

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE HON. KENT J. DAWSON, JUDGE PRESIDING

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

REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 23)

Thursday, October 20, 2005

APPEARANCES: (See Page 2)

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

1 APPEARANCES:

2 For the Plaintiff:

3 JEFFREY A. NEIMAN  
4 DAVID IGNALL  
5 Trial Attorneys  
6 U.S. Department of Justice  
7 Southern Criminal Enforcement Section  
8 Tax Division  
9 P.O. Box 972  
10 Washington, DC 20044  
11 (202) 514-5351

12 For the Defendant, Cynthia Neun:

13 MICHAEL V. CRISTALLI, ESQ.  
14 Michael V. Cristalli, Ltd.  
15 3960 Howard Hughes Parkway, Suite 850  
16 Las Vegas, Nevada 89109  
17 (702) 386-2180

18 For the Defendant, Irwin A. Schiff:

19 IRWIN A. SCHIFF, PRO PER  
20 444 East Sahara Avenue  
21 Las Vegas, Nevada 89104  
22 (702) 385-6920

23 TODD M. LEVENTHAL, ESQ.  
24 Flangas & Leventhal  
25 600 South Third Street  
Las Vegas, NV 89101  
(702) 384-1990

For the Defendant, Lawrence Cohen:

19 CHAD A. BOWERS, ESQ.  
20 Albert D. Massi, Ltd.  
21 3202 West Charleston Boulevard  
22 Las Vegas, Nevada 89102  
23 (702) 878-8778

24 Also Present: Gary Modafferi, J.D.

25

1 LAS VEGAS, NEVADA; THURSDAY, OCTOBER 20, 2005; 1:11 P.M.

2 --oOo--

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

4 THE COURT: Okay.

5 THE CLERK: They are all on the line.

6 THE COURT: Have they made their appearances already?

7 THE CLERK: No.

8 THE COURT: Go ahead, make your appearances, Counsel.

9 MR. NEIMAN: Good afternoon. Jeffrey Neiman and David  
10 Ignall on behalf of the United States.

11 MR. CRISTALLI: Good afternoon. Michael Cristalli  
12 appearing on behalf of Cynthia Neun.

13 MR. BOWERS: Chad Bowers on behalf of Larry Cohen.

14 MR. SCHIFF: Irwin Schiff on behalf of Irwin Schiff.

15 MR. LEVENTHAL: Todd Leventhal for Irwin Schiff.

16 THE COURT: Thank you.

17 The Court has received a request from the jury for  
18 Cynthia's Internal Revenue Code and --

19 MR. CRISTALLI: I'm sorry? Could you repeat that, your  
20 Honor?

21 THE COURT: Yes.

22 The Court has received a request from the jury --

23 MR. CRISTALLI: Okay.

24 THE COURT: -- for Cynthia Neun's Internal Revenue  
25 Code --

1 MR. CRISTALLI: Okay.

2 THE COURT: -- and also for the Internal Revenue Code  
3 itself, apparently another copy, a clean copy.

4 The Court checked with the clerk. Defendant Neun's  
5 Internal Revenue Code was received, uh, as Exhibit No. 2500 for  
6 a limited purpose. It was agreed that it would not go into the  
7 jury room. The -- the second request for a -- an Internal  
8 Revenue Code, uh, is, I think, problematic in that that would  
9 allow the jury to have something that was not introduced into  
10 evidence.

11 What I propose is this -- this is the answer --  
12 "Neither is available. Cynthia's Internal Revenue Code was  
13 received into evidence for a limited purpose. The Internal  
14 Revenue Code was not received into evidence. The jury  
15 instructions contain the relevant statements of law that you are  
16 to use in deciding your verdicts."

