

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

5 UNITED STATES OF AMERICA,)
)
6 Plaintiff,) Case No. CR-S-04-119-KJD(LRL)
)
7 vs.)
)
8 IRWIN SCHIFF, CYNTHIA NEUN,)
 and LAWRENCE COHEN,)
9)
 Defendants.)
10)
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12
13
14

15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 19)
16 Thursday, October 13, 2005
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18
19

20 APPEARANCES: (See Page 2)
21
22
23

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

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

I N D E X

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

Irwin Schiff	--	--	4961L	4972N	--
Bradley Bean	4979S	4993I	4994S	--	--
Noel Spaid	5004S	5006N	5007S	--	--

EXHIBITS

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

2118	4973	--
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Defendant Neun's:

2500, 2501, 2503, 2508, and 2526	--	5032
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Defendant Cohen's:

2047	5025	--
2801, 2802, and 2803	--	5017
		5033
2810A	--	5033

1 LAS VEGAS, NEVADA; THURSDAY, OCTOBER 13, 2005; 9:15 A.M.

2 --oOo--

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

4 THE CLERK: All rise.

5 THE COURT: Thank you. Please be seated.

6 MR. SCHIFF: I have an issue.

7 THE COURT: Go ahead.

8 MR. SCHIFF: Yes. Uh, when on cross-examination the
9 Government said to me about the last trial, he says, and you
10 didn't agree with that verdict, did you? And he made it sound
11 as if I have some irrational agreement -- disagreement.

12 Now, I subpoenaed Elliott Silverman, who wrote an
13 article in the Journal of Taxation, and it merited an article in
14 the Journal of Taxation. And here is the article and his letter
15 to me. And I believe I should be able to show this to the jury,
16 that somebody else disagreed, although the impression is that I
17 irrationally disagreed.

18 Now, here is Mr. Silverman's article. And the way he
19 said it, well, you disagree with that verdict? Well,
20 Mr. Silverman thought enough about it. And he said as far as
21 the Court is concerned -- as far as the judge's answer is, this
22 answer was clearly wrong. And Mr. Silverman, who I didn't know,
23 said that my conviction is in conflict with the principle that
24 practitioners have thought until now to have been settled law
25 for over 40 years. The mere inaction, not filing a return or

1 paying a tax, is not sufficient to constitute the felony of tax
2 evasion. And he writes up the facts in the case and says
3 basically I was only convicted of the misdemeanors of failing to
4 file and failing to pay. But I was not convicted of an
5 affirmative -- so I couldn't have been convicted of evasion.

6 Now, the reason he wrote the article was not to protect
7 me so much; it was to raise the issue for tax lawyers whether
8 the law has been changed and you cannot be found guilty of tax
9 evasion without committing an affirmative act of evasion.

10 Now, the purpose of this article is merely to show that
11 this was not just sour grapes on my part. But the way the U.S.
12 Attorney said, well, you didn't agree with that decision, as if
13 everybody else agreed with it except me. So I believe because
14 he put it in such tones and in such language that the jury has a
15 right to know that other professionals, other than me, disagreed
16 with that verdict. If not, then his -- his, um, statements are
17 so prejudicial, totally prejudicial. So here's the article.

18 And I'm gonna take the stand. And I would like
19 Mr. Leventhal who -- to say -- to ask me a question such as:
20 Mr. Schiff, you disagree with your conviction in 1985. Did
21 anybody else disagree? And then I'll have an opportunity to say
22 other professionals disagreed and why.

23 And I believe if you don't allow me to do this you're
24 just allowing a prejudicial -- and this is probative. I don't
25 know the terms that lawyers use. And it's being entered to

1 overcome the prejudicial character of the Government's remarks.

2 THE COURT: Are you through?

3 MR. SCHIFF: Yes.

4 THE COURT: Government.

5 MR. NEIMAN: Well, your Honor, obviously the testimony
6 regarding Mr. Schiff's prior convictions, whether it was a
7 felony or misdemeanor, really is irrelevant. What is --

8 THE COURT: Mr. Schiff.

9 MR. NEIMAN: -- this evidence was used to show notice
10 to Mr. Schiff that he was required to pay taxes. The fact that
11 he disagrees with the decision goes to the good-faith nature of
12 this misunderstanding, if even to characterize it as that. And,
13 uh, therefore, I think the testimony of -- or the reference even
14 to a -- a lawyer who -- writing an opinion as to this case is
15 completely irrelevant.

16 THE COURT: It is irrelevant and --

17 MR. SCHIFF: Your Honor, can I just --

18 THE COURT: -- I've ruled.

19 MR. SCHIFF: -- can I --

20 THE COURT: I've ruled.

21 MR. SCHIFF: I can't make a comment on his...

22 THE COURT: Mr. Schiff, you went over this at length
23 yesterday.

24 MR. SCHIFF: I don't remember.

25 THE COURT: I ruled. You may not remember, but you

1 did.

2 MR. SCHIFF: Did he show --

3 THE COURT: I already ruled then and I'm ruling again
4 it is irrelevant.

5 Ms. Clerk, will you bring in the jury.

6 THE CLERK: Yes, sir.

7 (Pause in the proceedings.)

8 MR. SCHIFF: Can I get five minutes?

9 THE COURT: What's the problem?

10 MR. SCHIFF: I'm trying to think of questions.

11 THE COURT: What is the problem? Mr. Leventhal?

12 MR. SCHIFF: He --

13 MR. LEVENTHAL: I'm not sure --

14 MR. SCHIFF: -- I have to give him questions to ask me.

15 THE COURT: What?

16 MR. SCHIFF: I have to --

17 MR. LEVENTHAL: He's trying to give me the questions
18 that he wants me to ask him.

19 THE COURT: Well, hand them to him.

20 MR. LEVENTHAL: I'm sorry?

21 MR. SCHIFF: All right.

22 THE COURT: If you have the questions, hand them to
23 him.

24 MR. SCHIFF: I'm trying to think of what might be
25 relevant at this stage of the game.

1 THE COURT: Mr. Schiff.
2 (Discussion between Mr. Leventhal and
3 Mr. Schiff.)
4 (Jury enters the courtroom at 9:21 a.m.)
5 THE COURT: Please be seated.
6 Will counsel stipulate to the presence of the jury?
7 MR. NEIMAN: Yes, your Honor.
8 MR. BOWERS: Yes, your Honor.
9 MR. CRISTALLI: Yes, your Honor.
10 THE COURT: Thank you.
11 Ladies and gentlemen of the jury, it's my understanding
12 that some of you have inquired as to the timing of -- of this
13 case and the conclusion. We are -- we are nearing the end of
14 the case. It -- it looks to me like even if we get the case to
15 you today your deliberations may -- may extend beyond today.
16 And I say "if" advisedly because I'm not sure, uh, how many more
17 witnesses are going to testify.
18 If the case, uh, does not conclude today or you do not
19 reach a verdict today, how many of you have other plans for
20 tomorrow and would not be able to return tomorrow if we decide
21 to go Friday? Raise your hands. (Hands raised.)
22 All right. Five, -- five hands. Well, that's --
23 that's enough.
24 If -- if the case resumes Monday, are all of you
25 prepared to -- to return on Monday? If anyone is not, please

1 raise your hand. (No hands raised.)

2 Okay. It looks like that's what we'll do, Counsel, is
3 we'll have -- we'll have to go into Monday --

4 MR. CRISTALLI: Yes, sir.

5 THE COURT: -- if we don't conclude today.

6 All right. Mr. Schiff, you will resume the stand,
7 please.

8 MR. MODAFFERI: Irwin.

9 (Discussion between Mr. Modafferi and
10 Mr. Schiff.)

11 (Mr. Schiff resumes the witness stand.)

12 THE COURT: Why don't you go ahead and hand those to
13 counsel. Thank you, Chad.

14 Mr. Fears is handing you each a copy of the proposed
15 jury instructions.

16 (Pause in the proceedings.)

17

18 IRWIN SCHIFF,

19 the defendant herein, having been previously duly sworn, was
20 examined and testified further as follows:

21

22 THE COURT: Okay. Mr. Leventhal, you can go ahead.

23 MR. LEVENTHAL: Thank you, Judge.

24

25

1 REDIRECT EXAMINATION (Continued)

2 BY MR. LEVENTHAL:

3 Q. Good morning, Mr. Schiff.

4 A. Good morning.

5 Q. Mr. Schiff, do you believe there's any law requiring you to
6 pay income taxes?

7 A. No, I do not. And the Government never produce such a law
8 at this trial.

9 MR. NEIMAN: Objection to the last portion of that
10 statement. The Government's not required to prove anything.

11 THE COURT: Sustained. Strike.

12 THE WITNESS: All right.

13 BY MR. LEVENTHAL:

14 Q. Mr. Schiff, do you believe any IRS agent has any authority
15 to seize property?

16 MR. NEIMAN: Objection. Relevance.

17 THE COURT: What is the relevance?

18 MR. SCHIFF: Well, your Honor, doesn't it go to my
19 beliefs? Aren't my beliefs important in this trial?

20 MR. NEIMAN: Your Honor, I think under Cheek his
21 beliefs as to the authorization, or lack thereof, of the IRS to
22 do anything are irrelevant.

23 MR. SCHIFF: Under the Cheek decision, it's what I
24 believe, not what I should have believed. And if I believe and
25 the jury believes that I believe it, they can't find me guilty.

1 THE COURT: I'll allow that one question. We're not
2 going to go into any depth into it. But he can answer what he
3 believes.

4 BY MR. LEVENTHAL:

5 Q. Do you want me to repeat the question? Do you believe any
6 IRS agent has any authority to seize property?

7 A. I absolutely believe that. There is no doubt in my mind --

8 THE COURT: Mr. Schiff --

9 THE WITNESS: All right. I want it understood.

10 BY MR. LEVENTHAL:

11 Q. Do you believe that the IRS has the authority --

12 A. Wait, wait, wait a minute.

13 Q. -- to estimate taxes?

14 A. Wait a minute.

15 THE COURT: Go ahead. Next --

16 THE WITNESS: I gotta consult with him for a moment,
17 your Honor.

18 THE COURT: You need to what?

19 THE WITNESS: That's not the question that I exactly
20 gave him.

21 THE COURT: All right. Well --

22 THE WITNESS: Could I get one minute to consult with
23 him?

24 THE COURT: Yes, you may.

25 THE WITNESS: Otherwise...

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

3 THE COURT: Mr. Leventhal.

4 MR. LEVENTHAL: Thank you, Judge.

5 BY MR. LEVENTHAL:

6 Q. Mr. Schiff, do you believe the IRS has the authority to
7 estimate taxes?

8 A. Estimate taxes? No.

9 Q. And what do you base that belief on?

10 A. Because the IRS is not mentioned anywhere in the Internal
11 Revenue Code. The only person who has any authority given in
12 the Code is the Secretary of the Treasury. And, before the IRS
13 can get any such authority, pursuant to Section 7701,
14 subparagraph 12, the Secretary has to delegate his authority to
15 the IRS and that delegation of authority has to be published in
16 the Federal Register pursuant to subtitle 44, Section 1505; and,
17 A, that that authority has never been delegated and it's never
18 been published in the Federal Register, so they can't have any
19 such authority.

20 MR. NEIMAN: Your Honor, the Government is just
21 wondering what Mr. Schiff is reading from, uh...

22 THE COURT: What are you reading from?

23 THE WITNESS: I'm reading from -- well, I'm reading
24 from Section 44 -- I'm reading from Chapter 15 because I can't
25 get it --

1 MR. NEIMAN: Well, what's the document?

2 THE WITNESS: -- exactly in case he wanted to challenge
3 me on it.

4 MR. NEIMAN: Just --

5 THE WITNESS: Well, I'm reading from 1505 of subtitle
6 44, and I'm reading from the specific statute, 7701.

7 THE COURT: What is the document that you're reading
8 from, sir?

9 THE WITNESS: I'm -- here it is. It's just a document.
10 I can't memorize these statutes.

11 MR. NEIMAN: Well --

12 THE WITNESS: So in case --

13 THE COURT: T looks like it has a caption on it. What
14 is the --

15 THE WITNESS: Well, it says --

16 THE COURT: No. Wait a minute.
17 First page, what's on the first page? Or is this
18 something you've just cobbled together?

19 THE WITNESS: No. I just put it together in case the
20 U.S. Attorney --

21 MR. NEIMAN: Your Honor, the Government --

22 THE WITNESS: -- challenged me --

23 MR. NEIMAN: -- from here --

24 THE WITNESS: -- on this statute.

25 MR. NEIMAN: -- it looks like it is a court case. If

1 it is, the United States would like to know what the court case
2 it is he's reading from with this argument.

3 THE COURT: Well, it appears to me that what he has in
4 front of him is something that he has cut and pasted.

5 THE WITNESS: I -- I -- I --

6 THE COURT: He's clipped out and then he's taped --

7 THE WITNESS: Yeah, but --

8 THE COURT: -- things onto a page. And so I can't tell
9 what he's looking at.

10 THE WITNESS: All right. Let me tell you what I'm
11 reading from. Here it is if you want to see it.

12 THE COURT: Well, if you want to read something from --
13 if you want to read from something, it must be marked so that
14 the Government knows what you're reading from.

15 THE WITNESS: I'm reading from two statutes.

16 THE COURT: You can't bring things up and just read
17 them off of a page and not let people know what you're reading
18 from.

19 THE WITNESS: All right. I'll tell you what I'm
20 reading from. I -- I thought -- I'm reading from Title 44 --

21 MR. NEIMAN: Your Honor, we would object to the reading
22 of the statute. It's a misstatement of the law.

23 THE COURT: It is --

24 THE WITNESS: Well --

25 THE COURT: -- and --

1 THE WITNESS: -- here's the law. Show me where --

2 THE COURT: Well, you're not entitled to read from

3 something.

4 THE WITNESS: All right, all right.

5 THE COURT: You can --

6 THE WITNESS: I won't read it.

7 THE COURT: -- you can respond to the question.

8 THE WITNESS: Okay.

9 THE COURT: You're not allowed to read unless the --

10 THE WITNESS: Okay.

11 THE COURT: -- the document is marked --

12 THE WITNESS: Okay.

13 THE COURT: -- for identification.

14 THE WITNESS: Okay.

15 According to my understanding, since I can find nowhere

16 in the Internal Revenue Code any reference to the IRS doing

17 anything all -- all authority in the Code is given to the

18 Secretary of the Treasury. However, the Code does allow the

19 Secretary of the Treasury to delegate his authority to anybody,

20 including the IRS. But it's my belief he's never done so. And,

21 even if he has done so, that delegation of authority has to be

22 published in the Federal Register. And I have been told by the

23 people who compile the Federal Register --

24 MR. NEIMAN: Objection. Hearsay.

25 THE COURT: Sustained.

1 THE WITNESS: Well, I have --

2 THE COURT: Sustained.

3 THE WITNESS: -- I have a letter from them.

4 THE COURT: Sustained.

5 THE WITNESS: The letter is shown in The Federal Mafia.

6 THE COURT: It is still hearsay. Sustained.

7 THE WITNESS: All right.

8 Well, it's my belief that the delegation order has

9 never been published. And I asked in pretrial motions for the

10 Government to produced those two, um, documents --

11 MR. NEIMAN: Objection --

12 THE WITNESS: -- and they never have.

13 MR. NEIMAN: -- as to what he asked the Government to

14 produce.

15 THE WITNESS: Well, produce 'em.

16 THE COURT: Sustained.

17 THE WITNESS: That's what I base my --

18 THE COURT: Sustained.

19 THE WITNESS: -- belief on. It's not an irrational

20 belief.

21 MR. NEIMAN: Objection to the commentary.

22 THE COURT: Sustained. Strike.

23 BY MR. LEVENTHAL:

24 Q. Mr. Schiff, have you ever tried to attempt to conceal your

25 assets?

1 A. No, from -- from -- conceal my assets from any tax I
2 believe...

3 Q. That's correct.

4 A. Well, I didn't -- never tried to conceal them anyway. I
5 always publicized what I was doing. Everything was done through
6 my checkbook. I didn't take cash in a suitcase and leave the
7 country. I publicized what I was doing. But --

8 Q. Mr. Schiff --

9 A. -- but I tried to put money, uh, where I thought the IRS
10 couldn't get their hands on it.

11 Do you want to know the basis -- all right.

12 Q. What is the basis?

13 A. Because seizures are usually done by revenue officers and no
14 revenue officer has an enforcement pocket commission.

15 MR. NEIMAN: Objection to the pocket commission.

16 Irrelevant.

17 THE COURT: Sustained.

18 THE WITNESS: Well, it's --

19 THE COURT: I've already --

20 THE WITNESS: -- they don't have --

21 THE COURT: -- I've already warned you on this now.

22 THE WITNESS: Well, you're telling me that --

23 THE COURT: Mr. Schiff --

24 THE WITNESS: -- I'm irrational --

25 THE COURT: -- don't argue with the Court. I sustained

1 the objection.

2 BY MR. LEVENTHAL:

3 Q. Mr. Schiff, have you ever deliberately tried to mislead
4 people in what the law requires them to do?

5 A. Absolutely not. I try to encourage them to read the law and
6 understand it on their own.

7 Q. Have you ever forced anybody to file a zero return?

8 A. Absolutely not.

9 Q. Can you point to any statute that requires you to keep books
10 and records?

11 MR. NEIMAN: Objection --

12 THE WITNESS: I -- I can't.

13 MR. NEIMAN: -- as to his --

14 THE WITNESS: Maybe the --

15 MR. NEIMAN: -- the judge instructs --

16 THE WITNESS: -- prosecutor can.

17 MR. NEIMAN: -- upon the law, not the defendant.

18 BY MR. LEVENTHAL:

19 Q. Mr. Schiff, do you believe that there's any statute that
20 requires you to keep books and records?

21 A. I've never found any such statute. If the prosecutor will
22 show me a statute, I'll -- I'll start keeping it.

23 THE COURT: Uh, Mr. Schiff, you don't need to make
24 commentary. The prosecutor is not obligated to show you such
25 law.

1 THE WITNESS: All right.

2 THE COURT: And the Court will instruct the jury on --
3 on the law relative to that.

4 MR. LEVENTHAL: That's all I have.

5 Is there anything else? With the Court's indulgence.

6 THE COURT: Yes.

7 (Discussion between Mr. Leventhal and
8 Mr. Schiff.)

9 BY MR. LEVENTHAL:

10 Q. Mr. Schiff, on what authority do you base your beliefs on?

11 A. Well, on the Privacy Act Notice. All my beliefs stem from
12 the Privacy Act Notice, which is in the 1040 booklet. And the
13 Privacy Act Notice says 6001, 6011, and 6012, and their
14 regulations, say you must file a return or statement with us for
15 any tax you are liable for.

16 So the government is telling me that I only have to
17 file taxes for -- and I can't find where, uh, I'm liable for an
18 income tax. The government doesn't tell me the section. And I
19 have --

20 THE COURT: Mr. Schiff --

21 THE WITNESS: -- not been able to find it on my own.
22 So, therefore, all my beliefs stem from that statement which is
23 the official notice to me of whether or not I have to pay income
24 taxes. And, if there is any other section other than these
25 sections that would require me to pay income taxes, the

1 government was bound by law to direct me to those sections. And
2 I can find nothing in those sections that required me to keep
3 books and records or pay income taxes or make me liable.

4 And I also relied on the letters from Dan Burton, uh,
5 and, uh, Congressman, uh, uh, uh, Ensign confirming my
6 understanding. Both Congressman Dan Burton when he was on the
7 Senate -- uh, House Ways and Means Committee -- they are the
8 ones who write tax legislation -- he certainly should have been
9 able to go to the legal counsel for that committee, even if he
10 didn't know the answer himself, say give me some help here, will
11 ya, before I write my constituents. And, if he can't find a law
12 and if Burton can't find the law, how can the government expect
13 me to find it, or anybody else?

14 BY MR. LEVENTHAL:

15 Q. I think that's it?

16 A. Pardon me?

17 Q. Is that -- that's all the questions?

18 A. That should do it.

19 Q. Okay. Thank you.

20 THE COURT: Cross-examination. Mr. Cristalli?

21 MR. CRISTALLI: No questions, your Honor.

22 THE COURT: Mr. Bowers?

23 MR. BOWERS: Nothing, Judge.

24 THE COURT: Government?

25 MR. NEIMAN: Your Honor, if I could just approach the

1 witness --

2 THE COURT: You may.

3 MR. NEIMAN: -- to see what it was.

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

6 MR. SCHIFF: Here, this is what I was using. These --
7 I was quoting from the statute.

8

9 RE-CROSS-EXAMINATION

10 BY MR. NEIMAN:

11 Q. Mr. Schiff, what you were quoting from was actually an order
12 from this court rejecting all those arguments.

13 A. No, I'm not. We'll talk -- that was some of my --

14 Q. Was it not?

15 A. -- final argue -- no. I happened to put it on there.

16 Q. It was an order with some attachments in the case of William
17 Waller versus the United States of America --

18 A. I didn't --

19 Q. -- was it not?

20 A. -- I didn't raise that case at all.

21 THE COURT: Mr. Schiff, answer the question.

22 THE WITNESS: No. I didn't --

23 BY MR. NEIMAN:

24 Q. Is this what you were reading from --

25 A. No.

1 Q. -- the order?

2 A. Absolutely not. I was reading -- there was some -- there
3 was some space on that page if a case came up. I was reading
4 from the statutes --

5 THE COURT: All right. Well, let's --

6 THE WITNESS: -- not from that decision.

7 THE COURT: -- let's mark it as an exhibit --

8 MR. NEIMAN: Please.

9 THE COURT: -- since there is a dispute about it.

10 THE WITNESS: That already is an exhibit.

11 THE COURT: The entire --

12 THE WITNESS: I just added --

13 THE COURT: -- the entire bundle --

14 THE WITNESS: -- some --

15 THE COURT: -- will be marked as an exhibit.

16 No. It's a bundle that has been cobbled together,
17 Ms. Clerk. You will give it a new number.

18 THE WITNESS: I was reading from the statutes. Now, if
19 I misquoted the statutes, I will be happy to know about it.

20 THE CLERK: 2118.

21 (Defendant Schiff's Exhibit No. 2118, marked
22 for identification.)

