared that somebody was in fact living in the
17 residence.

18 Q. It appears that somebody was living in the residence?

19 A. Yes.

20 Q. Living in?

21 A. Irwin's residence --

22 Q. Well, you can --

23 A. -- meaning that he probably was residing there since the
24 bills were being paid at his residence.

25 Q. Well, the fact that he was residing at one residence does

1 not mean that he wasn't providing support to Ms. Neun as his,
2 uh, confidant and girlfriend; correct?

3 A. No. I made -- I made that reference in -- in -- in respect
4 to the fact you said that he was living with her.

5 Q. Okay. Um, the, uh -- she wasn't walkin' around in expensive
6 diamond rings or, you know, expensive clothing or anything to
7 suggest that she was living a lavish lifestyle, was she?

8 A. Mr. Cristalli, I -- I don't believe I saw Cindy Neun twice
9 in this whole examination. And I have never talked to
10 Mrs. Neun.

11 Q. You didn't review any receipts that would suggest that there
12 was large purchases for expensive or exotic-type items, did you?

13 A. No, I didn't find those.

14 Q. Okay. In fact, if you look at Government's, uh, Exhibit 325
15 as what you identified as gross income, um, is relatively small.
16 In 1999, you have 11,000 and change; in 2000, you have 16,000
17 and change; 2001, I think it's 13,000 and change; and 2002 is
18 20,000 and change. Right?

19 A. All of those amounts are over the threshold of the
20 requirement for filing a tax return.

21 Q. Well, let's talk about -- that is if that money is, um -- is
22 income; correct?

23 A. My -- correct. I assume it to be income on this schedule.

24 Q. Well, you can't really assume, sir, can you? You can only
25 testify to what you know. What you know is what was paid to

1 those entities; correct?

2 A. I'm using the expenditures method for reconstruction of
3 income where a taxpayer doesn't maintain books or records or a
4 bank account. And, under that method, this would be income.

5 Q. Under my hypothetical that Irwin was paying for those items,
6 sir, then that would not amount to the threshold requirement;
7 correct?

8 A. Under your hypothetical.

9 Q. Okay. Now, in terms of the threshold requirement, if one is
10 receiving disability, um, disability is not required to be
11 reported on a 1040; correct?

12 A. Would you state the question again?

13 Q. I know it's bad. Disability benefits --

14 A. Okay.

15 Q. -- okay, I'm gettin' disability benefits.

16 A. Okay.

17 Q. Um, my disability benefits that I'm receiving is under the
18 threshold, whatever the threshold number may be. I don't have
19 to report that to the Internal Revenue Service; correct?

20 A. Correct.

21 Q. Now, um, I'm generating -- in addition to the disability
22 benefits I'm -- I'm receiving, I'm generating some other income.
23 Okay? In terms of determining whether or not I have to file a
24 1040 to the Internal Revenue Service, I do not combine my
25 disability benefits with the income that I'm making; correct?

1 A. The only time you would -- you would combine the two is if
2 those disability payments were fraudulently obtained and then
3 they would be income combined with your other income.

4 Q. Correct.

5 But, for the sake of discussion, let's say that the
6 disability benefits were not fraudulently obtained. We have
7 income. The only thing that I would be required to report, if
8 it met the threshold requirements of the Internal Revenue
9 Service, was the income-generated source; correct?

10 A. That's correct.

11 Q. Okay.

12 MR. CRISTALLI: Court's indulgence.

13 THE COURT: Yes.

14 (Pause in the proceedings.)

15 MR. SCHIFF: No further questions of the witness?

16 MR. BOWERS: No. Court's indulgence.

17 MR. SCHIFF: Oh.

18 BY MR. CRISTALLI:

19 Q. Mr. Lowder, are you aware that, um, Ms., uh, Neun for the
20 purposes of these proceedings was declared indigent?

21 A. No, I was not.

22 Q. Do you know what the word "indigent" means?

23 A. Yes, sir, I do.

24 Q. And what is that?

25 A. It means without resources, without money.

1 Q. Okay.

2 MR. CRISTALLI: No further questions.

3 THE COURT: Any examination, Mr. Bowers?

4 MR. BOWERS: I'll defer, if any, after Mr. Schiff.

5 THE COURT: Mr. Schiff?

6 (Pause in the proceedings.)