17 MR. SCHIFF: Are you ready to receive comments?

18 THE COURT: What?

19 MR. SCHIFF: Are you ready to receive comments/  
20 objections to your instruction?

21 THE COURT: I'm ready to receive comments, yes.

22 MR. SCHIFF: Well, I think the jury has a perfect right  
23 to see the law. Uh, because one of the -- one of the elements  
24 in the -- in the Cheek decision was the government has a  
25 right -- uh, the gov- -- has to impose a duty. We discussed the

1 law. I tried to introduce the law myself. We had Jerry -- uh,  
2 uh, Jerry what's his name's Code book. I think the jury has a  
3 perfect right to see the law.

4 My own view is that your instructions to the jury as to  
5 what the law is was not entirely accurate as my objections in  
6 the jury conference revealed. I think an American jury has the  
7 right to see the law if they wanna see it. And there's no point  
8 served in keeping the law from them. The only point there would  
9 be in keeping the law from them is you don't want them to see  
10 what the law actually says. And why shouldn't they see what the  
11 law actually says?

12 For one thing, we're supposed to, the public is  
13 supposed to, know what the law is. So I would say that there is  
14 something not exactly, um, legitimate in not allowing the jury  
15 to see the law as the law is written by Congress. And,  
16 therefore, it -- it's objectionable and it seems to me it would  
17 be an attempt to conceal and hide the actual law from the jury.

18 MR. CRISTALLI: And, your Honor -- is everybody hearing  
19 me?

20 MR. SCHIFF: Yeah.

21 MR. CRISTALLI: Um, your Honor, on behalf of Ms. Neun,  
22 um, obviously I understand the Court's previous ruling with  
23 regard, uh, to Ms. Neun's book and whether or not it can come  
24 into evidence, uh, as an exhibit that would go, uh, with the  
25 jury in the back. Obviously we wanted that to happen. It was

1 identified as Ms. Neun's, uh, uh, Internal Revenue Code book.  
2 So we -- it certainly was authenticated. We made a motion to  
3 have it admitted into evidence. We would certainly renew that  
4 request.

5 But, in addition, your Honor, I would be agreeable, um,  
6 to have the Code book go back into the jury deliberation room  
7 with a limiting instruction that it should be, uh -- it should  
8 be only -- it should be used for the sole purpose of Ms. Neun's  
9 reliance, um, and -- and not, um, you know, as to whether -- as  
10 to the jury, um, deciphering what the law is.

11 MR. BOWERS: I would just add that I think a limiting  
12 instruction as to the purpose of the book would allow it to be  
13 received into evidence without undue prejudice.

14 MR. IGNALL: Your Honor, we'd object to that. I think  
15 it's inappropriate for the jury to be doing its own legal  
16 research. I think the Court's instruction, the second part, is  
17 appropriate that all the law the jury needs to concern itself  
18 with is in the Court's instructions.

19 At most -- I think the way the Court's written it is  
20 appropriate -- at most we could perhaps, you know, have -- I  
21 don't remember the phraseology for introducing Ms. Neun's Code  
22 book. I'm not sure anyone -- I think we agreed to let it in.  
23 I'm not sure anyone actually identified it as being hers; maybe  
24 Mr. Schiff did.

25 MR. CRISTALLI: Actually, Mr. Schiff and, um, I believe

1 the undercover agent, um, if I'm not mistaken identified it as  
2 consistent with the book that Ms. Neun had with her at the time  
3 that they, um, met.

4 MR. IGNALL: But what I don't recall is the phraseology  
5 for the limited purpose that it was introduced for.

6 MR. NEIMAN: To show that it was worn and gone through,  
7 I believe, is something to the effect of what --

8 THE COURT: That's correct.

9 MR. CRISTALLI: It was said that. That was correct.

10 MR. NEIMAN: So I guess the Government wouldn't object  
11 if we explained to the jury the limited purpose for which the  
12 book was introduced as evidence.

13 MR. CRISTALLI: With the book?

14 MR. NEIMAN: Without the book.

15 MR. CRISTALLI: Well, then we don't need an instruction  
16 then.

17 MR. SCHIFF: I identified that as being her Code book.  
18 It's showing that she didn't necessarily rely upon me  
19 completely. She -- she took what I said and then did her own  
20 research by checking out the law.