23 THE COURT: Are you marking it as a defense exhibit?

24 THE CLERK: Mr. Neiman asked me to.

25 MR. NEIMAN: Defense is fine.

1 THE COURT: All right.

2 MR. NEIMAN: I'm not going to move it in, your Honor.

3 It's just for identification purposes.

4 THE COURT: Yes.

5 MR. NEIMAN: If I may approach the witness.

6 THE COURT: You may.

7 BY MR. NEIMAN:

8 Q. Mr. Schiff, the first page of Defense Exhibit, marked for

9 identification, 2118 is that not the order denying Mr. Waller's

10 appeal of a collection due process hearing?

11 A. Yeah. But I didn't use it for that purpose.

12 Q. Is that what the first page is?

13 A. Yes, it is.

14 Q. And you disagree with that order?

15 A. Ab- -- disagree with the Court's order? Of course I do.

16 Q. All right.

17 A. So did Mr. Waller.

18 MR. NEIMAN: Nothing further.

19 THE WITNESS: But did I quote the statutes correctly?

20 THE COURT: Okay. Thank you.

21 You may step down, sir.

22 THE WITNESS: I'm all through?

23 THE COURT: You are.

24 THE CLERK: Mr. Schiff, all of this stuff is yours. I

25 set it aside for you.

1 MR. SCHIFF: Can I take this?

2 THE COURT: No --

3 THE CLERK: No, sir, you can't.

4 THE COURT: -- that's marked as an exhibit.

5 MR. SCHIFF: Can I have it?

6 THE CLERK: No, sir.

7 MR. SCHIFF: Well, I use it -- I can't have that?

8 THE COURT: We'll make you a copy --

9 MR. SCHIFF: Could I --

10 THE COURT: -- if you need it. We'll make you a copy
11 if you need it.

12 MR. SCHIFF: Yeah, make me a copy.

13 THE CLERK: Okay.

14 MR. SCHIFF: Is the 1040 going in as an exhibit? I
15 read from this also. Is this going in? I was reading from the
16 Privacy Act. So why don't you make the Privacy Act an exhibit.

17 THE COURT: Well, Mr. Schiff, the Government doesn't
18 have to put in exhibits that you think they should put in. So
19 if --

20 MR. SCHIFF: Is it in, incidentally?

21 THE COURT: I don't know.

22 MR. SCHIFF: I would like to put --

23 MR. NEIMAN: Your Honor --

24 MR. SCHIFF: -- it in as --

25 MR. NEIMAN: -- if he wants --

1 MR. SCHIFF: -- an exhibit.

2 MR. NEIMAN: -- it to be marked, it can be marked.

3 Whether it's admitted is a different story.

4 THE COURT: Marked.

5 MR. NEIMAN: But it can be marked. Just like this

6 was -- the previous one was marked.

7 THE COURT: We'll be happy to mark it --

8 MR. SCHIFF: Okay.

9 THE COURT: -- if that's what you wish.

10 MR. SCHIFF: I think the jury ought to see it.

11 THE COURT: All right.

12 MR. SCHIFF: Also --

13 THE COURT: Please step down, sir. You --

14 MR. SCHIFF: Also --

15 THE COURT: -- your examination is through.

16 MR. SCHIFF: I have some Supreme Court cases I'd like

17 to put in.

18 THE COURT: Well --

19 MR. SCHIFF: I forgot to bring it.

20 THE COURT: Step down, sir.

21 THE CLERK: Here.

22 MR. SCHIFF: I have a witness.

23 THE COURT: You have a witness?

24 MR. SCHIFF: Yeah.

25 THE COURT: All right.

1 MR. CRISTALLI: Your Honor, I don't know if Mr. Schiff
2 knows. But I think he does have a right to redirect. I think
3 that's the last redirect.

4 MR. SCHIFF: They asked me --

5 THE COURT: He was on redirect.

6 MR. CRISTALLI: I'm sorry?

7 THE COURT: He was on redirect.

8 MR. SCHIFF: Your Honor --

9 THE COURT: This -- if we take him again --

10 MR. CRISTALLI: Right. I thought --

11 THE COURT: -- it is reredirect.

12 MR. CRISTALLI: Right.

13 THE COURT: It's the third time.

14 MR. CRISTALLI: Okay. I apologize. I think I'm...

15 MR. SCHIFF: Your Honor, I didn't think I had --

16 THE COURT: Go ahead.

17 MR. SCHIFF: -- to put into evidence Supreme Court
18 cases that I relied on.

19 THE COURT: Mr. Schiff, why don't you step down. You
20 are --

21 MR. SCHIFF: Okay.

22 THE COURT: -- no longer on the witness stand.

23 MR. SCHIFF: Okay.

24 (Pause in the proceedings.)

25 THE COURT: Watch your step.

1 MR. SCHIFF: I'll tell you my understanding.

2 THE COURT: Watch your step.

3 MR. SCHIFF: Yes, sir.

4 THE COURT: Okay.

5 MR. SCHIFF: Um...

6 THE COURT: All right. Your next witness, Mr. Schiff.

7 MR. SCHIFF: Can I have a question?

8 THE COURT: Your next witness.

9 (Discussion between Mr. Modafferi and
10 Mr. Schiff.)

11 THE COURT: Your next witness, Mr. Schiff.

12 MR. SCHIFF: All right.

13 (Pause in the proceedings.)

14 THE COURT: Will the Court Security Officer check and
15 see what the delay is.

16 (Pause in the proceedings.)

17 THE COURT: Step right up here.

18 (Bradley Bean takes the witness stand.)

19 THE CLERK: Go on up to the...

20 Please remain standing. 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: Yes, ma'am.

25 THE CLERK: Please be seated.

1 BY MR. SCHIFF:

2 Q. Mr. Bean --

3 THE CLERK: Excuse me, sir.

4 THE WITNESS: Yes.

5 THE CLERK: Please state for the record your full name
6 and spell your last name.

7 THE WITNESS: Bradley W. Bean, B-e-a-n.

8 THE CLERK: Thank you.

9

10 BRADLEY BEAN,

11 called as a witness on behalf of Defendant Schiff, having been
12 first duly sworn, was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. SCHIFF:

16 Q. And what kind of work to you do you, Mr. Bean?

17 A. I work at General Electric in Lynn, Mass.

18 Q. You work at General Electric in Lynn, Mass.?

19 A. I'm an --

20 Q. Is that correct, in Lynn, Mass.?

21 A. Correct.

22 Q. What kind of work do you do there?

23 A. I'm assembly and test of large gear reduction units for --

24 Q. Can I ask you to keep your voice up? I...

25 A. Okay.

1 I -- I -- I'm an assembler. My job title is assembly
2 and test. I, uh, work on assembling large gear reduction units
3 for ocean-going vessels.

4 Q. How long have you been working there?

5 A. I've been, uh -- I was originally hired in '85 and I've been
6 laid off and rehired and laid off and...

7 Q. So you've been there since '85 though?

8 A. Yes, sir.

9 Q. How many employees did they have in '85? Do you know?

10 A. In '85, they had 17,000.

11 Q. 17,000.

12 How many employees do they have now?

13 A. 2300.

14 MR. IGNALL: Objection. Relevance.

15 THE COURT: It's not relevant.

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

17 THE COURT: It is not relevant.

18 MR. SCHIFF: All right.

19 THE COURT: Next question.

20 BY MR. SCHIFF:

21 Q. How did you first come in contact with me?

22 A. I was surfin' the Web and found your Web site.

23 Q. Surfing the Web?

24 A. Correct.

25 Q. And you came across my Web site?

1 A. Back in the fall of 1999, yes, sir.

2 Q. Oh, in 1999.

3 Was there something on my Web site that perked your
4 interest?

5 A. Absolutely. Your, uh, claims, uh, of, uh, what's -- what's
6 really happenin' with our -- with our -- with the IRS and -- and
7 our government; the fact that there was, uh, no income tax
8 liability interest being...

9 Q. Okay. So there was something on my Web site that got your
10 interest. So what did you do as a result?

11 A. I purchased your book The Federal Mafia and --

12 Q. Oh, The Federal Mafia you purchased. Federal Mafia.

13 Anything else?

14 A. I also purchased The Great Income Tax Hoax.

15 Q. The Great Income Tax Hoax.

16 A. And I also purchased your Secrets video.

17 Q. The Secrets video.

18 A. Correct.

19 Q. Secrets video.

20 And you -- what happened?

21 A. Well, I -- I --

22 Q. Did you review the video?

23 A. I looked at the -- looked at the book, you know, briefly and
24 my wife and I viewed your Secrets video.

25 Q. And was there anybody else who watched it with you?

1 A. No. My wife and I originally were --

2 Q. Okay.

3 A. -- the first ones to watch it.

4 Q. Okay. What was your reaction to the video?

5 A. Disbelief. Uh, we were angered. Just -- just couldn't

6 believe that what was in the video could really be happening.

7 Q. Well, what did you find so unbelievable?

8 A. Well, what -- what I found unbelievable is that your claim

9 that there's no law that makes us liable for the income tax and

10 yet the IRS continually goes and fraudulently collects.

11 Q. But was that my claim or was it supported by doc- --

12 A. It was supported by documents, yes.

13 Q. In other words, it was not my claim?

14 A. No, it's not your claim.

15 MR. IGNALL: Objection, your Honor. If it's not

16 Mr. Schiff's claim, then I'm not sure what the relevance --

17 MR. SCHIFF: Okay.

18 MR. IGNALL: -- of this witness is.

19 BY MR. SCHIFF:

20 Q. So what -- what did you do --

21 THE COURT: Yes. Mr. --

22 BY MR. SCHIFF:

23 Q. -- what did you --

24 THE COURT: Mr. Schiff --

25

1 BY MR. SCHIFF:

2 Q. -- what did you do next?

3 THE COURT: Mr. Schiff, don't -- don't disregard the
4 prior rulings of the Court on the relevance of this witness.

5 MR. SCHIFF: I just wanted...

6 BY MR. SCHIFF:

7 Q. What did you do next?

8 A. Well, I wanted to, uh, support -- I wanted to investigate
9 the information that I learned. So I did it in several ways. I
10 purchased a copy of the Internal Revenue Code, Title 26.

11 Q. So you purchased from me the Internal Revenue Code --

12 A. Yes, sir.

13 Q. -- to verify?

14 A. To -- to verify that what -- what you said or what you
15 showed in your books and video was accurate.

16 Q. And did you make a determination whether it was accurate?

17 A. Well -- well, I -- I made a determination, but it wasn't
18 satisfactory to me. I needed more proof in my --

19 Q. So --

20 A. -- in my opinion.

21 Q. -- then what did you do?

22 A. Which I seeked [sic] more proof.

23 Q. So what did you do?

24 A. I -- I did it --

25 MR. IGNALL: Objection, your Honor. Insofar as this

1 goes to this witness somehow, you know, confirming what
2 Mr. Schiff has already told him, I'm not sure it's relevant.

3 THE COURT: It isn't.

4 MR. IGNALL: What he's done --

5 THE COURT: It isn't.

6 MR. IGNALL: -- may be relevant.

7 THE COURT: Sustained.

8 THE WITNESS: I --

9 MR. SCHIFF: He sustained --

10 THE COURT: I've sustained --

11 MR. SCHIFF: -- the objection.

12 THE COURT: -- the objection.

13 THE WITNESS: Oh, oh. I'm sorry.

14 THE COURT: Wait for the next question.

15 BY MR. SCHIFF:

16 Q. So, uh, you made -- all right. What did you do next?

17 A. What I -- what I did next --

18 THE COURT: I sustained the objection. Ask him --

19 MR. SCHIFF: Well, it's next.

20 THE COURT: -- him a specific --

21 MR. SCHIFF: I'm asking --

22 THE COURT: -- question.

23 MR. SCHIFF: -- what he's doing -- he's not --

24 THE COURT: No. Ask him a specific question.

25

1 BY MR. SCHIFF:

2 Q. Well, did you file a zero return? Did you claim exempt?

3 Did you do anything with the information that you got?

4 A. What -- what I did next after -- upon my investigation of

5 the facts, I comfortably filed a completely honest zero return.

6 Q. So wait a minute. So you filed a zero return?

7 A. Correct, in the -- in the -- in -- in April 2000.

8 Q. Did you recall some of the elements with -- with an

9 attachment?

10 A. I -- I included an attachment with 30 -- 30 reasons why this

11 is a legitimate return.

12 Q. Did you agree with everything on the attachment?

13 A. Ab- -- absolutely, yes.

14 Q. Um, do you recall some of things that you put on the

15 attachment?

16 A. Um, the attachment cited the fact that it -- it can't be

17 ruled a frivolous return because it's, uh, supported by numerous

18 Supreme Court cases. Um, it's -- there are many reasons. I --

19 really at the moment I...

20 Q. You can't recall any reasons. All right.

21 So as a result of filing this -- what year was that?

22 A. That was for the tax year '99.

23 Q. 1999.

24 Okay. What was the result of your filing that return?

25 A. Well, the result was a year later I received notice that

1 they were gonna impose a frivolous penalty against me if I
2 didn't send in a return -- a proper return.

3 Q. Did you believe that the return you filed was proper?

4 A. Absolutely.

5 Q. Did you believe it was frivolous?

6 A. No -- in no -- in no way.

7 Q. Did -- when they replied to you, did they, um, contradict
8 or -- or attempt to answer any of the issues on your --

9 A. No, sir.

10 Q. -- return?

11 A. No.

12 Q. So what did you do?

13 A. What I -- what I did was I contacted the IRS via certified
14 mail asking them to specifically point out what they would
15 consider frivolous on my return.

16 Q. And what did they reply?

17 A. As I recall, they did not reply. What -- what was next is
18 they -- they imposed a penalty against me.

19 Q. Did you ever have a hearing on whether or not the penalty --

20 A. I -- I -- I requested a hearing about this and they said I
21 did not qualify for a hearing.

22 Q. So then what happened? Then moving on, what -- what did you
23 do next, if anything?

24 A. Um...

25 Q. Did you still continue to have --

1 A. I'm just -- I'm just thinking sequentially what's happened.

2 I wanted a hearing over this frivolous penalty, and I
3 was denied a hearing. I went to the IRS, my local IRS office in
4 Andover, Mass., and I went in and offered to pay the penalty.
5 And they told me the amount, of course with interest and
6 penalties, and I filled the check out "Federal Reserve" and the
7 amount. And I said, sir, before I sign this, I'd just like to
8 write in the memo the regulation that requires me to pay this
9 penalty and he was unable to answer that question. So I said,
10 will you please go to your manager or go to someone that can
11 answer the question?

12 And before long I had three agents or officers behind
13 this glass window and they would not answer my question. And I
14 said, can you please tell me the law that makes me liable for
15 the income tax?

16 And they said, No, we can't, sir. We don't have an
17 Internal Revenue Code here.

18 And I said, You don't have an Internal Revenue Code
19 here --

20 MR. IGNALL: Objection, your Honor.

21 THE WITNESS: -- at the IRS?

22 MR. IGNALL: This doesn't tie into any notice to
23 Mr. Schiff that I can tell --

24 MR. SCHIFF: All right.

25 MR. IGNALL: -- here.

1 THE COURT: It's not.

2 MR. SCHIFF: That's enough.

3 BY MR. SCHIFF:

4 Q. What happened --

5 THE COURT: Sustained.

6 BY MR. SCHIFF:

7 Q. Let's move on.

8 A. Okay.

9 Q. Did you -- did you attempt to...

10 A. I -- I -- finally I got a hearing over this frivolous

11 penalty, and I brought my wife as a witness. And I had notified

12 the IRS to meet their -- their --

13 MR. IGNALL: Objection again.

14 BY MR. SCHIFF:

15 Q. Uh, no. We --

16 MR. IGNALL: I don't see --

17 BY MR. SCHIFF:

18 Q. Let's move ahead.

19 MR. IGNALL: -- how this is tied to anything going back

20 to Mr. Schiff.

21 THE COURT: Sustained.

22 BY MR. SCHIFF:

23 Q. You made an attempt to -- all right.

24 Did you ever make an attempt to stop the withholding of

25 this tax from your pay?

1 A. Yes, yes. In the fall of 2000, I got rehired to GE after a
2 layoff of approximately 18 months. At that time, I
3 confidentially, comfortably filled out my W-4 exempt.

4 Q. You claimed exempt on your W-4?

5 A. I claimed exempt on my W-4, yes, sir.

6 Q. And you stopped the withholding of tax from your pay?

7 A. That's correct.

8 Q. What made you believe you could do that?

9 A. Because I read the law and the law supports...

10 Q. What law did you read?

11 A. I read --

12 MR. IGNALL: Objection, your Honor. This, again, is
13 trying to bolster Mr. Schiff's position that he --

14 THE COURT: Sustained.

15 MR. IGNALL: -- suggested with this witness.

16 THE COURT: Sustained.

17 BY MR. SCHIFF:

18 Q. So you believe from the law that you had a right to claim
19 exempt.

20 MR. IGNALL: Same objection --

21 THE COURT: Mr. Schiff --

22 MR. IGNALL: -- your Honor.

23 MR. SCHIFF: All right.

24 BY MR. SCHIFF:

25 Q. Did the --

1 THE COURT: Mr. Schiff, you do not need to repeat every
2 answer this witness gives --

3 MR. SCHIFF: I wanted to make sure --

4 THE COURT: -- as you have been --

5 MR. SCHIFF: -- I got it right.

6 THE COURT: -- doing on every question, you have
7 repeated his answer.

8 MR. SCHIFF: Okay.

9 BY MR. SCHIFF:

10 Q. So did GE honor it?

11 A. Yes, sir.

12 Q. And they -- when was that you just said? Do you have a
13 date?

14 A. That was in the -- in the fall of 2000.

15 Q. 2000.

16 So they continued to honor your W-4 as you recall?

17 A. Yes, sir.

18 Q. For how long?

19 A. They -- they have -- there -- there was a situation where
20 the IRS informed me by an unsigned letter that they had informed
21 General Electric to disregard my W-4 and take out the maximum
22 amount of taxes at which time I contacted you and got your W-4
23 packet. And through --

24 Q. One thing at a time.

25 The IRS contacted you --

1 A. Correct.

2 Q. -- and told you that they were gonna contact GE?

3 A. They told me they had contacted GE.

4 Q. They had contacted -- they told GE --

5 A. Yes.

6 Q. -- not to honor your W-4?

7 A. That's correct.

8 Q. And you called me at that time to inform me?

9 A. Yes, sir.

10 Q. And I recommend you get my W-4 packet; is that right?

11 A. That's correct.

12 Q. Did you get the W-4 packet?

13 A. Yes, sir.

14 Q. Do you recall what you paid for the W-4 packet?

15 A. I -- I -- I -- I guess it was probably \$75 or \$50.

16 Q. Okay. So what did you do with the information in the W-4

17 packet?

18 A. I applied the information. I filled out an affidavit signed

19 and notarized swearing that I am indeed exempt because I meet

20 the criteria to be exempt under the color -- under the law. And

21 I sent it to GE and they never took out any income tax.

22 Q. So they disregarded the letter from the IRS?

23 A. Yes.

24 Q. And they continued to honor your W-4?

25 A. Yes, sir.

1 Q. Have they continued to honor it until this day?

2 A. Yes.

3 Q. So are you satisfied with the material that you got from
4 Freedom Books?

5 A. Absolutely.

6 MR. IGNALL: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. SCHIFF:

9 Q. Now, in all the material you got from us, have you ever seen
10 one line or one phrase in any of the material that you believed
11 in any way was encouraging you to violate the law?

12 MR. IGNALL: Objection --

13 THE WITNESS: Absolutely not.

14 MR. IGNALL: -- your Honor. The Court instructs on the
15 law.

16 THE COURT: The Court instructs --

17 MR. SCHIFF: I'm just asking him --

18 THE COURT: -- on the law.

19 MR. SCHIFF: -- if he believed it.

20 THE COURT: Sustained.

21 MR. SCHIFF: No further questions.

22 THE COURT: Cristalli?

23 MR. CRISTALLI: No questions, your Honor.

24 THE COURT: Bowers?

25 MR. BOWERS: Nothing, your Honor.

1 THE COURT: Ignall?

2

3

CROSS-EXAMINATION

4 BY MR. IGNALL:

5 Q. Good morning, Mr. Bean.

6 A. Good morning.

7 Q. You testified that you purchased certain materials from

8 Mr. Schiff?

9 A. Yes, sir.

10 Q. And you spoke to him on numerous occasions?

11 A. Yes, sir.

12 Q. And he talked to you and [sic] the materials and over the

13 phone about that there's no legal requirement that you pay

14 income taxes; is that correct?