7

8 CROSS-EXAMINATION

9 BY MR. SCHIFF:

10 Q. Mr. Lowder, you, uh, kept referring -- indicating that I had
11 eight bank accounts. Did I have eight bank accounts at any one
12 time?

13 A. No. I believe I explained that you had eight bank accounts
14 over a period -- over the period from 1997 to 2002, not eight at
15 one time. You opened and closed accounts. But the total
16 accounts over that period did total eight bank accounts.

17 Q. Well, I closed the accounts. Isn't it a fact that I closed
18 my account at, um, Bank of America after the Government seized
19 the account. So I had to open up an account at, um, um, the,
20 uh --

21 A. Another bank.

22 Q. -- Nevada State Bank?

23 A. That's true. After the -- after the levy was placed on your
24 Bank of America account and they did seize funds, you closed
25 that account and opened up another account with a different, uh,

1 identification number.

2 Q. Well, the identification number that I had -- well, all
3 right.

4 Um, then why did I have four accounts? Do you recall
5 why I had four separate accounts?

6 MR. NEIMAN: Objection to speculation as to why
7 Mr. Schiff does --

8 MR. SCHIFF: It's not --

9 THE COURT: Sustained.

10 MR. SCHIFF: Your Honor, the implication is I'm
11 manipulating bank accounts. Why did I --

12 THE COURT: You're asking him to speculate why.

13 MR. SCHIFF: All right.

14 THE COURT: He can't.

15 MR. SCHIFF: Well --

16 THE COURT: Objection is sustained.

17 MR. SCHIFF: -- the four accounts weren't my accounts.

18 THE COURT: Are you asking a question --

19 MR. SCHIFF: Yes.

20 THE COURT: -- of the witness?

21 MR. SCHIFF: Yeah.

22 BY MR. SCHIFF:

23 Q. The four accounts weren't my accounts, were they?

24 A. Which accounts --

25 MR. NEIMAN: Objection --

1 THE WITNESS: -- are you referring to?

2 BY MR. SCHIFF:

3 Q. Well, two accounts were in the Freedom Foundation --

4 A. I didn't --

5 Q. -- and only two accounts --

6 A. -- I didn't include any Freedom Foundation accounts in my
7 analysis.

8 Q. So, therefore, I only had two accounts.

9 A. Again, what accounts are you referring to?

10 Q. Well, I only --

11 A. Which bank?

12 Q. Well, when I had my accounts at the Bank of America or
13 the -- the Nevada State Bank, I only had a total of four
14 accounts at one given time; is that correct?

15 What are you lookin' at him for? Don't you know the
16 answer?

17 A. Well, I'm trying to decide. When you say at one point, I'm
18 not able in my mind to look at the time frame and say at any --
19 at one point you had those four accounts because you opened and
20 closed accounts at various times.

21 Q. I did. At one time when the IRS seized my accounts at the
22 Bank of America, I had to get another bank account, didn't I?

23 THE COURT: Now you're testifying.

24 BY MR. SCHIFF:

25 Q. And I moved the four accounts to the Nevada State Bank.

1 THE COURT: You're testifying.

2 BY MR. SCHIFF:

3 Q. I moved those four accounts.

4 Didn't you look at the names of those accounts when you
5 analyzed them?

6 A. Yes, I did. I certainly did.

7 Q. Okay. And you saw that one -- two of those accounts were
8 for the Freedom Foundation, which is a nonprofit corporation,
9 and --

10 THE COURT: All right. We've already gone over this.

11 BY MR. SCHIFF:

12 Q. -- two of the accounts --

13 THE COURT: We have already gone over this now.

14 MR. SCHIFF: Pardon me?

15 THE COURT: We have already gone over this.

16 MR. SCHIFF: Well --

17 THE COURT: You already asked him the same question,
18 and he said he didn't include Freedom Foundation accounts.

19 MR. SCHIFF: Yeah. But, your Honor -- but he's
20 still -- he's unresponsive. The implication is I had all kinds
21 of accounts and I was manipulating deposits.

22 THE COURT: Okay.

23 BY MR. SCHIFF:

24 Q. Now --

25 THE COURT: The jury will decide what the implication

1 is.