21 MR. CRISTALLI: If your Honor is going to make the  
22 determination that it's already been admitted for a limited  
23 purpose, then that's the ruling. But there shouldn't be any  
24 additional canvass, um, with regard to the purpose of the book  
25 coming in. I mean, that -- that's not even asked of the -- by

1    them to have answered.  So I would object seriously to that.  I  
2    mean, I -- I would -- I would offer it to go in with a limiting  
3    instruction.  But, if it didn't go in, then there shouldn't be  
4    any limiting instruction.

5           MR. BOWERS:  I'd join in --

6           MR. CRISTALLI:  It wouldn't necessitate one.

7           MR. IGNALL:  And the Government agrees with the Court's  
8    proposed answer to the question.

9           MR. SCHIFF:  Well, first of all, if the -- if the Court  
10   correctly, uh, stated the law, how would the actual law itself  
11   con- -- contradict what the -- what the Court said?  I mean, why  
12   should the Government and the Court, uh, be -- be afraid of the  
13   jury seeing the law as written by Congress?  I mean, there  
14   shouldn't be any conflict between the law as given to it by the  
15   Court and the law as contained in the Internal Revenue Code.  
16   But I think the jury wants to see the extent of the research  
17   that Cynthia Neun did in making whatever determination she did.

18           MR. BOWERS:  I'd join in those objections on behalf of  
19   Mr. Cohen.

20           THE COURT:  Well, the -- the request to -- to send back  
21   the law is -- is not something that is done in -- in any type of  
22   case, criminal case or otherwise.

23           The -- and that's not because the Court wants to keep  
24   the law from the jury.  It's that the jury is not entitled to do  
25   its own legal research.  Otherwise, we'd just turn 'em loose up

1 in the library in every case and let them see what they could  
2 cobble together.

3 Uh, the -- with respect to Mr. Schiff's continuing  
4 hammering on that I should have let him tell the jury what the  
5 law was, that is clearly improper and -- and no -- no attorney  
6 would -- would make such a suggestion, uh, although in  
7 Mr. Schiff's case it is something that he is, uh, promoting  
8 as -- as a way to, uh -- to inflame others.

9 The, uh -- the -- the Code -- the IRC of Cynthia Neun  
10 was received into evidence for the limited purpose of showing  
11 that it was worn and, uh, tabbed. And I don't think any further  
12 explanation is requested -- is required for that.

13 The Internal Revenue Code itself was not received into  
14 evidence. Again, it poses the same problem and, that is, that,  
15 you know, if we allowed the jury that then we should be allowing  
16 them to have a Westlaw access to do their own research. I think  
17 the law has been adequately and accurately recited in the jury  
18 instructions that they already have.

19 MR. SCHIFF: Well, I take exception to that. The --  
20 the -- the -- one of the instructions which stated that a  
21 deficiency arises at the time a tax is due, uh, is absolutely a  
22 misstatement of law. A deficiency can only arise after a tax  
23 return is examined and a deficiency determined by the Secretary.  
24 Uh, so, uh -- also, the jury instruction that Congress -- uh, or  
25 the -- or the Secretary, uh, delegated the IRS the authority to

1 collect taxes, that's an incorrect jury instruction.