15 A. Yes, that there's no law that makes us liable.

16 Q. Did Mr. Schiff ever tell you that he'd raised that very

17 argument in court on more than one occasion?

18 A. Uh, not -- not that I recall, no.

19 Q. Did he ever tell you that every time he's raised that

20 argument in court he's lost?

21 A. Um, to -- to answer that question, I'm -- I'm aware that

22 there have been trials where he has raised the issue and he has

23 lost. But he didn't communicate that to me personally.

24 Q. All right.

25 MR. IGNALL: No further questions.

REDIRECT EXAMINATION

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BY MR. SCHIFF:

Q. You said, uh -- the prosecutor asked you whether I communicated personally. Did you determine on your own that you had no income tax liability?

THE COURT: Mr. Schiff --

MR. IGNALL: Objection. Relevance. It's what --

THE COURT: -- it's not relevant.

MR. IGNALL: -- Mr. Schiff knows.

THE COURT: That is not the question that was asked.

BY MR. SCHIFF:

Q. Did you believe you were not liable be- --

THE COURT: Mr. Schiff, I sustained the objection. The question was: Did you communicate to him personally that you had lost every case in which you had raised that issue? That was the question.

MR. SCHIFF: Well, it's in my book I went to jail.

BY MR. SCHIFF:

Q. Did you -- are you aware that I went to jail on numerous occasions?

A. Yes, sir.

Q. Were you aware that, uh, Simon & Schuster took over a hundred fifty thousand?

A. Yes, sir.

Q. Uh, but, when you made your determination to send in a zero

1 return, did you -- I said, did you believe every paragraph based
2 on your own research?

3 MR. IGNALL: Objection.

4 THE COURT: I've already sustained the objection to
5 that question. I've already sustained it.

6 MR. SCHIFF: No further questions.

7 THE COURT: Recross. Cristalli?

8 MR. CRISTALLI: Oh, nothing, your Honor.

9 THE COURT: Bowers?

10 MR. BOWERS: No, your Honor.

11 MR. IGNALL: Nothing, your Honor.

12 THE COURT: Government?

13 You're excused. Watch your step as you go down.

14 There's...

15 Next witness, Mr. Schiff. Mr. Schiff --

16 MR. SCHIFF: Yeah. I --

17 THE COURT: -- who is your next witness?

18 MR. SCHIFF: I'm gonna bring in the next witness.

19 THE COURT: All right. Mr. Schiff --

20 MR. SCHIFF: Yes.

21 THE COURT: -- who is --

22 MR. SCHIFF: It's --

23 THE COURT: -- your next witness?

24 MR. SCHIFF: -- Noel Spaid.

25 THE COURT: Hum?

1 MR. SCHIFF: Noel Spaid, the attorney.

2 (Pause in the proceedings.)

3 MR. NEIMAN: Your Honor, I believe this witness is
4 limited to the 404(a), uh, evidence based upon the proffer, the
5 character.

6 MS. SPAID: Do you want me to take the stand, Judge?

7 THE COURT: You may.

8 And the examination, based on the proffer, is limited
9 to your knowledge of the reputation of Defendant Schiff for
10 honesty and veracity in the community.

11 MS. SPAID: Um, your Honor, I think we had one other
12 area. I don't know if he proffered it to you. I'm an attorney.
13 Maybe we need a sidebar.

14 MR. CRISTALLI: Yeah, I think that's actually correct,
15 your Honor. I think there was another area that we needed to
16 discuss.

17 MR. NEIMAN: And I thought the judge had ruled on this.
18 If we could go to sidebar, we can discuss it if --

19 MR. CRISTALLI: I don't think we did. I don't think we
20 did unless I missed it.

21 THE COURT: We'll go to sidebar.

22 MS. SPAID: Could I attend the sidebar?

23 THE COURT: No.

24 (Sidebar conference was held as follows:)

25 MR. NEIMAN: I think the other area was what was raised

1 by Mr. Leventhal at a previous sidebar regarding --

2 MR. CRISTALLI: I didn't remember it. That's kinda
3 why.

4 MR. NEIMAN: If it's notice to Mr. Schiff, maybe he
5 better explain to see if it actually ties to him.

6 MR. SCHIFF: Well, I thought I said -- initially I
7 wanted to use her for various others, especially since somebody
8 sued me for -- you know, in other areas and that we --

9 THE COURT: Well, that was the -- that was the --

10 MR. SCHIFF: Lawsuit.

11 THE COURT: -- the TV offer or whatever.

12 MR. SCHIFF: No, no. No, she didn't defend me on that.

13 No. Some --

14 THE COURT: Fraud case brought against you.

15 MR. SCHIFF: Yeah. Somebody sued me because they
16 followed my advice allegedly and they sued me for a couple
17 million bucks.

18 THE COURT: Has that been raised by the Government?

19 MR. NEIMAN: It actually hasn't.

20 THE COURT: No.

21 MR. SCHIFF: But, anyway --

22 MR. NEIMAN: Not yet.

23 MR. SCHIFF: -- but -- but there were certain
24 interesting --

25 MR. IGNALL: Have to reconsider.

1 MR. SCHIFF: -- what he actually did is get publicity
2 for his Web site. But, in any case, he still had to handle it.

3 Anyway, also, uh, she agreed with me that the Notice of
4 Levy is not a levy. And she --

5 THE COURT: That's buttressing --

6 MR. SCHIFF: Well, I initially --

7 THE COURT: -- and it's an incorrect statement of the
8 law.

9 MR. SCHIFF: -- wanted to use her -- all right. I
10 initially wanted to use her and four or five other lawyers
11 simply to say that she believed that I believed my views
12 sincerely, you know, whether we -- oh, she also represented me
13 and I got the preliminary injunction. And she -- she told me
14 she couldn't raise the validity of my beliefs. So -- but --
15 but -- so -- but then I told her --

16 THE COURT: Preliminary injunction are you referring
17 to?

18 MR. SCHIFF: I got a preliminary injunction to -- I
19 can't sell my book. You know.

20 THE COURT: Oh. It's not -- it's not preliminary
21 anymore.

22 MR. SCHIFF: Yes, it is. I never -- I never had --

23 THE COURT: It's final.

24 MR. SCHIFF: No, it's not. I gotta have -- no, it's
25 not final.

1 THE COURT: Yeah.

2 MR. SCHIFF: I'm working -- we got an extension on the
3 final order. I'll -- I'll get to that.

4 THE COURT: After it got to the Supreme Court and --

5 MR. SCHIFF: No.

6 THE COURT: -- denied cert?

7 MR. SCHIFF: We appealed on the preliminary.

8 THE COURT: Yeah.

9 MR. SCHIFF: Yeah, well...

10 THE COURT: Okay.

11 MR. SCHIFF: But, anyway, so I said to her, no -- she's
12 known me a long time -- so I said you can be a character
13 witness.

14 THE COURT: Yes, character witness is it I guess.
15 That's all I've heard --

16 MR. SCHIFF: Yeah.

17 THE COURT: -- character witness.

18 MR. SCHIFF: All right.

19 MR. NEIMAN: And, your Honor, we may get into some bias
20 areas. We're gonna limit it strictly to --

21 THE COURT: Yeah, bias.

22 MR. NEIMAN: -- strictly to the fact that she's not
23 able to raise his arguments. And she knows that.

24 MR. CRISTALLI: I didn't hear that.

25 MR. IGNALL: Mr. Schiff --

1 THE COURT: Wait a minute. Wait a minute.

2 MR. CRISTALLI: I don't think -- I don't think we

3 should --

4 MR. BOWERS: What was the --

5 MR. CRISTALLI: -- discuss --

6 MR. SCHIFF: First of all --

7 MR. CRISTALLI: -- get into some notice. I mean --

8 MR. NEIMAN: It's not notice. It's bias.

9 MR. CRISTALLI: What --

10 MR. IGNALL: It goes to whether she really believes --

11 MR. NEIMAN: Whether she believes he's honest and

12 trustworthy. That --

13 MR. SCHIFF: She knows --

14 MR. BOWERS: She can't put forth arguments that will

15 impeach her.

16 MR. NEIMAN: Yeah. She knows she can't put forth --

17 MR. SCHIFF: All I wanna say --

18 MR. NEIMAN: -- that argument.

19 MR. SCHIFF: -- I object to --

20 THE COURT: I think it's --

21 MR. SCHIFF: I object to the fact that she cannot offer

22 evidence on whether or not she believes I hold my belief with

23 sincerity.

24 THE COURT: She can't because -- because her -- her

25 opinion as to -- to your honesty takes away from the jury.

1 It -- it --

2 MR. SCHIFF: I know this is a separate issue.

3 MR. CRISTALLI: Your Honor --

4 MR. BOWERS: Your Honor, just a moment --

5 MR. CRISTALLI: -- I just got wind of the Government's
6 potential cross-examination.

7 THE COURT: Yeah.

8 MR. CRISTALLI: Um, and I understand the Court's
9 position, I think. But I don't think it's proper in that, um, a
10 witness for character and truthfulness is a witness for
11 character and truthfulness. The fact that you try to impeach
12 them with, uh, notice issues --

13 MR. IGNALL: That's not --

14 MR. CRISTALLI: -- that's what ultimately we've been
15 doing throughout the whole entire case. That's what you've been
16 doing in terms of he was unsuccessful, he's unsuccessful, he's
17 unsuccessful, he's unsuccessful. But --

18 THE COURT: As to character witnesses we've done that?

19 MR. CRISTALLI: No. That's what I think the proffer is
20 going to be on --

21 THE COURT: Oh.

22 MR. CRISTALLI: -- cross-examination.

23 THE COURT: I think -- I think what they are going to
24 do is attack her opinion of his truth and veracity by asking her
25 questions about whether --

1 MR. SCHIFF: I pay my bills or not?

2 THE COURT: -- the details of it.

3 MR. SCHIFF: I mean --

4 THE COURT: The details of it.

5 MR. CRISTALLI: Well, I don't think it's proper. I

6 assert an objection on --

7 THE COURT: Okay. Well, I'm going to allow it. So...

8 MR. CRISTALLI: Thank you.

9 MR. SCHIFF: Well, then they've opened the door, I

10 think, for other questions on my part.

11 THE COURT: No, they haven't. No.

12 (Sidebar conference concluded and the

13 following is held in open court:)

14 THE COURT: His reputation for truth and veracity in

15 the community.

16 MS. SPAID: May I confer with him for two seconds? I

17 don't think --

18 THE COURT: We told him.

19 MS. SPAID: -- I think there's something else that he

20 forgot. May I see him for just two seconds?

21 THE COURT: The Court has ruled. And -- and, unless

22 you're -- unless you're his -- I know you're trying to mouth

23 something to him -- unless you're his legal counsel in this

24 matter, you can't consult with him because there's an

25 exclusionary rule in force right now.

1 MS. SPAID: Well, your Honor, I -- I have conferred
2 with him in this and -- and that will come out that I have, um,
3 conferred with him and -- and -- during this case.

4 THE COURT: Yeah --

5 MS. SPAID: There is a --

6 THE COURT: Well, I --

7 MS. SPAID: -- matter I think he has not brought to
8 your attention.

9 THE COURT: There -- I have limited -- he's brought
10 things to my attention at sidebar, all of the things. And --
11 and none of them are relevant. So I'm going to confine the
12 testimony, the inquiry, as -- into reputation, character
13 evidence.

14 MR. CRISTALLI: Your Honor, here is -- is there a
15 possibility that we could have a sidebar with the witness on
16 this particular matter? I have not had an opportunity to know
17 what the proffered evidence would be.

18 THE COURT: Mr. -- Mr. Schiff has already made the
19 proffer at sidebar.

20 Go ahead.

21 THE CLERK: Ma'am, please stand and raise your right
22 hand.

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

1 THE WITNESS: I do.

2 THE CLERK: Please be seated.

3 THE WITNESS: Thank you.

4 THE CLERK: Please state for the record your full name
5 and please spell both your first name and your name last name.

6 THE WITNESS: Thank you.

7 Noel Spaid, N-o-e-l, S-p-a-i-d.

8

9 NOEL SPAID,

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

12

13 DIRECT EXAMINATION

14 BY MR. SCHIFF:

15 Q. Ms. Spaid, what is your occupation?

16 A. I'm a lawyer.

17 Q. I see.

18 Do you have any speciality in the law?

19 A. Uh, yes. At this time, I specialize in criminal law. I do
20 civil law. I do both. Uh, the -- in criminal law, I do a fair
21 amount of defense of, uh, tax cases -- in tax cases.

22 Q. Have you represented me?

23 A. Yes, I have.

24 Q. In civil cases?

25 A. In civil cases. In civil cases.

1 Q. All right. Civil cases?

2 A. Yes.

3 Q. Now, how long have you known me?

4 A. I believe it was 2001 that we met. And you could correct me
5 if that's incorrect.

6 Q. Yes, we met.

7 Where did we meet?

8 A. We met in Washington, D.C., during a conference that Bob
9 Schulz was having. It was --

10 Q. Okay. And you've --

11 A. -- actually an Internet --

12 Q. -- known me since?

13 A. -- an Internet seminar that you call it.

14 Q. And we've had a lot of conversations since?

15 A. Many, many.

16 Q. And you know a lot of people who know me?

17 A. Yes, I do. Many. Many of the people that are in the --
18 what we call the "tax dissent" or "tax protest" group. Call it
19 what you want. Many people that --

20 Q. All right.

21 A. -- are active in the group.

22 Q. Over this period of time, have you been able to form an
23 opinion regarding how the community -- my reputation within that
24 community, uh, with respect to my truth and honesty?

25 A. Absolutely.

1 Q. And, uh, what -- what have you concluded that reputation is?

2 A. Impeccable. Absolutely impeccable. You are a completely,
3 totally honesty person. You fight with yourself over saying
4 things correctly, over being honest, over being truthful.

5 Q. Thank you very much, Ms. Spaid.

6 THE COURT: Mr. Cristalli? Examination, Mr. Cristalli?

7 MR. CRISTALLI: Court's indulgence.

8 (Discussion between Mr. Cristalli and
9 Mr. Neiman.)

10 MR. CRISTALLI: No questions, your Honor.

11 THE COURT: Mr. Bowers?

12 MR. BOWERS: Not right now, your Honor.

13 MR. NEIMAN: Real briefly, your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. NEIMAN:

17 Q. Good morning, Ms. Spaid?

18 A. Yes.

19 Q. Spaid. Spaid. Spaid?

20 A. That's correct.

21 Q. Ms. Spaid, you're familiar with Mr. Schiff's positions with
22 regards to the tax laws --

23 A. Yes.

24 Q. -- are you not?

25 A. Very.

1 Q. And, as an attorney, you also know that you cannot advocate
2 those positions to a court --

3 A. That's correct.

4 Q. -- is that correct? Okay.

5 And that's because they are deemed frivolous or
6 meritless --

7 A. That is --

8 Q. -- by the courts?

9 A. -- that is because the Federal Judiciary cannot find those
10 positions to be accurate.

11 Q. All right.

12 MR. NEIMAN: Nothing further.

13 THE WITNESS: Thank you.

14 MR. SCHIFF: Well, your Honor...

15

16 REDIRECT EXAMINATION

17 BY MR. SCHIFF:

18 Q. Okay. Now, regardless of what my beliefs are with respect
19 to the tax law, have you concluded that I hold those beliefs
20 with sincerity and honesty?

21 MR. NEIMAN: Objection.

22 THE WITNESS: As a --

23 THE COURT: Sus- --

24 THE WITNESS: -- fanatic.

25 THE COURT: -- sustained. Strike.

1 MR. SCHIFF: The point is she...

2 MR. NEIMAN: Your Honor --

3 MR. SCHIFF: It doesn't make -- all right.

4 Thank you very much, Ms. Spaid.

5 THE COURT: Your next witness, Mr. Schiff.

6 Watch your step, ma'am.

7 THE WITNESS: Yes.

8 (Discussion between Mr. Schiff and

9 Ms. Spaid.)

10 THE COURT: Mr. Schiff, who is your next witness?

11 (Discussion between Mr. Schiff and

12 Ms. Spaid.)

13 THE COURT: Mr. Schiff --

14 MR. SCHIFF: Yeah.

15 THE COURT: -- who is your next witness?

16 MR. SCHIFF: Um, the prosecutor. No. I can't make him

17 my witness.

18 THE COURT: No, you can't.

19 MR. SCHIFF: All right. Well, I guess I'll rest.

20 THE COURT: Okay. Thank you.

21 Mr. Cristalli and Mr. Bowers?

22 MR. CRISTALLI: Your Honor, if -- if I may, uh, have a

23 short recess?

24 THE COURT: Okay.

25 How much time do you need, Counsel?

1 MR. CRISTALLI: Uh, ten minutes.

2 THE COURT: Okay. We'll take a 15-minute break.

3 MR. CRISTALLI: Okay. Thank you.

4 THE COURT: The standard admonition continues.

5 (Jury leaves the courtroom at 10:11 a.m.)

6 (Recess from 10:12 a.m. to 10:38 a.m.)

7 THE CLERK: All rise.

8 THE COURT: Thank you. Please be seated.

9 Okay. Where are we going from here?

10 (Discussion between Mr. Cristalli and

11 Mr. Modafferi.)

12 MR. CRISTALLI: Your Honor, we're ready for the jury.

13 THE COURT: All right.

14 Are you going to call witnesses, Mr. Cristalli?

15 MR. CRISTALLI: Um, Court's indulgence.

16 (Discussion between Mr. Cristalli,

17 Mr. Modafferi, and Ms. Neun.)

18 MR. CRISTALLI: Um, your Honor, before, um, I go any

19 further, there's been a number of proposed defense exhibits, one

20 of which I thought was in evidence already. But I may be

21 incorrect. And I think Ms. Clerk is trying to decipher whether

22 or not it's in evidence or not in evidence.

23 But it is, um, Defendant's Proposed Exhibit 2500, which

24 is Ms. Neun's Internal Revenue Code. I know it was -- I -- I

25 thought it was introduced through the undercover agent who, uh,

1 was in the shop with Ms. Neun and, uh, he actually went through
2 some of the portions of the Code with her. But I don't -- I
3 thought it was in -- I thought it was. I was, like, under the
4 impression because I know I, like, put it on the side thinking
5 that it was in evidence already. And I had a notation under
6 that particular witness that it came in because he identified it
7 as her, uh, IRS book.

8 THE CLERK: I asked Felicia -- Felicia was trying to
9 look it up just as you came in.

10 THE COURT: Okay.

11 THE CLERK: So she -- she can't --

12 THE COURT: Well, is there an objection to it coming
13 in?

14 MR. IGNALL: I think there is because I don't think
15 anyone's actually identified it as Ms. Neun's Code book is my
16 recollection.

17 MR. CRISTALLI: Yeah, I thought it was -- number one, I
18 thought it was identified --

19 MR. IGNALL: I -- I think the main witness testified
20 that Ms. Neun had a Code book.

21 MR. CRISTALLI: No.

22 MR. BOWERS: Irwin --

23 MR. IGNALL: And I think there was some, actually,
24 controversy about what year on the cover that was versus when --

25 THE COURT: But let's assume that it gets identified,

1 someone identifies it, uh --

2 MR. CRISTALLI: And there was two -- I know Mr. Schiff
3 identified --

4 THE COURT: -- do you have any objection to it if it's
5 identified as her Code book by the witness? Let's start there.

6 MR. IGNALL: I mean, yes and no. I think -- I suppose
7 the point of bringing it in is that she looks through it a lot
8 and it's weathered. I supposed that's fine. But --

9 MR. CRISTALLI: Yeah.

10 MR. IGNALL: -- do we wanna be sending an Internal
11 Revenue Code back to the jury, you know, given that, you know,
12 it takes lawyers some time to go through what's relevant and
13 what's not in that as far as -- as far as our case is concerned.
14 So I'm not sure we want to do that. If --

15 MR. CRISTALLI: I'd be --

16 MR. IGNALL: -- can there be -- if indeed it's already
17 been admitted and identified, maybe we could have some sort of a
18 stipulation to the jury that, you know, Ms. Neun's Code book
19 was, you know, dog-eared and weathered if that's...

20 (Pause in the proceedings.)

21 MR. IGNALL: And maybe we can stipulate to that now if
22 that's...

23 THE COURT: Well, I think maybe Mr. Cristalli would
24 like to be able to refer to it --

25 MR. CRISTALLI: Yeah.

1 THE COURT: -- in his argument. And it seems to me we
2 just -- we let it in with the understanding that it will not go
3 back to the jury as part of the exhibits --

4 MR. IGNALL: I think we could agree to that.

5 THE COURT: -- unless they ask for it and then we'll
6 deal with it then. Maybe with a curative instruction.

7 The problem is this is that I don't want to -- I don't
8 want to send something back to the jury that invites them to --
9 to do their own research on the law because I think that would
10 be improper. The instructions of law are what will control.
11 But, uh --

12 MR. CRISTALLI: And that's -- uh, that's fine, your
13 Honor. And, with that caveat, I would like to have this same
14 type of understanding with the rest of her material, if I could,
15 which would be Defendant's Proposed Exhibit 2501, once again,
16 not for the purposes of going back into, uh, the jury room for
17 deliberation but for the purposes of me displaying them to the
18 jury during the course of my closing argument.

19 MR. BOWERS: Well, I guess --

20 MR. CRISTALLI: And I'm not -- another thing, your
21 Honor -- I'm not going to mention one word in terms of the
22 content of any of this material during closing argument as well.