2 MR. SCHIFF: But the jury doesn't know what these
3 accounts represented. Let me get it to the jury.

4 MR. NEIMAN: Your Honor, if Mr. Schiff wanted to ask
5 the Revenue agent what accounts specifically and the names of
6 those accounts and which banks, I think that would probably be
7 proper in order to clear this up, if there's --

8 MR. SCHIFF: He is saying he didn't know what these
9 accounts were. I had two accounts --

10 THE COURT: You are not --

11 MR. SCHIFF: -- for Freedom Foundation --

12 THE COURT: -- going to testify. All right?

13 MR. SCHIFF: -- and two accounts in my name --

14 THE COURT: Don't overtalk me.

15 MR. SCHIFF: -- Freedom Books.

16 Pardon me?

17 THE COURT: Don't overtalk me. I said you're not going
18 to testify.

19 MR. SCHIFF: I'm not testifying.

20 THE COURT: You are too.

21 MR. SCHIFF: I'm trying to clarify what those accounts
22 were for.

23 THE COURT: You can't clarify it; you can ask him
24 questions.

25

1 BY MR. SCHIFF:

2 Q. Okay. I'm gonna ask you questions.

3 Did Freedom Foundation have two accounts?

4 A. I believe Freedom Foundation actually had four accounts with
5 Nevada State Bank. I have bank signature cards --

6 Q. That's --

7 A. -- for --

8 Q. -- well, that's simply not true. That's simply not true.

9 I -- I don't --

10 THE COURT: You're testifying.

11 MR. SCHIFF: Well, what do I do when he makes a
12 statement that's not true?

13 THE COURT: Do you know the difference?

14 BY MR. SCHIFF:

15 Q. Well, then can you bring in -- can you show me the four --
16 the fact of the matter is, I had two accounts. I --

17 THE COURT: Don't testify.

18 MR. SCHIFF: All right, all right.

19 THE COURT: You're testifying.

20 MR. SCHIFF: All right, all right.

21 BY MR. SCHIFF:

22 Q. Now, the, uh -- Freedom Books had two accounts; is that
23 correct?

24 A. Two Nevada State bank accounts. That's correct.

25 Q. Two accounts.

1 Do you know what the purpose of each account was?

2 THE COURT: Do you want him to guess on this?

3 MR. NEIMAN: Your Honor, he could testify as to what
4 activity he saw coming and --

5 MR. SCHIFF: All right.

6 MR. NEIMAN: -- as to the accounts.

7 MR. SCHIFF: Well, what's --

8 MR. NEIMAN: If that leads him to a conclusion, he
9 could testify to that. Otherwise --

10 MR. BOWERS: In fairness to Mr. Schiff --

11 MR. NEIMAN: -- it would be speculation.

12 MR. BOWERS: -- the question was appropriate.

13 MR. SCHIFF: You stated --

14 MR. BOWERS: It was do you know. He can answer that
15 yes or no and then maybe a follow-up is appropriate.

16 BY MR. SCHIFF:

17 Q. Now, you stated I had a merchant's account.

18 A. Yes --

19 Q. Right.

20 A. -- you do.

21 Q. What is a merchant's account?

22 A. A merchant's account is an account that will process credit
23 card transactions.

24 Q. So wasn't one of those accounts to process the merchant
25 account transaction where money would automatically go into an

1 account?

2 A. One of the accounts did have merchant activity in it as well
3 as what I would term regular deposits from -- from sales of
4 Freedom Books. It wasn't --

5 Q. Well --

6 A. -- it wasn't exclusive --

7 Q. Didn't --

8 A. -- to the merchant account.

9 Q. Didn't I have to transfer -- and wasn't one of the accounts
10 the accounts that I wrote checks against and one of the accounts
11 is where I would get the merchant's -- where the -- all of my
12 money would automatically come from credit card sales into that
13 account and then I would have to transfer money from that
14 account into another account for which I could write checks?

15 A. There were transfers between the two accounts.

16 Q. Well, what was -- well, if one of the accounts I wrote
17 checks against and the other account was a merchant's account,
18 wouldn't that explain why there were transfers?

19 A. Both accounts had check expenditures out of them, not just
20 one account.

21 Q. Oh.

22 A. There were checks written out of both accounts.

23 Q. But my business expenditures were written out of one account
24 primarily. All right.

25 You testified that there were a lot of, uh, checks made

1 payable to cash; is that correct?

2 A. Yes, there were.

3 Q. Okay. When you -- when you looked at the account, did you
4 ever see any checks made payable to employee salaries?

5 A. I saw checks paid to Michelle Degrosellier -- Degrosellier
6 that had a "P" in the memo section, which she testified
7 indicated payroll. I also saw checks from Bill Thomas in
8 Indiana that were sent UPS that had a designation that they were
9 for payroll. And I heard testimony from both of those
10 individuals indicating that cash was used for payroll.