2 THE COURT: You can appeal it, Mr. Schiff.

3 MR. SCHIFF: I'm just saying my view is that that's an  
4 incorrect jury instruction.

5 THE COURT: No. We're not -- we're not here to argue  
6 the jury instructions that have already been given.

7 MR. SCHIFF: All right. I'm just --

8 THE COURT: We're here to discuss the -- the request  
9 that has been made.

10 MR. CRISTALLI: And, your Honor, just so that we're  
11 clear just for purposes of, um, you know, appellate reasons, um,  
12 the Government did, uh, introduce -- and I understand they  
13 introduced it for the purposes of notice -- but the CRE [sic]  
14 Report which contained ad nauseam citations of law. Um, so  
15 with --

16 THE COURT: Yeah. And it was received for a limited  
17 purpose.

18 MR. CRISTALLI: And I believe there was other items of  
19 evidence introduced --

20 THE COURT: Well, so was Mr. --

21 MR. CRISTALLI: -- that cited law as well.

22 THE COURT: -- so was Mr. Schiff's --

23 MR. CRISTALLI: So --

24 THE COURT: -- book.

25 MR. CRISTALLI: -- with that said we would,

1 obviously --

2 THE COURT: Yeah.

3 MR. CRISTALLI: -- renew our request --

4 THE COURT: Well --

5 MR. CRISTALLI: -- to have it admitted.

6 THE COURT: -- the problem throughout this trial is  
7 that Mr. Schiff kept reciting the law. And, as you know, that  
8 required an interim instruction. This whole case, because of  
9 Mr. Schiff's self-representation, was, uh -- was geared to -- to  
10 trying to keep out misstatements of the law and avoid  
11 Mr. Schiff, uh, uh, giving the instructions of law that are the  
12 prerogative of the Court.

13 So, uh, you know, some -- some things did come in.  
14 Mr. Schiff's -- Mr. Schiff got it in over -- over objections and  
15 over objections that were sustained he repeatedly interjected  
16 his view of the law. And so these are things that -- you know,  
17 we couldn't avoid having a little bit of spillage. But now to  
18 open it up because, uh, things came in over objection is -- I  
19 don't think is the answer. I think the answer is to limit the  
20 jury to the information that they have, the instructions of law  
21 that they have. And that's what I'm going to do.

22 MR. BOWERS: Your Honor, I'm sorry. Chad Bowers. Just  
23 for the record, I'd like to join in Mr. Cristalli's last  
24 comment.

25 MR. CRISTALLI: Um, your Honor, once again, I don't

1 know whether or not the Court knows or not, but if it does,  
2 whether or not it has the discretion to tell us who the  
3 foreperson is.

4 THE COURT: I don't -- don't recall who it is. I don't  
5 have the -- the note in front of me. So that's the answer.

6 MR. CRISTALLI: And so it was signed by the foreperson,  
7 however, the note?

8 THE COURT: It was signed by someone and -- an it  
9 didn't -- my recollection is it didn't identify that person as  
10 the foreperson.

11 MR. BOWERS: And that note will be made part the  
12 record, your Honor?

13 THE COURT: It will.

14 MR. CRISTALLI: Okay. And so the Court is going to  
15 instruct them finally. Um, what -- what will the Court's  
16 response be to the jury?

17 THE COURT: "Neither is available. Cynthia's IRC was  
18 received into evidence for a limited purpose. The Internal  
19 Revenue Code was not received into evidence."

20 MR. CRISTALLI: Okay.

21 THE COURT: "The jury instructions contain the relevant  
22 statements of law that you must use in deciding your verdicts."

23 MR. CRISTALLI: Okay.

24 THE COURT: Anything further?

25 MR. NEIMAN: Are we gonna -- are you gonna instruct the

1 jury with us on the phone or are you gonna do it in writing?  
2 How are we gonna proceed from here?

3 THE COURT: It's -- it's going to be done in writing  
4 using the exact language that I just read to you.

5 MR. CRISTALLI: Very good, your Honor.

6 THE COURT: Thank you.

7 MR. BOWERS: All right. Thank you, your Honor.

8 MR. NEIMAN: Thank you.

9 MR. SCHIFF: Thank you.

10 (Proceedings adjourned at 1:25 p.m.)

11 --oOo--

12 I hereby certify that pursuant to Section 753, Title 28, United  
13 States Code, the foregoing is a true and correct transcript of  
14 the stenographically reported proceedings held in the  
15 above-entitled matter.

16  
17 DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478