23 MR. IGNALL: We'll stipulate to that.

24 THE COURT: Okay.

25 MR. IGNALL: And, in terms of The Federal Mafia and the

1 Internal Revenue Code, we'll stip.

2 MR. CRISTALLI: Well, and --

3 MR. IGNALL: The other -- the other things -- I'm not
4 sure what's in there and I don't think there has been any
5 testimony about that.

6 MR. CRISTALLI: There actually has. Mr. Schiff
7 identified all of these exhibits during the course of my
8 cross-examination of him. Um, these -- this was material that
9 was prepared by Freedom Books. Um, it is specifically with
10 regard to the Truth-In-Taxation Hearing that was held in
11 Washington, D.C. It, um -- it was not generated by Ms. Neun,
12 but it was organized and prepared by her and he identified it as
13 such.

14 THE COURT: He did.

15 MR. CRISTALLI: Also --

16 THE COURT: Did we have it marked at that time?

17 MR. CRISTALLI: Yes. It is Defendant's Proposed
18 Exhibit 2526.

19 Um, also, her Federal Civil Judicial Procedure and
20 Rules, which is Defendant's Proposed 2503; um, her Black's Law
21 Dictionary --

22 MR. MODAFFERI: This was not.

23 MR. CRISTALLI: Oh, I'm sorry. This was not
24 identified. My mistake.

25 THE COURT: Okay.

1 MR. CRISTALLI: That was not identified.

2 And then, finally, this which is...

3 (Discussion between Mr. Cristalli,

4 Mr. Modafferi, and Ms. Neun.)

5 MR. CRISTALLI: Okay. This is -- this is -- this is
6 the book that, uh, Ms. Neun would take to the collection due
7 process hearings with her. And it was identified as Defendant's
8 Proposed 2508. And that would be the extent of them.

9 MR. IGNALL: All right.

10 Your Honor, we'd object to the two notebooks. I don't
11 think there's been any evidence to tie that in as being relevant
12 somehow or what the substance of that is.

13 In terms of The Federal Mafia, the Code, and the -- the
14 civil procedure, I think those are probably self-explanatory
15 what they are. And the only relevance of that is that she had
16 them and they seem to have been dog-eared and read. For that
17 limited purpose, I think we'd agree that Mr. Cristalli can
18 reference them.

19 As far as the notebooks, Mr. Schiff's testimony was
20 this is some notebook that Ms. Neun had. I don't think there's
21 enough to tie that into --

22 MR. CRISTALLI: I think he actually --

23 MR. IGNALL: -- being relevant on any issue that is
24 before the jury without Ms. Neun testifying about what that is
25 and --

1 THE COURT: Go ahead, Mr. Cristalli.

2 MR. IGNALL: -- and what she relied on.

3 MR. CRISTALLI: Thank you, your Honor. I'm sorry to
4 interrupt.

5 Um, I think he actually identified what the material
6 was and what it was used for. And I -- like I -- as I indicated
7 to the Court, I am not going to point to any specific provision
8 in any of those documents but, um, merely argue them in terms
9 of, uh, what Ms. Neun used during the course of her dealings at
10 Freedom Books.

11 THE COURT: I'm gonna allow all of them in under a
12 limited purpose --

13 MR. CRISTALLI: Thank you, your Honor.

14 THE COURT: -- order and, that is, to demonstrate that
15 these are hers; she used them as part of her activities --

16 MR. CRISTALLI: Yes, sir, that's -- that's --

17 THE COURT: -- and not as an accurate statement of the
18 law with -- with the exception of the Code. And --

19 MR. CRISTALLI: Yes, sir.

20 THE COURT: -- as to that, the jury will be instructed
21 on the law and is instructed not to do any of their own
22 research. And -- and to enforce that we will not send them in
23 with -- with the jury unless they ask for them --

24 MR. CRISTALLI: Yes, sir.

25 THE COURT: -- and give a specific reason why they need

1 them and then we will --

2 MR. CRISTALLI: Yes, sir.

3 THE COURT: -- create curative instructions to overcome
4 that -- that issue if it arises.

5 MR. CRISTALLI: Yes, sir.

6 Um, and with that said, your Honor, the defense on
7 behalf of Ms. Neun rests.

8 THE COURT: Mr. Bowers?

9 MR. BOWERS: Your Honor, I've entered into a
10 stipulation with the Government. I can't imagine there'd be an
11 objection by any of the other parties. Feel free.

12 With reference to Exhibits 2801, 2802, and 2803, those
13 are Mr. Cohen's prior years' tax returns that are being offered
14 for the purpose -- not, uh, to their truth and veracity but
15 simply to demonstrate that prior to his association with Freedom
16 Books he filed traditional tax returns. We're not in any way
17 gonna use that material to suggest that he's honest or
18 forthright or whatever. Just simply that this was not something
19 he did prior to his association with Mr. Schiff.

20 THE COURT: Okay.

21 MR. IGNALL: With that understanding, we don't object,
22 your Honor.

23 THE COURT: Okay.

24 MR. BOWERS: So I'd move those into evidence at this
25 point in time.

1 THE COURT: Two 0 -- any objection to 2801, '02, or
2 '03? Same are received.

3 (Defendant Cohen's Exhibit Nos. 2801, 2802,
4 and 2803, received into evidence.)

5 MR. BOWERS: Your Honor, the other issue is during
6 Mr. Lewis's testimony Mr. Lewis indicated that he had relied on
7 the 1040 instruction form booklet. Uh, the year that he's
8 discussing was the year 2000. Uh, that document was not
9 formally admitted although it was indicated the Court would
10 accept f if -- if we -- because the -- the selection I had
11 provided was a limited, uh, page extraction from that and the
12 condition was that we get a full book. Um, I currently do not
13 have a full book of the year --

14 (Mr. Schiff speaking to Mr. Leventhal.)

15 MR. BOWERS: Would you mind if I finished? I'm sorry.
16 Thank you.

17 The year 2000, we don't have a full book. So
18 there's -- there's two choices. I can obtain a copy, uh, from
19 the Internet, which the Government has agreed to let me do
20 because I think I can get that done over the lunch hour and I
21 doubt the jury will get this quite that quickly.

22 The other option is -- and what I'm proposing now is
23 marking, uh, Exhibit 28- -- 2810A -- uh, I guess unadmitting
24 2810, leaving it in the record but admitting 2810A which is an
25 actual, physical paperbound manual, but the year is for 2002.

1 The Government doesn't dispute that for the purposes
2 that it was offered and the purposes that those manuals have
3 been discussed at trial I believe they are close enough in
4 accuracy. I think that's the Government position on that.

5 MR. IGNALL: Yeah, we're amenable to either option,
6 your Honor.

7 THE COURT: Well, we will accept 2810A in the place of
8 2810.

9 MR. BOWERS: Okay.

10 THE COURT: The -- the order admitting 2810 is
11 rescinded in light of the admission of the more complete
12 document, which is 2810A. And if the -- if you are able to
13 obtain a Internet full copy of the 1040 instructions, that will
14 be received in the place of 2810A as 2810B and 2810A will be
15 withdrawn.

16 THE CLERK: Can we get a little more complicated,
17 please?

18 MR. BOWERS: Further, your Honor, Mr. Cohen has
19 indicated that he's not gonna testify. And I would rest my case
20 at this point. However, there's some evidentiary issues that
21 based on the implication of his privilege against
22 self-incrimination I wanted to make a proffer to this Court
23 outside the presence of the jury.

24 As this Court is well aware, on or about mid October, I
25 think, of 2003 Agent Holland and Mr. Cohen had a rather lengthy

1 discussion. I mean, this -- he was Mirandized. This is
2 generally the sort of thing that would be considered a
3 confession. The Government and I have talked about that and
4 they are quite adamant that it's a hearsay -- there's no
5 exception to -- to the admission of that tape for hearsay
6 purposes. I would submit that under 804, uh, (b)(3) I would
7 offer that testimony as statements against the interest of the
8 declarant who is unavailable.

9 THE COURT: Interest of who?

10 MR. BOWERS: Mr. Cohen.

11 THE COURT: Oh, okay.

12 MR. IGNALL: And that's creative but I think
13 inaccurate.

14 MR. BOWERS: Well.... Okay. So, anyway, the --

15 THE COURT: We'll decide the cigar issue later. But...

16 MR. BOWERS: The Court has a copy of that transcript
17 and the tape which has been marked. Um, I -- I guess, also, I
18 think that -- I think that there are portions of that tape that
19 may go to state of mind as opposed to statement of beliefs
20 offered for the proof of their assertion. Um, I -- I'm sure the
21 Government would disagree with me on that point as well.

22 MR. IGNALL: Your Honor, the exception would be for
23 then-existing state of mind, not his state of mind at some prior
24 time. The crime was completed at the time he spoke with
25 Agent Holland.

1 THE COURT: The objection is sustained.

2 You have your record --

3 MR. BOWERS: Thank you --

4 THE COURT: -- Mr. Bowers.

5 MR. BOWERS: -- your Honor.

6 Um.... Just a moment, your Honor.

7 THE COURT: Yes.

8 (Pause in the proceedings.)

9 MR. BOWERS: Oh, I guess -- I guess, as evidence is
10 about to close in the matter, I -- for appellate purposes we've
11 raised a number of different, uh, motions for severance, some
12 motions for mistrial. I, as the Court is aware, had both a
13 written motion to sever as well as a written motion to suppress.
14 I believe the Government's agreed that throughout the course of
15 the trial with respect to the motion to suppress, not
16 Mr. Cohen's criminal history but, you know, the search warrant
17 documents, that we've retained that right.

18 I would renew all of those motions at this point in
19 time. Um, there's some case law in the Circuit to suggest that
20 if I don't do that it would somehow indicate that Mr. Schiff's
21 behavior didn't require severance and these other things weren't
22 material. Um, I don't wanna waste the Court's time with
23 documenting why I still think these things are material. But I
24 think there still has been a prejudicial effect. So I renew any
25 and all of those motions made that I have been denied to the

1 Court to date.

2 MR. CRISTALLI: And, your Honor --

3 THE COURT: Mr. Cristalli.

4 MR. CRISTALLI: Yeah. On behalf of Ms. Neun, I would
5 also join in that motion. But, in addition to that, I think
6 it's also necessary that I renew my Rule 29 motion pursuant to
7 law as well.

8 MR. BOWERS: And I -- I appreciate that reminder from
9 Mr. Cristalli. I would add -- obviously we haven't added any
10 direct evidence of our own. But the arguments made in those
11 Rule 29 motions would be largely similar.

12 THE COURT: All right. Thank you.

13 Mr. Schiff.

14 MR. SCHIFF: Yeah, I didn't realize that.

15 I wanted to renew my Rule 29 motion and all the
16 pretrial motions that I filed which argued that this Court had
17 no jurisdiction, uh, which I don't believe it had.

18 And I also wanna object to the fact that you denied me
19 continually, uh, raising issues of law when the Cheek decision
20 clearly says that apart from having a good-faith belief in my
21 beliefs, the Government had a burden during its case in chief of
22 proving that a duty existed, imposed upon me by the income tax
23 laws which it never met; and, secondly, that I was aware of that
24 duty.

25 They absolutely did not prove that. And they even

1 stated that they were gonna rely on you to meet their burden,
2 uh, in -- uh, in your instructions to the jury.

3 THE COURT: That isn't exactly what happened. But the
4 Government has met its --

5 MR. SCHIFF: Pardon?

6 THE COURT: The Government has met its burden
7 sufficiently that it can go to the jury as to --

8 MR. SCHIFF: Well, I was not --

9 THE COURT: -- innocence --

10 MR. SCHIFF: -- able to --

11 THE COURT: -- or guilt.

12 MR. SCHIFF: -- cross-examine any of its witnesses on
13 their understanding of the law. Every time I started to do it,
14 you said it's irrelevant.

15 THE COURT: Well --

16 MR. SCHIFF: So I never had a chance.

17 THE COURT: -- no. The Government -- the Government,
18 as I said in the -- in the initial instruction to the jury, the
19 Court instructs on the law. And, uh, the instructions of law
20 come solely from the Court. So your -- your motions --

21 MR. SCHIFF: I believe --

22 THE COURT: -- are denied. The motions --

23 MR. SCHIFF: -- I believe I had a right under the law
24 to cross-examine the Government's claim of the duty it claims it
25 imposed on me and whether or not I had such a -- knowledge of

1 the law.

2 The third, uh, defense I had, even if there were such a
3 law, I didn't believe it applied to me. And I --

4 THE COURT: And you've been able to testify to that.
5 So I'm denying your motions, Mr. Schiff.

6 MR. SCHIFF: I've only been able to testify with
7 respect to the third, uh -- third element of the Cheek decision.

8 Incidentally, one other thing. I thought that when I
9 mentioned a Court decision I don't have to put it in. Uh, at
10 this time I would like to put in the Cheek decision, uh, which I
11 relied upon in good faith. I'd like to put on Pollack v.
12 Farmers Loan & Co. and Merchants' Loan. So I'd like to put
13 these in as exhibits.

14 THE COURT: Government, your position on Pollack,
15 Cheek, and Merchants' Loan.

16 MR. IGNALL: Again, I think this potentially invades
17 the province of the Court. And I'm not -- Mr. Schiff's already
18 rested. And I'm not sure what the relevance of these is just to
19 throw them into evidence as they are. Therefore, I think --
20 given that the danger of confusing the jury, I think given the
21 exhibits that Mr. Neiman introduced through Mr. Schiff were
22 introduced for the purpose of notice. Mr. Schiff admitted that
23 he knew those decisions, what they were, and he disagreed with
24 them. I think that goes to his notice and his lack of good
25 faith.

1 THE COURT: Well --

2 MR. IGNALL: These are just being offered, I suppose,
3 to allow Mr. Schiff to argue some different theory of law than
4 the Court's gonna instruct the jury on.

5 THE COURT: The Court agrees that the defendant --

6 MR. SCHIFF: Let me explain why.

7 THE COURT: The Court agrees --

8 MR. SCHIFF: Under the --

9 THE COURT: Do not overtalk me.

10 MR. SCHIFF: I'm sorry.

11 THE COURT: The Court agrees that you have rested --

12 MR. SCHIFF: Well, your Honor --

13 THE COURT: -- that -- that -- Mr. Schiff, you did
14 rest.

15 The Court further notes that the -- the admission of
16 those would require the admission of -- of other cases. And I
17 could literally put in the entire Federal Digest if I -- if I
18 opened the door. So --

19 MR. SCHIFF: But --

20 THE COURT: -- I am not going to do it. I have ruled.
21 Be seated, sir.

22 MR. SCHIFF: Can I just --

23 THE COURT: Mr. Schiff, you're not going to continue to
24 argue with me.

25 MR. SCHIFF: One of my jury instructions is that under

1 the Bishop case -- and I pointed --

2 THE COURT: I will rule on jury instructions in a few
3 minutes.

4 MR. SCHIFF: But if I had a good-faith reliance --

5 THE COURT: You can argue it in jury instructions.

6 MR. SCHIFF: All right. So it's not final. I can
7 argue this in jury instructions.

8 THE COURT: You can argue about jury instructions --

9 MR. SCHIFF: Okay.

10 THE COURT: -- and what goes in, what doesn't.

11 Yes, Mr. Bowers.

12 MR. BOWERS: I'm sorry. Just a couple more
13 housekeeping things, your Honor. I -- I'm approaching the clerk
14 with what will be marked as the next available exhibit. Um,
15 it's 28 -- I don't know -- 50-something.

16 THE CLERK: No, sir. I think it's 2047.

17 MR. BOWERS: Okay. Thank you.

18 (Defendant Cohen's Exhibit No. 2047, marked
19 for identification.)

20 MR. BOWERS: Your Honor, that document is Mr. Cohen's
21 response, uh, to the frivolous letter sent to him. Uh, it is
22 signed as Larry Cohen. Um, the Government doesn't challenge its
23 authenticity; they supplied it. There's probably two levels of
24 hearsay. Uh, it's stamped as having been received by the IRS.
25 So for authenticity and that level of hearsay, I don't think

1 there's a problem with what the IRS kept in the course of its
2 business.

3 (Document handed to the Court.)

4 MR. BOWERS: With respect to its content, I know the
5 Government would -- would object as it being hearsay. And I
6 would be offering it for the proof of the matter asserted. Um,
7 I would suggest that it is a recording of his then state of
8 mind. Uh, there are portions of it that are just his state of
9 mind not used to support his belief. But I -- I know the
10 Government's got the same thoughts as that on these other
11 documents offered similarly.

12 And then the -- the last issue is I just want to make
13 sure that in renewing the -- the motions that I preserve my
14 right to the ruling made yesterday afternoon with respect to the
15 proposed expert on behalf of Mr. Cohen.

16 THE COURT: With respect to what?

17 MR. BOWERS: The proposed expert offered by Mr. Cohen.

18 THE COURT: Oh, yes. Okay.

19 The motions with respect to 29(a) are denied.

20 The motions with respect to severance are denied.

21 The Court has already ruled on the other areas raised
22 by counsel, and the Court is not going to change its ruling.

23 I find that there is sufficient evidence that has been
24 presented that a reasonable jury could, uh, find the, uh -- the
25 necessary elements for a conviction under each of the counts

1 that remain.

2 Now, uh, does the Government have any -- any further
3 matters before I bring the jury in?

4 MR. NEIMAN: Just one, your Honor. One if -- if -- and
5 it sounds as though Mr. Cohen and Ms. Neun are not testifying.
6 We would ask the Court just canvass the defendants as to their
7 decision not to testify so that it's clear for the record that
8 this was indeed their decision.

9 THE COURT: All right. I will do that.

10 Ms. Neun, have you had an opportunity to discuss
11 whether or not you will testify -- you may remain seated.

12 MR. CRISTALLI: Thank you, your Honor.

13 THE COURT: -- with Mr. Cristalli?

14 DEFENDANT NEUN: Uh, yes, your Honor.

15 THE COURT: Do you feel that you fully understand the
16 risks of not testifying? And I will inform you that I am going
17 to instruct the jury that no adverse inference can be drawn from
18 the fact that you do not testify. But are you fully satisfied
19 that all of your questions have been answered and discussed with
20 Mr. Cristalli regarding this matter?

21 DEFENDANT NEUN: Yes, your Honor.

22 THE COURT: And is it your decision not to take the
23 witness stand?

24 DEFENDANT NEUN: Yes.

25 THE COURT: Okay.

1 Now, Mr. Cohen I'll ask the same questions to you: Do
2 you feel that you've had an adequate opportunity to discuss with
3 Mr. Bowers whether or not you'll exercise your right to testify
4 or your right not to testify?

5 DEFENDANT COHEN: Yes.

6 THE COURT: Do you feel that all of your questions have
7 been answered?

8 DEFENDANT COHEN: Yes.

9 THE COURT: And do you feel that you fully understand
10 all of the ramifications, including the fact that the Court will
11 instruct the jury that no adverse inference can be drawn from
12 your decision not to testify?

13 DEFENDANT COHEN: It's quite a decision. But yes --

14 THE COURT: All right.

15 DEFENDANT COHEN: -- I understand.

16 THE COURT: And is it your decision not to testify?

17 DEFENDANT COHEN: Yes.

18 THE COURT: All right. Thank you.

19 MR. NEIMAN: I guess procedurally I guess we're just --
20 what we're gonna do next, I guess, we'll bring --

21 THE COURT: Bring the jury in -- do you have any
22 rebuttal witnesses?

23 MR. NEIMAN: No, we don't, your Honor.

24 THE COURT: All right. We'll bring the jury in. We'll
25 instruct them that we're going to take a break to discuss jury

1 instructions. We will inform them of the admission of the
2 documents for limited purpose. Uh, and, uh, we will discuss,
3 uh -- when we'll return.

4 I guess what I'd like to do is I'd like to conclude
5 jury instructions this morning before we break. Then bring the
6 jury back, read the instructions to them, and then allow you to
7 make your -- your closing arguments or summations.

8 MR. CRISTALLI: On Monday, your Honor; right? Is that
9 what -- I'm sorry. I missed that. It was on Monday; correct?

10 THE COURT: No. Today.

11 MR. CRISTALLI: This afternoon. Okay.

12 THE COURT: Yeah, this afternoon.

13 MR. CRISTALLI: I'm sorry. I was --

14 THE COURT: Yeah.

15 MR. CRISTALLI: -- I was wondering --

16 THE COURT: That's all right.

17 MR. SCHIFF: Wait. Are we gonna have --

18 MR. CRISTALLI: So we're gonna -- I'm sorry, your
19 Honor -- we're gonna do jury instructions after, um, we excuse
20 the jury right now; correct?

21 THE COURT: Yes.

22 MR. CRISTALLI: Okay. Very good.

23 THE COURT: And the procedure that I use is that I read
24 the instructions to the jury before closing statements are made.

25 MR. CRISTALLI: Okay.

1 THE COURT: Okay. All right. Let's bring the jury in,
2 Ms. Clerk.

3 MR. SCHIFF: Your Honor, are these the instructions
4 you're gonna give?

5 THE COURT: No. We're going to discuss the
6 instructions.

7 MR. SCHIFF: When?

8 THE COURT: Right now --

9 MR. SCHIFF: Oh, okay.

10 THE COURT: -- as soon as we finish with the jury.

11 (Pause in the proceedings.)

12 (Jury enters the courtroom at 11:04 a.m.)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. IGNALL: Yes, your Honor.