11 Q. Yeah. Well, cash was used for payroll.

12 Well, were you aware that Michelle Degrosellier
13 swindled about 50,000 she made payable -- checks made payable to
14 herself?

15 MR. NEIMAN: Objection. The facts not --

16 THE COURT: Sustained.

17 MR. NEIMAN: -- in evidence.

18 MR. SCHIFF: Well --

19 THE COURT: Sustained.

20 MR. SCHIFF: -- the fact is I got reimbursed when --

21 THE COURT: Sustained.

22 MR. SCHIFF: All right.

23 THE COURT: No testimony.

24 BY MR. SCHIFF:

25 Q. Now -- so, if I wanted to pay my employees in cash, wouldn't

1 I write checks payable in cash so I can get cash to pay my
2 employees? Wouldn't I?

3 A. I don't know. That's --

4 Q. Well, how could --

5 A. -- up to you.

6 Q. -- I pay my employees in cash if I didn't take money out
7 payable in cash?

8 A. I believe I can answer that because there was testimony
9 from, uh, Michelle and from Bill Thomas as well indicating that
10 numerous sales were made in Las Vegas that were not written
11 up -- cash sales that were made in Las Vegas that were not
12 written up on invoices.

13 Q. They were not -- well, do you know what -- well, who -- who
14 did that? Who -- who did those cash -- who did those cash?

15 When you analyzed -- when you analyzed the accounts --

16 THE COURT: Do you have a question or are you going --

17 MR. SCHIFF: I'm sorry.

18 THE COURT: -- to just --

19 BY MR. SCHIFF:

20 Q. Did you see --

21 THE COURT: -- wander around.

22 MR. SCHIFF: All right.

23 BY MR. SCHIFF:

24 Q. Did you see a lot of deposits of money orders going into my
25 account?

1 A. There were money orders that did go into your account.

2 Q. So if I wanted to put -- if I wanted to, uh, conceal money,
3 I could very easily endorse money orders and put -- put the
4 money in my pocket, couldn't I?

5 A. That -- that's a possibility.

6 Q. Okay. Um, incidentally -- oh, any of the money that went to
7 P.I.L.L., all the moneys that went to P.I.L.L., there were
8 checks made payable to P.I.L.L., either by Bill Thomas or from
9 my office; right? So, um -- and I advertised, I discussed my
10 P.I.L.L. account on my radio program. So it was no secret.

11 MR. NEIMAN: Objection. Compound and he's testifying
12 as well.

13 MR. SCHIFF: All right.

14 THE COURT: Sustained.

15 BY MR. SCHIFF:

16 Q. Weren't all the checks -- weren't there numerous checks
17 payable directly to P.I.L.L. by check, either by Mr. Thomas or
18 by myself?

19 A. The only items I could trace going to P.I.L.L. were either
20 by check or cashier's check.

21 Q. Okay. Okay. Now, let me get to some specific statements.
22 Let me just get to the beginning.

23 Now, you said that based on your training you did a lot
24 of auditing of tax returns; is that correct?

25 A. Yes, it is correct.

1 Q. Oh, incidentally, isn't it a fact for all the years that you
2 commented on I filed a tax return stating that I had zero
3 income; is that correct?