16 MR. CRISTALLI: Yes, your Honor.

17 MR. BOWERS: Yes, your Honor.

18 MR. SCHIFF: Yes, your Honor.

19 THE COURT: Thank you.

20 There are a few housekeeping matters that we need to
21 take care of right now. The first is the admission of certain
22 exhibits with limiting instructions.

23 Mr. Cristalli, you will identify the exhibit, the
24 exhibit numbers --

25 MR. CRISTALLI: Yes, sir.

1 THE COURT: -- and then I will give the limiting
2 instruction.

3 MR. CRISTALLI: Yes, sir.

4 Um, first of all, Defendant's, uh, Proposed
5 Exhibit 2500, which is, uh, Ms. Neun's Internal Revenue Code --
6 do you want me just to go through them all right now, your
7 Honor?

8 THE COURT: If you would, please.

9 MR. CRISTALLI: Okay.

10 THE COURT: 2500.

11 MR. CRISTALLI: 2500.

12 THE COURT: Thank you.

13 MR. CRISTALLI: Defendant's 2501, which is
14 Ms. Neun's -- Ms. Neun's Federal Mafia book.

15 Um, Defendant's 2503, which is the Federal Civil
16 Judicial Procedures and Rules of Ms. Neun's.

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

19 MR. CRISTALLI: Uh, Defendant's 2508, which is
20 identified as Ms. Neun's Bert's book which she utilized during
21 the course of the collection due process hearing.

22 THE COURT: What did you call that book?

23 MR. CRISTALLI: It's called the B-e-r-t-s book.

24 THE COURT: And that is number?

25 MR. CRISTALLI: That is number 2508.

1 And, finally, Defendant's 2526, which is Ms. Neun's,
2 uh, book that, uh, um, was organized by her and used during the
3 course of the We the People Foundation, uh, Truth-In-Taxation
4 Hearing in Washington, D.C.

5 THE COURT: Okay. Those items are received subject to
6 the objections that have been previously made, if any, and they
7 are received for the limited purpose of showing that they were,
8 uh, utilized -- possessed and utilized by Ms. Neun but not --
9 not for any other purpose.

10 MR. CRISTALLI: Yes, sir.

11 (Defendant Neun's Exhibit Nos. 2500, 2501,
12 2503, 2508, and 2526, received into
13 evidence.)

14 THE COURT: Is that all, Mr. Cristalli?

15 MR. CRISTALLI: Uh, as far as that is concerned --

16 THE COURT: Okay.

17 MR. CRISTALLI: -- your Honor.

18 THE COURT: Does the defense rest?

19 MR. CRISTALLI: Your Honor, with that, the defense
20 rests.

21 THE COURT: Thank you.

22 Mr. Bowers, if you will identify the exhibits that --
23 that you have mentioned, the tax returns for the prior years.

24 MR. BOWERS: As I understand it, we are admitting at
25 this point in time 2801, 2802, and 2803, which are Mr. Cohen's

1 tax returns -- uh, traditional tax returns for the years prior
2 to 1999. Um, we also have exhibited Exhibit 2810A, which is the
3 paper copy of the 1040 manual. Um, and I believe that's it.

4 THE COURT: 2801, '02, '03, and 2810A are received.
5 2810 is withdrawn.

6 (Defendant Cohen's Exhibit Nos. 2801, 2802,
7 2803, and 2810A, received into evidence.)

8 MR. BOWERS: Thank you, your Honor.

9 THE COURT: Thank you.

10 MR. BOWERS: We rest at this point in time.

11 THE COURT: Defense rests. Thank you.

12 Government --

13 MR. NEIMAN: Your Honor --

14 THE COURT: -- any --

15 MR. NEIMAN: -- the United States does not have a
16 rebuttal.

17 THE COURT: Rebuttal. Okay.

18 Ladies and gentlemen, we have now completed the
19 presentation-of-evidence phase. The next phase is for the Court
20 to meet with counsel and go over proposed jury instructions,
21 settle those, and then read those instructions to you and, uh,
22 then hear the closing statements or summations of counsel.

23 We are going to need some time to do that. And so what
24 we are going to do is we're going to excuse you now. We will
25 take the rest of the morning discussing the jury instructions

1 and allowing counsel some time during the lunch hour to prepare
2 their closing statements. So we'll be in recess until 1:30 p.m.

3 The admonition continues that you're not to discuss the
4 case among yourselves or with others or to allow yourselves to
5 be influenced by others; to discuss the case and have anyone
6 discuss the case in your presence; and, uh, to not read any
7 media accounts or view any such things until I formally submit
8 the case to you for deliberation.

9 So we'll see you back at 1:30. Thank you.

10 (Jury leaves the courtroom at 11:09 a.m.)

11 THE COURT: Thank you. We are in recess.

12 When you get ready, Counsel, I'll see you back in
13 chambers with the -- with your proposed jury instructions and
14 we'll go over those.

15 MR. CRISTALLI: Your Honor, in terms of Ms. Neun's
16 presence at that proceeding, she doesn't need to be there I
17 would assume. Correct?

18 THE COURT: No.

19 MR. CRISTALLI: Okay.

20 THE COURT: No.

21 MR. CRISTALLI: We'd ask that her presence be waived
22 then.

23 MR. BOWERS: And the same obviously for --

24 THE COURT: Same with Mr. Cohen. It is waived.

25 MR. CRISTALLI: Thank you, your Honor.

1 THE COURT: So take a few minutes, get yourselves
2 organized, and what we'll do next -- we'll do it in --

3 MR. SCHIFF: Are we gonna argue the jury instructions
4 now?

5 THE COURT: We'll probably -- what I'd like to do is
6 I'd like to do it in chambers, uh, with -- with you, Mr. Schiff,
7 of course, pro se and, uh, the Government attorneys,
8 Mr. Cristalli, and Mr. Bowers.

9 MR. SCHIFF: Can we have a little conference before?

10 THE COURT: And what we will do -- yes, you can -- what
11 we will do after we've discussed these in chambers is we'll come
12 back into court and make a record of --

13 MR. CRISTALLI: Yes, sir.

14 THE COURT: -- of any objections.

15 MR. CRISTALLI: Yes, sir.

16 MR. BOWERS: Can we have a really quick sidebar? Just
17 very, very brief. Just a courtroom administration thing I wanna
18 alert the Court to.

19 THE COURT: You want to do --

20 MR. BOWERS: Yeah, just --

21 THE COURT: -- something at sidebar?

22 MR. BOWERS: -- real fast, your Honor. Yeah.

23 (Sidebar conference was held as follows:)

24 MR. BOWERS: Is everybody here that -- Mr. Schiff.

25 Just very quickly, yesterday when we were gone at lunch

1 we came back a little -- the lawyers received something from
2 somebody in the gallery, not threatening or anything. I'm just
3 uncomfortable by the up and about -- the public's access to --
4 to the courtroom. I mean, I know it's locked, but -- and I
5 don't want -- I don't want to make Ms. -- you know, Peggie, you
6 know --

7 THE COURT: Uh-huh.

8 MR. BOWERS: -- carry that burden. But maybe if we
9 could just have the Marshals exercise some diligence in keeping
10 the public behind the bar.

11 THE COURT: Oh, okay.

12 MR. BOWERS: That's all.

13 THE COURT: Yeah. All right.

14 MR. BOWERS: I just --

15 MR. CRISTALLI: Oh, somebody came over the --

16 MR. BOWERS: Well, they must --

17 MR. LEVENTHAL: -- left those notes.

18 MR. CRISTALLI: Oh.

19 MR. BOWERS: Somebody had to come over the bar to leave
20 those notes.

21 THE COURT: Yeah. They were --

22 MR. BOWERS: And --

23 MR. CRISTALLI: I got a note too.

24 MR. BOWERS: It's not the right name. We're not --

25 THE COURT: You got a note?

1 MR. CRISTALLI: Yeah.

2 THE COURT: Oh, okay.

3 THE CLERK: I never got any -- and the thing is --

4 MR. BOWERS: I'm sure that you --

5 MR. CRISTALLI: It was --

6 MR. BOWERS: And that's what I'm saying. I don't want
7 to put the burden on you.

8 MR. CRISTALLI: Yeah. And I didn't bring it to
9 anybody's attention. I didn't think it was necessary. It was
10 a, uh, note just, uh, advocating a certain --

11 MR. BOWERS: Position.

12 MR. CRISTALLI: -- position that I should take on
13 cross-examination.

14 MR. BOWERS: But we --

15 MR. CRISTALLI: The miracle defense it was, I think.

16 MR. BOWERS: You know, we're sorta getting to the point
17 where --

18 THE COURT: Okay.

19 MR. BOWERS: -- you know, just -- yeah, just explain
20 the law and you'll be fine defense. But yeah.

21 THE COURT: Is it anything I can eat?

22 MR. BOWERS: All right. Thank you.

23 THE COURT: Okay.

24 (Sidebar conference concluded and the
25 following is held in open court:)

1 (Recess from 11:13 a.m. to 1:37 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 (Pause in the proceedings.)

5 THE COURT: Okay. Counsel, you have received the
6 Court's proposed instructions. As I understand it, they have
7 not been changed from what was discussed in chambers when I met
8 with all -- all counsel, including Mr. Schiff. I believe
9 Mr. Fears has faithfully reproduced the instructions that were
10 either agreed upon or were objected to in the form that the
11 Court proposed to give.

12 So, Government, do you have any objections to the
13 proposed jury instructions you wish to make on the record?

14 MR. NEIMAN: No, we do not, your Honor.

15 THE COURT: Thank you.

16 Mr. Cristalli, would you like to --

17 MR. CRISTALLI: Your Honor --

18 THE COURT: -- make a record?

19 MR. CRISTALLI: -- um, we don't have, um, any
20 objections to the, um -- the jury instructions as modified.

21 I do believe I have two objections, however. It was
22 originally, um, Jury Instruction No. 21, the Court's Jury
23 Instruction No. 21 -- oh, strike that. It was -- okay. That
24 one's a nonissue. I apologize.

25 THE COURT: Okay.

1 MR. CRISTALLI: Yeah, I think we would like to assert
2 our objection to Jury Instruction No. 22, current Jury
3 Instruction No. 22. It's the, uh, jury instruction on summary
4 judgment.

5 THE COURT: Thank you.

6 MR. CRISTALLI: And that's the extent of our
7 objections, your Honor.

8 THE COURT: Thank you, Mr. Cristalli.

9 Mr. Bowers.

10 MR. SCHIFF: I have --

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

13 MR. BOWERS: Very briefly. I join in Mr. Cristalli's
14 objection and -- as well as we discussed, um, I think a limiting
15 instruction is insufficient, although I did not propose
16 controlling authority as to alternative language. I don't think
17 those are the problems we've -- we've addressed.

18 THE COURT: Thank you.

19 Now Mr. Schiff.

20 MR. SCHIFF: Yeah, I have objections, but I'm trying to
21 reconcile the numbers to my notes so I know specifically what
22 jury instruction corresponds.

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

25 MR. BOWERS: Your Honor, Court's indulgence for a

1 moment. I think maybe I can help.

2 Mr. Schiff has made notes on the old numbers.

3 THE COURT: Okay.

4 MR. BOWERS: Would you allow him to make objections to
5 those and then at a later --

6 MR. SCHIFF: I wanna see --

7 MR. BOWERS: -- time --

8 MR. SCHIFF: -- if they correspond.

9 MR. BOWERS: -- straighten the number out?

10 THE COURT: Yes.

11 MR. LEVENTHAL: Okay. Go ahead.

12 MR. BOWERS: So make -- do it on your old one, Irwin.

13 MR. SCHIFF: These are the old numbers.

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

16 MR. BOWERS: Todd will renumber them for you.

17 MR. LEVENTHAL: I'll renumber them.

18 MR. SCHIFF: Tell me, 21? Okay. Okay.

19 Okay. My objection is it says, "Congress has the
20 authority ... general power"...

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

23 MR. SCHIFF: Number 21.

24 -- "to levy taxes to require the filing of tax returns,
25 [and] reporting taxes and income."

1 I, um, object that Congress may have the power to levy
2 a tax on income, but it hasn't done so. It hasn't done so.
3 There's an implication here that, uh, they have done so in the
4 current '54 Code.

5 Now, the federal income tax is imposed in Section 1 of
6 the Internal Revenue Code. Taxable income is defined in Section
7 63. Taxable income tax is not defined in Section 63. Uh, the
8 Court's have ruled that income is not defined in the Code. And,
9 if the Congress ever attempted to define income, it would be
10 unconstitutional since -- let me have my jury instruction --
11 since -- oh, here -- since it would be amending the Constitution
12 by legislation alone. And that was held in the case of
13 Eisner v. Macomber.

14 The proper jury instruction is my instruction as
15 requested which I said, "When used in this trial, the word
16 'income' is used in the Sixteenth Amendment in constitutional
17 sense and not in its ordinary or dictionary sense."

18 And the authority for my jury instruction was House
19 Report No. 1337 and Senate Report No. 1622, 83rd Congress, 2d
20 Session, which specifically shows the intent of Congress. That
21 is the proper jury instruction.

22 Section -- uh, income tax is not defined. And, in
23 addition, you indicate in this jury instruction that, uh, gross
24 income includes wages and salaries. That was specifically
25 removed from the, uh, '39 Code. Specifically there is no

1 reference to wages and salaries in the '54 Code. And this
2 absolutely misleads the jury as to what is taxable.

3 And what you're listing here is sources of income as
4 being taxable and not income itself.

5 When a return (mumbling) -- the person -- okay. Then
6 the balance -- "When a return is required, the person required
7 to make such a return is required ... without assessment or
8 notice and demand." That's absolutely contrary to Section 6201,
9 6204 which specifically says Congress shall assess all taxes
10 determined by the taxpayer.

11 This might apply to certain excise taxes, but it
12 certainly can't apply to income tax and it -- it eliminates
13 practically all of the assessment requirements of the Code.
14 It's absolutely incorrect as a matter of law.

15 THE COURT: Okay.

16 MR. SCHIFF: "These sections, working together, make an
17 individual liable." There's no such thing. Sections don't work
18 together. There is no specific section in the Internal Revenue
19 Code that makes anybody liable. And at least 10 witnesses,
20 including six of the defense witnesses, said so.

21 Now, you said, "The Internal Revenue Service is
22 authorized by Congress to enforce and administer the internal
23 revenue code." That is dead wrong. There is no authority --
24 uh, Congress has given no authority to the Internal Revenue.
25 All authority in the Code is given to the Secretary. However,

1 the Secretary is authorized, uh, to delegate that authority, uh,
2 to anybody, including the Commissioner. But that delegation
3 order has to be, um, published in the Federal Register pursuant
4 to, uh, Section 44 of the Code before it can have any force and
5 effect of law. Those two documents have never been, uh --
6 there's no such thing as a delegation order. And, even if one
7 were fabricated, it certainly hasn't been published. So that
8 jury instruction is dead wrong as a matter of law.

9 Now --

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

12 MR. SCHIFF: 22 [sic]. "Relevant statues (mumbling)...
13 power to collect taxes and ... power can be delegated to" -- "to
14 local IRS agents. Section (mumbling) provides that '[t]he
15 Secretary shall collect taxes imposed" --

16 THE COURT: Mr. Schiff --

17 MR. SCHIFF: -- has been delegated.

18 THE COURT: -- just state your objection.

19 MR. SCHIFF: No. All right.

20 THE COURT: I don't need you to read it.

21 MR. SCHIFF: I'm sorry.

22 THE COURT: Mr. Schiff, just state your objection.

23 MR. SCHIFF: The objection is in this instruction you
24 say the power to collect taxes has been delegated to local IRS
25 directors. That's not true. That's a false jury instruction.

1 The delegation -- now, the -- Secretary of the Internal
2 Revenue -- that's not true. Because, uh, the Secretary would
3 have had to delegate his authority to the Commissioner and then
4 the Commissioner would have had to have redelegated his
5 authority and then publish it.

6 The '39 Code, the -- you are giving jury instructions
7 based on the '39 Code --

8 THE COURT: Mr. Schiff --

9 MR. SCHIFF: -- which included --

10 THE COURT: Mr. Schiff --

11 MR. SCHIFF: All right. I want to get the record clear
12 on this.

13 THE COURT: Well --

14 MR. SCHIFF: Number 23.

15 (Discussion between Mr. Leventhal and
16 Mr. Schiff.)

17 MR. SCHIFF: Okay.

18 MR. BOWERS: Your Honor --

19 MR. SCHIFF: -- number 23 --

20 THE COURT: Yes.

21 MR. SCHIFF: I'm sorry.

22 MR. BOWERS: Give me just a second here.

23 MR. SCHIFF: I wanna get the record clear.

24 MR. BOWERS: Absolutely. That's very important.

25

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

3 MR. SCHIFF: Uh, number 23 says, "The Commissioner need
4 not" -- oh. It says, "is authorized to independent [sic]
5 calculate the tax owed and ... prepare a substitute return for
6 the taxpayer." There's absolutely no authority in the Internal
7 Revenue Code to provide for a substitute for return. No --
8 no -- no authority whatsoever. The only authority in the Code
9 is Section 6020(b) and that -- and that can only be prepared by
10 the Secretary and signed by the Secretary. Uh, and, um, no such
11 thing. There is no authority in the Internal Revenue Code for
12 the IRS to calculate your tax. Um, and, if he can show me any
13 such authority, I'd be happy to plead guilty and I don't have to
14 waste my time --

15 THE COURT: Mr. Schiff --

16 MR. SCHIFF: -- in final argument.

17 THE COURT: -- Mr. Schiff --

18 MR. SCHIFF: All right.

19 27.

20 THE COURT: -- Mr. Schiff --

21 MR. SCHIFF: Yes.

22 THE COURT: -- stop making speeches.

23 MR. SCHIFF: All right. 27.

24 THE COURT: Your objections so far have been not
25 found --

1 MR. SCHIFF: It's at least on the record.

2 THE COURT: -- have not been found valid by any --

3 MR. SCHIFF: All right.

4 THE COURT: -- court in the United States.

5 MR. SCHIFF: Okay.

6 THE COURT: Go ahead with your next one.

7 MR. SCHIFF: Okay.

8 27 says, "The Internal Revenue Service" --

9 THE COURT: Mr. Schiff, don't read it.

10 MR. SCHIFF: Well --

11 THE COURT: Just tell me what your objection is.

12 MR. SCHIFF: On 27, it indicates that, um, the Internal

13 Revenue Service is an agency of the United States Government.

14 Congress never created the Internal Revenue Service as an agency

15 of government. It's never been created as an agency of the

16 United States Government.

17 THE COURT: Next.

18 MR. SCHIFF: So that's an incorrect statement.

19 41. (Reviewing document.)

20 Uh, 40. I object to 40. And you should have given...

21 (Discussion between Mr. Leventhal and

22 Mr. Schiff.)

23 MR. SCHIFF: Okay. Okay. Jury instruction 40. It

24 says, if the taxpayer fails to file a return and the government

25 can prove a deficiency, deficiency arises on the date the return

1 was due. That is dead wrong. If -- if there's no return filed,
2 then the government must sue the individual under Section
3 6501(C)(3). A deficiency cannot arise as a matter of law.

4 Uh --

5 THE COURT: Court's have rejected that --

6 MR. SCHIFF: All right.

7 THE COURT: -- argument. Move on --

8 MR. SCHIFF: Well, it can't --

9 THE COURT: -- to the next one.

10 MR. SCHIFF: -- arise as a matter of law.

11 THE COURT: All the courts --

12 MR. SCHIFF: All right.

13 THE COURT: -- have rejected it. Move on.

14 MR. SCHIFF: Okay.

15 Well, you talk about affording one's tax liability.

16 Well, it can't be referring to an income tax because there is no
17 such liability in the law.

18 THE COURT: Courts have rejected the argument.

19 MR. SCHIFF: Okay. Okay.

20 You talk about in there to defeat -- evade or defeat
21 income tax. I suggested to evade or defeat a tax lawfully owed.
22 It cannot -- you can't -- you can't be charged with evading or
23 defeat a tax that you don't owe. So I have an objection to
24 that.

25

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

3 MR. SCHIFF: Oh, yeah. To establish an understatement.
4 They use the bank deposit method. There's nothing in the
5 Internal Revenue Code that allows the IRS to estimate the amount
6 of tax that you failed to put on your return using any method.
7 There is absolutely no authority in the Internal Revenue Code
8 that permits this alleged bank deposit theory.

9 Okay. What's the next one?

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

12 MR. SCHIFF: There was one where he was calculating my
13 income. There was an earlier one.

14 (Discussion between Mr. Leventhal and
15 Mr. Bowers.)

16 MR. SCHIFF: Oh, here. Here's what I objected to. We
17 changed that. What -- what did this become? What did this
18 become?

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

21 MR. SCHIFF: Well, I had an objection. Let me see
22 what it says. (Reviewing document.)

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

25 THE COURT: Mr. Schiff.

1 MR. SCHIFF: I thought we took out --

2 MR. LEVENTHAL: Yeah, we did. Look...

3 (Discussion between Mr. Leventhal and

4 Mr. Schiff.)

5 MR. SCHIFF: I thought he was presented as a expert in

6 tax computation, not income tax. Since it's still in there, I

7 object because he -- when I tried to cross-examine him on his

8 understanding of the word "income" --

9 MR. LEVENTHAL: Who is he?

10 MR. SCHIFF: -- you did not allow me to do it.

11 MR. LEVENTHAL: Tell him who "he" is.

12 MR. SCHIFF: If he's an expert on tax computation, I'd

13 have no objection.

14 MR. LEVENTHAL: Tell him who --

15 MR. SCHIFF: But I don't think he knows what income is.

16 So how can he --

17 THE COURT: Which one are you referring to?

18 MR. SCHIFF: All right.

19 MR. LEVENTHAL: Who are you referring to?

20 MR. SCHIFF: Mr. Lowder.

21 MR. LEVENTHAL: Thank you.

22 THE COURT: Which one?

23 MR. SCHIFF: Mr. Lowder.

24 MR. LEVENTHAL: Number 16 on the new instructions.

25 MR. SCHIFF: Mr. Lowder.

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

3 MR. SCHIFF: It's the new Jury Instruction 16. Okay.

4 THE COURT: We were going take a look and see what his
5 testimony was. It was how he was presented. "Tax computation"
6 is the word that was used according to my notes.

7 Any objection to taking "income" out of that?

8 MR. NEIMAN: No. The United States wouldn't have an
9 objection to that.

10 THE COURT: All right.

11 MR. BOWERS: Just for the record, that was instruction
12 number what?

13 MR. NEIMAN: Jury -- new number 16, I believe.

14 THE COURT: Number 16 is the new one.

15 MR. BOWERS: Striking the word "income"?

16 MR. LEVENTHAL: Do you withdraw your objection?

17 THE COURT: Tax computation.

18 MR. SCHIFF: Yeah. If you want to use him in -- but
19 I'm also -- I also object to the fact that he's even authorized
20 to compute my taxes for what I allegedly owe.

21 THE COURT: You already --

22 MR. SCHIFF: It's on the record.

23 THE COURT: -- made that record.

24 All right. Anything else?

25 MR. SCHIFF: All right.

1 THE COURT: Is that it? Okay.

2 MR. BOWERS: Your Honor, I'm sorry. Just very quickly.

3 There were a couple of proposed instructions that we --
4 the Government couldn't agree to. I'd like to have them added
5 to the record.

6 THE COURT: Okay.

7 MR. BOWERS: Um, I think the Court's ruled on 'em. But
8 I'll approach and...

9 THE COURT: You may.

10 MR. BOWERS: They were just marked as Ms. Neun's 3
11 and 4. We discussed them. And I'd just...

12 (Document handed to the Court.)

13 MR. BOWERS: I don't know how they'll be marked or if
14 this covers it for the purposes of the record.

15 THE COURT: Mark them as next in order for whichever.

16 MR. BOWERS: Defendant Cohen.

17 THE COURT: Cohen.

18 MR. BOWERS: Thank you, your Honor.

19 THE COURT: All right. Let's bring in the jury. Uh,
20 we need to make sure Mr. Fears has copies printed for the
21 jury --

22 THE CLERK: Okay.

23 THE COURT: -- and we need to -- to redact one --
24 one -- I did noticed a -- another error in the, uh -- in the
25 instructions, typographical error.

1 In Instruction No. 38 it reads, "19-" -- on line 5,
2 1999 twice. I -- I presume that is '98 and '99. Line 5. Page
3 41 of the new instructions.

4 MR. NEIMAN: Yes, it should be 1998, your Honor.

5 THE COURT: 1998. Okay. With that, I think I've ruled
6 on everything.

7 Okay. Let's take a short recess and see where the
8 instructions are and do the, uh, redactions.

9 (Recess from 1:55 p.m. to 2:11 p.m.)

10 THE COURT: Please be seated.

11 Those changes have been made to Jury Instructions 16
12 and 38.

13 (Jury enters the courtroom at 2:13 p.m.)

14 THE COURT: Please be seated.

15 Go ahead, Mr. Fears.

16 Will counsel stipulate to the presence of the jury?

17 MR. IGNALL: Yes, your Honor.

18 MR. CRISTALLI: Yes, your Honor.

19 MR. BOWERS: Yes, Judge.

20 MR. SCHIFF: Yes.

21 THE COURT: Thank you.

22 (Pause in the proceedings.)

23 THE COURT: Court will now read the jury instructions.
24 Each of the jurors have been provided with a copy of the
25 instructions which they will be permitted to take with them into

1 the jury room for deliberation.

2 "Members of the" -- sorry.

3 "Jury Instruction No. 1

4 "Members of the jury, now that you have heard all the
5 evidence, it is my duty to instruct you on the law which applies
6 in this case.

7 "It is your duty to find the facts from all the
8 evidence in the case. To those facts you must apply the law as
9 I give it to you. You must follow the law as I give it to you
10 whether you agree with it or not. And you must not be
11 influenced by any personal likes or dislikes, opinions,
12 prejudices or sympathy. That means that you must decide the
13 case solely on the evidence before you. You will recall that
14 you took an oath promising to do so at the beginning of the
15 case.

16 "In following my instructions, you must follow all of
17 them and not single out some and ignore others; they are all
18 equally important. And you must not read into these
19 instructions, or into anything I have" -- "may have said or
20 done, any suggestion as to what your verdict should" -- "as to
21 what verdict you should return -- that is a matter entirely up
22 to you.

23 "The Indictment is not evidence.

24 "The law presumes a defendant to be innocent of crime.
25 The law does not require a defendant to prove his innocence or

1 produce any evidence at all, and no inference whatever may be
2 drawn from the election of a defendant not to testify. The
3 Government has the burden of proving him guilty beyond a
4 reasonable doubt, and if it fails to do so you must acquit him.

5 "The punishment provided by law for this crime is for
6 the Court to decide. You may not consider punishment in
7 deciding whether the Government has proved its case against the
8 Defendant beyond a reasonable doubt."

9 "Jury Instruction No. 2

10 "Proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced that the Defendant is guilty. It is not
12 required that the Government prove guilt beyond all possible
13 doubt.

14 "A reasonable doubt is a doubt based on reason and
15 common sense and is not based purely on speculation. It may
16 arise from a careful and impartial consideration of all the
17 evidence, or from lack of evidence.

18 "If after a careful and impartial consideration of all
19 the evidence, you are not convinced beyond a reasonable doubt
20 that the Defendant is guilty, it is your duty to find the
21 Defendant not guilty. On the other hand, if after a careful and
22 impartial consideration of all the evidence, you are convinced
23 beyond a reasonable doubt that the Defendant is guilty, it is
24 your duty to find the Defendant guilty.

25 "The evidence from which you are to decide the" --

1 "what the facts are consists of: (1) the sworn testimony of
2 witnesses, both on direct and cross-examination, regardless of
3 who called the witnesses; (2) the exhibits which have been
4 received into evidence; and (3) any facts to which all the
5 lawyers have agreed or stipulated.

6 "Evidence may be direct or circumstantial. Direct
7 evidence is direct proof of a fact, such as testimony of an
8 eyewitness. Circumstantial evidence is indirect evidence, that
9 is, proof of a chain of facts from which you could find that
10 another fact exists, even though it has not been proved
11 directly. You are to consider both kinds of evidence. The law
12 permits you to give equal weight to both, but it is for you to
13 decide how much weight to give to any evidence.

14 "It is for you to decide whether a fact has been proved
15 by circumstantial evidence. In making that decision, you must
16 consider all the evidence in the light of reason, common sense
17 and experience."

18 "Jury Instruction No. 3

19 "In reaching your verdict you may consider only the
20 testimony and exhibits received into evidence. Certain things
21 are not evidence and you may not consider them in deciding what
22 the facts are. I will list them for you.

23 "1. Arguments and statements by lawyers are not
24 evidence. The lawyers are not witnesses. What they have said
25 in their opening statements or will say in their closing

1 statements and at other times is intended to help you interpret
2 the evidence, but it is not evidence. If the facts as you
3 remember them differ from the way the lawyers have stated them,
4 your memory of them controls.

5 "2. Questions and objections by lawyers are not
6 evidence. Attorneys have a duty to their clients to object when
7 they believe a question is improper under the rules of evidence.
8 You should not be influenced by the question, the objection or
9 the Court's ruling on it.

10 "3. Testimony that has been excluded or stricken, or
11 that you have been instructed to disregard, is not evidence and
12 must not be considered. In addition some testimony and exhibits
13 have been received only for a limited purpose; where I have
14 given a limiting instruction, you must follow it.

15 "4. Anything you may have seen or heard when the court
16 was not in session is not evidence. You are to decide the case
17 solely on the evidence received at trial."

18 "Jury Instruction No. 4

19 "In deciding the facts in this case, you may have to
20 decide which testimony to believe and which testimony not to
21 believe. You may believe everything a witness says, or part of
22 it, or none of it.

23 "In considering the testimony of any witness, you may
24 talk into account:

25 "1. the opportunity and ability of the witness to see

1 or hear or know of the things testified to;

2 "2. the witness' memory;

3 "3. the witness' manner while testifying;

4 "4. The witness' interest in the outcome of the case

5 and any bias or prejudice;

6 "5. whether other evidence contradicted the witness'

7 testimony;

8 "6. the reasonableness of the witness' testimony in the

9 light of all the evidence; and

10 "7. any other factors that bear on believability.

11 "The weight of the evidence as to a fact does not

12 necessarily depend on the number of witnesses who testify."

13 "Jury Instruction No. 5

14 "The defendants are on trial only for the crimes

15 charged in the indictment, not for any other activities."

16 "Jury Instruction No. 6

17 "A defendant in a criminal trial" -- "case has a

18 constitutional right not to testify. No presumption of guilt

19 may be raised, and no inference of any kind may be drawn, from

20 the fact that witnesses" -- "that Defendants Cynthia Neun and

21 Lawrence Cohen did not testify."

22 "Jury Instruction No. 7

23 "Defendant Irwin Schiff has testified. You should

24 treat this testimony just as you would the testimony of any

25 other witness."

1 "Jury Instruction No. 8

2 "You are here only to determine whether the defendants
3 are guilty or not guilty of the charges in the Indictment: Your
4 determination must be made only from the evidence in the case.
5 The defendants are not on trial for any conduct or offense not
6 charged in the Indictment. You should consider evidence about
7 the acts, statements, and intentions of others, or evidence
8 about other acts of a defendant, only as they relate to a charge
9 against that defendant."

10 "Jury Instruction No. 9

11 "Although the defendants are being tried together, you
12 must give separate consideration to each defendant. In doing
13 so, you must determine which evidence in the case applies to
14 each defendant, disregarding any evidence admitted solely
15 against some other defendants. The fact that you may find one
16 of the defendants guilty or not guilty should not control your
17 verdict as to any other defendants.

18 "A separate crime is charged against one or more of the
19 defendants in each count. The charges have been joined for
20 trial. You must decide the case of each defendant on each crime
21 charged against that defendant separately. Your verdict on any
22 count as to any defendant should not control your verdict on any
23 other count or as to any other defendant.

24 "All of the instructions apply to each defendant and to
25 each count unless a specific instruction states that it applies

1 only to a specific defendant."

2 "Jury Instruction No. 10

3 "You have heard testimony that a witness made a
4 statement. It is for you to decide (1) whether the defendant
5 made the statement, and (2) if so, how much weight to give it.
6 In making those decisions, you should consider all of the
7 evidence about the statement, including the circumstances under
8 which that defendant may have made it."

9 "Jury Instruction No. 11

10 "You have heard evidence of other crimes, acts, and/or
11 wrongs engaged in by defendant Irwin Schiff. You may consider
12 that evidence only as it bears on that defendant's motive,
13 opportunity, intent, preparation, plan, knowledge, identity,
14 absence of mistake, or absence of accident and for no other
15 purpose."

16 "Jury Instruction No. 12

17 "You have heard testimony from Jason Cardiff and Toni
18 Mitchell, witnesses who have received immunity. That testimony
19 was given in exchange for a promise by the government that their
20 testimony will not be used in any criminal case against them.

21 "In evaluating their testimony, you should consider the
22 extent to which or whether their testimony may have been
23 influenced by the government's promise of immunity. In
24 addition, you should consider their testimony with greater
25 caution than that of other witnesses."

1 "Jury Instruction No. 13

2 "You have heard evidence of the character for
3 truthfulness of defendant Irwin Schiff. You may consider this
4 evidence along with other evidence in deciding whether or not to
5 believe that witness' testimony and how much weight to give it."

6 "Jury Instruction No. 14

7 "You have heard evidence that Jason Cardiff, a witness,
8 lied under oath on prior occasions. You may consider this
9 evidence, along with all other pertinent evidence, in deciding
10 whether or not to believe this witness and how much weight to
11 give to the testimony of that witness."

12 "Jury Instruction No. 15

13 "You have heard testimony from IRS Special Agents Kay
14 Irely and Doug McEwen who were involved in the government's
15 investigation in this case. Law enforcement officials are not
16 precluded from engaging in stealth and deception, such as the
17 use of informants and undercover agents, in order to apprehend
18 persons engaged in suspected or alleged criminal activities.
19 Undercover agents and informants may properly make use of false
20 names and appearances and may properly assume the roles of
21 members in criminal organizations. The government may utilize a
22 broad range of schemes and ploys to ferret out criminal
23 activity."

24 "Jury Instruction No. 16

25 "During the trial you heard the testimony of Clint

1 Lowder, who was described to you as the summary expert in the
2 area of tax computation.

3 "If scientific, technical, or other specialized
4 knowledge might assist the jury in understanding the evidence or
5 in determining a fact in issue, a witness qualified as an expert
6 by knowledge, skill, experience, training, or education, may
7 testify and state an opinion concerning such matters.

8 "Merely because an expert witness has expressed an
9 opinion does not mean, however, that you must accept this
10 opinion. The same as with any other witness, it is up to you to
11 decide whether to believe this testimony and choose to rely upon
12 it. Part of the that decision will depend on your judgment
13 about whether the witness's background or training and
14 experience is sufficient for the witness to give the expert
15 opinion that you heard. You must also decide whether the
16 witness's opinions were based on sound reasons, judgment, and
17 information."

18 "Jury Instruction No. 17

19 "Certain charts and summaries have been received into
20 evidence and illustrate facts brought out in the testimony of
21 some witnesses. Charts and summaries are only as good as the
22 underlying evidence that supports them. You should, therefore,
23 give them only such weight as you think the underlying evidence
24 deserves."

25 "Jury Instruction No. 18

1 "A jury in a federal criminal case cannot convict
2 unless it unanimously find that the government has proved each
3 element."

4 "Jury Instruction No. 19

5 "Congress has the authority and general power to levy
6 taxes to require the filing of tax returns, reporting taxes and
7 income.

8 "The federal income tax is imposed in Section 1 of the
9 Internal Revenue Code, on the taxable income of every
10 individual. Taxable" -- "taxable income tax is defined in
11 Section 63 of the Internal Revenue Code as gross income less
12 deductions. Gross income is defined in Section 61 of the
13 Internal Revenue Code to mean all income from whatever source
14 derived and includes wages and salaries. Every individual whose
15 gross income exceeds specified amounts is required to file an
16 income tax return pursuant to Section 6012 of the Internal
17 Revenue Code. When a return is required, the person required to
18 make such return is required without assessment or notice and
19 demand of the Secretary of the Treasury, to pay such tax along
20 with his or her return. These sections, working together, make
21 an individual liable for income taxes.

22 "The Internal Revenue Service is authorized by Congress
23 to enforce and administer the internal revenue code. The
24 Internal Revenue Service may assess taxes and may lawfully seize
25 or levy property without court order in order to satisfy tax

1 liabilities."

2 "Jury Instruction No. 20

3 "Relevant statutes and regulations provide that the
4 Secretary has the power to collect taxes and that such power can
5 be delegated to local IRS agents. Section 6301 provides that
6 '[t]he Secretary shall collect the taxes imposed by the Internal
7 Revenue laws.' The actual task of collecting the taxes,
8 however, has been delegated to all" -- "to local IRS directors.
9 District directors in turn are authorized to redelegate the levy
10 power to lower level officials such as collection officers. The
11 delegation of authority down the chain of command, from the
12 Secretary, to the Commissioner of Internal Revenue, to local IRS
13 employees constitutes a valid delegation by the Secretary to The
14 commissioner, and a redelegation by the Commissioner to the
15 delegated officers and employees."

16 "Jury Instruction No. 21

17 "In the absence of a tax return, the Commissioner of
18 Internal Revenue is authorized to independently calculate the
19 tax owed and to prepare a substitute return for the taxpayer.
20 However, the Commissioner need not prepare a return for the
21 taxpayer before determining the taxpayer's deficiency."

22 "Jury Instruction No. 22

23 "You have heard testimony that certain motions, cases
24 and appeals have been" -- "had been resolved by summary
25 judgment. I will explain what this term means. Summary

1 judgment may be granted if the pleadings, depositions, answers
2 to interrogatories, and admissions on file, together with [the]
3 affidavits, if any, show that there is no genuine issue as to
4 any material fact and that the moving party is entitled to
5 judgment as a matter of law. Summary judgment procedure is a
6 proper method for promptly disposing of cases in which there is
7 no genuine issue as to any material fact or in which only a
8 question of law is involved. Once a court determines that there
9 are no disputed material facts, it is free to enter a summary
10 judgment on the basis of a determination of the governing" --
11 "governing legal issues and in doing so does not deprive the
12 parties of the right to a jury trial. Summary judgment has the
13 same force and effect as any other judgment and may be
14 appealed."

15 "Jury Instruction No. 23

16 "Title 18, United States Code, Section 371 provides, in
17 part, that:

18 "'If two or more persons conspire . . . to defraud the
19 United States, or any agency thereof in any manner or
20 for any purpose, and one or more of such persons do any
21 act to effect the object of the conspiracy . . . ' each
22 shall be guilty of an offense against the United
23 States."

24 "Jury Instruction No. 24

25 "This is a criminal case brought by the United States.

1 In Count One of the Indictment, defendants Irwin Schiff, Cynthia
2 Neun, and Lawrence Cohen have been charged with conspiracy to
3 defraud the United States by impeding, impairing, obstructing,
4 and defeating the Internal Revenue Service in ascertaining,
5 computing, assessing, and collecting taxes in violation of 18
6 U.S.C. Section 371."

7 "Jury Instruction No. 25

8 "The Internal Revenue Service of the Treasury
9 Department" -- I'm sorry -- "The Internal Revenue Service of the
10 Department of Treasury is an agency of the United States.
11 Therefore, it is a violation of Title 18, United State Code,
12 Section 371 to conspire to frustrate or obstruct the IRS in
13 performing its lawful function of ascertaining, computing,
14 assessing and collecting of federal income taxes due the United
15 States."

16 "Jury Instruction No. 26

17 "In order for each defendant to be found guilty of the
18 crime of conspiracy under Title 18, United States Code, Section
19 371, the government must prove each of the following elements
20 beyond a reasonable doubt:

21 "(1) that beginning in approximately December 9[th],
22 1999, and ending on or about February 3[rd], 2003,
23 there was an agreement between on or more persons
24 to defraud the United States by impairing and
25 impeding the Internal Revenue Service in

1 ascertainment, computation, assessment and
2 collection of income taxes owed by others as
3 charged in the Indictment;

4 "(2) Each defendant became a member of the
5 conspiracy knowing of at least one of its objects
6 and intending to help accomplish it;

7 "(3) One of the members of the conspiracy
8 performed at least one overt act for the purpose of
9 carrying out the conspiracy, with all of you
10 agreeing on a particular overt act that you find
11 was committed; and

12 "(4) The means employed to accomplish the purpose
13 of the agreement were either dishonest or
14 deceitful."

15 "Jury Instruction No. 27

16 "A conspiracy is a kind of criminal partnership--an
17 agreement of two or more persons to commit one or more crimes.
18 The crime of conspiracy is the agreement to do something
19 unlawful; it does not matter whether the crime agreed upon was
20 committed.

21 "For conspiracy to have existed, it is not necessary
22 that the conspirators make a formal agreement or that they
23 agreed on every detail of the conspiracy. It is not enough,
24 however, that they simply met, discussed matters of common
25 interest, acted in similar ways, or perhaps helped one another.

1 You must find that there was a plan to defraud the United States
2 for the purpose of impairing and impeding the IRS as alleged in
3 the Indictment.

4 "One becomes a member of a conspiracy by willfully
5 participating in the unlawful plan with the intent to advance or
6 further some object or purpose of the conspiracy, even though
7 the person does not have full knowledge of all the details of
8 the conspiracy. Furthermore, one who willfully joins an
9 existing conspiracy is as responsible for it as the originators.
10 On the other hand, one who has no knowledge of a conspiracy, but
11 happens to act in a way which furthers some object or purpose of
12 the conspiracy, does not thereby become a conspirator.
13 Similarly, a person does not become a conspirator merely by
14 associating with one or more persons who are conspirators, nor
15 merely by knowing that a conspiracy exists.

16 "An overt act does not itself have to be unlawful. A
17 lawful act may be an element of a conspiracy if it was done for
18 the purpose of carrying out the conspiracy. The government is
19 not required to prove that the defendant personally did one of
20 the overt acts."

21 "Jury Instruction No. 28

22 "Each member of the conspiracy is responsible for the
23 actions of the other conspirators performed during the course
24 and in furtherance of the conspiracy. If one member of a
25 conspiracy commits a crime in furtherance of a conspiracy, the

1 other members have also, under the law, committed that crime."