4 A. Yes, it is --

5 Q. Okay.

6 A. -- correct. You filed zero returns --

7 Q. Right.

8 A. -- for each of those years.

9 Q. Zero income.

10 Did you look at my tax returns?

11 A. I briefly looked at them, not in any detail. I know that
12 the zero returns have zeroes on each and every line --

13 Q. Okay.

14 A. -- and some of them were signed by Cindy Neun.

15 Q. Okay. Well, when I filed my zero returns --

16 MR. SCHIFF: Can I approach the witness? This is the
17 Government's exhibit. It's my 1997 return.

18 MR. NEIMAN: It's in evidence.

19 MR. SCHIFF: I'll give you any return.

20 Is that one of the returns I'm being charged with --

21 MR. IGNALL: Yes.

22 MR. SCHIFF: Huh?

23 MR. IGNALL: (Nods head.)

24 BY MR. SCHIFF:

25 Q. Okay. Now, when you looked at --

1 MR. SCHIFF: Can I approach the witness with it or can
2 he --

3 THE COURT: The clerk has to --

4 MR. SCHIFF: It's a Government exhibit.

5 MR. NEIMAN: Your Honor, Government Exhibit 42.

6 MR. SCHIFF: All right. Give him Government
7 Exhibit 42.

8 BY MR. SCHIFF:

9 Q. Now -- you got that --

10 A. I don't --

11 Q. -- exhibit yet?

12 A. -- have it yet.

13 Q. Now, you wanna read -- you wanna read paragraph 7 from that
14 exhibit?

15 THE COURT: Paragraph 7?

16 MR. NEIMAN: Of what, your Honor, is, I guess -- is he
17 referring to the attachment? Is he referring to --

18 MR. SCHIFF: Yeah, the attachment. That's part of my
19 return.

20 MR. NEIMAN: And for which year, just so we make sure
21 we're on --

22 MR. SCHIFF: It's 1997.

23 MR. NEIMAN: Exhibit --

24 THE WITNESS: I have the '99 return.

25 MR. NEIMAN: Exhibit 40. I apologize.

1 BY MR. SCHIFF:

2 Q. Do you want to read, uh --

3 (Exhibit handed to the witness.)

4 BY MR. SCHIFF:

5 Q. Do you want to read, uh, -- do you want to read paragraph 7?

6 A. Paragraph 7 [sic], "It should also be noted that I had
7 'zero' income according to the Supreme Court's definition of
8 income (See Note #1), sention [sic]" -- "since in Merchant's
9 Loan & Trust ... [uh] v. Sameta [sic], 255 U.S. 509, (at pages
10 518 & 519), that court held that: 'The word (income) must be
11 given the same meaning in all of the Income Tax Acts of Congress
12 that was given to it in the Corporate [sic] Excise Tax ... of
13 1909.' Therefore, I had no earnings in 1999 that would have
14 been taxable as 'income' under the Corporate [sic] Excise
15 Tax ... of 1909, I can only swear to having 'zero' income in
16 1999. Obviously, since I know the legal def-" -- "definition of
17 'income,' if I were to swear to having received any other amount
18 of 'income,' I would be committing perjury under both 18 U.S.C.
19 1621 ... U.S.C. 7206. Therefore, not wishing to commit perjury
20 under either statute, I can only swear to having 'zero' income
21 for" --

22 Q. Now it's pretty obvious that I have a different concept of
23 income than you do.

24 A. I don't think we disagree that your concept of income tax is
25 different than my concept nor this Court's concept of income

1 tax.

2 Q. All right. But -- so, when I say I have zero income, it's
3 not because -- all those documents that said I had a hundred
4 thousand of income for other purpose. But, when it comes to
5 taxes, I believe that the word "income" has a specific meaning
6 other than income in the ordinary sense. Is that correct?

7 A. And I don't agree with that.

8 Q. You don't have to agree with -- but I have a different
9 concept than you do?

10 A. I agree that you disagree.

11 Q. Uh, incidentally, did you check that -- before you
12 calculated my income, did you go to that Supreme Court case
13 Merchant's v. Loan & [sic] -- did you check out what that case
14 said with respect to income?

15 A. No, I didn't because it's not applicable anymore. It's a
16 nineteen 0 -- 19 -- it was heard in 1921, I believe.

17 Q. Oh, so you're saying a 1921 case is no longer applicable.
18 Has this case ever been overturned?

19 MR. NEIMAN: Your Honor, we're gettin' into that
20 invading --

21 MR. SCHIFF: Well --

22 MR. NEIMAN: -- the province of the Court --

23 MR. SCHIFF: Well --

24 MR. NEIMAN: -- and I must object now.

25 MR. SCHIFF: Well, point is this: I have a different

1 concept of income.

2 Incidentally -- incidentally, can you put my 2003
3 return? Give him my 2003 return. That's another return.

4 MR. NEIMAN: That hasn't been admitted.

5 MR. SCHIFF: 2003. 2003.

6 MR. IGNALL: Government Exhibit 46, Ms. Vannozzi.

7 MR. SCHIFF: Give him 2003.

8 (Document placed before the witness by the
9 clerk.)

10 MR. SCHIFF: I can't see it. Can't see it. That's my
11 2003. Okay? Let's --

12 THE COURT: Do you have the 2003 return before you?

13 THE WITNESS: Yes, I do.

14 BY MR. SCHIFF:

15 Q. Okay. I also reported zero income that year; is that
16 correct?

17 A. That's correct.

18 Q. All right. Let's -- let's go to see the attachment. Can
19 you -- can you -- can you...

20 All right. Can you keep going?

21 A. What would you like me to read?

22 Q. No. Just keep going.

23 A. Where would you like me to start?

24 Q. Not yet.

25

1 (Document displayed in open court.)