2 "Jury Instruction No. 29

3 "You have heard testimony that the Defendant made
4 statements or took some action. This evidence is admissible
5 against that particular Defendant in proving or disproving the
6 case against that particular Defendant. However, this evidence
7 may have limited value against the other Defendants on trial.
8 Admissions or statements made by someone outside of court may
9 not be considered as evidence against another person who was not
10 present and did not hear the statement or see or take any" --
11 "or see any action being taken unless they are shown to have
12 been members of a conspiracy.

13 "Therefore, you must determine whether or not a
14 conspiracy existed and whether a Defendant was one of the
15 members of the conspiracy when the statements were allegedly
16 made or the actions allegedly taken. If you are satisfied that
17 such is the case, then these statements or actions may be
18 considered against other defendants [sic] whom you find to also
19 be members of the conspiracy, even though the statements or acts
20 have occurred in their absence or" -- "[or] without their
21 knowledge. However, you must be certain that these statements
22 or actions were knowingly and willfully made and done during the
23 course of and in furtherance of the conspiracy itself."

24 "Jury Instruction No. 30

25 "A conspiracy may continue for a long period of time

1 and may include the performance of many transactions. It is not
2 necessary that all members of the conspiracy join in" -- "join
3 it at the same time, and one may become a member of a conspiracy
4 without full knowledge of all the details of the unlawful scheme
5 or the names, identities, or locations of all the other members.

6 "Even though a defendant did not directly conspire with
7 other conspirators in the overall scheme, that defendant has, in
8 effect, agreed to participate in the conspiracy if it is proved
9 beyond a reasonable doubt that:

10 "(1) the defendant directly conspired with one or more
11 conspirators to carry out at least one of the
12 objects of the conspiracy,

13 "(2) the defendant knew or had reason to know that
14 other conspirators were involved with those with
15 whom the defendant directly conspired, and

16 "(3) the defendant had reason to believe that
17 whatever benefits the defendant might get from the
18 conspiracy were probably dependent upon the success
19 of the entire venture.

20 "It is no defense that a person's participation in the
21 conspiracy was minor or for a short period of time."

22 "Jury Instruction No. 31

23 "The Indictment charges that [the] offenses were
24 committed 'on or about' a certain date.

25 "Although it is necessary for the government to prove

1 beyond a reasonable doubt that the offense was committed on a
2 date reasonably near the date alleged in the Indictment, it is
3 not necessary for the government to prove that the offense was
4 committed precisely on the date charged."

5 "Jury Instruction No. 32

6 "Title 26, United State Code, Section 701 provides in
7 part, that:

8 "'Any person who willfully attempts in any manner to
9 evade or defeat any tax imposed by this title or the
10 payment thereof shall . . .' be guilty of an offense
11 against the United States."

12 "... Instruction No. 33

13 "Count Seventeen of the Indictment charges Irwin Schiff
14 with willfully attempting to evade and defeat the payment of
15 approximately \$1,369,000 in income taxes, penalties, and
16 interest due and owing for 199-" -- "1979-1985. In order for
17 you to find Mr. Schiff guilty of that charge, you must find that
18 a tax deficiency existed for those years, that ... Schiff
19 willfully" -- "Mr. Schiff willfully attempted to evade the taxes
20 owed for those years, and that Mr. Schiff committed at least one
21 affirmative act to evade the taxes owed."

22 "Jury Instruction No. 34

23 "As to Count 17, a tax due and owing may be ascertained
24 in three ways: by the taxpayer reporting the amount of tax due
25 and owing; by the [Commissioner] examining the taxpayer and

1 assessing the tax; or if the taxpayer fails to file a return and
2 the government can prove a tax deficiency the deficiency arises
3 on the date the return was due.

4 "In cases where the IRS examined the taxpayer and
5 assessed the tax, a certificate of assessments and payments is
6 'adequate evidence' of a tax liability."

7 "Jury Instruction No. 35

8 "As to Count 17, a failure to act is not an attempt to
9 evade one's taxes. But any affirmative act, 'the likely effect
10 of which would be to mislead or to conceal' one's tax liability,
11 is an attempt to evade taxes.

12 "An affirmative 'willful attempt' to evade or defeat
13 income tax may be inferred from conduct such as keeping a double
14 set of books, making false entries or alterations, or false
15 invoices or documents, destruction of books or records,
16 concealment of assets or covering up sources of income, handling
17 of one's affairs to avoid making the records usual in
18 transactions of the kind, and any other conduct the likely
19 effect of which would be to mislead or to conceal.

20 "Other examples of affirmative acts of evasion ... of
21 tax include placing assets in the name of others, causing debts
22 to be paid through and in the name of others, using bank
23 accounts in the names of others, transacting business in cash or
24 cashier's checks, and paying other creditors instead of the
25 government."

1 "Jury Instruction No. 36

2 "Title 26, United State Code, Section 7206(1) provides
3 in part, that:

4 "'Any person who willfully makes and subscribes any
5 return, statement, or other document which contains or
6 is verified by a written declaration that is made under
7 the penalties of perjury, and which he does not believe
8 to be true and correct as to every material matter'
9 shall be guilty of an offense against the United
10 States."

11 "Jury Instruction No. 37

12 "Defendant Irwin Schiff is charged in Counts 18-23 of
13 the Indictment with falling [sic]" -- "filing false federal
14 income tax returns for 1997-2002 in violation of Section 7206(1)
15 of Title 26 of the United States Code. In order for defendant
16 Schiff to be found guilty of violating 26 U.S.C. Section
17 7206(1), the government must prove each of the following
18 elements beyond a reasonable doubt:

19 "(1) that defendant made and signed a federal income
20 tax return that he knew contained false information
21 as to any material matter;

22 "(2) the return contained a written declaration
23 that it was being signed subject to the penalties
24 of perjury; and

25 "(3) in filing the false tax return, the defendant

1 acted willfully.

2 "The false information was material if it had a natural
3 tendency to influence or was capable of influencing or affecting
4 the ability of the Internal Revenue Service to audit or verify
5 the accuracy of the tax return or a related return."

6 "Jury Instruction No. 38

7 "To establish a substantial understatement of the tax
8 on the income tax return of Defendant Irwin Schiff for the years
9 1997, 1998, 1999, 2000, 2001, and 2002, the government has
10 relied upon proof by the so-called 'bank deposits method' of
11 determining income during a particular period. This 'bank' --
12 " 'bank deposits method,' if done correctly, is an indirect or
13 circumstantial way to reliably determine income. The theory of
14 this method of proof is that if a taxpayer is engaged in an
15 activity that produces income and if that taxpayer periodically
16 deposits money in bank accounts under the taxpayer's name, or
17 under the taxpayer's control, it may be inferred, unless
18 otherwise explained, that these bank deposits represent taxable
19 income. If there are expenditures of cash by the taxpayer from
20 funds not deposited in any bank and not from any non-taxable
21 source, such as by gift or from inheritance, it may be inferred,
22 unless otherwise explained, that this cash represents unreported
23 income.

24 "In this method of proof, a taxpayer's bank deposits
25 for the tax year are totaled, with adjustments made for funds in

1 transit at the beginning and again at the end of that year. Any
2 'non-income' deposits are excluded from this total and income
3 which has not been deposited is included in the total. This
4 procedure provides a gross income figure. Income tax is then
5 calculated in the usual way with legitimate credits and
6 legitimate deductions taken into account. If the resulting
7 figure is greater than that which the taxpayer reported on his
8 tax return for that year, then that taxpayer has unreported
9 income in that amount.

10 "Because the 'bank deposits method' of determining
11 income involves a review of bank deposits and cash expenditures
12 during a taxable year, the government must establish with a
13 reasonable degree of certainty an accurate 'cash on hand' figure
14 for the beginning of the tax year in question. The government
15 is not required to prove an exact 'cash on hand' figure, but
16 must prove a figure that is reasonably accurate. If, therefore,
17 you do not find that the government has established to a
18 reasonable degree of certainty what the defendant's 'cash on
19 hand' was at the beginning of year 1997, 1998, 1999, 2000, 2001,
20 or 2002, then you should find the defendant not guilty for that
21 year. If on the other hand, you find that the government has
22 proven to a reasonable degree of certainty what the defendant's
23 'cash on hand' was at the beginning of the year 1997, 1998,
24 1999, 2000, 2001, or 2002, you must then proceed to decide
25 whether the evidence in the case establishes beyond a reasonable

1 doubt that the bank deposits and non-deductible cash
2 expenditures of Defendant Irwin Schiff substantially exceeded
3 the amount reported on his tax return for each year. If so, you
4 should then proceed to decide whether or not the government has
5 proven, beyond a reasonable doubt, that the defendant willfully
6 made and subscribed false income tax returns as charged in
7 Counts 18-23 of the Indictment."

8 "Jury Instruction No. 39

9 "Title 26, United State Code, Section 7206(2) provides
10 in part, that:

11 "'Any person who willfully aids or assists in, or
12 [procures], counsels, or advises the preparation or
13 presentation under, or in connection with any matter
14 arising under, the internal revenue laws, of a return,
15 affidavit, claim, or other document, which is fraudulent
16 or is false as to any material matter, whether or not
17 such falsity or fraud is with the knowledge or consent
18 of the person authorized or required to present such
19 return, affidavit, claim, or document' shall be guilty
20 of an offense against the United States."

21 "Jury Instruction No. 40

22 "Defendant Irwin Schiff is charged in Counts 2-6 of the
23 Indictment with aiding or advising the preparation of false
24 income tax returns in violation of Section 7206(2) of Title 26
25 of the United States Code. Defendant Cynthia Neun is also

1 charged with aiding or advising the preparation of false income
2 tax returns in Counts 6-12 and 24-25. Defendant Lawrence Cohen
3 is charged with aiding or advising the preparation of false
4 income tax returns in Counts 13-16 of the Indictment.

5 "In order for a defendant to be found guilty of
6 violating 26 U.S.C. Section 7206(2), the government must prove
7 each of the following elements beyond a reasonable doubt:

8 "(1) the defendant willfully assisted or advised in the
9 preparation of an income tax return that was false;

10 "(2) the return was false as to something
11 necessary to a determination of whether income tax
12 was owed.

13 "The government is not required to prove that the
14 person who actually filed the tax return knew that the return
15 was false."

16 "Jury Instruction No. 41

17 "Title 26, United State Code, Section 7203 provides in
18 part, ...:

19 "'Any person required . . . by law or regulation . . .
20 to make [such] return . . . who wilfully fails to . . .
21 make such return . . . at the time or times required by
22 law or regulation . . . ' shall be guilty of an offense
23 against the United States."

24 "Jury Instruction No. 42

25 "The receipt of a specified amount of gross income

1 during a calendar year determines whether a person must file a
2 federal income tax return. All persons who earn gross income in
3 excess of the minimum required under the law are 'persons' or
4 'taxpayers' required to file income tax returns and pay income
5 tax under the Internal Revenue laws.

6 "Count 26 of the Indictment charges defendant Cynthia
7 Neun with failure to file a tax return for the year 1999. A
8 single individual was required to file a ... tax return for 1999
9 on or before April 17[th], 2000, if she earned more than \$7050.

10 "Count 27 of the Indictment charges ... Cynthia Neun
11 with" -- "with failure to file a tax return for the tax year
12 2000. A single individual was required to file a tax return" --
13 "[an] ... income tax return for 2000 on or before April 16[th],
14 2001, if she earned more than 72" -- "\$7200.

15 "Count 28 of the Indictment charges ... Cynthia Neun
16 with failure to file a tax return for the year 2001. A single
17 individual is required to file a federal income tax return for
18 2001 on or before April 15[th], 2002, if she earned more than
19 \$7450.

20 "Count 29 of the Indictment charges the def-" --
21 "defendant Cynthia Neun with failure to file a tax return for
22 the year 2002. A single individual was required to file a
23 federal income tax return for 2002 on or before April 15[th],
24 2003, if she earned more than \$7700."

25 "Jury Instruction No. 43

1 "The crime of willfully failing to file income tax
2 returns under 26 U.S.C. Section 7203 contains three elements
3 that the Government must prove:

4 "(1) that the defendant was required to file a tax
5 return;

6 "(2) that he or she did not file a tax return at
7 the time required by law; and

8 "(3) that the failure to file was willful."

9 "Jury Instruction No. 44:

10 "A person is required to file a federal income tax
11 return for any calendar year in which he or she has gross income
12 in excess of the filing requirement. Gross income means the
13 total of all income received before making any deductions
14 allowed by law.

15 "Gross income includes the following: (1) Compensation
16 for services, including fees, commissions, and similar items;
17 (2) Gross income derived from business; (3) Gains derived from
18 dealings in property; (4) Interest; (5) Rents; (6) Royalties';
19 (7) Dividends; (8) Alimony and separate maintenance payments;
20 (9) Annuities; (10) Income from life insurance and endowment
21 contracts; (11) Pensions; (12) Income from discharge of
22 indebtedness; (13) Distributive share of partnership gross
23 income; (14) Income in respect of a decedent; (15) Income from
24 an interest in an estate or trust; and (16) Income derived from
25 illegal activities, including fraud, theft, or embezzlement.

1 Gross income does not include gifts.

2 "For the crime of willful failure to file a tax return,
3 the government is not required to show that a tax is due and
4 owing from a defendant. Nor is the government required to prove
5 an intent to evade or defeat any taxes."

6 "Jury Instruction No. 45

7 "In this case the Government relies upon the so-called
8 'cash expenditures method' of proving that" -- "of proving the
9 Defendant Cynthia Neun had income in excess of the filing
10 threshold. The theory of this method of proof is that if a
11 taxpayer's expenditures and disbursements for a particular
12 taxable year, together with any increase in net worth exceed the
13 taxpayer's non-taxable receipts, which include gifts, and
14 available cash at the beginning of the year by an amount greater
15 than the minimum filing threshold, then the taxpayer had an
16 obligation to file a tax return for that year.

17 "The 'cash expenditures method' necessarily involves
18 not only the examination of the Defendant's expenditures and
19 disbursements during the taxable year, but also an examination
20 of the Defendant's 'net worth' at the beginning and at the end
21 of that year. A person's 'net worth' at any given date is the
22 difference between such person's total assets and total
23 liabilities on that date. It is the difference between what one
24 owes" -- "owns and what one owes (measuring the value of what
25 one owes by its cost rather than the unrealized increases in

1 market value).

2 "If the evidence establishes beyond a reasonable doubt
3 that the Defendant's net worth increased during a taxable year,
4 then you may infer that the Defendant had [received some] money
5 or property during that year; and if the evidence also
6 establishes that those receipts cannot be accounted for by
7 non-taxable sources, then you may further infer that those
8 receipts were taxable income to the Defendant.

9 "In addition to the matter of the Defendant's net
10 worth, if the evidence establishes beyond a reasonable doubt
11 that the Defendant spent money during the year on living
12 expenses, taxes, and other expenditures, which did not add to
13 the Defendant's net worth at the end of the year, then you may
14 infer that those expenditures also came from funds received
15 during the year; and, again, if the evidence establishes that
16 those receipts cannot be accounted for by non-taxable sources,
17 then you may further infer that those funds were also taxable
18 income to the Defendant.

19 "Because the 'expenditures method' of proving
20 unreported income involves a comparison of the Defendant's net
21 worth at the beginning of the year and the Defendant's net worth
22 at the end of the year, the result cannot be accepted as correct
23 unless the starting net worth is reasonably accurate. In that
24 regard the proof need not show the exact value of all the assets
25 owned by the Defendant at the starting point so long as it

1 established that the Defendant" -- "the assets owned by the
2 Defendant at that time were insufficient by themselves to
3 account for the subsequent increases in the Defendant's net
4 worth. If" -- "So, if you should decide that the evidence does
5 not establish with reasonable certainty what the Defendant's net
6 worth was at the beginning of the year, you should not" -- "you
7 should find the Defendant not guilty.

8 "In determining whether or not the claimed net worth of
9 the Defendant at the starting point (or the beginning of the
10 year) is reasonably accurate, you may consider what" -- "whether
11 Government agents sufficiently investigated all reasonable
12 'leads' suggested to them by the Defendant, or which otherwise
13 surfaced during the investigation, concerning the existence and
14 value of other assets. If you should find that the Government's
15 investigation has either failed to reasonably pursue, or to
16 refute, plausible explanations advanced by the Defendant or
17 which otherwise arose during the investigation concerning other
18 assets the Defendant had at the beginning of the year (or other
19 non-taxable sources income that the Defendant had during the
20 year), then you should find the Defendant not guilty. Notice,
21 however" -- "Notice, however, that this duty to reasonably
22 investigate applies only to suggestions or explanations made by
23 the Defendant, or to reasonable leads that otherwise turn up;
24 the Government is not required to investigate every conceivable
25 asset or source of non-taxable funds.

1 "If you decide the evidence in the case establishes
2 beyond a reasonable doubt the maximum possible amount of the
3 Defendant's net worth at the beginning of the tax year, and
4 further establishes that any increase in the Defendant's net
5 worth at the end of that year together with non-deductible
6 expenditures made during the year, did exceed the amount of
7 income required to file a tax return, you should then proceed to
8 decide whether the evidence also establishes beyond a reasonable
9 doubt that such additional funds represented taxable income
10 (that is, income from taxable sources) such that Defendant Neun
11 willfully failed to file a tax return as charged in the
12 Indictment."

13 "Jury Instruction No. 46

14 "The second element of the offense of failure to file
15 is that the defendant failed to file an income tax return for
16 each of the years charged in the Indictment.

17 "If the minimum income threshold is met, the law
18 provides that a return made on the basis of the calendar year
19 shall be made on or before the 15th day of April, following the
20 close of the calendar year, except that when April 15 falls on a
21 Saturday, Sunday, or legal holiday, returns are due on the first
22 day following April 15, which is not a Saturday, Sunday, or
23 legal holiday."

24 "Jury Instruction No. 47

25 "With respect to the tax offenses charged in the

1 Indictment, to act willfully means to act voluntarily and
2 deliberately with the intention to violate a known legal duty."

3 "Jury Instruction No. 48

4 "Conduct is not willful if it is based upon accident,
5 mistake, inadvertence or due to a good faith misunderstanding as
6 to the requirements of the law. Additionally, mere negligence,
7 even gross negligence is not sufficient to constitute
8 willfulness under the law. A defendant" -- "A defendant does
9 not willfully violate the tax laws if he or she believes in good
10 faith that he or she is acting within the law, or that his or
11 her actions comply with the law, even if he or she is incorrect.
12 A good faith belief is one which is honestly and be genuinely
13 held. Therefore, if [a]" -- "if [a] defendant actually believed
14 what he or she was doing was in accord[ance] with the tax
15 statutes, he or she cannot be said to have the criminal intent
16 to willfully fail to file tax returns, assist or advise in the
17 filing of tax returns, or to evade or defeat a tax. A belief
18 need not be objectively reasonable to be held in good faith.
19 The burden of proof is not on the defendant to prove his or her
20 good faith.

21 "Neither a disagreement with the requirements of the
22 law, nor a belief that the tax laws are unconstitutional -- no
23 matter how earnestly held -- constitutes a defense of good faith
24 misunderstanding, or mistake. A disagreement with the Internal
25 Revenue Code, or a belief that the law should be other than what

1 it is, no matter how earnestly believed, is not a defense and
2 does not negate willfulness. In other words, a good faith
3 misunderstanding of the law may negate the willfulness of the
4 defendant's actions, but a good faith disagreement with the law
5 will not. It is the duty of all citizens to obey the law
6 whether they agree with it or not.

7 "In deciding whether a defendant had a good-faith
8 belief, you are free to consider any admissible evidence from
9 any source showing that defendant was aware of their duty
10 including evidence showing their awareness of the relevant
11 provisions of the Internal Revenue Code or regulations, of court
12 decisions rejecting or accepting their interpretation of the tax
13 law, of authoritative rulings of the Internal Revenue Service or
14 of any contents of the personal income tax return forms and
15 accompanying instructions."

16 "Jury Instruction No. 49

17 "The intent of a person or the knowledge that a person
18 possesses at any given time may not ordinarily be proved
19 directly because there is no way of directly scrutinizing the
20 workings of the human mind. In determining the issue of what a
21 person knew or what a person intended at a particular time, you
22 may consider any statements made or acts done by that person and
23 all other facts and circumstances received into evidence which
24 may aid in your determination of that person's knowledge or
25 intent.

1 "You may infer, but you are not" -- certainly not
2 required to infer, that a person intends the natural and
3 probably consequences of acts knowingly done and knowingly
4 omitted. It is entirely up to you, however, to decide what
5 facts to find from the evidence received during this trial."

6 "Jury Instruction No. 50

7 "Title 42, United State Code, Section 408(a)(3)
8 provides in part, that:

9 "'Whoever at any time makes or causes to be made any
10 false statement or representation of a material fact for
11 use in determining rights to payment . . . ' for Social
12 Security Disability Benefits shall be guilty of an
13 offense against the United States."

14 "Jury Instruction No. 51

15 "Cynthia Neun" -- "Defendant Cynthia Neun is charged in
16 Count 32 of the Indictment with making a false statement and
17 representation of a material fact for use in determining her
18 right to payment for disability benefits under Title II of the
19 Social Security Act. In" -- "In order for defendant Neun to be
20 found guilty of that charge, the government must prove each of
21 the following elements beyond a reasonable doubt:

22 "(1) Cynthia Neun knowingly made or caused to be made

23 "(2) a false statement or representation of a
24 material fact

25 "(3) to the Social Security Administration for use

1 in determination her right to payment under Title
2 II of the Social Security Act."