2 BY MR. SCHIFF:

3 Q. It says, "3 of 6, 4 of 6." Let's see 5 of 6. Okay. That's

4 5 of 6. 5 of 6.

5 Do you recognize that document? It's attached to my

6 return. Do you recognize that document?

7 A. No, I don't.

8 Q. Well, what is that document? What is that document?

9 MR. NEIMAN: Your Honor, objection. The inquiry as to

10 this document with this witness should end right there.

11 MR. SCHIFF: He's --

12 THE COURT: Sustained.

13 MR. SCHIFF: -- we're talking about income. That's the

14 House Report saying income is used in the --

15 THE COURT: Sustained. You're not going to testify.

16 MR. SCHIFF: Well --

17 THE COURT: Sustained.

18 MR. SCHIFF: -- well, he said -- well, that's why I

19 said he's not an expert. He doesn't know what income means. He

20 doesn't have the vaguest idea what income means.

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

22 MR. SCHIFF: Well --

23 THE COURT: The Court has already defined income.

24 MR. SCHIFF: Well --

25 THE COURT: The law of the case is what the Court has

1 read already to the jury.

2 MR. SCHIFF: That is attached to my return. I have a
3 different concept of income and my concept of income is based
4 upon --

5 THE COURT: You're not going to testify as to your
6 concept of income. The Court has ruled what the concept of
7 income is for purposes of this case.

8 MR. SCHIFF: Yes. But in this case --

9 THE COURT: And you are stuck with it whether you like
10 it or not.

11 MR. SCHIFF: No. But in this case it has to do with
12 willfulness. It has to do not with what income may or may not
13 be; it's based upon my understanding of the word "income."

14 THE COURT: The jury -- the jury decides willfulness.

15 MR. SCHIFF: Well, but how are they gonna know -- but
16 they have to know on what I base my --

17 THE COURT: This witness --

18 MR. SCHIFF: -- belief of income.

19 THE COURT: -- this witness --

20 MR. SCHIFF: The implication from the witness, your
21 Honor --

22 THE COURT: Well, you keep talking about the
23 implication. The -- you can question him regarding his
24 testimony; you cannot question him --

25 MR. SCHIFF: Okay.

1 THE COURT: -- about his implication.

2 MR. SCHIFF: But his -- the Government introduced

3 through him various documents in which businesses were asking me

4 income in the ordinary sense. So if I said --

5 THE COURT: Court has already defined income.

6 MR. SCHIFF: Yeah. But I don't --

7 THE COURT: The Court --

8 MR. SCHIFF: -- I don't have the same understanding --

9 THE COURT: -- the Court has already defined income.

10 MR. SCHIFF: Look, you may be right. But I have a

11 different understanding --

12 THE COURT: Well, you --

13 MR. SCHIFF: -- based upon Supreme Court --

14 THE COURT: You're not going to bring in your

15 understanding, uh, through this witness. When you -- when you

16 take the stand, you may do so. But --

17 MR. SCHIFF: Okay.

18 THE COURT: -- this question is improper.

19 MR. SCHIFF: But the point is my understanding of

20 income is not the same as yours.

21 THE COURT: I have already -- Mr. Schiff --

22 MR. SCHIFF: All right.

23 THE COURT: -- if you repeat that one more time --

24 MR. SCHIFF: All right.

25 THE COURT: -- there will be sanctions.

1 MR. SCHIFF: All right. Okay.

2 BY MR. SCHIFF:

3 Q. Now -- now, in any case, in all of the tax returns that I
4 filed, I reported I had zero income; is that correct?

5 A. Not all of 'em. You did file returns, I believe, in '81
6 through '85 that did reflect income.

7 Q. Yeah. That was because I was coerced. That was during a
8 probation --

9 THE COURT: You're not going to testify.

10 BY MR. SCHIFF:

11 Q. For the years -- for the years -- I am being charged with
12 filing false returns for what years? '79 --

13 For the years that I'm charged with filing under
14 Section 7206. I'm sticking to those years.

15 A. Yes, that's correct.

16 Q. Okay.

17 A. They were zero returns for '99 through --

18 Q. So, for those years, I'm charged with filing false returns.
19 Okay.

20 So, for those years, they're false because somebody's
21 determined I have -- I should have reported a greater amount of
22 income than I reported; is that correct?

23 A. Yes, you're correct --

24 Q. Okay.

25 A. -- on that.

1 Q. Okay. Now, in other words, so your job -- in analyzing all
2 these bank accounts, your job is to estimate the amount of taxes
3 I allegedly failed to report. Isn't that what you're
4 essentially doing?

5 A. No. My job is to reconstruct income to the best of my
6 ability using an indirect method for reconstruction since there
7 were no books or records maintained.

8 Q. Oh. Since there were -- so are you saying I'm required to
9 keep books and records for tax purposes?

10 A. Yes, I am.

11 Q. Can you please identify me -- for me the statute that
12 requires me to keep books and records? Because I've never seen
13 it and I would like to see it. What statute requires me to keep
14 books and records?

15 A. Code section 6001.

16 Q. 6001. Okay.

17 MR. BOWERS: Your Honor, this appears it might be a
18 continuing debate for some period of time. Maybe we could
19 question the jury about their availability for this procedure?

20 THE COURT: I'm sorry?

21 MR. BOWERS: This -- this appears like it may go on a
22 while. Maybe --

23 THE COURT: We're going to end it and take our recess
24 for the evening.

25 MR. BOWERS: Uh, thank you, your Honor.

1 THE COURT: We are in recess until, Ms. Clerk, 9:00
2 a.m.?

3 THE CLERK: Yes, sir.

4 THE COURT: 9:00 a.m.

5 The admonition is a continuing one. Does anyone need
6 to be reminded of it? Raise your hand. Hearing none, you're
7 discussed for the evening.

8 (Jury leaves the courtroom at 4:33 p.m.)

9 THE COURT: Anything before we recess?

10 MR. BOWERS: Just I need the Court's fax number.

11 THE COURT: I'm sorry?

12 MR. BOWERS: I can get it from your clerk privately, I
13 assume, the chambers fax number. Thank you.

14 MR. LEVENTHAL: Judge, I have something quickly. You
15 mentioned that you wanted me to do the direct examination on
16 Mr. Schiff. As you know, I came into this two days before this
17 trial. I don't know anything about -- if there's any kind of
18 objections or questions that I may or may not ask, I'm not sure
19 that I would be prepared to argue any kind of relevancy.

20 THE COURT: Well --

21 MR. LEVENTHAL: I'm not sure I'm gonna be prepared to
22 ask him what he wants.

23 THE COURT: Yeah. I'm not sure you're expected to be.
24 But the instruction to Mr. Schiff is to write out all of his
25 questions that he wishes you to ask and hand them to you so that

1 any questioning is in response -- or any answers are in response
2 to a question, not -- not, as I indicated earlier, a opportunity
3 to uh, throw in --

4 MR. SCHIFF: Your Honor --

5 THE COURT: -- everything.

6 MR. SCHIFF: -- I couldn't possibly write out -- this
7 is far ranging. It goes all the way back to 1979. And I
8 couldn't write out follow-up questions. Now, I won't testify.
9 Uh, Mr. Leventhal simply doesn't know all the elements that have
10 gone in here.

11 THE COURT: That's why I'm asking you to write out the
12 questions you want him to ask you.

13 MR. SCHIFF: I -- I can't possibly do that. There are
14 too many questions. I don't have the time and I can't write up
15 follow-up questions. He doesn't understand the income tax.

16 THE COURT: Well --

17 MR. SCHIFF: Now, he's probably competent enough to
18 know what evidence can go in and how I should ask questions.
19 But, with respect to all my -- all the information that's in my
20 books and in my, uh, videos and in my whole, uh -- I couldn't
21 possibly.

22 Now, your Honor, I will -- and I've done this before at
23 other trials. I could ask and answer my own questions. And, if
24 the Government has an objection -- I do it in different voice,
25 your Honor, so it's easy to follow.

1 THE COURT: No.

2 MR. SCHIFF: But, your Honor, I can't possibly write
3 out the questions.

4 THE COURT: Write 'em out.

5 MR. SCHIFF: Pardon me?

6 THE COURT: Write 'em out. We're not gonna have a
7 running narrative between --

8 MR. SCHIFF: I'm not gonna testify in the narrative.

9 THE COURT: -- between Irwin and Schiff. We're going
10 to have questions and answers.

11 MR. SCHIFF: That's -- that's the way I'll testify.

12 THE COURT: And -- and -- and, if you get out of line
13 with it, if you -- if you vary from it, I'm going revoke your
14 right to represent yourself because you are becoming disruptive.