3 "Jury Instruction No. 52

4 "A statement is a representation of material fact if it
5 has a natural tendency to influence, or be capable of
6 influencing, the decision of the Social Security Administration.
7 However, whether a statement is material does not depend on
8 whether the Social Security Administration was actually deceived
9 or whether the Social Security Administration's decision would
10 have been different if the statement had not been made."

11 "Jury Instruction No. 53

12 "Title 28, United State Code, Section 641 provides in
13 part, that:

14 "'Whoever embezzles, steals, purloins, or knowingly
15 converts to his use or the use of another . . . any
16 record, voucher, money or other thing'" -- "'or thing of
17 value of the United States or of any department or
18 agency thereof . . . ' shall be guilty of an offense
19 against the United States."

20 "Jury Instruction No. 54:

21 "Defendant Cynthia Neun is charged in Count 33 of the
22 Indictment with theft of government money in violation of
23 Section 641 of Title 18, United States Code" -- "of the United
24 States Code. In order for defendant Neun to be found guilty of
25 that charge, the government must prove each of the following

1 elements beyond a reasonable doubt:

2 "(1) that defendant ... knowingly stole money with the
3 intention of depriving the owner of the use or
4 benefit of the money;

5 "(2) the money belonged to the United States; and

6 "(3) the value of the money was more than \$1,000."

7 "Jury Instruction No. 55

8 "When you retire, you should elect one member of the
9 jury as your foreperson. That person will preside over the
10 deliberations and speak for you here in Court.

11 "You will then discuss the case with your fellow jurors
12 to reach agreement if you can do so. Your verdict, whether
13 guilty or not guilty, must be unanimous.

14 "Each of you must decide the case for yourself, but you
15 should do so only after you have considered all the evidence,
16 discussed it fully with the other jurors, and listened to the
17 views of your fellow jurors.

18 "Do not be afraid to change your opinion if the
19 discussion persuades you that you should. But do not come to a
20 decision simply because other jurors think it is right.

21 "It is important that you attempt to reach a unanimous
22 verdict but, of course, only if ... you can do" -- "do so after
23 having made your own conscientious decision. Do not change an
24 honest belief about the weight and effect of the evidence simply
25 to reach a verdict.

1 "The verdict must be based solely on the evidence and
2 on the law as I have given it to you in these instructions.
3 However, nothing that I have said or done is intended to suggest
4 what your verdict should be -- that is entirely for you to
5 decide.

6 "The arguments and statements of the lawyers" -- or
7 "the attorneys are not evidence. If you remember the facts
8 differently from the way the lawyers" -- I'm sorry -- "the
9 attorneys have stated them, you should base your decision on
10 what you remember.

11 "After you have reached unanimous agreement on a
12 verdict, your foreperson will fill in the verdict forms that
13 will be given to you, sign and date it and advise the marshal
14 outside your door that you are ready to return to the courtroom.

15 "If it becomes necessary during your deliberations to
16 communicate with me, you may send a note through the marshal or
17 bailiff, signed by your foreperson or by one or more members of
18 the jury. No member of the jury should attempt to communicate
19 with me except by a signed writing, and I will communicate with
20 any member of the jury on anything concerning the case only in
21 writing, or orally here in open court. Remember that you are
22 not to tell anyone -- including me -- how the jury stands,
23 numerically or otherwise, on the question of the innocence or
24 guilt of the Defendant[s], until after you have reached a
25 unanimous verdict or have been discharged."

1 I think we're going to take a break. It's been lengthy
2 and I want to inquire of counsel as to the timeline. So we'll
3 take a -- we'll take a short break.

4 You're still not allowed to deliberate, so just take a
5 break. Don't discuss the case.

6 (Jury leaves the courtroom at 2:59 p.m.)

7 THE COURT: Please be seated.

8 We're at 3:00 p.m. Unless everyone is willing to
9 stipulate, you'll only take a total of 30 minutes for your
10 closings. We're not going to have time to complete closings
11 before 4:30. So, uh, the alternatives are to recess until
12 Monday for closing arguments. Uh, that's one alternative.
13 Another is to get started and go as far as we can today and then
14 resume on Monday. But, as I said, unless you're all going to
15 stipulate to take 30 minutes or less, we're not going to
16 conclude today.

17 (Discussion among counsel.)

18 MR. CRISTALLI: Your Honor, the only, um, proposition
19 that I have with regard to that is if -- if we agreed to have
20 the Government give their closing and, uh, have me be able to
21 give my closing that way at least we -- we have, uh, one defense
22 closing prior to the weekend, if you wanted to get a portion of
23 the closing arguments in. That way we would have two remaining
24 defense closings and rebuttal for Monday. Um, I would be more
25 than happy to do that and I think the Government, uh, would also

1 be okay with that as well, I think.

2 MR. IGNALL: We're okay with that, your Honor, although
3 I'm not sure that even those two would be done by 4:30.

4 MR. BOWERS: Your Honor --

5 THE COURT: That's the problem. And I think we have a
6 juror who, as we saw a few days ago, has to be -- has to be out
7 of here right at 4:30. And I would not want to cut
8 Mr. Cristalli off --

9 MR. CRISTALLI: Yes, sir.

10 THE COURT: -- before you had an opportunity. So I
11 think we'll just go ahead and recess.

12 MR. CRISTALLI: That's fine, your Honor.

13 MR. BOWERS: No objection.

14 MR. IGNALL: There are, I think, three small things we
15 noted in the jury instructions.

16 THE COURT: Okay.

17 MR. IGNALL: We might wanna -- we could probably do
18 that today I think.

19 THE COURT: All right.

20 MR. IGNALL: Let me see if I can find them. One was
21 the instruction on, uh, tax evasion by Mr. Schiff.

22 Is this the new one, Jeff?

23 MR. NEIMAN: Yeah, that's the new one.

24 THE COURT: Page number?

25 MR. IGNALL: Let me see if I can find it, your Honor.

1 MR. NEIMAN: Here it is.

2 MR. IGNALL: It's page No. 35. I think we -- we wanted
3 to add at the end of that language similar to what we had in the
4 conspiracy instruction saying "with all of you agreeing on a
5 particular affirmative act that you found" -- "find Mr. Schiff
6 committed" at the end of that.

7 (Discussion between Mr. Schiff and
8 Mr. Leventhal.)

9 THE COURT: On at least one affirmative act --

10 MR. IGNALL: I think the --

11 THE COURT: -- or an affirmative --

12 MR. IGNALL: -- I think the way that sentence should
13 read is "in order for you to find Mr. Schiff guilty of that
14 charge, you must find that a tax deficiency existed for those
15 years; that Mr. Schiff willfully attempted to evade the taxes
16 owed for those years; and that Mr. Schiff committed at least one
17 affirmative act to evade the taxes owed, with all of you
18 agreeing on a particular affirmative act that you find
19 Mr. Schiff committed" -- sorry -- agreeing on at least one. It
20 may have to be at least one. No particular affirmative act.

21 MR. SCHIFF: What did he say? Can you repeat
22 everything so I can... What jury instruction --

23 MR. LEVENTHAL: I got it. I got it.

24 THE COURT: Okay.

25 MR. IGNALL: And then the other two -- the other two

1 things are just very minor. I think we renumbered the last two
2 counts in the Indictment when we redacted it. So I think Jury
3 Instruction 51 should talk about Count 30 and Jury Instruction
4 No. --

5 THE COURT: You renumbered it when you redacted it?

6 MR. IGNALL: We renumbered it. I don't know if that
7 was appropriate or not, but we did.

8 THE COURT: Well, can we --

9 MR. IGNALL: Can we unnumber it?

10 THE COURT: -- can we, uh -- I see what you did.

11 MR. IGNALL: Yeah. I --

12 THE COURT: Well, probably the better thing to do if --
13 if we've been consistent except for that is to just -- just
14 unnumber it and cut out the two that have been dismissed.

15 MR. IGNALL: We -- we can do that, your Honor. But I
16 believe your Honor mentioned Counts 30 and 31 in the preliminary
17 in the instructions.

18 THE COURT: I probably did.

19 MR. IGNALL: I doubt anyone remembers that, but...

20 THE COURT: All right.

21 MR. IGNALL: We'll do it either way, your Honor.

22 THE COURT: Well --

23 MR. SCHIFF: Are they changing the jury instructions
24 now? Is that it?

25 THE COURT: Okay. Um, how do you want to handle this?

1 Reread --

2 MR. SCHIFF: Wait a minute. Wait --

3 THE COURT: -- Instruction --

4 MR. SCHIFF: -- a minute.

5 THE COURT: -- number 33?

6 MR. IGNALL: I'd propose rereading Jury Instruction

7 No. 33 I --

8 THE COURT: Okay.

9 MR. IGNALL: -- think is appropriate.

10 THE COURT: All right. And why don't -- I think --

11 MR. IGNALL: And we could -- we'll reredact the

12 Indictment.

13 THE COURT: Okay.

14 Do we have to make any changes if you reredact?

15 MR. IGNALL: Uh, I don't know if -- if we want to point

16 out that there are two counts that aren't in there. I don't

17 think we need to. I think we could just reredact it and --

18 THE COURT: Yeah.

19 MR. IGNALL: -- and take out the original Counts 29 and

20 30. Or is it 30, 31 I think? We'll take care of it.

21 THE COURT: Okay.

22 MR. SCHIFF: Uh, your Honor, I may think -- there's a

23 double jeopardy in that. I was already prosecuted for tax

24 evasion for the years '81, '82, '83. Now --

25 THE COURT: There's a double jeopardy --

1 MR. SCHIFF: -- I was charged --

2 THE COURT: -- in what?

3 MR. SCHIFF: -- with evading and defeating the tax.

4 THE COURT: There's a double jeopardy in what?

5 MR. SCHIFF: Well, I was already prosecuted for

6 evading --

7 THE COURT: Mr. Schiff, this is not the time to

8 raise --

9 MR. SCHIFF: No, no.

10 THE COURT: -- issues of --

11 MR. SCHIFF: I'm saying -- but the payment. I think

12 it's not evading -- it's evading the payment. That's --

13 THE COURT: Well --

14 MR. SCHIFF: -- a different charge.

15 THE COURT: -- Mr. Schiff, your -- your objection is

16 late. We've already --

17 MR. SCHIFF: Well, no, no because --

18 THE COURT: -- agreed to these. The only thing that's

19 being added to 33 is something that benefits you. I'm pretty

20 sure --

21 MR. SCHIFF: Well --

22 THE COURT: -- that's the case.

23 MR. SCHIFF: -- well -- well, let me get somethin'

24 straight here. I thought I was being charged with failure to

25 pay the tax, not -- when I read the charge, I didn't raise the

1 issue because I thought it was a different charge.

2 THE COURT: Well --

3 MR. SCHIFF: I thought I was being charged with failure
4 to pay the tax, not that I owed, not attempting to evade the tax
5 because I already was prosecuted for that.

6 THE COURT: Okay.

7 MR. SCHIFF: So that's why I didn't raise the issue.

8 THE COURT: All right. Your objection is noted.

9 Uh, I think we'll just let the jury go home --

10 MR. BOWERS: Yes.

11 THE COURT: -- for the weekend --

12 MR. SCHIFF: Can I just clarify --

13 THE COURT: -- and come back.

14 MR. SCHIFF: -- that? Am I being charged with evading
15 taxes for the years, um, '80, '81, '82? That's really double
16 jeopardy.

17 THE COURT: Mr. Schiff, this is not the time to raise
18 that -- that objection.

19 MR. SCHIFF: Well, I think the issue --

20 THE COURT: I'm going to --

21 MR. SCHIFF: -- can be raised --

22 THE COURT: -- I'm gonna --

23 MR. SCHIFF: -- at any time pro se. I don't --

24 THE COURT: -- bring the jury back in --

25 THE CLERK: Yes.

1 THE COURT: -- and we'll excuse them --

2 MR. SCHIFF: I'm perfectly --

3 THE COURT: -- for the weekend.

4 MR. SCHIFF: -- willing to accept the charge -- accept
5 it to evade the payment of the tax, not evade the tax.

6 MR. IGNALL: Your Honor, just to be clear, he is
7 charged with evasion of payment. That is what that charge is.

8 MR. SCHIFF: Oh, so you're -- I was right on that. I
9 wasn't charged with evasion but avoid the payment.

10 MR. BOWERS: Your Honor, is it 9:00 o'clock Monday?

11 THE COURT: 9:00, yes.

12 (Pause in the proceedings.)

13 THE COURT: I want to see counsel at sidebar.

14 (Sidebar conference was held as follows:)

15 THE COURT: Um, the, uh, Marshals have determined that
16 it would be advisable to transport the jury, uh, to their -- to
17 their vehicles. Uh, so I just want to let you know --

18 MR. CRISTALLI: Is there --

19 MR. BOWERS: Is there any reason for our concern as
20 attorneys --

21 MR. CRISTALLI: No. I might --

22 MR. BOWERS: -- or other officers of the Court?

23 MR. CRISTALLI: My question is, is there a reason why?

24 THE COURT: Uh, the reason is that they have picked up
25 things on the Internet; that there's a group that intends to

1 take photos of the jurors, identify them --

2 MR. SCHIFF: I didn't know anything at all about this.

3 THE COURT: -- put --

4 MR. BOWERS: Not saying you do.

5 THE COURT: -- put things in front of them. So that's
6 the reason. It involves a fringe group that -- that is, uh, uh,
7 known as a -- an organization that would do those things.

8 MR. BOWERS: Would it -- would it be fair to say that
9 the information is mainly of a harassment nature, not of a
10 violent, threatening nature?

11 THE COURT: Uh, I -- I think it -- I think it is.
12 There are no -- there are no death threats, although the group
13 that has associated with it has been associated with those
14 activities. But there's no -- there's no discrete threat
15 against -- against --

16 MR. SCHIFF: They're probably an anti-Semitic group
17 too, so...

18 MR. BOWERS: Shhhh. Please.

19 MR. NEIMAN: Your Honor, it may be wise to maybe seal
20 the -- the names of the jurors at this time --

21 THE COURT: Okay.

22 THE CLERK: They are sealed.

23 MR. NEIMAN: -- if it hasn't already been done so.

24 MR. CRISTALLI: I think it has been done.

25 MR. NEIMAN: And I think we may ask that we also put

1 precautions in place for Monday morning.

2 THE COURT: The precautions for Monday morning is that
3 they will be given a different place for parking and they'll be
4 picked up and delivered.

5 MR. BOWERS: So the Marshals will escort them --

6 THE COURT: Yeah.

7 MR. BOWERS: -- in and out of the courtroom.

8 THE COURT: Yeah. I just wanted you to know.

9 MR. BOWERS: Okay.

10 MR. CRISTALLI: All right.

11 THE COURT: Just so you're aware.

12 MR. CRISTALLI: Thank you, your Honor.

13 MR. NEIMAN: Thank you, your Honor.

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

16 MR. NEIMAN: Your Honor, I think maybe we should have
17 one more --

18 THE COURT: One more sidebar?

19 MR. NEIMAN: Yeah, one more issue.

20 THE COURT: All right.

21 (Sidebar conference was held as follows:)

22 THE COURT: Is anybody else asking for a ride.

23 MR. LEVENTHAL: I actually was.

24 MR. NEIMAN: No.

25 MR. CRISTALLI: Not yet.

1 MR. BOWERS: I might take one.

2 MR. NEIMAN: Your Honor, we would ask that you order --

3 MR. IGNALL: All the parties.

4 MR. NEIMAN: -- all the parties here to not discuss
5 this with anybody outside -- I think Mr. Schiff already
6 discussed with Ms. Neun -- that's fine -- and Mr. Cohen, with
7 the clients. But we need -- there have been things that have
8 been said at sidebar which have appeared on the Internet before.

9 THE COURT: Okay.

10 MR. NEIMAN: And I think it's important that -- for
11 everyone's safety, including the jurors, that everyone
12 understand that it's not to be discussed with anybody.

13 MR. SCHIFF: I'm gonna try to find out who --

14 MR. BOWERS: I mean --

15 THE COURT: No.

16 MR. SCHIFF: No? You don't want me to do it?

17 THE COURT: Don't stir.

18 MR. SCHIFF: All right.

19 THE COURT: It's -- it's bad enough.

20 MR. IGNALL: I would like an exception for the -- we'll
21 mention it to our agents.

22 THE COURT: Humm?

23 MR. IGNALL: I'd like to mention it to our agents.

24 THE COURT: Yeah. You mentioned your agents. Please
25 tell your clients, Mr. Cristalli --

1 MR. CRISTALLI: Yes, Judge.

2 THE COURT: -- Mr. Bowers, the order is not to discuss
3 this matter --

4 MR. BOWERS: Sure.

5 THE COURT: -- outside of the --

6 MR. BOWERS: Well, absolutely.

7 THE COURT: -- outside of --

8 MR. BOWERS: -- well --

9 THE COURT: -- the individuals who --

10 MR. BOWERS: -- want to talk to my family --

11 THE COURT: Yeah.

12 MR. BOWERS: -- but not --

13 THE COURT: No.

14 MR. BOWERS: -- not for purposes of disseminating the
15 information and I wanna make sure they are safe.

16 THE COURT: Right.

17 MR. CRISTALLI: And, your Honor, just so that --

18 THE COURT: I have no problem with that.

19 MR. CRISTALLI: Just so that --

20 MR. BOWERS: Thank you.

21 MR. CRISTALLI: -- we're clear, um, in terms of, you
22 know, material that may have been disseminated during the course
23 of the trial, um, certainly, um, we have not disseminated any
24 information as relates to this case -- the trial of this case to
25 go anywhere --

1 THE COURT: Okay.

2 MR. CRISTALLI: -- and haven't spoken with anybody with
3 regard to it.

4 THE COURT: Okay.

5 MR. CRISTALLI: So I just want to make that disclosure
6 to the Court.

7 THE COURT: Okay. Thank you.

8 MR. IGNALL: Thank you, your Honor.

9 THE COURT: Thank you.

10 MR. BOWERS: All right. Thank you, Judge.

11 (Sidebar conference concluded and the
12 following is held in open court:)

13 (Jury enters the courtroom at 3:15 p.m.)

14 THE COURT: Please be seated.

15 Will counsel stipulate to the presence of the jury?

16 MR. NEIMAN: Yes, your Honor.

17 MR. BOWERS: Yes, your Honor.

18 MR. CRISTALLI: Yes, your Honor.

19 THE COURT: Ladies and gentlemen of the jury, it's
20 necessary for me to -- to reread a -- one -- one jury
21 instruction, Jury Instruction No. 33, with some additional
22 language that is -- that counsel has agreed is necessary. And
23 what we will do, uh, is we will provide you with a new version
24 of Jury Instruction No. 33. But if you wish you can -- you can
25 write the -- write the additional information on your own copy.

1 And I'm adding a phrase at the very end of -- of the last line.

2 So I'll read it, uh, from the start:

3 "Jury Instruction No. 33

4 "Count Seventeen of the Indictment charges Irwin Schiff
5 with willfully attempting to evade and defeat the payment of
6 approximately \$1,369,000 in income taxes, penalties, and
7 interest due and owing for 1979-1985. In order for you to find
8 Mr. Schiff guilty of that charge, you must find that a tax
9 deficiency existed for those years, that Mr. Schiff willfully
10 attempted to evade the taxes owed for those years, and that
11 Mr. Schiff committed at least one affirmative act to evade the
12 taxes owed with all of you agreeing on at least one particular
13 affirmative act."

14 You should not draw any inference from the fact I read
15 this twice other than to make the amendment.

16 Okay. Now, it's -- we're at 3:15. It's very clear
17 that we will not be able to complete closing arguments today in
18 the time that remains before 4:30. So, accordingly, we're going
19 to have you come back at 9:00 a.m. on Monday for the closing
20 arguments of counsel and then the commencement of your
21 deliberations. I would -- I would think that you'll -- you'll
22 have the case sometime pretty close to -- to early afternoon.

23 And so we'll be in recess until 9:00 a.m. on Monday.
24 The Court again instructs you that you are not to commence your
25 deliberations or to discuss the case with anyone or allow it to

1 be discussed in your presence or to read or view any media
2 accounts that may be published concerning this case.

3 The Court requests that you reassemble in the jury room
4 for further instructions from the Marshals.

5 We're in recess.

6 (Jury leaves the courtroom at 3:18 p.m.)

7 THE COURT: Anything further?

8 MR. IGNALL: No, your Honor.

9 THE COURT: Government?

10 MR. CRISTALLI: No, your Honor.

11 MR. BOWERS: Oh, I'm sorry, your Honor. Well, no.

12 We'll do it Monday morning. It's no big deal.

13 MR. CRISTALLI: Oh, your Honor, maybe before, um, we
14 leave, so we don't have to do it tonight, we -- it may be an
15 appropriate time after jury instructions just to renew all
16 motions, including Rule 29 motions. Just so the record's clear.

17 THE COURT: Okay.

18 MR. BOWERS: That's fine.

19 THE COURT: We'll take care of that on Monday.

20 MR. BOWERS: Thanks.

21 THE COURT: Thank you.

22

23

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25

1 MR. BOWERS: Have a nice weekend.

2 THE COURT: Thank you.

3 (Proceedings adjourned at 3:19 p.m.)

4 --oOo--

5 I hereby certify that pursuant to Section 753, Title 28, United
6 States Code, the foregoing is a true and correct transcript of
7 the stenographically reported proceedings held in the
8 above-entitled matter.

9

10 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

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