15 MR. SCHIFF: Well, your Honor, I could ask and answer
16 my own questions. If I write out questions for Mr. Leventhal, I
17 could ask the same question. But then if it's not responsive --

18 THE COURT: Write 'em out, figure out -- speak with him
19 and find out what's relevant and write out your questions
20 designed --

21 MR. SCHIFF: I can't --

22 THE COURT: -- to that end.

23 MR. SCHIFF: -- I don't have the time to write out all
24 these questions. You're talking about writing out questions
25 ranging all the way back to 1979.

1 THE COURT: Mr. Schiff, we are not going to have a
2 nonstop rant on your part, which is what you do when you
3 don't -- when you're not strictured.

4 MR. SCHIFF: I will -- then you can sanction me if I'm
5 on the witness stand. You can sanction me; you can say it's
6 irrelevant.

7 THE COURT: Write out the questions. That's the order,
8 sir.

9 MR. SCHIFF: I -- I can't -- physically I can't do it.
10 You wanna give me two days off so I can write out these
11 questions?

12 THE COURT: Well, you have witnesses coming in
13 tomorrow. The Government will finish up with this one. So
14 you'll have the weekend.

15 MR. SCHIFF: Well, your Honor, I physically -- I wanted
16 Mr. Leventhal --

17 THE COURT: You've got the weekend to do it.

18 MR. SCHIFF: -- to watch my video --

19 THE COURT: You've actually got four days.

20 MR. SCHIFF: No. I have four --

21 THE COURT: He doesn't need to watch your video.

22 MR. SCHIFF: I have four days to get people in here to
23 go -- to contact potential witnesses, to write out jury
24 instructions. I physically cannot write out -- if he's not --
25 he doesn't understand, not his -- he doesn't understand income

1 taxes. He doesn't know what's in my books.

2 THE COURT: Well --

3 MR. SCHIFF: He doesn't understand. He's not a tax law
4 [sic]. All right. I'll tell you what I'll do. Suppose I get
5 somebody, a lawyer from Massachusetts who has -- who has read my
6 material over the years and he'll come in from Massachusetts?
7 Could I do that?

8 THE COURT: No.

9 MR. SCHIFF: Because Mr. Leven- -- Rosenthal [sic]
10 cannot do this.

11 THE COURT: You're going to do it. You're gonna write
12 out the questions and he's gonna ask you the questions and
13 that's the order, Mr. Schiff.

14 MR. SCHIFF: I -- I -- I can't physically -- can I
15 bring in another lawyer who understands my material?

16 THE COURT: Mr. Schiff, this -- this comes at a time
17 when we're ready to commence your part of the case, uh. I have
18 not reviewed any pro hac vice. Of course I'm not going to tell
19 you you can bring another lawyer in and then have this person
20 turn out to be someone who is, uh, not qualified to practice
21 before this court.

22 MR. SCHIFF: Okay. Your Honor, the problem --
23 Mr. Leventhal lives in San Francisco and every weekend he had to
24 go back to San Francisco.

25 THE COURT: You can write out the questions and he'll

1 read 'em to you. It's your -- you chose to represent
2 yourself --

3 MR. SCHIFF: Physically I --

4 THE COURT: -- and you can write them out. That is the
5 order.

6 MR. SCHIFF: I'm gonna write out -- I'm gonna write out
7 questions for -- for -- covering --

8 THE COURT: They're your questions. You can write them
9 out.

10 MR. SCHIFF: I can't write them out.

11 THE COURT: He doesn't need to -- he doesn't need to
12 know your case to write the questions because you're writing the
13 questions.

14 MR. SCHIFF: I'm physically --

15 THE COURT: You see, all he has to do is read your
16 questions. That's the order.

17 Okay. We're in recess until 9:00 a.m.

18 (Proceedings adjourned at 4:39 p.m.)

19 --oOo--

20 I hereby certify that pursuant to Section 753, Title 28, United
21 States Code, the foregoing is a true and correct transcript of
22 the stenographically reported proceedings held in the
23 above-entitled matter.

24

DATED:

25

FELICIA RENE ZABIN, RPR, CCR NO. 478